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IN THE  
**Supreme Court of Virginia**

RECORD NO. 001072



**A. G. BERTOZZI,**

*Appellant,*

**v.**

**HANOVER COUNTY,**

*Appellee.*

JOINT APPENDIX

**Bruce P. Ganey**  
**GANEY & LAIBSTAIN, P.C.**  
Post Office Box 646  
Ashland, Virginia 23005  
(804) 798-2579

*Counsel for Appellant*

**A. Lisa Barker**  
**OFFICE OF THE COUNTY**  
**ATTORNEY**  
Post Office Box 470  
Hanover, Virginia 23069  
(804) 537-6035

*Counsel for Appellant*



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VIRGINIA:

**IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER**

A. G. BERTOZZI,

Appellant,

v.

CH 594-96

HANOVER COUNTY, VIRGINIA,

Appellee.

SERVE: Sterling E. Rives, III.  
County Attorney  
P.O. Box 470  
Hanover, Virginia 23069

**PETITION FOR APPEAL OF DECISION  
OF HANOVER COUNTY PLANNING OFFICE**

Comes now the Appellant, A. G. Bertozzi, by counsel, and hereby notes an appeal of the Decision rendered by the Hanover County Planning Office on October 29, 1996, and support thereof states as follows:

1. That at all times germane to this action the Appellant, A. G. Bertozzi, is now and has been the record owner of 181.1 acres of land located in South Anna District, Hanover County, Virginia.
2. That at all times germane to this action the Hanover County Board of Supervisors has designated John Hodges as Director of Planning for Hanover County, Virginia.
3. That the said John Hodges has empowered Michael E. Crescenzo as his Deputy Director of Planning and in said capacity is authorized to act on behalf of John Hodges as Planning Director.
4. That all proposed subdivisions in Hanover County must be submitted to the Hanover County Planning Office for approval and certification by a duly authorized agent of the Hanover County Board of Supervisors.

5. That on October 9, 1996, your Appellant filed an application for final approval of a subdivision known as "Sugar Maple" consisting of 181.1 acres of real property located in South Anna District, Hanover County, Virginia.

6. That the above-referenced application and required fees were filed for Sections A - E of said Sugar Maple subdivision with a notation that Sections F and G would be filed immediately thereafter.

7. That on October 29, 1996, the County, by and through its duly authorized agent, **disapproved** the subdivision plat and application because of applicant's failure to record first division lots (Title I, Art. 5, Section 2.7-1) (see Exhibit A attached hereto and made a part hereof).

8. That Title III, Section 4, 4-1.1 of the Hanover County Zoning and Subdivision Ordinance provides for an appeal of the agent's Decision to the Hanover Circuit Court.

9. That the actions of the agent to disapprove the application and subdivision plat are in error as the application and subdivision plat for the Sugar Maple subdivision are in full compliance with Title I, Art. 5, Section 2.7-1.

10. That Title I, Art. 5, Section 2.7-1 is ambiguous and vague as it merely describes lot size requirements, all of which have been met by the application and subdivision plat.

11. Based on the ordinance application, the **disapproval** was improper.

12. That the **disapproval** was arbitrary and/or capricious.

13. That since the Appellant has fully complied with all requirements, the agent should have approved the subdivision application and ordinance.



WHEREFORE, your Appellant prays that this Court overturn the Decision of the Hanover County Planning Office; that this Court ORDER that the subdivision plat and application with respect to the Sugar Maple subdivision be approved and recorded; and that this Court order the Appellee to pay all costs of this proceeding, including reasonable attorney's fees and costs.

**A. G. BERTOZZI**

BY:   
\_\_\_\_\_  
OF COUNSEL

Bruce P. Ganey, Esquire  
GANEY & LAIBSTAIN, P.C.  
P.O. Box 646  
Ashland, Virginia 23005  
(804) 798-2579

## EXHIBIT "A"



HANOVER COUNTY

P. O. BOX 470

HANOVER, VIRGINIA 23069-0470

JACK BERRY  
COUNTY ADMINISTRATORRICHARD R. JOHNSON  
DEPUTY COUNTY ADMINISTRATORSTERLING E. RIVES, III  
COUNTY ATTORNEY

## BOARD OF SUPERVISORS

W. L. GEE, JR., CHAIRMAN  
NORTH DISTRICTJ. M. WARD, VICE-CHAIRMAN  
MECHANICSVILLE DISTRICTD. E. ERNST  
ASHLAND DISTRICTT. G. GILES  
GREENSBORO DISTRICTJ. M. GORDON, JR.  
COURT HOUSE DISTRICTR. E. STANLEY, JR.  
HEATHCOTE DISTRICTR. L. WADE, SR.  
SOUTH HARBOR DISTRICT

October 29, 1996

Richard L. Baird, Jr.  
1910 Byrd Avenue, Suite 210  
Richmond, VA 23231CERTIFIED MAIL - RETURN  
RECEIPT REQUESTEDRe: Subdivision application - Sugar Maple, Sect. A - E

Dear Mr. Baird:

On October 8, 1996, the Hanover County Board of Supervisors adopted zoning and subdivision ordinances which significantly change rural subdivision development requirements. The new ordinance eliminated the distinction among Title II, Title III, and Title IV subdivisions, as well as both "first divisions" and "the 25 acre rule" as interpretations of the zoning and subdivision ordinances.

However, the Board also approved a provision which permits the review of "complete applications for final subdivision approval which...were in compliance with all substantive zoning and subdivision ordinance requirements in effect on [the date of submittal]". Because your application was received prior to adoption of the new ordinance, this provision applies to your subdivision.

The staff has completed its review of your application and is notifying you that your subdivision plan and application, filed on October 9, 1996, titled "Sugar Maple", prepared by Charles G. Paterson, Jr., and dated October 8, 1996, is **DISAPPROVED** because of failure to record first division plat in accordance with Sec. 2.7-11.

Your application, plan, and fees are being returned to you. Attached are copies of Ordinance 16-11 and 16-12 (the revised zoning and subdivision ordinances) for your use. Should you wish to reapply for subdivision approval, the standards specified in these ordinances will apply.



Richard L. Baird  
October 29, 1996  
page 2

Should you have any questions regarding this action, or if we can assist you in your reapplication, please contact F. Keith Thompson, Principal Planner; Jenifer Reiner, Applicant Liaison; or me.

Sincerely,

  
Michael E. Crescenzo  
Deputy Director of Planning

cc: A. G. Bernold (Owner)  
Sugar Maple

**VIRGINIA:**

IN THE CIRCUIT COURT OF HANOVER COUNTY

**A. G. BERTOZZI,**

**Appellant,**

**v.**

**In Chancery No. 594-96**

**HANOVER COUNTY, VIRGINIA,**

RECEIVED and/or FILED

**Appellee.**

1 JAN 2 1 1997

**ANSWER**

CLERK'S OFFICE  
HANOVER CIRCUIT COURT

Appellee, Hanover County, Virginia ("the County"), by counsel, responds to the Petition for Appeal of Decision of Hanover County Planning Office (the "Petition"), as follows:

1. The County is without sufficient information to admit or deny matters relating to the legal status of ownership of the subject tract, although A. G. Bertozzi is apparently the owner.
2. The County admits the allegations of paragraph 2.
3. The County admits the allegations of paragraph 3.
4. The County admits the allegations of paragraph 4.
5. The County denies the allegations of paragraph 5. The Appellant submitted five applications for subdivision of tracts totaling 130.97 acres.
6. The County denies the allegations of paragraph 6.
7. The County admits the allegation of paragraph 7 that the letter of the agent disapproved the subdivision applications for the reason stated, and the County



further states that the applications may not comply with the ordinances for additional reasons.

8. The County admits the allegations of paragraph 8, in that prior to amendment on October 9, 1996, Title III of the Subdivision Ordinance provided for appeals.

9. The County denies the allegations of paragraph 9.

10. The County denies the allegations of paragraph 10.

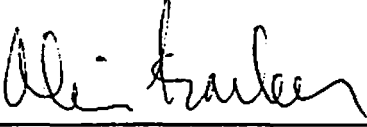
11. The County denies the allegations of paragraph 11.

12. The County denies the allegations of paragraph 12.

13. The County denies the allegations of paragraph 13.

For the reasons stated above, the County respectfully requests this Court to dismiss this action with prejudice, and to award to it its costs incurred and such other relief as the Court deems appropriate.

HANOVER COUNTY, VIRGINIA

By:   
Of Counsel

Sterling E. Rives, III  
Hanover County Attorney  
A. Lisa Barker  
Senior Assistant County Attorney  
P. O. Box 470  
Hanover, Virginia 23069  
(804) 537-6035

CERTIFICATE OF SERVICE

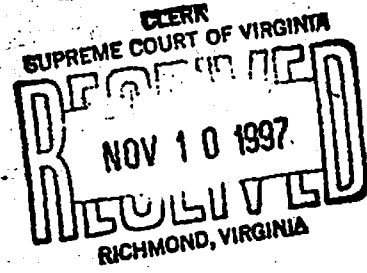
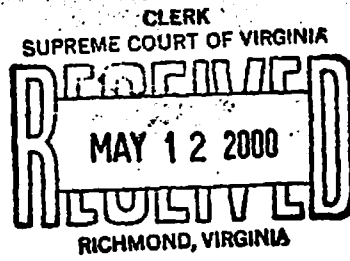
I hereby certify that a true copy of the foregoing Answer was mailed, postage prepaid, this 21st day of January, 1997, to Bruce P. Ganey, Esq., Ganey & Laibstain, P.C., P. O. Box 646, Ashland, Virginia 23005.

A handwritten signature in cursive script, appearing to read "A. Lisa Barker", written over a horizontal line.

A. Lisa Barker



992283  
001072



A. G. BERTOZZI

V

HANOVER COUNTY, VIRGINIA

HANOVER COUNTY'S MEMORANDUM FILED 03/31/97

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

RECEIVED and/or FILED

A. G. BERTOZZI,

Appellant,

v.

HANOVER COUNTY, VIRGINIA,

Appellee.

MAR 3 1 1997

CLERK'S OFFICE  
HANOVER CIRCUIT COURT  
In Chancery No. 594-96

MEMORANDUM

The following memorandum is submitted by Appellee Hanover County, Virginia ("the County"), by counsel, and sets out the relevant facts and law relating to the Petition filed in this matter.

Statement of Facts

On October 9, 1996, the Appellant filed an application for final approval of a development called "Sugar Maple" consisting of subdivision plats for Sections A through E ("the Subdivision"), which are attached to this memorandum as Exhibits A through E. That proposed development consisted of approximately 125 acres of property located in South Anna District. That acreage was part of an original parcel of about 181 acres. The 181-acre tract is depicted in a "Title IV" Subdivision plat titled "Plat Showing Seven Tracts of Land Situated on the South Side of Route No. 54 Near Montpelier," attached as Exhibit F.

Each of those plats for Sections A through E depicts a parcel of about 25 acres, divided into four lots, two of which are ten acres or greater and two of which are less

than ten acres. All of those subdivision plats were disapproved by letter dated October 29, 1996, because of the Appellant's "failure to record first division lots (Title I, Article 5, Section 2.7-1)." A copy of that letter is attached as Exhibit G.

I. Adoption of Zoning and Subdivision Ordinance Revisions Eliminated the "Twenty-Five Acre Rule" Which the Appellant Attempted to Use.

On the evening of October 9, 1996, the Board of Supervisors adopted Ordinance No. 96-17 and Ordinance No. 96-18, revising the Zoning and Subdivision ordinances. Copies of those ordinances are attached as Exhibits H and I. In brief, among other changes, the Subdivision Ordinance revision made every division of property a subdivision and imposed some additional development standards. The Zoning Ordinance revision deleted the two-acre minimum lot size for "first divisions", making the minimum lot size ten acres in the A-1 district. Except for developments which were "grandfathered", as described below, those changes effectively eliminated the "Twenty-Five Acre Rule" ("the Rule") which was a long-standing staff interpretation, applied to development of thousands of lots over the years. The Rule, in effect, provided a bonus for developers, in allowing additional lots over those which would have been allowed with a strict ordinance interpretation.

The basis of the Rule included the provision relating to minimum lot size in the A-1 district (copy of prior provision attached as Exhibit J). Title I, Article 5, Section 2.7, of the Hanover County Zoning Ordinance, stated that the minimum lot size for a single family dwelling was "two acres, after the first conveyance, all lots must be ten acres or greater." The definition of "subdivision", Title III - Subdivision - 10 to 25 Acres, Section

2-6 (copy of prior provision attached as Exhibit K) was “[t]he division of a tract or parcel of land into three (3) or more parts, any of which contain an area of ten (10) or more acres, but less than twenty-five (25) acres . . . .” The resulting interpretation was that a landowner could record a plat (a Title IV Subdivision plat) or deeds dividing a large parcel into tracts of 25 acres. The owner could then record a two-acre “first division” for each of those tracts. Plats for Title III subdivisions could then be submitted, which would show the remaining 23 acres divided into two ten acre tracts and one three acre tract (the “residual”). The recording of the “first division” prior to submission of the Title III subdivision application was an essential element of the Rule, since otherwise the division would not have been “first”, and the language of the Zoning Ordinance minimum lot size provision would have had no meaning.

Following the “letter of the law” set out in the Zoning and Subdivision ordinances, without the Rule, the Appellant would have been entitled to one two acre conveyance from his original tract of 181 acres, and one residual tract of less than ten acres. (The Rule also provided that the “residual” was legal and buildable, as long as it was more than two acres, even if it was less than ten.) Any other lots would have been required to be at least ten acres in size. For the 125 acres included in proposed Sections A through E, the Appellant, if he had correctly used the Rule, would have been granted approval for six lots, in addition to the divisions allowed pursuant to the language of the prior ordinance.

The Appellant, despite prior discussions with the staff, failed to create “first divisions” in accordance with the Rule. The Rule required that there be an actual first

division, not merely a lot denoted on a Title III subdivision plat as the "first division." In other words, the lot designated as a "first division" for each 25 acre lot would have had to have been recorded by deed or plat prior to the submission of the Title III subdivision plat. That aspect of the Rule had been followed countless times by applicants, and Title III subdivision plats had been routinely rejected, for failure to follow that process. Placing the label "first division" on one of the lots, as the Appellant did for each 25 acre section of "Sugar Maple", did not comply with the Rule.

**II. Appellant's Proposed Subdivision Plats Did Not Conform to the Requirements Established by the Board of Supervisors for "Grandfathering."**

Both ordinances adopted on October 9th included identical "grandfather clauses" as follows:

This ordinance shall be effective upon adoption; provided, however, that:

- a. Complete applications for final subdivision approval which have been filed before the close of business on October 9, 1996, which were in compliance with all substantive zoning and subdivision ordinance requirements in effect on that date shall be reviewed in accordance with those requirements.
- b. All lots or parcels described in deeds or plats recorded in the Hanover County Circuit Court Clerk's Office prior to the close of business on October 9, 1996, which meet all zoning and subdivision requirements for yards, setbacks, and access in effect on the date of building permit application shall be deemed to be in compliance with the lot dimension and area requirements of the Zoning Ordinance and the requirements of the Subdivision Ordinance.

In applying those grandfather clauses, the County staff gave applicants the benefit of the Rule in determining whether applications were filed "in compliance with all substantive zoning and subdivision requirements . . . ." In other words, strictly applying the ordinance provisions, as mentioned above, the Appellant could have taken only a two acre "first division" and left a residual lot, from the original tract of about 181 acres. Any remaining lots would have been required to be at least ten acres in size. The Appellant's proposal did not comply with the Rule, nor did it comply with the actual terms of the prior Zoning and Subdivision ordinance requirements.

Attached is a copy of a list titled "Title III Subdivisions Status 10/9/96." (Exhibit L). That list includes all of the subdivisions (involving property zoned A-1) which were "grandfathered" by the new ordinances. That list shows that 452 lots were grandfathered in accordance with the rules applied to the Appellant's subdivision. Another list titled "Subdivisions Sent Back" (Exhibit M) lists the subdivisions which were filed prior to October 10th and rejected because of failure to meet the "substantive compliance" test of the grandfather clauses. There are two subdivisions in addition to the Appellant's which were rejected for failure to record the "first division," as required by the Rule.

### **III. Long-standing Interpretation of the Zoning and Subdivision Ordinances Governed Application of the Grandfather Clause.**

The Hanover County Planning Department, for a period beginning in the late 1970s, with the adoption of the Zoning Ordinance, through October 9, 1996, adhered to the Rule. "[G]reat weight is given the consistent construction of an ordinance by the



officials charged with its enforcement.” Cook v. City of Falls Church, 244 Va. 107 at 111 (1992). Notwithstanding the possibility of an occasional staff error in reviewing thousands of lots over a period of almost twenty years, the consistent requirement that “first divisions” were required to actually precede any other divisions, should be given deference. That requirement is a reasonable interpretation of the Zoning Ordinance language, by officials charged with the responsibility of administration, and liberalized the effect of the ordinances.

The denial of subdivision approval in this case was based on the applicable ordinances and long-standing interpretations. There is nothing about the decision which is “arbitrary and capricious,” as alleged by Appellant. The Appellant still has the option of subdividing his property pursuant to the revised ordinances.

The transition provided for by the Board of Supervisors, the “grandfather” clauses, did not allow circumvention of prior ordinance requirements. If the Appellant’s subdivision plats had been approved, he would have been allowed to ignore the procedures required of many other applicants over a long period of time, including other applicants filing plats at the same time as the Appellant. The Appellant has provided no basis for his having a benefit given to no one else. The “substantive compliance” standard allowed for those who had met all except trivial requirements to receive the benefit of the liberal ordinance interpretation. The “grandfather” clauses are a form of what has been referred to as “legislative grace” for those landowners who followed all of the appropriate procedures prior to the ordinance changes.


### Conclusion

In summary, if the Appellant had followed the procedures required by the interpretation which liberalized the application of the Zoning and Subdivision ordinances, he would have had the benefit of a number of additional lots in his proposed development. However, in the absence of adherence to that procedure, the Appellant was not "grandfathered" with regard to the use of the Rule and was held to the actual provisions of the prior ordinances, which prescribe a minimum lot size of ten acres, with only a two-acre first division and a residual, from an original tract.

Approval of subdivisions is a ministerial act. A subdivision may not be approved unless it meets all requirements of the Zoning and Subdivision ordinances. The staff does not have discretion in that matter, and based disapproval on the ordinances and applicable interpretations. The Appellant's five subdivision sections are not approvable and this Petition should be dismissed.

The County requests that the Court provide an additional period of time to the parties to conduct discovery and properly enter documents into the record, so that the Court may rule in this case.

HANOVER COUNTY, VIRGINIA

By:   
Of Counsel

Sterling E. Rives, III  
Hanover County Attorney  
A. Lisa Barker  
Senior Assistant County Attorney

P. O. Box 470  
Hanover, Virginia 23069  
(804) 537-6035

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum was mailed, postage prepaid, this 31st day of March, 1997, to Bruce P. Ganey, Esq., Ganey & Laibstain, P.C., P. O. Box 646, Ashland, Virginia 23005.

A handwritten signature in cursive script, appearing to read "A. Lisa Barker", is written above a horizontal line.

A. Lisa Barker

**PRINTER'S NOTE: EXHIBITS A - F (PLAT MAPS) ARE  
TOO LARGE TO BE REASONABLY REPRODUCED.**

BOARD OF SUPERVISORS

R.J. KLOTZ, JR., CHAIRMAN  
HENRY DISTRICT

J.T. "JACK" WARD, VICE-CHAIRMAN  
MECHANICSVILLE DISTRICT

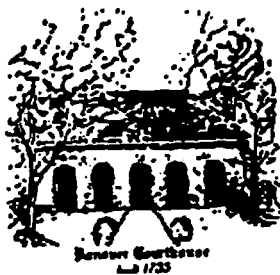
TIMOTHY E. ERNST  
ASHLAND DISTRICT

TOM GILES  
CHICKAHOMINY DISTRICT

JOHN E. GORDON, JR.  
SOUTH ANNA DISTRICT

AUBREY M. STANLEY, JR.  
BEAVERDAM DISTRICT

ELTON J. WADE, SR.  
COLD HARBOR DISTRICT



HANOVER COUNTY

P. O. BOX 470  
HANOVER, VIRGINIA 23069-0470

JACK BERRY  
COUNTY ADMINISTRATOR

RICHARD R. JOHNSON  
DEPUTY COUNTY ADMINISTRATOR

STERLING E. RIVES, III  
COUNTY ATTORNEY

October 29, 1996

Richard L. Baird, Jr.  
1910 Byrd Avenue, Suite 210  
Richmond, VA 23230

**CERTIFIED MAIL - RETURN  
RECEIPT REQUESTED**

Re: Subdivision Application - Sugar Maple, Sect. A - E

Dear Mr. Baird:

On October 9, 1996, the Hanover County Board of Supervisors adopted zoning and subdivision ordinances which significantly change rural subdivision development requirements. The new ordinance eliminated the distinction among Title II, Title III, and Title IV subdivisions, as well as both "first divisions" and "the 25 acre rule" as interpretations of the zoning and subdivision ordinances.

However, the Board also approved a provision which permits the review of "complete applications for final subdivision approval which...were in compliance with all substantive zoning and subdivision ordinance requirements in effect on [the date of submittal]". Because your application was received prior to adoption of the new ordinance, this provision applies to your subdivision.

The staff has completed its review of your application and is notifying you that your subdivision plat and application, filed on October 9, 1996, titled "Sugar Maple", prepared by Charles G. Patterson, Jr., and dated October 8, 1996, is **DISAPPROVED** because of failure to record first division lots (Title I, Art. 5, Sect. 2.7-1).

Your application, plats, and fees are being returned to you. Attached are copies of Ordinance 96-17 and 96-18 (the revised zoning and subdivision ordinances) for your use. Should you wish to reapply for subdivision approval, the standards specified in these ordinances will apply.

EXHIBIT

6

Richard L. Baird  
October 29, 1996  
page 2

Should you have any questions regarding this action, or if we can assist you in your reapplication, please contact J. Keith Thompson, Principal Planner; Jenifer Reiner, Applicant Liaison; or me.

Sincerely,

  
Michael E. Crescenzo  
Deputy Director of Planning

copies:        A. G. Bertozzi (Owner)  
                  file: Sugar Maple





*Adopted 10/9/96*  
*M.C.C. 11/28/97*

ORDINANCE 96-17  
October 9, 1996

AN ORDINANCE TO REPEAL TITLES III AND IV OF THE HANOVER COUNTY CODE AND TO AMEND THE HANOVER COUNTY CODE, TITLE II.- SUBDIVISION ORDINANCE - LESS THAN TEN ACRES, TO REDEFINE THE TERM "SUBDIVISION"; TO PROVIDE FOR THE REVIEW AND APPROVAL OF SUBDIVISIONS WITH PRIVATE ROADS; TO REVISE THE REQUIREMENTS FOR THE PROVISION OF ROADS; AND TO REVISE THE STANDARDS FOR PREPARATION, SUBMITTAL, AND APPROVAL OF PRELIMINARY AND FINAL PLATS.

BE IT ORDAINED BY THE HANOVER COUNTY BOARD OF SUPERVISORS:

1. That the Hanover County Code, Appendix, Title III: Subdivision Ordinance - Ten to Twenty-five Acres, and Title IV: Subdivision Ordinance - Twenty-five Acres or Greater (Private Road), are hereby REPEALED.
2. That the Hanover County Code, Appendix, Title II: Subdivision Ordinance - Less Than Ten Acres, shall be amended to read in its entirety as follows:

Title II  
SUBDIVISION ORDINANCE

Section 1. Purpose and Title.

1-1 Purpose: The purpose of this Ordinance is to establish certain subdivision standards and procedures for Hanover County, Virginia, and such of its environs as come under the jurisdiction of the Board of Supervisors as provided by the Code of Virginia, 1950, as amended. These are part of a long-range plan to guide and facilitate the orderly beneficial growth of the community, and to promote the public health, safety, convenience, comfort, prosperity, and general welfare. More specifically, the purposes of these standards and procedures are to provide a guide for the change that occurs when lands and acreage become urban in character as a result of development for residential, business, or industrial purposes; to provide assurance that the purchasers of lots are buying a commodity that is suitable for development and use; and to make possible the provision of public services in a safe, adequate, and efficient manner.

1-2 Title: This Ordinance is known and may be cited as the "Subdivision Ordinance" of Hanover County, Virginia.

Section 2. Words and terms.

For the purpose of this Ordinance, certain words and terms used herein shall be interpreted or defined as follows: Words used in the present tense include the future; words in the singular number include the plural, and the plural, the singular, unless the natural construction of the word indicates otherwise; the word "lot" includes the word "parcel"; the word "shall" is mandatory and not directory; the word "approve" shall be considered to be followed by the words "or disapprove"; any reference to this ordinance includes all ordinances amending or supplementing the same; and all distances and areas refer to measurement in a horizontal plane.



- 2-1 Agent: The Hanover County Planning Commission.
- 2-2 Alley: A permanent service way providing a secondary means of access to abutting properties.
- 2-3 Building development: Any erection of any buildings or structures which is required to have a minimum lot size pursuant to the General District Regulations of the Hanover County Zoning Ordinance or which requires the issuance of a building permit by Hanover County.
- 2-4 Building setback: The minimum distance that a building must be set back from a street or lot line as required by a building setback line so designated on a plat of subdivision. The building setback line may be more but shall not be less than required in the Zoning Ordinance. The building setback line shall not be more than one-half the total lot depth.
- 2-5 Commission: The Planning Commission of Hanover County, Virginia.
- 2-6 Cul-de-sac: A street with only one outlet and having an appropriate turnaround for a safe, convenient reverse traffic movement.
- 2-7 Developer: An owner of property being subdivided.
- 2-7.1 Director: The Director of Planning for Hanover County.
- 2-8 Engineer: An engineer licensed by the Commonwealth of Virginia to lay out subdivisions.
- 2-9 Easement: A grant by a property owner of the use of land for a specific purpose or purposes.
- 2-10 Governing body: The Board of Supervisors of Hanover County, Virginia.
- 2-11 Health official: The health director of Hanover County or the sanitarian.
- 2-12 Highway engineer: The resident engineer employed by the Virginia Department of Transportation.
- 2-13 Jurisdiction: The area of territory subject to the legislative control of the governing body.
- 2-14 Lot: A numbered and recorded portion of a subdivision intended for transfer of ownership or for building development for a single building and its accessory buildings.
- 2-15 Lot, corner: A lot abutting upon two (2) or more streets at their intersection. The shortest side fronting upon a street shall be considered the front of the lot, and the longest side fronting upon a street shall be considered the side of the lot.

- 2-16 Lot, depth of: The mean horizontal distance between the front and rear lot lines.
- 2-17 Lot, double frontage: An interior lot having frontage on two (2) streets.
- 2-18 Reserved.
- 2-19 Lot, interior: A lot other than a corner lot.
- 2-20 Lot of record: A lot which has been recorded in the office of the Clerk of the Circuit Court of Hanover County, Virginia.
- 2-21 Lot, width of: The horizontal distance between the side lot lines measured at the front building setback line.
- 2-22 Physical improvements: Any structure such as a drainage structure, central water systems, central sewage disposal systems, bridges, etc., and such other improvements as the agent may designate.
- 2-22.1 Plat: Includes the terms map, plan, plot, replat, or replot; a map or plan of a tract or parcel or land which is to be, or which has been, subdivided. When used as a verb "plat" is synonymous with "subdivided."
- 2-23 Property: Any tract, lot, parcel, or several of the same collected together for the purpose of subdividing.
- 2-24 Street or road: A public or private thoroughfare which affords the principal means of access to abutting properties, whether designated as a freeway, expressway, highway, road, avenue, boulevard, lane, place, circle, or however otherwise designated.
- 2-25 Street or alley, public use of: The unrestricted use of a specified area or right-of-way for ingress and egress to two (2) or more abutting properties.
- 2-26 Street, major: A street or highway so designated on the Major Thoroughfare Plan of Hanover County.
- 2-27 Street, minor: A street other than a major street or collector street so designated on the Major Thoroughfare Plan of Hanover County, and intended primarily for providing access to abutting property.
- 2-28 Street, service drive: A public right-of-way generally parallel and contiguous to a major highway, primarily designed to promote safety by eliminating promiscuous ingress and egress to the right-of-way.
- 2-29 Street width: The total width of the strip of land dedicated or served for public travel, including roadway, curbs, gutters, sidewalks, and planting strips.

2-30 Subdivider: An owner of property being subdivided as defined in section 2-31.

2-31 Subdivision: The term "subdivision" shall mean the division of a parcel of land into two (2) or more lots or parcels of land for the purpose of transfer of ownership or building development, including any parcel previously separated by the owner or prior owner of such land for such purpose. The sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building lots or new roads, shall be exempt from the terms of this Ordinance. The division or partitioning of land in an estate by court order or among heirs of the original owner shall also be exempt from the provisions of this Ordinance.

2-32 Surveyor: A surveyor licensed by the Commonwealth of Virginia to lay out subdivisions.

2-33 Urban service area: All lands lying within those portions of Hanover County which are identified on a map entitled "Urban Service Area" which map is made a part of this Ordinance pursuant to the provisions of section 3A.

### Section 3. Administration.

3-1 Administrator: The agent appointed by the Board of Supervisors is hereby delegated to administer this Ordinance. In so acting, the agent shall be considered the agent of the governing body, and approval or disapproval as though it were given by the governing body. In the event the agent is not the Commission, the agent may consult with the Commission on matters contained herein.

3-2 Duties: The agent shall perform its duties as regards to subdivision and subdividing in accordance with this Ordinance and the Virginia Subdivision Act.

3-3 To consult: In the performance of its duties, the agent may call for opinions or decisions, either verbal or written, from other departments in considering details of any submitted plat. This authority by the agent shall have particular reference to the resident highway engineer and the health department.

3-4 Additional authority: In addition to the regulations herein contained for the platting of the subdivision, the agent may, from time to time, establish any reasonable additional requirements deemed necessary for the proper administration of this Ordinance or development of the property.

### Section 3A. Urban Service Area.

3A-1 Purpose and intent: The urban service area designation is intended to provide for certain regulations which are appropriate for development in urban areas but which regulations are not appropriate for development

in rural areas. The purpose of the urban service area is to clearly designate the areas in which urban development regulations shall be applicable and to also designate the areas in which rural development regulations shall be applicable.

3A-2 Establishment of urban service area: The urban service area shall consist of those portions of Hanover County described in Section 3A-2.1 et seq. and further designated as lying within an urban service area as shown on a map entitled "Hanover County, Virginia, Title 11 Subdivision Ordinance, Urban Service Areas." Such map is hereby incorporated into this Ordinance.

3A-2.1 Urban service area: The urban service area shall include all lands lying within an area described as follows: Beginning at a point 500 feet east of the intersection of the centerline of Route 615 and Interstate 295; thence in an easterly direction along the centerline of 1-295 to its intersection with the centerline of the Chickahominy River (the Hanover County/Henrico County line); thence in a northwesterly direction along the centerline of the Chickahominy River to its intersection with the centerline of the CSX Railroad; thence in a northerly direction along the centerline of the CSX Railroad to its intersection with the corporate line of the Town of Ashland; thence in a southerly direction, thence in an easterly direction, thence in a northeasterly direction along the corporate line of the Town of Ashland to its intersection with the right-of-way line of Interstate 95; thence in a southerly direction along the right-of-way line of 1-95 to a point 500 feet north of its intersection with the centerline of Route 657; thence in a southeasterly direction along a line 500 feet north of, and parallel to, the centerline of Route 657 to a point where said line intersects a line 500 feet northeast of, and parallel to, the centerline of Route 656; thence southerly along said line 500 feet east of, and parallel to, the centerline of Route 656 to a point where said line intersects with a line 500 feet north of, and parallel to, the centerline of Route 643; thence southeasterly, along said line 500 feet north of, and parallel to, the centerline of Route 643 to a point where said line intersects a line 500 feet north of, and parallel to, the centerline of Route 627; thence in an easterly direction along said line 500 feet north of, and parallel to, the centerline of Route 627 to a point where said line intersects a line 500 feet northeast of, and parallel to, the centerline of Route 615; thence in a southerly direction along a line 500 feet east of, and parallel to, the centerline of Route 615 to the point of beginning.

3A-3 Official map document; public information copies: The Official Urban Service Area Map shall be an original drawing maintained within the Planning Department offices and available for public inspection at reasonable times. Nothing in this Ordinance shall be interpreted as prohibiting the reproduction and public distribution of copies of said map, provided that such copies are clearly designated as copies and indicate the location of the official map and its availability for inspection. One copy of the map and this Ordinance shall be maintained in the Office of the Clerk of the Hanover County Circuit Court.



3A-4 Interpretations: The detailed descriptions contained in Section 3A-2.1 et seq. shall be inclusive as to the location of urban service area boundaries. The Agent shall provide, upon formal request, an interpretation as to the location of the boundaries of an urban service area.

#### Section 4. Procedure for making and recording plats.

4-1 Platting required: Any owner or developer of any tract of land situated within Hanover County who subdivides the same shall cause a plat of such subdivision, with reference to known or permanent monuments, to be made and recorded in the office of the Clerk of the Circuit Court of Hanover County, Virginia. No such plat of a subdivision shall be recorded unless and until it shall have been submitted, approved, and certified by the agent in accordance with regulations set forth in this Ordinance. No lot shall be sold in any such subdivision before the plat shall have been recorded.

4-1-1 In the event a plat for a subdivision is disapproved by the agent, the subdivider may appeal to the Board of Supervisors. The Board may then override the recommendation of the agent and approve said plat.

4-2 Draw and certify: Every such plat shall be prepared by a civil engineer or surveyor duly licensed by the State of Virginia, who shall endorse upon each plat a certificate signed by him setting forth the source of the title of the land subdivided, and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat, within an insert block, or by means of dotted boundary line upon the plat.

4-3 Owner's statement: Every such plat, or the deed of dedication to which such plat is attached, shall contain, in addition to the engineer's or surveyor's certificate, a statement to the effect that "the above and foregoing subdivision of (here insert correct description of land subdivided) as appears in this plat is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any" and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds, and when thus executed and approved as herein specified shall be filed and recorded with the office of the Clerk of the Circuit Court of Hanover County, Virginia, and indexed under the name of the landowners signing such statement and under the name of said subdivision.

4-4 No one exempt: No person shall subdivide any tract of land that is located within Hanover County as defined in the Virginia Land Subdivision Act except in conformity with the provisions of this Ordinance.

4-5 Private contracts: This Ordinance bears no relation to any private easement, covenant, agreement, or restriction, nor is the responsibility of enforcing such private easement, covenant, agreement, or restriction

implied herein to any public official. When this Ordinance calls for more restrictive standards than are required by private contract, the provisions of this Ordinance shall control.

4-6 Necessary changes: No change, erasure, or revision shall be made on any preliminary or final plat, nor on accompanying data sheets, after approval of the agent has been endorsed in writing on the plat or sheets, unless authorization for such changes has been granted in writing by the agent.

4-7 Fees:

1. There shall be a charge in connection with an application for the examination and approval of plat submitted pursuant to the requirements of this Ordinance, in accordance with a schedule of fees as adopted by the Board of Supervisors from time to time.
2. No fee paid pursuant to this section shall be refunded unless a written request for withdrawal of the application is received by the Planning Department within five (5) working days after the date of application.

Section 5. General regulations.

5-1 Mutual responsibility: There is a mutual responsibility between the subdivider and the county to divide the land so as to improve the general use pattern of the land being subdivided.

5-2 Repealed.

5-3 Flooding: Land subject to flooding and land deemed to the topographically unsuitable shall not be platted for uses that may increase danger to health, life, or property, or aggravate erosion or flood hazard. Such land within the subdivision shall be set aside on the plat for such uses as allowed by the Hanover Drainage and Floodplain Ordinance. To insure that residents will have sufficient land upon which to build which is flood-free, the agent may require the subdivider to provide elevations and flood profiles sufficient to demonstrate the land to be completely free of the danger of flood waters.

5-4 Building site: Grading plans for each lot in the subdivision may be required prior to or at the time that application is made for a building permit. Such grading plan shall be prepared by a certified civil engineer or land surveyor and shall show the location of the proposed building, the existing and proposed elevations at the building corner, lot corners, and the finished floor elevation of the ground floor, and the proposed direction of flow of the drainage on the lot.

5-5 Improvements: All required improvements shall be installed by the subdivider at his cost. The subdivider's bond shall not be released until construction, in conformance with the requirements of this Ordinance, has been inspected and approved by the agent or highway

engineer. All improvements in addition to the foregoing shall include the following requirements:

5-5-1A Lot size: The dimension and area of all lots shall comply with the requirements of the zoning district in which they are located. In zoning districts where lot averaging is permitted, the number of lots which may be smaller than the minimum average lot size shall be calculated for the entire property for which preliminary subdivision approval is granted. Individual sections of the subdivision may contain a higher percentage of lots smaller than the minimum average lot size permitted within the zoning district, but at no time shall the number of lots smaller than the minimum average lot size exceed the maximum percentage permitted within the zoning district in which the subdivision is located when calculated as a percentage of all lots having received final approval. Notwithstanding requirements of the zoning regulations, greater lot areas may be required where individual septic tanks or individual wells are used, if the health official determines that there are factors of drainage, soil conditions, or other conditions to cause potential health problems. The agent shall require that data from percolation tests be submitted as a basis for passing upon subdivisions dependent upon septic tanks as a means of sewage disposal.

5-5-1B Flood control and drainage: The subdivider shall provide all necessary information needed to determine what improvements are necessary to properly develop the subject property, including contour intervals, drainage plans, and flood control devices. The subdivider shall also provide plans for all improvements together with an engineer's or survey's statement that such improvements, when properly installed, will be adequate for property development. All improvements shall be in conformance with the Hanover County Floodplain and Drainage Ordinance and approved by the County of Hanover.

5-5-1C Erosion and sediment control: All subdivision plans shall include adequate provisions for control of temporary flooding or erosion and sediment control, both during construction and after completion of construction, in conformance with applicable ordinances.

5-5-2 Easements: The agent may require that easements for drainage through adjoining property be provided by the subdivider. Easements of not less than sixteen (16) feet in width shall be provided for water, sewer, power lines, and other utilities in the subdivision, when required by the agent.

5-5-3 Sanitary sewers: Sanitary sewers shall be required in all subdivisions where sanitary sewer is available. The agent may require the installation and capping of sanitary sewer mains and house connections if public utilities will be available within three (3) years from the date of recordation of the subdivision as prescribed by the Hanover Utility Improvement Plan. Plans for sanitary sewer installation shall be submitted and approved prior to the recordation of the final subdivision plat.

5-5-4 Public water:

- (a) Any subdivision located within an urban service area and located within an AR-2, AR-1, R, B, or M zoning district shall provide a central water system which conforms to the requirements of the design standards and specifications and the water regulations in effect on the date of final subdivision approval. Such central water system, upon completion by the developer and approval by the Director, shall be dedicated to the County of Hanover to be operated as a part of the public utility system.
- (b) Any subdivision not located within an urban service area and located in any R zoning district shall provide a central water system which conforms to the requirements of the design standards and specifications and the water regulations in effect at the time of final subdivision approval. Such central water systems shall be offered for dedication to the county, without cost, and shall be accepted by the county and operated as part of the public utility system, if the Board of Supervisors determines that county ownership and operation of the system would be consistent with the plans for the county's public utility system.
- (c) Any subdivision not located in an urban service area and not located in any R zoning district may provide a central water system. Any such system shall conform to the requirements of the design standards and specifications and the water regulations in effect at the time of final subdivision approval. Such central water systems shall be offered for dedication to the county, without cost, and shall be accepted by the county and operated as part of the public utility system, if the Board of Supervisors determines that county ownership and operation of the system would be consistent with the plans for the county's public utility system.
- (d) When a central water system is provided, the system shall include storage capacity of at least fifteen thousand (15,000) gallons in excess of requirements of the water regulations.
- (e) Where a subdivision located within an urban service area can be served by the extension of an existing privately owned central water system, such extension may be made in satisfaction of this requirement, provided that if such private system is acquired by the county at a later date, no charge may be assessed against the county for the improvements made as part of such extension. Whenever the requirement for provision of a public water system is to be satisfied by this subsection, a contract between the owner of the private central water system and Hanover County shall be executed prior to final approval of the subdivision plan by the agent. Such contract shall assure the future ability of the county to

acquire the improvements made as a part of the extension without cost and shall require that the extension meet the requirements of the design standards and specifications and the water regulations in effect on the date of final approval of the subdivision.

- (f) Neither central nor public water systems shall be required in the RRC, Rural Residential Cluster District nor the AR-6, Agricultural Residential District.

5-5-5 Fire protection: The installation of adequate fire hydrants in a subdivision at locations approved by the agent may be required if a central water system is installed in the subdivision. Fire hydrants shall have a six (6) inch or longer inlet and connection, a valve opening of at least four and one-half (4 1/2) inches, a four and one-half (4 1/2) inch pumper connection, and a two and one-half (2 1/2) inch hose connection. All connections must be of a national standard thread. Fire hydrants shall be placed on water mains having a diameter of not less than six (6) inches, and hydrants shall not be located more than one thousand (1,000) feet apart. There shall be maintained a minimum of forty (40) pounds hydrant pressure under normal operating conditions for the system in supplying water for domestic usage. The agent shall consult with the governing body of the county before approving such location.

5-5-6 Underground utilities: All utility lines except those in the A-1, Agricultural District, AR-6, Agricultural Residential District, M-2, Light Industrial District, and M-3, Heavy Industrial District, including, but not limited to, electric, CATV, telephone, or other lines, constructed after May 26, 1993, shall be placed underground. This requirement shall apply to lines serving individual sites within the development and to utility lines providing service to the development. Where aerial utility service is extended from lines existing on May 26, 1993, located across a major thoroughfare, such lines may be carried overhead to a terminal pole located along the thoroughfare right-of-way but within the subdivision, where the lines shall be placed underground. This shall not apply to electric transmission lines, the placement of which is regulated by the state corporation commission. Where aerial utility lines, excluding service lines, in existence on May 26, 1993, traverse the property proposed for subdivision, such lines may remain overhead unless the lines are subsequently moved. Relocation of existing poles placed within an easement contiguous to the highway right of-way which adjoins the property being subdivided, when done as part of construction of an entrance to the subdivision shown on an approved subdivision plat, shall be exempt from these requirements.

5-5-7 Storm drainage requirements: The subdivider shall submit a plan for handling of storm drainage, in conformance with the design criteria set forth in the Hanover County Storm Drainage and Floodplain Control Ordinance.

5-5-8 Reserved.

5-5-9 Off-site sewage and drainage improvements: Whenever the Board of Supervisors has established a general sewer and drainage improvement program applicable to the land proposed for subdivision or a portion thereof, the subdivider shall pay a pro-rata share of the cost of providing reasonable and necessary sewage and drainage facilities located outside the property limits of the land owned or controlled by him, which facilities are necessitated or required, at least in part, by the construction or improvement of his subdivision or development. Such share shall be the proportion of the total estimated cost which the increased sewage flow and/or increased volume and velocity of storm water runoff to be actually caused by the subdivision or development bears to total estimated volume and velocity of sewage and/or run-off from such area in its fully developed state. Each such payment received shall be expended only for the construction of those facilities for which the payment was required, and until so expended shall be held in an interest-bearing account for the benefit of the subdivider or developer.

5-6 Performance agreements and surety:

1. Required improvement construction or performance agreement required.

- (a) Before final approval and recordation of any subdivision plat, the subdivider shall construct all required improvements in accordance with the approved plans and standards set forth in this chapter and have said improvements accepted for maintenance by the appropriate County or State agency.
- (b) In lieu of said construction and acceptance, a performance agreement shall be executed with the County. The Director shall have authority to execute the agreement on behalf of the County. Such agreement, which shall be made on forms to be supplied by the agent and approved as to form by the County Attorney, shall as a minimum provide that all improvements required or voluntarily agreed to and/or all improvements shown on the final plat of subdivision shall be completed, approved, and accepted within eighteen (18) months from the date of recordation or, in the case of residential subdivision, upon the occupancy of one-third (1/3) of the residences in the subdivision, whichever occurs first. Extensions of such time may be granted by the agent after consideration of the following criteria:
  - (1) The needs of the occupants of residences in the subdivision for safe and convenient access to their residences.
  - (2) Deterioration of the roads, drainage, and other improvements completed or partially completed.

- (3) The season of the year and the type of work which remains to be completed.
- (4) The number of residences occupied and the eligibility of the facilities for acceptance by the appropriate State or local agency.
- (c) Improvement shall include any street, curb, gutter, sidewalk, bicycle trail, drainage or sewer system, water line as part of a public system, or other improvement dedicated for public use and maintained by the County, the Commonwealth, or other public agency, and the provision of other site-related improvements voluntarily agreed to and/or required by local ordinance.

2. Surety required. The performance agreement shall be accompanied by surety in an amount sufficient to provide for the improvements identified in the performance agreement. All surety shall be provided in a form approved by the County Attorney and shall be conditioned on construction of the improvements. Such surety may take one or more of the following forms:

- (a) Certification that the construction costs have been paid to the person constructing such facilities; such certification to be by notarized letter to the County and witnessed by the person constructing such improvements. Any person constructing such improvements shall furnish a letter of credit or performance bond reciting prior payment of construction cost in full; or
- (b) Personal or corporate bond with property, cash or corporate surety licensed to do business in the Commonwealth, in an amount equal to the cost of construction; or
- (c) A contract for the construction of such facilities and the contractor's bond naming the County as obligee, with surety as required above; or
- (d) A letter of credit issued by a bank or savings and loan institution having an office located in the State of Virginia and being regulated by the State of Virginia or the United States Government; or a letter of credit issued by a regulated bank or savings and loan institution with payment of the full amount of the letter of credit being confirmed and guaranteed by a regulated bank or savings and loan institution with an office located in the State of Virginia in the amount of the estimated cost of construction.

The cost of construction shall equal an estimate made by the Director based on unit prices for new public or private sector construction in the County and a twenty-five (25) percent allowance for estimated administrative cost, including



attorneys' fees if applicable, inflation, and potential damage to existing roads or utilities.

3. Maintenance and indemnifying bond required. Where, because of factors other than quality of construction, a road for public use is not accepted into the State System of Highways within the eighteen (18) month period, the subdivider shall furnish the County a maintenance and indemnifying bond, with surety, in an amount sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the System of Highways. Such amount shall be set by the Director of Public Works. The bond shall be effective for one (1) year and if such roads have not been accepted, the bond shall be annually reviewed as to amount by the Director of Public Works and renewed. In lieu of such bond, the County may accept a letter of credit. "Maintenance of such road" shall be deemed to mean maintenance of the streets, curb, gutter, drainage facilities, utilities, or other street improvements, including the correction of defects or damages and the removal of snow, water, or debris, so as to keep such road reasonably open for public usage. Surety required by this section shall conform to the requirements for bonds and letters of credit described in the preceding section and shall be provided in a form approved by the County Attorney.

4. Action when improvements not complete and accepted. Whenever the requirements of this ordinance and any provisions of a performance agreement executed pursuant to this chapter have not been completed or complied with within the time limits established for such completion and/or compliance, the Director shall proceed to enforce the agreement and the requirements of this ordinance and shall call upon any cash, letter of credit, or surety provided to guarantee performance. If any funds remain after all requirements or provisions have been completed and complied with and no defects or deficiencies are found therein, such funds shall be returned to the subdivider.

5. Bond reductions. Periodic partial and/or final complete release of any bond, escrow, letter of credit, or other performance guarantee required by the County under this section shall be made within thirty (30) days after receipt of written notice from the subdivider or developer of completion of part or all of any facilities required to be constructed hereunder unless the County notifies said subdivider or developer in writing by certified mail return receipt of nonreceipt of approval by the applicable State agency, or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the thirty (30) day period.

If no such action is taken by the County within the time specified above, the request shall be deemed approved, and a partial release granted to the subdivider or developer. No final release shall be granted until after expiration of such thirty (30) day period. No final release shall be granted until there is an additional request in writing sent by certified mail return receipt to the Director. The County shall act within ten (10) working days of receipt of the request; then if no

action is taken, the request shall be deemed approved and final release granted to the subdivider or developer.

Upon written request by the subdivider or developer, the County shall make periodic partial releases of such bond, escrow, letter of credit, or other performance guarantee in a cumulative amount equal to no less than eighty (80) percent of the original amount of the bond, escrow, letter of credit, or other performance guarantee, based upon the percentage of facilities completed and approved by the County or State agency having jurisdiction. Periodic partial releases may not occur before the completion of at least thirty (30) percent of the facilities covered by any bond, escrow, letter of credit, or other performance guarantee, or after completion of more than eighty (80) percent of said facilities. The County shall not be required to execute more than three (3) partial releases in any twelve (12) month period. Upon final completion and acceptance of said facilities, the County shall release any remaining bond, escrow, letter of credit, or other performance guarantee to the subdivider or developer. For the purpose of final release the term "acceptance" is deemed to mean: when said public facility is accepted by and taken over for operation and maintenance by the State agency, local government department of agency, or other public authority which is responsible for maintaining and for operating such facility upon acceptance.

5-7 Plans and specifications: Prints of the plans and specifications for all required physical improvements to be installed shall be prepared by an engineer or surveyor and shall be submitted to the agent for approval or disapproval. The required number of copies shall be determined by the agent. If approved, one copy bearing certification of such approval shall be returned to the subdivider. If disapproved, all papers shall be returned to the subdivider with the reasons for disapproval in writing.

5-8 Reserved.

5-8-1 Exceptions or planned unit development. Where the land within the unincorporated territory of Hanover County is proposed for development in accordance with the provisions of the Hanover County Zoning Ordinance pertaining to the establishment of Planned Unit Development Districts, the requirements and conditions for approval as set forth in that Ordinance shall prevail in the case of any conflict with these regulations; provided, however, that nothing in this section shall be construed as permitting any exception from the requirements of these regulations with regard to design, arrangement, or improvement of streets and highways within any proposed planned unit development except as specifically provided herein.

5-9 Part of a tract: Whenever part of a tract is proposed for platting and it is intended to subdivide additional parts in the future, a sketch plan for the entire tract shall be submitted with the preliminary plat.

[LOTS]

5-10 Shape: The lot arrangement, design, and shape shall be such that lots will provide satisfactory and desirable sites for buildings, and be properly related to topography, and conform to requirements set forth herein. Lots shall not contain peculiarly-shaped elongations solely to provide necessary square footage or area which would be unusable for normal purposes.

5-11 Location: Each lot shall abut on a street dedicated by the subdivision plat, or on an existing public dedicated street, or on a street which has become public by right of use unless otherwise specified herein. If the existing streets are not forty (40) feet in width and a greater width is not required by the Major Thoroughfare Plan, the subdivider shall make provisions in the deeds to the lots for all buildings to be constructed as to permit the widening by dedication of said roads or streets to a width of fifty (50) feet.

5-12 Corner lots: Corner lots shall be required to maintain a front yard setback only along the street upon which the majority of the lots in the block fronts. Building setback lines along side yard frontages shall be a minimum of one-half the required front yard setback.

5-13 Side lines: Side lines of lots shall be approximately at right angles or radial to the street line.

5-14 Remnants: There shall be no remnants of parcels after subdivision. All property subdivided shall be included into the lots created or conveyed to adjoining property owners as additions to the existing lots.

5-15 Separate ownership: When the land covered by a subdivision includes two (2) or more parcels in separate ownership, and lot arrangement is such that a property ownership line divides one or more lots, the land in each lot so divided shall be transferred by deed to single ownership, simultaneous with the recording of the final plat. Said deed is to be deposited with the agent and held with the final plat until the subdivider is ready to record same, and they both shall be then recorded together.

5-16 Septic tanks and wells: In subdivisions where septic tanks or individual wells are contemplated the agent may require that the lot areas be greater than those required herein. If the health department determines that there are factors of drainage, soil conditions, or other conditions to cause potential health problems, the agent shall require the data from percolation tests be submitted as a basis for passing upon subdivisions dependent upon septic tanks as a means of sewage disposal. Each septic system and individual well shall be located on the lot served.

[BLOCKS]

5-17 Length: The maximum length of blocks generally shall be twelve hundred (1200) feet and the minimum length of blocks upon which lots have frontage of five hundred (500) feet.

5-18 Width: Blocks shall be wide enough to allow two (2) tiers of lots of minimum depth, except where fronting on major streets or prevented by topographical conditions or size of the property, in which case the agent may approve a single tier of lots of minimum depth.

5-19 Orientation: Where a subdivision adjoins a public road, the agent or commission may require that the greater dimension of the block shall front and/or back upon such public thoroughfare to avoid unnecessary ingress and egress which would cause dangerous traffic conditions or reduce the traffic-carrying capacity of the public road.

5-20 Business or industrial: Blocks intended for business or industrial use shall be designed specifically for such purposes with adequate space set aside for off-street parking and delivery facilities. Individual lots within blocks of subdivisions which have been zoned to a business or industrial classification may be omitted from the final plat allowing the property to be divided in block form only. The subsequent transfer of parcels within the previously recorded business or industrial subdivision shall not be construed as a resubdivision of the property; however, prior to the issuance of any building permit, the subdivider shall have plats for the division of the property approved by the Hanover County Planning Office to insure that all requirements of the Hanover County Subdivision Ordinance have been met.

[STREETS]

5-21-1 Alignment and layout of streets. Existing or proposed streets shall be designed in accordance with the requirements of the Major Thoroughfare Plan, including the minimum widths as specified hereunder. The arrangements of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas. The street arrangement must be such as to cause no unnecessary hardship to owners of adjoining property when they plat their own land; provide for convenient access to adjoining property; and avoid environmentally-sensitive lands. Proposed streets shall be extended by dedication to the boundary of such property and all streets proposed to extend beyond the property boundary shall be designed beyond the boundary to the point where the vertical curvature of the street coincides with the natural topography (figure 3). Half streets along the boundary of land proposed for subdivision may not be permitted. Whenever possible, streets should intersect at right angles. In all hillside areas, streets running with contours shall be required to intersect at angles of not less than sixty (60) degrees, unless approved by the highway engineer. All street intersections shall have a distance of at least two hundred (200) feet between center lines.

#### 5-21-2 Construction of streets.

- (a) Streets which provide lot access. All streets shown within the subdivision on the approved preliminary plan which provide lot access shall be constructed and paved, where required, to the boundary of the property being subdivided unless the slope at the boundary is greater than 3:1. In those cases, the road shall either be constructed and paved to the property line or to the point necessary to provide for access and to allow for all necessary slope, drainage, and other easements to be provided on site (figure 1).
- (b) Streets which do not provide access. Streets which do not provide lot access shall be constructed and paved, where required, for a minimum distance of fifty (50) feet from the edge of pavement of a road providing lot access. The remainder of the road to the property line or to a point where the approved road grade would create a slope no greater than 3:1 between the construction stub and the property line shall be graded and stabilized in accordance with the approved cross-section (figure 2).
- (c) Provision of easements. All necessary slope and other easements necessary for completion of road construction to the property line shall be provided prior to recordation of the final plat (figures 1, 2).
- (d) Completion of road construction. When property adjoining an existing subdivision with streets designed to be extended into the property is proposed for development, the developer shall complete construction of those streets contiguous to the property to be subdivided.

5-22 Service drives: Whenever a proposed subdivision contains or is adjacent to a limited access highway or expressway, provision shall be made for a service drive or marginal street approximately parallel to such right-of-way at a distance suitable for an appropriate use of land between such highway and the proposed subdivision. Such distances shall be determined with due consideration of the minimum distance required for ingress and egress to the main thoroughfare. The right-of-way of any major highway or street projected across any railroad, limited access highway, or expressway shall be of adequate width to provide for the cuts or fills required for any future separation of grades.

5-23 Approach angle: Minor streets shall approach the major or other streets at an angle of not less than eighty (80) degrees, unless the agent, upon recommendation of the highway engineer, shall approve a lesser angle of approach for reasons of contours, terrain, or matching of existing patterns.

5-24 Minimum width: The minimum width of proposed streets, measured from lot line to lot line, shall be shown on the plat, and shall be in accordance with the latest standards of the Virginia Department of

Transportation.

5-24-1 Alleys. If permitted, not less than twenty (20) nor more than twenty-eight (28) feet.

5-25 Alleys: Alleys should be avoided wherever possible.

5-26 Grading and paving: The grading, base, and pavement shall be in accordance with the latest minimum standards and specifications for subdivision streets and roads of the Virginia Department of Transportation.

5-27 Dead end: Dead end alleys shall be avoided wherever possible, but if unavoidable shall be provided with adequate turnaround facilities as determined by the agent.

5-28 Culs-de-sac: Street culs-de-sac shall meet the latest standards of the Virginia Department of Transportation. The maximum length of culs-de-sac may be increased in an acreage subdivision or planned unit development if justified by topography and environmental design considerations.

5-29 Names: Proposed streets, which are obviously in alignment with others already existing and named, shall bear the name of the existing streets. In no case shall the name of proposed streets duplicate existing street names irrespective of the use of the suffix avenue, boulevard, driveway, place, lane, or court. Street names shall be indicated on the preliminary and final plats and shall be approved by the agent.

Names of existing streets shall not be changed except by approval of the governing body.

5-30 Identification signs: Street identification signs shall be installed at all intersections according to the standards of the Virginia Department of Transportation.

5-31 Grades: The grades and sight distances of streets shall be in accordance with specifications established by the Virginia Department of Transportation.

5-31-1 Buyer's affidavit. No deed to a tract of land in a subdivision which contains private streets shall be recorded unless the same carries an affidavit duly signed and acknowledged by the grantee (buyer) in said deed to the effect that he acknowledges that all private roads in the subdivision shall not be maintained or improved by the Virginia Department of Transportation or any other public agency, and that it is the mutual duty and obligation of the abutting landowners or homeowners association (as applicable) to maintain and improve the roads which are private in nature and use.

5-32 Private streets: May be allowed only in subdivisions zoned to an A-1, Agricultural; AR-6, Agricultural Residential; RRC, Rural Residential Cluster; R-4, Residential Cluster; or Residential PUD classification where at no time in the future such streets will carry through traffic. Any subdivision containing private streets shall in the deed to each tract or lot carry a restrictive covenant to the effect that certain roads in the subdivision are private in nature and shall not be maintained by the Virginia Department of Transportation or other public road agency and that the maintenance and improvement thereof shall be the mutual obligation of the landowners in the subdivision and that such private roads shall not be taken into the state secondary system, unless and until the abutting landowners or homeowners' association shall have constructed and dedicated the private roads in accordance with the latest Virginia Department of Transportation specifications, and thereafter the Hanover County Board of Supervisors shall have recommended that said roads be taken into the State Secondary System of Highways.

5-32-1 Standards for private roads in A-1, Agricultural and AR-6, Agricultural Residential Districts: Private roads shall be permitted for all subdivisions in the A-1, Agricultural, and AR-6, Agricultural Residential District, in accordance with the standards set out below. No private road shall serve more than thirty-one (31) lots, including lots existing at the time of subdivision and those lots created through subdivision. Such improvements as required below shall be constructed or construction of the improvements secured in accordance with the requirements stated herein. All private roads shall either be extended and constructed to the property line of the parcel being subdivided or shall be designed and constructed as a cul-de-sac. Each cul-de-sac must terminate in a turnaround of a right-of-way radius of not less than fifty (50) feet or other turnaround design accepted by the Virginia Department of Transportation. No cul-de-sac road which intersects a public road other than one created by subdivision shall be less than two hundred (200) feet in length.

For the purpose of application of the private road standards set out below, the term "lot" shall include any real estate for which a metes and bounds description or a survey has been recorded.

When no more than four (4) lots are being created through subdivision, and the access to such lots serves no other property, a right-of-way fifty (50) feet in width shall be recorded on the plat to serve the lots. No road improvements shall be required. (fig. 4)

In subdivisions of five (5) or more lots, or when five or more lots are served by the same road, the roads in the subdivision for which approval is requested and those roads necessary to provide access to a road improved to these standards or to a public road shall be improved as specified below. (figures 5, 6)

Minimum right-of-way width: Fifty (50) feet

Minimum shoulder (width): Three (3) feet

Minimum travel surface (width): Eighteen (18) feet

Minimum travel surface (depth): Six (6) inches compacted stone (Virginia Department of Transportation standard 21-A or equivalent)

Preparation of subgrade: Subgrade shall be prepared by excavation and removal of all vegetative cover, root mat, and topsoil. Drainage systems must provide relief for surface runoff and groundwater conditions away from finished subgrade elevation. Road fill utilized to cross low areas shall be placed on excavated subgrade as described in this section, and shall consist of suitable backfill material as defined by the Virginia Department of Transportation Road and Bridge Specifications (most recent revision) or other methods as approved by the County Engineer. Inspection and approval of subgrade is required prior to placement of stone. The County Engineer will provide inspection of prepared subgrade with forty-eight (48) hours notice.

Compaction: Final compacted road surface shall be compacted in a manner such that a uniform texture is produced and the aggregates are firmly keyed. Irregularities in the surface shall be corrected by scarifying, remixing, reshaping, and recompacting until a smooth surface is secured. The compacted aggregate will be inspected for depth and surface condition by the County Engineer. Final inspections shall be provided with forty-eight (48) hours notice.

Maximum degree of curvature (radius): One hundred ten (110) feet

Maximum grade (percent): Ten (10) percent

Minimum stopping sight distance<sup>1</sup>: One hundred twenty-five (125) feet

Minimum intersection sight distance<sup>2</sup>: Two hundred (200) feet

Road identification signs shall be installed at all intersections in accordance with the Hanover County Property Numbering and Street Naming Manual and with Virginia Department of Transportation standard stop sign specifications.

<sup>1</sup> Distance based on 3.5' height of eye and 0.5' height of object.

<sup>2</sup> Distance based on 3.5' height of eye and 4.25' height of object.

Prior to approval, a Licensed Professional Engineer or Land Surveyor must certify that these requirements are met. If construction of roads is not completed prior to final approval of the plat, sufficient engineering design information must be submitted to the County Engineer prior to final approval. Sight distance easements and temporary slope easements must be dedicated on the final plat.



5-32-2 Public roads in A-1, Agricultural and AR-6, Agricultural Residential Districts: In subdivisions of thirty-two (32) or more lots, or when thirty-two or more lots are served by the same road, the roads in the subdivision for which approval is requested and those roads necessary to provide access to a public road shall be improved to public road standards and the developer shall take all other actions necessary for acceptance into the State System of Highways. (fig. 7)

5-33 Scenic drives: Where an existing or proposed street or road is designated as a scenic drive on the Comprehensive Plan, of which the Major Thoroughfare Plan is a part, the purpose and standards established for such drives to maintain their scenic qualities shall be observed in design and development of an adjacent subdivision, including, but not limited to, such factors as maintenance of existing alignments and natural vegetation, appropriate pavement design, and due care with respect to location and design of access points and building setback.

5-34 Visible for inspection: Upon completion of subdivision streets, sewers, and other improvements, the subdivider shall make certain that all monuments required by this Ordinance are clearly visible for inspection and use. Such monuments shall be inspected and approved by the engineer or agent before any improvements are accepted by the governing body.

#### [MONUMENTS]

5-35 Location-Concrete: Concrete monuments four (4) inches in diameter or square, three (3) feet long, with a flat top, containing four (4) numbers, three (3) steel bars, thirty-four (34) inches long and having one-half inch of cover, placed so that they are evenly spaced around the perimeter in the case of round monuments, and one in each corner in the case of square monuments, shall be set at all street corners, at all points where the street line intersects the exterior boundaries of the subdivision, and at angle points and points of curve in each street. The top of the monument shall have an exposed solid steel bar one-half inch in diameter located in the center of the monument so that it can be punched to identify properly the location of all points. The monument shall be set flush with the finished grade line.

5-36 Location-Iron pipe: All other lot corners shall be marked with iron pipes not less than three-fourths inch in diameter and twenty-four (24) inches long and driven so as to be flush with the finished grade. When rock is encountered, drill a hole four (4) inches deep in the rock and cement a steel rod one-half inch in diameter whose top shall be flush with the finished grade line.

#### 5-37 Resubdivision prohibited; procedure for vacations:

- (a) Unless otherwise excepted, none of the lots shown on the approved subdivision plat may be further divided without approval of the Board of Supervisors.

- (b) Notwithstanding the provisions of part (a) above, upon application by the property owner, the Agent may approve a resubdivision which involves the vacation of a lot line for the purpose of adjusting a lot boundary or combining two (2) or more lots, but which does not involve the creation of additional building lots or the vacation of any street, alley, easement for public passage, or other public area. For the purposes of review and approval of a resubdivision made under this part (b), the Director of Planning shall be the agent.
- (c) The vacation of any feature of an approved subdivision, other than a lot line, which may be vacated under the provisions of (b) above, shall be subjected to the provisions of state law governing the vacation of a subdivision.

#### Section 6. Approval of plats.

6-1 Approval of an application: An application shall be approved by the agent unless they find the proposed subdivision detrimental to the public health, safety, or general welfare, including, but not limited to, those items set forth in section 6-3.

6-2 Approval required before sale: Whenever any subdivision of land is proposed, and before any permit for the erection of a structure shall be granted, the subdivider or his agent shall make formal application to the agent for approval of the subdivision plat. No lot shall be sold until a final plat for the subdivision shall have been approved by the agent and recorded with the Clerk of the Circuit Court.

6-3 Elements of the public health, safety, and general welfare: The purpose of this Ordinance being to promote and protect the public health, safety, and general welfare, through the provisions of this Ordinance including the plan of the proposed subdivision, the performance guarantee bond and the design standards, the agent shall also consider the following elements of public health, safety, and general welfare in determining if the proposal conforms to the purpose of this Ordinance. Approval shall be granted only if such proposal promotes the public health, safety, and general welfare with respect to the following:

- a. The proposal will not result in undue water pollution. In making this determination, the agent will consider: The amount of rainfall received in the area; the relation of the land of floodplain; the nature of the soil and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the presence of streams as related to effluent disposal; the applicable health and water resources department regulations.
- b. The proposal will have sufficient water available per lot, both physically and legally, for the foreseeable needs of the subdivision development.

- c. The proposal will not cause an unreasonable depreciation on an existing water supply.
- d. The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
- e. The proposal will not cause undue air pollution.
- f. The proposal will not cause unreasonable highway congestion or unsafe conditions with respect to use of the highways existing or proposed.
- g. The proposal will be in keeping with the character of the existing area and will aid in the orderly development of the county and the efficient use of public funds.
- h. The proposal will not cause an unreasonable burden on the capacity of the school system.
- i. The proposal will not place an unreasonable burden on the ability of the local government to provide water, sewage, fire, police, solid waste disposal, and other services.
- j. The proposal will not have an undue adverse effect on aesthetics, historic sites, or rare or irreplaceable natural areas (or upon wildlife and their habitat).

6-4 Preliminary plat of development for subdivisions of five (5) or more lots with public roads: The applicant shall submit copies of the preliminary plat of development with every application for preliminary approval. The required number of copies shall be determined by the agent. The preliminary plat shall include the following information:

- 1. Name of subdivision.
- 2. Magisterial district.
- 3. County and state.
- 4. Name of owner and developer.
- 5. Name of engineer or surveyor who prepared the plat.
- 6. Vicinity sketch, at a scale of one inch to two thousand (2,000) feet.
- 7. Scale of plat (no larger than one inch to two hundred (200) feet, unless previously approved by the agent).
- 8. North arrow.

9. Date of completion and any subsequent revisions.
10. Number of sheets - match lines.
11. Boundary survey, showing bearings and distances.
12. Zoning boundaries and districts on site.
13. Total acreage of subdivided area.
14. Number of lots in subdivision.
15. Approximate area and frontage of each lot.
16. Names and locations of abutting subdivisions.
17. Names of owners both within and adjoining subdivision.
18. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
19. Location, width, and purpose of other rights-of-way and easements.
20. Location of existing physical features, including buildings, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplain limits of one-hundred-year floods.
21. Proposed location of streets, showing widths and names.
22. Proposed lot layout, lot numbers, block letters, and approximate dimensions of lots (or locations of cluster development or planned unit development).
23. Location of the subdivision as part of some larger subdivision (or a tract of land) and by reference to permanent survey monuments with a tie to a section corner.
24. Estimated total number of gallons per day of water system requirements where a distribution system is proposed.
25. Estimated total number of gallons to be treated where a central sewage facility is proposed; or sewage disposal means and suitability where no central sewage facility is proposed.
26. Topography at vertical intervals of two (2) feet, unless waived or requested at a greater interval by the director.
27. Such other information as may be required from time to time by the agent.

6-4-1 Preliminary plat of development for subdivisions of five (5) or more lots with private roads: The applicant shall submit copies of the preliminary plat of development with every application for preliminary approval. The required number of copies shall be determined by the agent. The preliminary plat shall include the following information:

1. Proposed name of subdivision or name of the owner(s) of the tax parcel to be divided.
2. Magisterial district, County, and state.
3. Name(s) of owner(s) and developer(s) (if applicable).
4. Scale of plan (no greater than 1":400').
5. Tax map parcel number(s) of property to be divided.
6. Existing boundaries of property to be divided, including name and number of adjoining public roads (based on County base maps).
7. Lot layout with approximate dimensions.
8. Layout of proposed roads, including evidence of access which meets Code requirements to the subdivision.
9. Topography, at intervals of 5 feet.
10. North arrow.

6-5 Final plat of development for subdivisions of five (5) or more lots: The applicant shall submit sets of final construction plans for roads, drainage facilities, water and sewage systems, and erosion and sedimentation control for review and approval prior to the submission of a final plat of development. The required number of copies shall be determined by the agent. The final plat of development shall consist of the following:

1. Title block, to be located consistently on all sheets, and to include the following information:
  - a. Name of subdivision.
  - b. Magisterial district, county, state.
  - c. Name(s) of owner(s) and developer.
  - d. Name of surveyor or engineer who prepared the plat.
  - e. Scale of plat (no larger than one inch to two hundred (200) feet, unless previously approved by the agent).
  - f. Date of completion and any subsequent revisions.
  - g. Number of sheets-match lines.

2. Information block, to include the following information:
  - a. Total area in subdivision.
  - b. Total area in lots.
  - c. Total area in road rights-of-way.
  - d. Total area in common areas.
  - e. Total number of Iota.
  - f. Parcel numbers (from county tax maps). (Note: if subdivision comprises more than one parcel, the parcel number and area of each should be shown).
  - g. Zoning of parcel(s).
3. Approval block, three (3) inches by five (5) inches.
4. True north arrow.
5. Vicinity sketch, at a scale of one inch equals two thousand (2,000) feet.
6. Boundary survey, showing bearings and distances.
7. Zoning boundaries and districts on site.
8. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten (10) seconds, for the following:
  - a. Lot layout, lot numbers, block letters, and dimensions of lots.
  - b. Area and frontage of lots.
  - c. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
  - d. Location, width, and purpose of other rights-of-way and easements.
  - e. Location of existing physical features, including buildings, and all streams, we, or ditches, including direction of @ water level elevations, and floodplain--
  - f. Location of the subdivision as part of same larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.
9. The data of all curves along the road frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.
10. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the director.

11. Names and locations of abutting subdivisions.
12. Names of owners both within and adjoining subdivision.
13. Owner's statement.
14. Surveyor's/engineer's certificate and buyer's affidavit, if necessary.
15. Source of title certificate.
16. Location(s) of streets, showing widths and names.
17. Estimated total number of gallons per day of water system requirements where a distribution system is proposed.
18. Estimated total number of gallons per day to be treated where a central sewage facility is proposed.
19. Location, size, and types of existing and proposed utilities, including sanitary sewers, storm drains, water mains, manholes, and underground conduits.

6-6 Procedure: The subdivider shall submit his application for preliminary approval, together with all required documents and plats, to the agent according to rules and procedures established by the agent. For private road subdivisions, the Director shall be the agent. The subdivider shall be notified within thirty (30) sixty (60) days of any action taken by the agent. Application for final approval, together with all required documents and plats, shall be made to the director. The subdivider shall be notified within sixty (60) days of any action taken by the director.

6-7 No guarantee: Approval by the agent of the preliminary plat does not constitute a guarantee of approval of the final plat.

6-8 Procedure for review of final plat; recordation:

1. Notwithstanding the existence of an approved preliminary plat, the final plat shall not be approved by the director unless it conforms to all provisions of this chapter; to all other applicable county ordinances in effect as of the date of application for final plat approval; and substantially to the approved preliminary plat and conditions, when applicable.
2. When the plat for final approval is submitted and the director finds that substantial changes in the character of the area, either through development or proposals for development, the comprehensive plan, or development regulations require the review of a new preliminary plan, he may require the submission, review, and approval of a new preliminary plan prior to approval of the final plat.

3. The director shall, within sixty (60) days after the date of submission of a complete final application and plat, approve or disapprove the final plat in writing, giving with the latter specific reasons therefor: Specific reasons for disapproval shall be contained in a letter to the applicant, and shall relate in general terms such modifications or corrections as will permit approval of the plat. The date of submission of such complete application and plat shall constitute official submission as contemplated by section 15.1-475 of the Code of Virginia.
4. If the developer records a final plat which may be a section of a subdivision as shown on an approved preliminary plat and enters into a performance agreement and furnishes to the County surety in accordance with this chapter in the amount of the estimated cost of construction of the facilities to be dedicated within said section for public use and maintained by the County, the Commonwealth, or other public agency, the developer shall have the right to record the remaining sections shown on the preliminary plat for a period of five years from the recordation date of the first section, subject to the terms and conditions of this chapter in effect at the time of final approval and subject to engineering and construction standards and zoning requirements in effect at the time that each remaining section is recorded.
5. Upon final approval, the director shall record the plat in the Office of the Clerk of the Circuit Court of Hanover County.

6-9 Reserved.

6-10 Plat of development for subdivisions of four (4) or less lots: This procedure applies only to subdivisions containing four (4) lots or less where no roads, utility, or drainage construction is necessary. This procedure may only be used one time on any parcel of land. The applicant shall submit copies of the plat of development with every application. The required number of copies shall be determined by the agent. The plat of development shall include the following information:

1. Title block, to be located consistently on all sheets, and to include the following information:
  - a. Name of subdivision.
  - b. Magisterial district, county, state.
  - c. Name(s) of owner(s) and developer.
  - d. Name of surveyor or engineer who prepared the plat.
  - e. Scale of plat (no larger than one inch equals two hundred (200) feet, unless previously approved by the agent).
  - f. Date of completion and any subsequent revisions.
  - g. Number of sheets - match lines.



2. Information block, to include the following information:
  - a. Total area in subdivision.
  - b. Total area in lots.
  - c. Total area in road right&d-way.
  - d. Total area in common areas.
  - e. Total number of lots.
  - f. Parcel numbers (from county tax maps). (Note: if subdivision comprises more than one parcel, the parcel number and area of each should be shown).
  - g. Zoning of parcel(a).
3. Approval block, three (3) inches by five (5) inches.
4. True north arrow.
5. Vicinity sketch, at a scale of one inch equals two thousand (2,000) feet.
6. Boundary survey, showing bearings and distances.
7. Zoning boundaries and districts on site.
8. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten (10) seconds, for the following:
  - a. Lot layout, lot numbers, block letters, and dimensions of lots.
  - b. Area and frontage of lots.
  - c. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
  - d. Location, width, and purpose of other rights-of-way and easements.
  - e. Location of existing physical features, including buildings, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplains.
  - f. Location of the subdivision as part of some larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.
9. The data of all curves along the road frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.
10. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the director.

11. Names and locations of abutting subdivisions.
12. Names of owners both within and adjoining subdivision.
13. Owner's statement.
14. Surveyor's/engineer's certificate.
15. Source of title certificate.

6-11 Procedure: The subdivider shall submit his application and all required documents and plats to the director according to rules and procedures established by the agent. The subdivider shall be notified within sixty (60) days of any action taken by the director.

6-12 Conditions: The plat shall not be finally approved until the subdivider has complied with the requirements of this ordinance. Approval of the plat shall be written by the director on the face thereof.

#### Section 7. Effectual clauses.

##### 7-1 Exceptions:

1. Where the subdivider can show the provision of these standards would cause unnecessary hardship if strictly adhered to, and where, because of topographical or other conditions peculiar to the site, in the opinion of the agent a departure may be made without destroying the intent of such provisions, the agent may authorize an exception. Any exception thus authorized is to be stated in writing in the report of the agent with the reasoning, on which the departure was justified, set forth.
2. An exception to the rules and procedures shall be granted by the director for a single division for homestead purpose of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner. Such an exception, and the division of a lot or parcel thereunder, shall be subject to the following limitations and conditions:
  - (a) Only one such division shall be allowed per family member and shall not be for the purpose of circumventing this subsection. For the purpose of this subsection a member of the immediate family is defined as any person who is a natural or legally defined offspring, spouse, grandchild, grandparent, or parent of the owner.
  - (b) Any lot created hereunder shall conform to the provisions of the Zoning Ordinance prior to issuance of a building permit.

7-2 Penalties: Any owner or proprietor of any tract of land who subdivides that tract of land and who violates any of the provisions of

this Ordinance shall be guilty of a misdemeanor, punishable by fine of not less than ten dollars (\$10.00) nor more than two hundred dollars (\$200.00), and each day after the first during which violation shall continue shall constitute a separate violation.

7.3 Validity: Should any article, section, subsection, or provision of this Subdivision Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the Subdivision Ordinance as a whole or any part other than the part so declared to be invalid or unconstitutional.

7-4 Repeal: All ordinances or portions of ordinance in conflict with this Ordinance are hereby repealed to the extent of their conflict.

7-5 Amendments: This Ordinance may be amended in whole or in part, as provided by law, by the governing body provided that any such amendment may either originate with or be submitted to the commission for recommendation.

7-6 Appeal procedures: Except where the Board of Supervisors is "agent," decisions of the agent may be appealed to the Board of Supervisors. Such appeals may be filed in writing within forty-five (45) days of action by the agent.

7-7 Effective date: This Ordinance was adopted by the Board of Supervisors of Hanover County, Virginia, on October 9, 1996.

#### Section 8. Chesapeake Bay Preservation.

All submittals made pursuant to this title shall include a water quality impact assessment or other documents and information as may be required by the Hanover County Code, Chapter 10. No preliminary or final plat shall be considered complete without the required information. No preliminary or final plat shall be approved unless the proposed development is in compliance with all requirements of Chapter 10.

3. If any part, section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, declared to be unconstitutional or invalid, such portion of the ordinance shall be severed from the remainder of this ordinance, and the remainder shall continue in full force and effect.
4. This Ordinance shall be effective upon adoption; provided, however, that:
  - a. Complete applications for final subdivision approval which have been filed before the close of business on October 9, 1996, which were in compliance with all substantive zoning and subdivision ordinance requirements in effect on that date shall be reviewed in accordance with those requirements.

b. All lots or parcels described in deeds or plats recorded in the Hanover County Circuit Court Clerk's Office prior to the close of business on October 9, 1996, which meet all zoning and subdivision requirements for yards, setbacks, and access in effect on the date of building permit application shall be deemed to be in compliance with the lot dimension and area requirements of the Zoning Ordinance and requirements of the Subdivision Ordinance.

Public Hearing: October 9, 1996

Adopted: October 9, 1996

  
\_\_\_\_\_  
John F. Berry, Clerk  
Hanover County Board of Supervisors

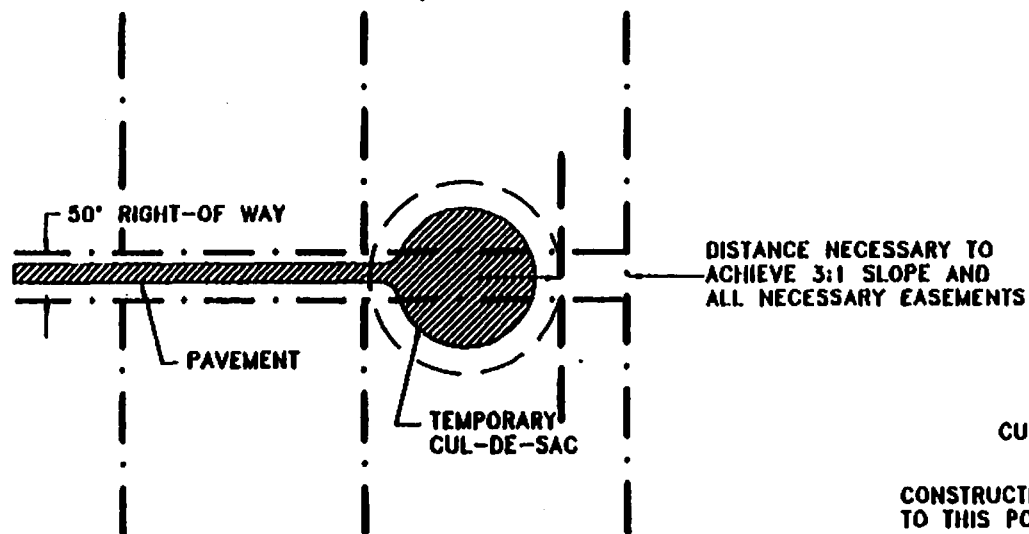


FIGURE 1  
ROADS WHICH PROVIDE LOT ACCESS

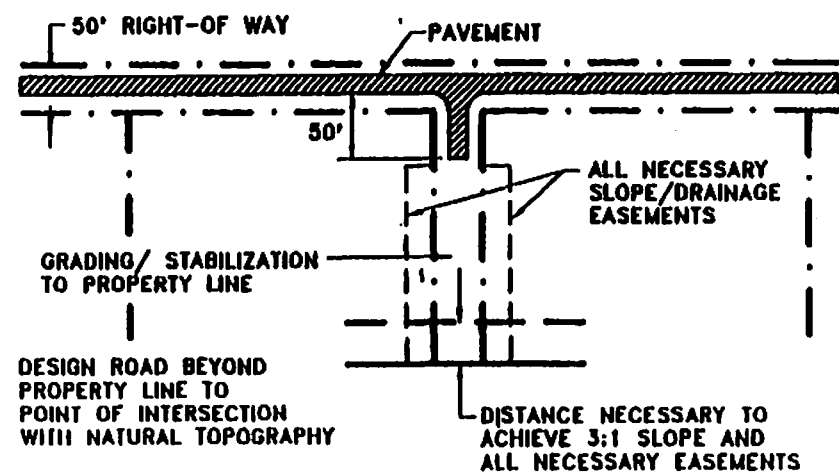


FIGURE 2  
ROADS WHICH DO NOT PROVIDE LOT ACCESS

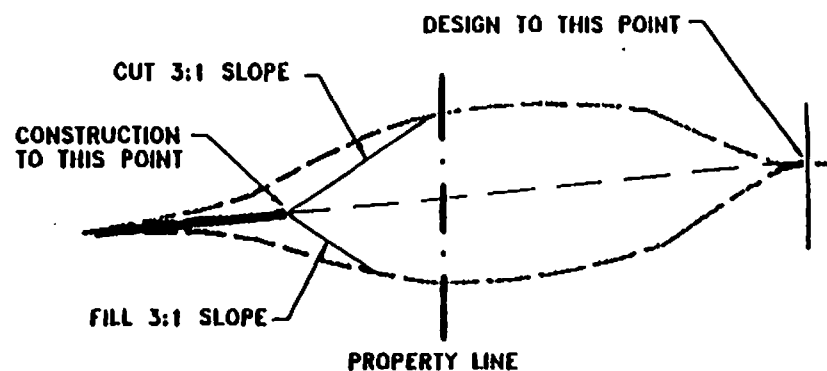
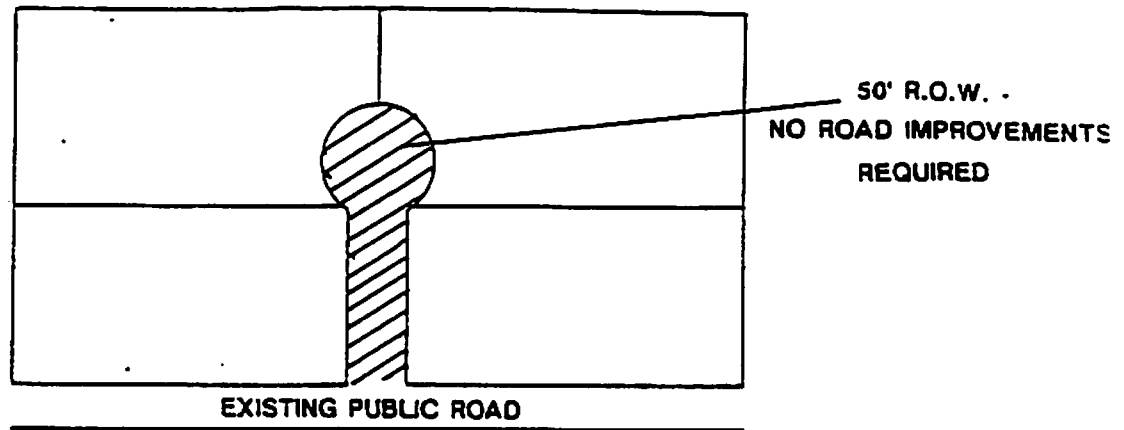
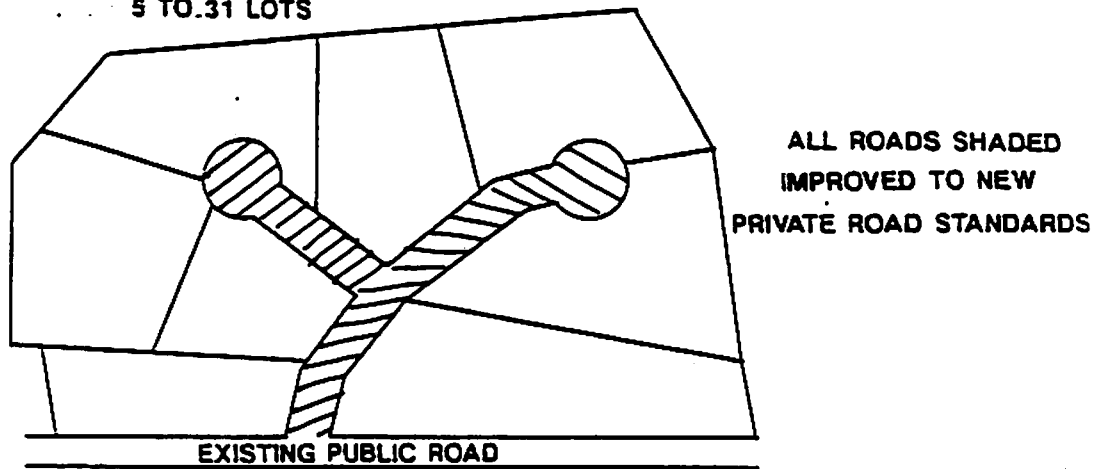


FIGURE 3  
CROSS SECTION

**FIG. 4 FOUR OR FEWER LOTS**



**FIG. 5  
5 TO 31 LOTS**



**FIG. 6  
EXISTING ACCESS ROAD**

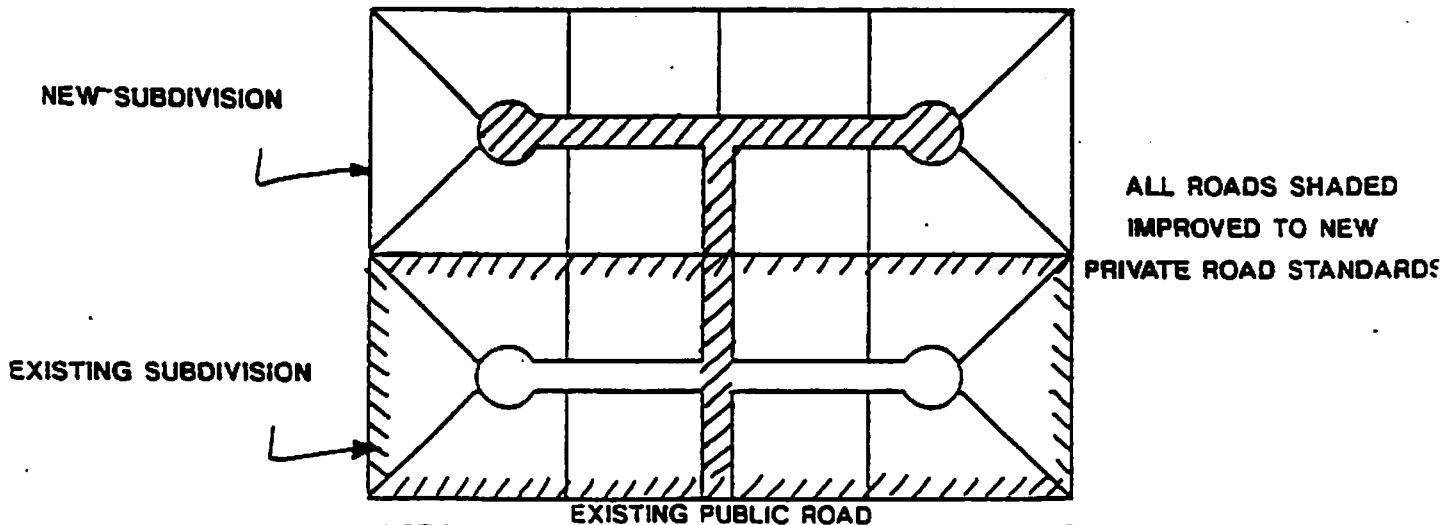
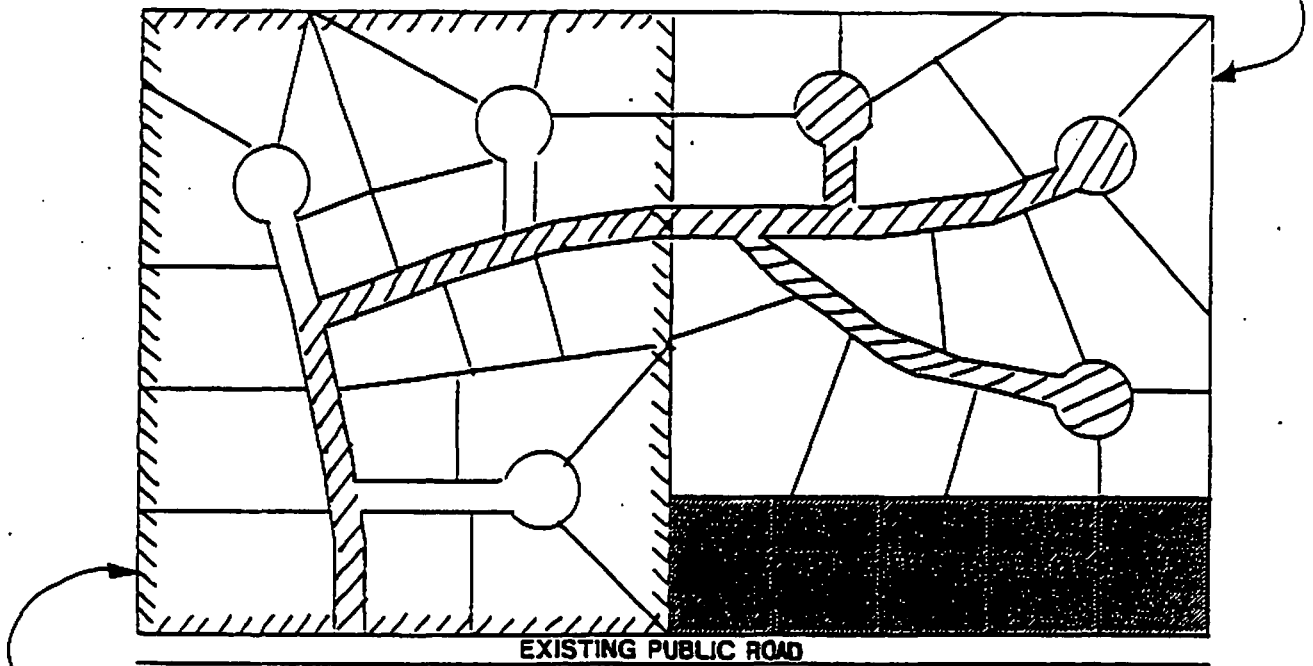


FIG. 87

32+ LOTS - EXISTING ACCESS  
(LOT COUNT IS CUMULATIVE)

NEW SUBDIVISION



EXISTING SUBDIVISION

ALL ROADS SHADED IMPROVED TO PUBLIC ROAD STANDARDS

Adopted 10/19/96  
MCC 11/28/97

ORDINANCE 96-18  
October 9, 1996

AN ORDINANCE TO AMEND THE HANOVER COUNTY CODE, TITLE I.- ZONING, TO DELETE THE AC, AGRICULTURAL CONSERVATION DISTRICT; TO CREATE AN AR-6, AGRICULTURAL RESIDENTIAL DISTRICT; TO REVISE THE A-1, AGRICULTURAL DISTRICT REQUIREMENTS FOR LOT SIZES; AND TO PROVIDE FOR FAMILY PROPERTY CONVEYANCES OF LOTS WITH LESS THAN TEN ACRES OF AREA IN THE A-1, AGRICULTURAL DISTRICT.

BE IT ORDAINED BY THE HANOVER COUNTY BOARD OF SUPERVISORS:

1. That the Hanover County Code, Appendix, Title I, Zoning, Article 2, Section 2, definition of "lot area", shall be adopted, and the definition of "subdivision" shall be amended. The definitions shall read as follows:

Lot, area: The gross acreage of the property less the acreage of public and private roads, unless otherwise specified in this Ordinance. In all districts other than A-1, Agricultural, and AR-6, Agricultural Residential, the acreage in floodplains shall not be included in lot area.

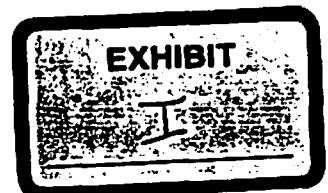
Subdivision: The term "subdivision" shall mean the division of a parcel of land into two (2) or more lots or parcels of land for the purpose of transfer of ownership or building development, including any parcel previously separated by the owner or prior owner of such land for such purposes. The sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building lots, shall be exempt from the terms of the ordinance. The division or partitioning of land in an estate by court order or among heirs of the original owner shall also be exempt from the provisions of this ordinance.

2. That the Hanover County Code, Appendix, Title I, Zoning, Article 5, Section 1, "A-C, Agricultural Conservation District", shall be deleted in its entirety, and Section 2, "A-1, Agricultural District", shall be redesignated as "Section 1". The section shall read in its entirety as follows:

ARTICLE 5. DISTRICT REGULATIONS

Section 1. A-1, Agricultural District.

1.1 Purpose of the district. The purpose of this district is to provide for a full range of agricultural activities and to protect agricultural land, as one of the county's most valuable natural resources, from the depreciating effect of objectionable, hazardous, and unsightly uses. The district is also intended for protection of watersheds, water resources, forest areas, and scenic values, and at the same time to provide for spacious residential development for those who choose this environment and to prevent untimely scattering of more dense urban uses which should be confined to areas planned for efficient extension of public service.





1.2 Permitted uses. A building or land shall be used only for the following purposes:

1. Detached single-family dwellings.
2. Agriculture, including horticultural, chemical, or general farming, truck gardens, cultivation of field crops, orchards, groves, or nurseries for growing or propagation of plants, trees, and shrubs, including temporary sawmills for cutting trees grown on the premises and use of heavy cultivating machinery, spray planes, or irrigating machinery, dairy farming, keeping or raising for sale of large or small animals, reptiles, fish, birds, or poultry, and including structures for processing and sale of products raised on the premises; provided:
  - (a) Any sawmill, grain drier, commercial feed lot or hog raising operation shall be located at least two hundred fifty (250) feet from any dwelling not located on the premises.
  - (b) Structures for commercial poultry raising shall be located at least two hundred (200) feet from any dwelling not located on the premises and at least one hundred (100) feet from any street or road.
  - (c) Commercial slaughtering and processing of large animals, such as horses, cows, pigs, sheep, or goats shall not be conducted on the premises.
3. Reserved.
4. Dog kennels, noncommercial; provided any open pens, runs, cages or kennels or any place for keeping more than five (5) adult dogs shall be located at least two hundred (200) feet from any side or rear lot lines.
5. Golf courses, not lighted for night play and not including miniature golf courses, putting greens, driving ranges, and similar activities operated as a business, but including a building for a golf shop, locker room, and snack bar as an accessory use to a permitted golf course, providing no such building is located closer than one hundred (100) feet from adjoining property lines. Practice greens and tees may accompany a standard nine (9) hole or eighteen (18) hole golf course occupying at least seventy-five (75) acres.
6. Facilities and structures necessary for rendering utility service, including poles, wires, transformers, telephone booths, and the like for normal electrical power distribution or communication service, and pipelines or conduits for electrical, gas, sewer, or water service, but not including buildings, treatment plants, pumping or regulator stations, substations and power transmission lines which are permitted as conditional uses.
7. Grain storage structures.

8. Greenhouse, commercial.
9. Hospital or clinic for large or small animals; provided that all buildings, structures, pens, or open kennels shall be located at least two hundred (200) feet from any lot line.
10. Hospital or clinic for small animals (dogs, cats, birds, and the like); provided such hospital or clinic and any treatment rooms, cages, pens, or kennels be maintained within a completely enclosed, soundproof building, and that such hospital or clinic be operated in such a way as to produce no objectionable odors outside its walls.
11. Military bases and appurtenances and parks operated by the United States Government or agencies of the Commonwealth of Virginia.
12. Public and private forests, wildlife reservations, similar conservation projects.
13. Railroad rights-of-way, including a strip of land with tracks and auxiliary facilities for track operations, but not including passenger stations, freight terminals, switching and classification yards, repair shops, round houses, power houses, interlocking towers, and fueling, sanding and watering stations.
14. Recreational uses such as tennis courts, swimming pools, and other similar activities operated exclusively for the use of private membership and not for commercial purposes; provided that no such use, structure, or accessory use is located closer than fifty (50) feet to any adjoining property line.
15. Stable, public or commercial; provided that any building for keeping of animals shall be located at least two hundred (200) feet from any side or rear lot lines, and that there shall be housed on the premises no more than one horse or pony for each acre of land.
16. Stable, private, or keeping of horses, ponies or other livestock for personal enjoyment and not as a business; provided that any building for keeping of animals shall be located at least one hundred (100) feet from any side or rear lot lines and that there shall be housed or kept on the premises no more than one horse or pony for each acre of land.
17. Raising for sale of birds, bees, fish, rabbits, and other small animals, provided any use shall be located at least two hundred (200) feet from any side or rear lot lines.
18. Frog or fish farms, provided any use shall be located at least two hundred (200) feet from any side or rear lot lines.
19. Medical office, limited to two (2) doctors and their staffs (no more than two (2) staff members per doctor).

### 1.3 Permitted accessory uses.

1. Accessory uses as follows on a farm of ten (10) acres or more:
  - (a) Accessory structures for sale or processing of farm products raised on the premises.
  - (b) Accessory, open or enclosed storage of farm materials, products, or equipment.
  - (c) Accessory farm buildings, including barns, stables, sheds, tool rooms, shops, bins, tanks and silos.
  - (d) Dwellings for persons permanently employed on the premises.
2. Domestic storage in main building or in accessory building.
3. Garage, private.
4. Guest houses.
5. Home occupations in a main building.
6. Keeping of small animals, insects, reptiles, fish, or birds, but only for personal enjoyment or household use and not for a business, as an accessory to a nonfarm dwelling on a lot of not less than two (2) acres.
7. Servants' quarters.
8. Storage of a boat trailer or camp trailer or a boat, but not in front yard.
9. Swimming pool and game courts, lighted or unlighted, for use of occupants or their guests.
10. Signs as regulated in article 7, section 3.
11. Temporary buildings, the uses of which are incidental to construction operation during development being conducted on the same or adjoining tract or subdivision and which shall be removed upon completion or abandonment of such construction, or upon the expiration of a period of two (2) years of the time of erection of such temporary buildings, whichever is sooner.
12. Accessory off-street parking and loading spaces. Open or enclosed space for parking one commercial vehicle of not more than one ton capacity and used by the occupant of a dwelling shall be permitted as accessory.
13. The location of office or construction trailers for a period not to exceed one year.

14. Noncommercial fuel alcohol distillery.

15. Foster care and adult family care.

1.4 Reserved.

1.5 Conditional Uses. The following uses may be permitted as conditional uses if approved by the Board of Supervisors in accordance with the procedures, guides and standards of articles 7 and 9:

1. Airports and landing fields, provided they shall comply with the recommendations of the Federal Aviation Agency.
2. Camps, day or boarding, private or commercial.
3. Cemetery, including a crematorium.
4. Circus or carnival grounds, amusement park, zoo or midway, permanent or temporary for a specified time period.
5. Exposition center or fairground.
6. Heliport or helistop.
7. Hospitals and sanitariums.
8. Institutions, educational or philanthropic, including museums, art galleries and libraries.
9. Livestock auction market.
10. Private clubs.
11. Public or governmental buildings and uses, including schools, fire stations (volunteer or otherwise), parks, parkways, and playgrounds; and public boat landings.
12. Public utilities or public service uses, buildings, generating or treatment plants, pumping or regulator stations, substations and transmission lines.
13. Race track, any type, including horses, stock cars, or drag strip.
14. Recreation facility, commercially operated, such as fishing or boating lake, camp ground, picnic grounds, or dude ranch, and accessory facilities, including sale of food, beverages, bait, supplies and equipment.
15. Sanitary landfill or trash collection site.
16. (a) Excavation or filling, borrow pits, extraction of stone, sand or gravel, stripping of topsoil (but not including stripping

of sod) and other major excavations other than for construction of swimming pools and foundations for buildings and other than those approved in connection with a street, subdivision or planned residential development.

(b) Crushing, treating, washing and/or processing of materials resulting from a use permitted in paragraph (a) above when conducted on the same property.

17. Sports area or stadium, commercial athletic field or baseball park.
18. Swimming or tennis club, commercially operated.
19. Reserved.
20. Radio or television broadcasting station or tower more than one hundred twenty-five (125) feet in height, provided construction and safety features are approved by the Administrator in accordance with applicable regulations and provided no hazard is created in an Airport Approach Zone.
21. Churches, rectories, parish houses, convents and monasteries, temples, and synagogues, or the expansion of any existing church, temple, or synagogue by more than fifty (50) percent of its floor area.
22. Agricultural and forestal support center.
23. Antique shop.

1.6 Uses permitted as special exceptions. The following uses may be permitted as special exceptions, if approved by the Board of Supervisors in accordance with the procedures, guides, and standards of article 8:

1. Temporary and conditional permits for the following uses:
  - (a) Archery ranges.
  - (b) Asphalt batching plants or concrete batching plants.
  - (c) Commercial dog kennels.
  - (d) Miniature golf courses or driving ranges.
  - (e) Nonaccessory tents for special purposes.
  - (f) Outdoor displays or promotional activities.
  - (g) Pony rings.
  - (h) Raising for sale of birds, bees, fish, rabbits and other small animals in an Overlay Urban Development District only.

- (i) Rifle or pistol ranges, trap, or skeet shooting.
- (j) Sawmill for cutting timber not grown on the premises.
- (k) Temporary buildings for use as a sales or rental office for an approved real estate development or subdivision.
- (l) A private garage for more than four (4) automobiles.
- (m) Cemetery for pets.
- (n) Convalescent homes, nursing homes, or homes for the aged.
- (o) Day nurseries or child or adult day care centers.
- (p) Frog or fish farms, in an Overlay Urban Development District only.
- (q) Sale of farm products not raised on the premises. Such sale shall be permitted only in conjunction with sales pursuant to section 2.3(1) above and only on a lot no less than ten (10) acres in area.
- (r) Mobile homes for living quarters as follows:
  - (1) accessory to a farm;
  - (2) in cases of hardship, as defined in section 2.6B.2(b), below;
  - (3) during the actual construction phase of a residential dwelling unit by the occupant of the mobile home;
  - (4) or during the actual repair when the permanent dwelling of the applicant has been rendered uninhabitable by a fire, natural disaster, or sudden accidental event.
- (s) Equipment storage yards accessory to a business office for construction or service contractors, operated as a home occupation, when located outside of the Overlay Urban Development District, provided:
  - i) The maximum number of employees on site shall not exceed ten (10) per establishment.
  - ii) There shall be no more than ten (10) pieces of motor propelled equipment stored per site, related to the designated use.
  - iii) There shall be a minimum lot size of five (5) acres, and no more than two (2) acres shall be devoted to the use permitted pursuant to this section.

- iv) There shall be no associated structure on site larger than five thousand (5,000) square feet in size.
- v) When equipment storage is within one hundred (100) feet of a property zoned for residential use, the equipment shall be screened in accordance with the standards specified in Article 7, Section 2A.
- vi) Applications shall be accompanied by a sketch plan prepared in accordance with the standards specified in Article 7, Section 7.2.
- (t) Home occupations in an accessory building, home craft shops, or retail sales businesses conducted as a home occupation.
- (u) Sale of Christmas trees not raised on the premises.
- (v) Auction sales, on a lot no less than ten (10) acres in area, located outside of the Overlay Urban Development District, with no more than four (4) such sales in any calendar year.
- (w) Open or enclosed space for the storage of one (1) commercial vehicle with greater than one (1) ton capacity on property located outside of the Overlay Urban Development District and outside of an approved subdivision, subject to the following standards:
  - i) the Tax Parcel on which the vehicle is stored shall be a minimum of two (2) acres in area and shall have public road frontage;
  - ii) if the vehicle is stored in an open space, the space shall be located at least one hundred feet (100') from any property zoned for residential use or shall be screened in accordance with the standards specified in Article 7, Section 2A; and
  - iii) a sketch plan shall be submitted for review at the time of application, in accordance with the standards specified in Article 7, Section 7.2.
- (x) Bed and breakfast, in accordance with the specific standards and requirements of Article 7, Section 8.9.

1.6A. Temporary mobile home use. Mobile homes may be used for a period of six (6) months from the date of an event rendering a dwelling uninhabitable, in the event of destruction of the dwelling or damage to the dwelling which renders the dwelling uninhabitable, provided that a permit for such use is obtained from the Zoning Administrator.

1. The Zoning Administrator shall have the authority to issue permits for such use if the applicant meets the following requirements:

- (a) An application shall be filed in the Planning Office on a form provided by the Zoning Administrator. The application shall include a verified statement that use of the mobile home is necessary because of damage or destruction to a dwelling on the site where the mobile home will be located and that the mobile home will be used only as a dwelling for the residents of the original dwelling. The application shall also document the nature and date of the event causing the damage or destruction.
  - (b) The site must comply with all requirements of the Hanover County Code, including the Zoning Ordinance and Subdivision Ordinance.
- 2. The permit shall be valid for a period of six (6) months from the date of the event causing the damage or destruction.
  - 3. The site shall remain in compliance with all requirements of the Hanover County Code, including the Zoning Ordinance and Subdivision Ordinance, during the term of the permit. The permit shall be void upon failure of the applicant to maintain compliance with all requirements.
  - 4. Prior to the expiration date or the voiding of any permit the mobile home shall be removed from the site by the owner or applicant.

1.6B. Standards for Special Exceptions for mobile homes as temporary living quarters.

- 1. For any request to use a mobile home as temporary living quarters during the actual construction phase of a residential dwelling unit by the occupant of the mobile home, or during the actual repair when the permanent dwelling of the applicant has been rendered uninhabitable by a fire, other natural disaster, or sudden accidental event, the following standards shall apply:
  - a. The time period for the initial Special Exception shall not exceed one (1) year from the date of approval. The total time period, including extensions, for the temporary use of the mobile home shall not exceed three (3) years from the date of approval of the Special Exception by the Board of Supervisors, except when permitted by the Board of Supervisors upon demonstration by the applicant of extenuating circumstances. When an extension is denied, or upon expiration of the Special Exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.
  - b. When such a Special Exception is granted, improvements shall be completed in accordance with the following schedule:



- 1) Year One (1): At a minimum, mobile home placement, well installation, septic tank installation, and provision of access shall be completed.
  - 2) Year Two (2): At a minimum, the Building Permit for the permanent dwelling shall be obtained, construction of the footing and the foundation completed, and the dwelling framed and protected from weather.
  - 3) Year Three (3): At a minimum, finish work shall be completed, a Certificate of Occupancy obtained, and the mobile home removed from the site within sixty (60) days of issuance of the Certificate of Occupancy.
- c. Requests for extensions for completion during the three (3) year period following the date of original approval of the Special Exception by the Board of Supervisors may be granted by the Board of Supervisors upon demonstration by the applicant of continuing compliance with the schedule for completion as set forth in Section 2.6B-1(b) above, provided that the application for extension is filed prior to expiration of the Special Exception.
2. For any request to use a mobile home as temporary living quarters in the case of a hardship, the following standards shall apply:
- a. The time period for the initial Special Exception shall not exceed two (2) years from the date of original approval of the Special Exception by the Board of Supervisors. Extensions may be granted in two (2) year increments for the duration of the hardship, in accordance with the procedures and standards specified below.
  - b. "Hardship" shall be defined as being when, for health reasons verified by a medical practitioner, licensed by the State of Virginia, through provision of a signed certificate specifying same, a person requires continuous care by another, and both persons will reside on the same or adjoining Tax Map Parcels.
  - c. Extensions may be granted pursuant to the following procedures:
    - 1) The application for a Special Exception shall not be accepted unless a signed certificate, as described above, verifying the need for living assistance due to age or medical reasons, accompanies the application.
    - 2) Extensions for continued use of the mobile home may be granted upon review and approval by the Board of Supervisors of an application, accompanied by confirmation of the continuation of the hardship, filed prior to the two (2) year anniversary date of original

approval of the Special Exception or of any subsequent extension.

- 3) When an extension is denied, or upon expiration of a Special Exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.
  - d. The Special Exception shall be issued to specific individual(s) only, and only for the duration of the verified hardship.
  - e. The mobile home may be occupied by either the person(s) needing care or the person(s) providing care. However, upon cessation of the hardship, the mobile home shall be removed from the site within sixty (60) days regardless of whether it is occupied by the person(s) needing care or providing care.
3. Consideration by the Board of Supervisors of a Special Exception request for placement of a mobile home for use as living quarters as specified herein shall include the potential for adverse impact of the use on the surrounding properties.

1.7 Lot size requirements.

|   | <u>Minimum, Square Ft.</u> | <u>Minimum, Feet</u>    |                                      |
|---|----------------------------|-------------------------|--------------------------------------|
|   | <u>Average Lot Area</u>    | <u>Minimum Lot Area</u> | <u>Lot Width</u><br><u>Lot Depth</u> |
| 1.a. Single-family dwelling on the following proposed rights-of-way:                    | -                          | 10 acres                |                                      |
| (a) 160 ft. rights-of-way   |                            |                         | 450 200                              |
| (b) 80 ft. rights-of-way  |                            |                         | 400 200                              |
| (c) 60 ft. rights-of-way  |                            |                         | 275 200                              |
| (d) 50 ft. rights-of-way  |                            | -                       | 250 200                              |
| 1.b. Family homesteads, pursuant to provisions specified in Article 10:                 |                            | 2 acres                 | 250 200                              |
| 2. Churches, rectories, parish houses, convents and monasteries, temples and synagogues | -                          | 1 acre                  | 200 200                              |
| 3. Animal hospital, larger animals  | -                          | 10 acres                | 300 300                              |
| 4. Animal hospital, small animals, open pens or kennels                                 | -                          | 5 acres                 | 300 300                              |

|    |  |   |         |     |     |
|----|--|---|---------|-----|-----|
|    | Recreation uses clubs, campgrounds                           | - | 5 acres | 200 | 200 |
| 6. | Stable, commercial   |   | 5 acres | 200 | 200 |
| 7. | Stable, private  |   | 2 acres | 200 | 200 |
| 8. | Frog or fish farms, or the raising for sale of small animals | - | 5 acres | 200 | 200 |
| 9. | Medical office   | - | 2 acres | 300 | 200 |

Lot width is measured at the front lot line for any lot located along any public road except those public roads created through the subdivision process; for lots located along a private road or a public road created through the subdivision of a parcel, lot width is measured at a point within the front half of the total depth of the lot. When access to a lot exempt from subdivision requirements is provided by use of a right-of-way with a width of fifty (50) feet or less, the lot shall meet the minimum width requirements for any lot which has frontage on a fifty (50) foot right-of-way.

Minimum frontage for development on private roads or any other road created through subdivision is twenty (20) feet; frontage on any other public road shall be the minimum required lot width.

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

### 1.3 Yard requirements.

| <u>Minimum in Feet</u> |   |                       |                               |                                 |                      |
|------------------------|---|-----------------------|-------------------------------|---------------------------------|----------------------|
|                        |   | <u>Front<br/>Yard</u> | <u>Side Yard,<br/>Minimum</u> | <u>Side Yard,<br/>Aggregate</u> | <u>Rear<br/>Yard</u> |
| 1.                     | Single-family dwelling on the following proposed rights-of-way: |                       |                               |                                 |                      |
| (a)                    | 160 ft.<br>rights-of-way  | 125                   | 25                            | 50                              | 40                   |
| (b)                    | 80 ft.<br>rights-of-way   | 100                   | 25                            | 50                              | 40                   |
| (c)                    | 60 ft.<br>rights-of-way   | 70                    | 25                            | 50                              | 40                   |
| (d)                    | 50 ft.<br>rights-of-way   | 60                    | 25                            | 50                              | 30                   |

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

2. Other structures same or as required in district regulations.

1.9 Height requirements. Single-family dwellings and all other structures not specifically exempted in article 7: Maximum height 2-2½ stories, but not to exceed 35 feet.

1.10 Off-street parking and loading requirements. Off-street parking and loading requirements are contained in article 7.

1.11 Public roads in the agricultural district.

1. The minimum lot area required in the agricultural district may be reduced by the amount of land necessary to be dedicated to improve an adjacent private right of way to public road standards, if the lot is part of a subdivision recorded prior to April 25, 1990. All lots affected by the proposed public road shall meet all other zoning requirements, except that lots containing residential structures existing on April 25, 1990, shall be exempt from yard requirements. The amount of reduction shall be no more than one (1) acre. No such dedication shall create an unusable residual parcel.
  2. The area necessary for the road must meet the requirements of the Virginia Department of Transportation and shall be conveyed to the county by general warranty deed or by dedication on an approved subdivision plat. The County shall be provided with all necessary assurances of title. The road shall be built in accordance with applicable requirements of the Virginia Department of Transportation and the Hanover County Code, and the developer or owner shall be responsible for applying for acceptance of the roads by the Virginia Department of Transportation.
  3. Construction of the road or execution of a performance agreement and provision of security, in accordance with procedures set out in the subdivision ordinance, shall be required prior to any issuance of any building permit for any lot affected by this exception.
3. That the Hanover County Code, Appendix, Title I, Zoning, Article 5, shall be amended to include the following language, which shall be designated "Section 2":

Section 2. AR-6, Agricultural Residential District.

2.1 Purpose of the district. The purpose of this district is to provide for spacious residential development for those who choose this environment; to provide for a full range of agricultural activities; and to protect agricultural land, as one of the county's most valuable natural resources, from the effect of objectionable, hazardous, and unsightly uses.

The district is also intended to provide for protection of watersheds, water resources, forest areas, and scenic values.

2.2 Permitted uses. A building or land shall be used only for the following purposes:

1. Detached single-family dwellings.
2. Agriculture, including horticultural, chemical, or general farming, truck gardens, cultivation of field crops, orchards, groves, or nurseries for growing or propagation of plants, trees, and shrubs, including temporary sawmills for cutting trees grown on the premises and use of heavy cultivating machinery, spray planes, or irrigating machinery, dairy farming, keeping or raising for sale of large or small animals, reptiles, fish, birds, or poultry, and including structures for processing and sale of products raised on the premises; provided:
  - (a) Any sawmill, grain drier, commercial feed lot or hog raising operation shall be located at least two hundred fifty (250) feet from any dwelling not located on the premises.
  - (b) Structures for commercial poultry raising shall be located at least two hundred (200) feet from any dwelling not located on the premises and at least one hundred (100) feet from any street or road.
  - (c) Commercial slaughtering and processing of large animals, such as horses, cows, pigs, sheep, or goats shall not be conducted on the premises.
3. Reserved.
4. Dog kennels, noncommercial; provided any open pens, runs, cages or kennels or any place for keeping more than five (5) adult dogs shall be located at least two hundred (200) feet from any side or rear lot lines.
5. Golf courses, not lighted for night play and not including miniature golf courses, putting greens, driving ranges, and similar activities operated as a business, but including a building for a golf shop, locker room, and snack bar as an accessory use to a permitted golf course, providing no such building is located closer than one hundred (100) feet from adjoining property lines. Practice greens and tees may accompany a standard nine (9) hole or eighteen (18) hole golf course occupying at least seventy-five (75) acres.
6. Facilities and structures necessary for rendering utility service, including poles, wires, transformers, telephone booths, and the like for normal electrical power distribution or communication

service, and pipelines or conduits for electrical, gas, sewer, or water service, but not including buildings, treatment plants, pumping or regulator stations, substations and power transmission lines which are permitted as conditional uses.

7. Grain storage structures.
8. Greenhouse, commercial.
9. Hospital or clinic for large or small animals; provided that all buildings, structures, pens, or open kennels shall be located at least two hundred (200) feet from any lot line.
10. Hospital or clinic for small animals (dogs, cats, birds, and the like); provided such hospital or clinic and any treatment rooms, cages, pens, or kennels be maintained within a completely enclosed, soundproof building, and that such hospital or clinic be operated in such a way as to produce no objectionable odors outside its walls.
11. Military bases and appurtenances and parks operated by the United States Government or agencies of the Commonwealth of Virginia.
12. Public and private forests, wildlife reservations, similar conservation projects.
13. Railroad rights-of-way, including a strip of land with tracks and auxiliary facilities for track operations, but not including passenger stations, freight terminals, switching and classification yards, repair shops, round houses, power houses, interlocking towers, and fueling, sanding and watering stations.
14. Recreational uses such as tennis courts, swimming pools, and other similar activities operated exclusively for the use of private membership and not for commercial purposes; provided that no such use, structure, or accessory use is located closer than fifty (50) feet to any adjoining property line.
15. Stable, public or commercial; provided that any building for keeping of animals shall be located at least two hundred (200) feet from any side or rear lot lines, and that there shall be housed on the premises no more than one horse or pony for each acre of land.
16. Stable, private, or keeping of horses, ponies or other livestock for personal enjoyment and not as a business; provided that any building for keeping of animals shall be located at least one hundred (100) feet from any side or rear lot lines and that there shall be housed or kept on the premises no more than one horse or pony for each acre of land.

17. Raising for sale of birds, bees, fish, rabbits, and other small animals, provided any use shall be located at least two hundred (200) feet from any side or rear lot lines.
18. Frog or fish farms, provided any use shall be located at least two hundred (200) feet from any side or rear lot lines.
19. Medical office, limited to two (2) doctors and their staffs (no more than two (2) staff members per doctor).

### 2.3 Permitted accessory uses.

1. Accessory uses as follows on a farm of ten (10) acres or more:
  - (a) Accessory structures for sale or processing of farm products raised on the premises.
  - (b) Accessory, open or enclosed storage of farm materials, products, or equipment.
  - (c) Accessory farm buildings, including barns, stables, sheds, tool rooms, shops, bins, tanks and silos.
  - (d) Dwellings for persons permanently employed on the premises.
2. Domestic storage in main building or in accessory building.
3. Garage, private.
4. Guest houses.
5. Home occupations in a main building.
6. Keeping of small animals, insects, reptiles, fish, or birds, but only for personal enjoyment or household use and not for a business, as an accessory to a nonfarm dwelling on a lot of not less than two (2) acres.
7. Servants' quarters.
8. Storage of a boat trailer or camp trailer or a boat, but not in front yard.
9. Swimming pool and game courts, lighted or unlighted, for use of occupants or their guests.
10. Signs as regulated in article 7, section 3.
11. Temporary buildings, the uses of which are incidental to construction operation during development being conducted on the same or adjoining tract or subdivision and which shall be removed upon completion or abandonment of such construction, or upon the

expiration of a period of two (2) years of the time of erection of such temporary buildings, whichever is sooner.

12. Accessory off-street parking and loading spaces. Open or enclosed space for parking one commercial vehicle of not more than one ton capacity and used by the occupant of a dwelling shall be permitted as accessory.
13. The location of office or construction trailers for a period not to exceed one year.
14. Noncommercial fuel alcohol distillery.
15. Foster care and adult family care.

2.4 Conditional Uses. The following uses may be permitted as conditional uses if approved by the Board of Supervisors in accordance with the procedures set out in this appendix:

1. Airports and landing fields, provided they shall comply with the recommendations of the Federal Aviation Agency.
2. Camps, day or boarding, private or commercial.
3. Cemetery, including a crematorium.
4. Circus or carnival grounds, amusement park, zoo or midway, permanent or temporary for a specified time period.
5. Exposition center or fairground.
6. Heliport or helistop.
7. Hospitals and sanitariums.
8. Institutions, educational or philanthropic, including museums, art galleries and libraries.
9. Livestock auction market.
10. Private clubs.
11. Public or governmental buildings and uses, including schools, fire stations (volunteer or otherwise), parks, parkways, and playgrounds; and public boat landings.
12. Public utilities or public service uses, buildings, generating or treatment plants, pumping or regulator stations, substations and transmission lines.
13. Race track, any type, including horses, stock cars, or drag strip.



14. Recreation facility, commercially operated, such as fishing or boating lake, camp ground, picnic grounds, or dude ranch, and accessory facilities, including sale of food, beverages, bait, supplies and equipment.
15. Sanitary landfill or trash collection site.
16. (a) Excavation or filling, borrow pits, extraction of stone, sand or gravel, stripping of topsoil (but not including stripping of sod) and other major excavations other than for construction of swimming pools and foundations for buildings and other than those approved in connection with a street, subdivision or planned residential development.  
  
(b) Crushing, treating, washing and/or processing of materials resulting from a use permitted in paragraph (a) above when conducted on the same property.
17. Sports area or stadium, commercial athletic field or baseball park.
18. Swimming or tennis club, commercially operated.
19. Reserved.
20. Radio or television broadcasting station or tower more than one hundred twenty-five (125) feet in height, provided construction and safety features are approved by the Administrator in accordance with applicable regulations and provided no hazard is created in an Airport Approach Zone.
21. Churches, rectories, parish houses, convents and monasteries, temples, and synagogues, or the expansion of any existing church, temple, or synagogue by more than fifty (50) percent of its floor area.
22. Agricultural and forestal support center.
23. Antique shop.

2.5 Uses permitted as special exceptions. The following uses may be permitted as special exceptions, if approved by the Board of Supervisors in accordance with the procedures set out in this appendix:

1. Temporary and conditional permits for the following uses:
  - (a) Archery ranges.
  - (b) Asphalt batching plants or concrete batching plants.
  - (c) Commercial dog kennels.
  - (d) Miniature golf courses or driving ranges.

- (e) Nonaccessory tents for special purposes.
- (f) Outdoor displays or promotional activities.
- (g) Pony rings.
- (h) Raising for sale of birds, bees, fish, rabbits and other small animals in an Overlay Urban Development District only.
- (i) Rifle or pistol ranges, trap, or skeet shooting.
- (j) Sawmill for cutting timber not grown on the premises.
- (k) Temporary buildings for use as a sales or rental office for an approved real estate development or subdivision.
- (l) A private garage for more than four (4) automobiles.
- (m) Cemetery for pets.
- (n) Convalescent homes, nursing homes, or homes for the aged.
- (o) Day nurseries or child or adult day care centers.
- (p) Frog or fish farms, in an Overlay Urban Development District only.
- (q) Sale of farm products not raised on the premises. Such sale shall be permitted only in conjunction with sales pursuant to section 2.3(1) above and only on a lot no less than ten (10) acres in area.
- (r) Mobile homes for living quarters as follows:
  - (1) accessory to a farm;
  - (2) in cases of hardship, as defined in section 2.6B.2(b), below;
  - (3) during the actual construction phase of a residential dwelling unit by the occupant of the mobile home;
  - (4) or during the actual repair when the permanent dwelling of the applicant has been rendered uninhabitable by a fire, natural disaster, or sudden accidental event.
- (s) Equipment storage yards accessory to a business office for construction or service contractors, operated as a home occupation, when located outside of the Overlay Urban Development District, provided:

- i) The maximum number of employees on site shall not exceed ten (10) per establishment.
  - ii) There shall be no more than ten (10) pieces of motor propelled equipment stored per site, related to the designated use.
  - iii) There shall be a minimum lot size of five (5) acres, and no more than two (2) acres shall be devoted to the use permitted pursuant to this section.
  - iv) There shall be no associated structure on site larger than five thousand (5,000) square feet in size.
  - v) When equipment storage is within one hundred (100) feet of a property zoned for residential use, the equipment shall be screened in accordance with the standards specified in Article 7, Section 2A.
  - vi) Applications shall be accompanied by a sketch plan prepared in accordance with the standards specified in Article 7, Section 7.2.
- (t) Home occupations in an accessory building, home craft shops, or retail sales businesses conducted as a home occupation.
  - (u) Sale of Christmas trees not raised on the premises.
  - (v) Auction sales, on a lot no less than ten (10) acres in area, located outside of the Overlay Urban Development District, with no more than four (4) such sales in any calendar year.
  - (w) Open or enclosed space for the storage of one (1) commercial vehicle with greater than one (1) ton capacity on property located outside of the Overlay Urban Development District and outside of an approved subdivision, subject to the following standards:
    - i) the Tax Parcel on which the vehicle is stored shall be a minimum of two (2) acres in area and shall have public road frontage;
    - ii) if the vehicle is stored in an open space, the space shall be located at least one hundred feet (100') from any property zoned for residential use or shall be screened in accordance with the standards specified in Article 7, Section 2A; and
    - iii) a sketch plan shall be submitted for review at the time of application, in accordance with the standards specified in Article 7, Section 7.2.

- (x) Bed and breakfast, in accordance with the specific standards and requirements of Article 7, Section 8.9.

2.6 Temporary mobile home use. Mobile homes may be used for a period of six (6) months from the date of an event rendering a dwelling uninhabitable, in the event of destruction of the dwelling or damage to the dwelling which renders the dwelling uninhabitable, provided that a permit for such use is obtained from the Zoning Administrator.

1. The Zoning Administrator shall have the authority to issue permits for such use if the applicant meets the following requirements:
  - (a) An application shall be filed in the Planning Office on a form provided by the Zoning Administrator. The application shall include a verified statement that use of the mobile home is necessary because of damage or destruction to a dwelling on the site where the mobile home will be located and that the mobile home will be used only as a dwelling for the residents of the original dwelling. The application shall also document the nature and date of the event causing the damage or destruction.
  - (b) The site must comply with all requirements of the Hanover County Code, including the Zoning Ordinance and Subdivision Ordinance.
2. The permit shall be valid for a period of six (6) months from the date of the event causing the damage or destruction.
3. The site shall remain in compliance with all requirements of the Hanover County Code, including the Zoning Ordinance and Subdivision Ordinance, during the term of the permit. The permit shall be void upon failure of the applicant to maintain compliance with all requirements.
4. Prior to the expiration date or the voiding of any permit the mobile home shall be removed from the site by the owner or applicant.

2.7 Standards for Special Exceptions for mobile homes as temporary living quarters.

1. For any request to use a mobile home as temporary living quarters during the actual construction phase of a residential dwelling unit by the occupant of the mobile home, or during the actual repair when the permanent dwelling of the applicant has been rendered uninhabitable by a fire, other natural disaster, or sudden accidental event, the following standards shall apply:
  - a. The time period for the initial Special Exception shall not exceed one (1) year from the date of approval. The total time period, including extensions, for the temporary use of the

mobile home shall not exceed three (3) years from the date of approval of the Special Exception by the Board of Supervisors, except when permitted by the Board of Supervisors upon demonstration by the applicant of extenuating circumstances. When an extension is denied, or upon expiration of the Special Exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.

b. When such a Special Exception is granted, improvements shall be completed in accordance with the following schedule:

- 1) Year One (1): At a minimum, mobile home placement, well installation, septic tank installation, and provision of access shall be completed.
- 2) Year Two (2): At a minimum, the Building Permit for the permanent dwelling shall be obtained, construction of the footing and the foundation completed, and the dwelling framed and protected from weather.
- 3) Year Three (3): At a minimum, finish work shall be completed, a Certificate of Occupancy obtained, and the mobile home removed from the site within sixty (60) days of issuance of the Certificate of Occupancy.

c. Requests for extensions for completion during the three (3) year period following the date of original approval of the Special Exception by the Board of Supervisors may be granted by the Board of Supervisors upon demonstration by the applicant of continuing compliance with the schedule for completion as set forth in Section 2.6B-1(b) above, provided that the application for extension is filed prior to expiration of the Special Exception.

2. For any request to use a mobile home as temporary living quarters in the case of a hardship, the following standards shall apply:

- a. The time period for the initial Special Exception shall not exceed two (2) years from the date of original approval of the Special Exception by the Board of Supervisors. Extensions may be granted in two (2) year increments for the duration of the hardship, in accordance with the procedures and standards specified below.
- b. "Hardship" shall be defined as being when, for health reasons verified by a medical practitioner, licensed by the State of Virginia, through provision of a signed certificate specifying same, a person requires continuous care by another, and both persons will reside on the same or adjoining Tax Map Parcels.

- c. Extensions may be granted pursuant to the following procedures:
- 1) The application for a Special Exception shall not be accepted unless a signed certificate, as described above, verifying the need for living assistance due to age or medical reasons, accompanies the application.
  - 2) Extensions for continued use of the mobile home may be granted upon review and approval by the Board of Supervisors of an application, accompanied by confirmation of the continuation of the hardship, filed prior to the two (2) year anniversary date of original approval of the Special Exception or of any subsequent extension.
  - 3) When an extension is denied, or upon expiration of a Special Exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.
- d. The Special Exception shall be issued to specific individual(s) only, and only for the duration of the verified hardship.
- e. The mobile home may be occupied by either the person(s) needing care or the person(s) providing care. However, upon cessation of the hardship, the mobile home shall be removed from the site within sixty (60) days regardless of whether it is occupied by the person(s) needing care or providing care.
3. Consideration by the Board of Supervisors of a Special Exception request for placement of a mobile home for use as living quarters as specified herein shall include the potential for adverse impact of the use on the surrounding properties.

2.8 Minimum area for application; density. The minimum parcel size for consideration of AR-6, Agricultural Residential District zoning shall be four (4) acres. The zoning request shall apply to the subject parcel in its entirety. Permissible density shall be calculated as follows:

- (1) For parcels four (4) to thirteen and 99/100 (13.99) acres in area: two (2) lots, with a minimum lot size of two (2) acres
- (2) For parcels fourteen (14) to twenty-four and 99/100 (24.99) acres in area: three (3) lots, with a minimum lot size of two (2) acres
- (3) For parcels twenty-five (25) acres or greater in area: one (1) lot per six and 1/4 (6.25) acres

Fractions resulting from the calculation shall be rounded down to the next whole number.

2.9 Subdivision lots prohibited. No lot less than twenty (20) acres in area which is part of a recorded subdivision shall be eligible for consideration for AR-6, Agricultural Residential District zoning.

2.10 Lot size requirements.

|   | <u>Minimum, Acres</u>                 | <u>Minimum, Feet</u> |                  |
|---|---------------------------------------|----------------------|------------------|
|   | <u>Lot Area</u>                       | <u>Lot Width</u>     | <u>Lot Depth</u> |
| 1. Single-family dwelling on the following proposed rights-of-way:                      | 5 acres<br>(except as provided above) |                      |                  |
| (a) 160 ft. rights-of-way   |                                       | 450                  | 200              |
| (b) 80 ft. rights-of-way  |                                       | 400                  | 200              |
| (c) 60 ft. rights-of-way  |                                       | 275                  | 200              |
| (d) 50 ft. rights-of-way  |                                       | 250                  | 200              |
| 2. Churches, rectories, parish houses, convents and monasteries, temples and synagogues | 1 acre                                | 200                  | 200              |
| 3. Animal hospital, larger animals  | 10 acres                              | 300                  | 300              |
| 4. Animal hospital, small animals, open pens or kennels                                 | 5 acres                               | 300                  | 300              |
| 5. Recreation uses clubs, campgrounds   | 5 acres                               | 200                  | 200              |
| 6. Stable, commercial   | 5 acres                               | 200                  | 200              |
| 7. Stable, private  | 2 acres                               | 200                  | 200              |
| 8. Frog or fish farms, or the raising for sale of small animals                         | 5 acres                               | 200                  | 200              |
| 9. Medical office   | 2 acres                               | 300                  | 200              |

Lot width is measured at the front lot line for any lot located along any public road except those public roads created through the subdivision process; for lots located along a private road or a public road created through the subdivision of a parcel, lot width is measured at a point within the front half of the total depth of the lot. When access to a lot exempt from subdivision requirements is provided by use of a right-of-way with a width of fifty (50) feet or less, the lot shall meet the minimum width requirements for any lot which has frontage on a fifty (50) foot right-of-way.

Minimum frontage for development on private roads or any other road created through subdivision is twenty (20) feet; frontage on any other public road shall be the minimum required lot width.

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

#### 2.11 Yard requirements.

|     |   | <u>Minimum in Feet</u> |                               |                                 |                      |
|-----|---|------------------------|-------------------------------|---------------------------------|----------------------|
|     |   | <u>Front<br/>Yard</u>  | <u>Side Yard,<br/>Minimum</u> | <u>Side Yard,<br/>Aggregate</u> | <u>Rear<br/>Yard</u> |
| 1.  | Single-family dwelling on the following proposed rights-of-way: |                        |                               |                                 |                      |
| (a) | 160 ft.<br>rights-of-way  | 125                    | 25                            | 50                              | 40                   |
| (b) | 80 ft.<br>rights-of-way   | 100                    | 25                            | 50                              | 40                   |
| (c) | 60 ft.<br>rights-of-way   | 70                     | 25                            | 50                              | 40                   |
| (d) | 50 ft.<br>rights-of-way   | 60                     | 25                            | 50                              | 30                   |

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

2. Other structures same or as required in district regulations.

2.12 Height requirements. Single-family dwellings and all other structures not specifically exempted in article 7: Maximum height 2-2½ stories, but not to exceed 35 feet.

2.13 Off-street parking and loading requirements. Off-street parking and loading requirements are contained in article 7.

4. That the Hanover County Code, Appendix, Title I, Zoning, Article 10, Section 3, shall be amended to read in its entirety as follows:

#### Section 3A. Permits.

3A.1 No building shall be erected, constructed, altered, moved, converted, extended, or enlarged, without the owner or owners first having obtained a building permit. Such permit shall require conformity with the provisions of this Ordinance. When issued, such permit shall be valid for a period of six (6) months.



3A.2 No building permit by the Administrator, lawfully issued prior to the effective date of this Ordinance, or of any amendment hereto, and which permit, by its own terms and provisions, is in force and effect at said date, shall be invalidated by the passage of this Ordinance, or any such amendment, but shall remain a valid and subsisting permit, subject only to its own terms and provisions and ordinances, rules, and regulations pertaining thereto, and in effect at the time of the issuance of such permit; provided, that all such permits shall expire not later than sixty (60) days from the effective date of this Ordinance, unless actual construction shall have theretofore begun and continued pursuant to the terms of said permit.

Section 3B. Family homesteads. A lot or parcel with a minimum area of two (2) acres is permitted for the purpose of constructing a home to be occupied by the natural or legally defined offspring, spouse, grandchild, grandparent, or parent of the owner of the tract from which the homestead lot is divided. The creation and use of a homestead lot shall be subject to the following provisions:

- i. (a) Only one homestead lot may be created for any one family member, and such lot shall not be created for the purpose of circumventing this Ordinance. No homestead lot shall be created prior to compliance with the requirements of this Section. Any homestead lot created under this Section shall be titled in the name of the family member for whom the home is built for a period of no less than three (3) years following issuance of the Certificate of Occupancy unless the lot is the subject of an involuntary transfer such as foreclosure, death, judicial sale, condemnation, or bankruptcy. The requirements of this Section shall be set forth in an agreement to be executed by the grantor and grantee of the lot in a form prescribed by the Director. This agreement shall be recorded in the Hanover County Circuit Court Clerk's Office prior to the creation of the lot.  
  
(b) Prior to the creation of a homestead lot, the grantor and grantee shall submit to the Director documentation as to compliance with these requirements, as required by the Director, along with an affidavit describing the purpose of the conveyance and identifying the members of the immediate family receiving the lot created.  
  
(c) An application for a building permit shall be submitted within two (2) years of creation of any homestead lot and shall include confirmation of previously submitted documentation. A Certificate of Occupancy for the residence must be obtained within three (3) years after creation of any homestead lot, unless this time period is extended by the Planning Director, for good cause, consistent with the purpose of this Section, demonstrated by the applicant.
- ii. The minimum width, yard, and area requirements of all such lots, including the remaining property from which the lot is divided, shall be in accordance with the Zoning Ordinance.

- iii. For property not served with public water and public sewer, each lot shall have its septic tank system and water source approved by the Health Department, and those facilities shall be located on the lot served.
  - iv. Each lot or parcel of property shall front a road which is part of the Virginia System of Highways or shall front upon a private drive or road which is in a right-of-way no less than twenty (20) feet in width. Such right-of-way shall remain private and shall include a driveway within it consisting of, at a minimum, an all-weather surface of rock, stone, or gravel, with a minimum depth of one (1) inch and a width of ten (10) feet. An erosion and sediment control plan with appropriate surety shall be submitted for approval if the proposed right-of-way and drive construction disturbs more than two thousand five hundred ((2,500) square feet of the property.
6. If any part, section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, declared to be unconstitutional or invalid, such portion of the ordinance shall be severed from the remainder of this ordinance, and the remainder shall continue in full force and effect.
7. This Ordinance shall be effective upon adoption; provided, however, that:
- a. Complete applications for final subdivision approval which have been filed before the close of business on October 9, 1996, which were in compliance with all substantive zoning and subdivision ordinance requirements in effect on that date shall be reviewed in accordance with those requirements.
  - b. All lots or parcels described in deeds or plats recorded in the Hanover County Circuit Court Clerk's Office prior to the close of business on October 9, 1996, which meet all zoning and subdivision requirements for yards, setbacks, and access in effect on the date of building permit application shall be deemed to be in compliance with the lot dimension and area requirements of the Zoning Ordinance and requirements of the Subdivision Ordinance.

Public Hearing: October 9, 1996

Adopted: October 9, 1996

  
\_\_\_\_\_  
John F. Berry, Clerk  
Hanover County Board of Supervisors

- c. Extensions may be granted pursuant to the following procedures:
- (1) The application for a special exception shall not be accepted unless a signed certificate, as described above, verifying the need for living assistance due to age or medical reasons, accompanies the application.
  - (2) Extensions for continued use of the mobile home may be granted upon review and approval by the Board of Supervisors of an application, accompanied by confirmation of the continuation of the hardship, filed prior to the two (2) year anniversary date of original approval of the special exception or of any subsequent extension.
  - (3) When an extension is denied, or upon expiration of a special exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.
- d. The special exception shall be issued to specific individual(s) only, and only for the duration of the verified hardship.
- e. The mobile home may be occupied by either the person(s) needing care or the person(s) providing care. However, upon cessation of the hardship, the mobile home shall be removed from the site within sixty (60) days regardless of whether it is occupied by the person(s) needing care or providing care.
3. Consideration by the Board of Supervisors of a special exception request for placement of a mobile home for use as living quarters as specified herein shall include the potential for adverse impact of the use on the surrounding properties. (Ord. No. 93-29, § 3, 2-23-94; Ord. No. 94-17, § 2, 8-23-94)

*2.7. Lot size requirements.*

|   | <i>Minimum,<br/>Average<br/>Lot Area</i> | <i>Square Feet<br/>Minimum<br/>Lot Area</i>                              | <i>Min-<br/>imum,<br/>Lot<br/>Width</i> | <i>Feet<br/>Lot<br/>Depth</i> |
|---|--|--|---|-------------------------------|
| 1. Single-family dwelling on the following proposed rights-of-way:                      | —  | 2 acres, after the first conveyance all lots must be 10 acres or greater |   |                               |
| (a) 160 ft. rights-of-way   |  |  | 450                                     | 200                           |
| (b) 80 ft. rights-of-way  |  |  | 400                                     | 200                           |
| (c) 60 ft. rights-of-way  |  |  | 275                                     | 200                           |
| (d) 50 ft. rights-of-way  |  |  | 250                                     | 200                           |
| 2. Churches, rectories, parish houses, convents and monasteries, temples and synagogues | —  | 1 acre   | 200                                     | 200                           |
| 3. Animal hospital, larger animals  |  | 10 acres   | 300                                     | 300                           |



# TITLE I—ZONING

Art. 5, § 2

|  | <i>Minimum,<br/>Average<br/>Lot Area</i> | <i>Square Feet<br/>Minimum<br/>Lot Area</i> | <i>Min-<br/>imum,<br/>Lot<br/>Width</i> | <i>Feet<br/>Lot<br/>Depth</i> |
|--|--|---|---|-------------------------------|
| 4. Animal hospital, small animals, open pens or kennels                                  |  | 5 acres                                     | 300                                     | 300                           |
| 5. Recreation uses clubs, campgrounds  |  | 5 acres                                     | 200                                     | 200                           |
| 6. Stable, commercial  |  | 5 acres                                     | 200                                     | 200                           |
| 7. Stable, private   |  | 2 acres                                     | 200                                     | 200                           |
| 8. Frog or fish farms, or the raising for sale of small animals                          | —  | 5 acres                                     | 200                                     | 200                           |
| 9. Medical office  |  | 2 acres                                     | 300                                     | 200                           |
| 10. Business office and equipment storage yards for construction and service contractors |  | 2 acres                                     | 300                                     | 200                           |

Lot width is measured at the building line.

Minimum street frontage is twenty (20) feet.

Proposed rights-of-way are those designated by the Major Thoroughfare Plan. (Ord. No. 85-13, § 2, 10-23-85; Ord. No. 90-11, § 2, 7-18-90; Ord. No. 90-15, § 1, 7-18-90; Ord. No. 91-02, § 1, 4-24-91)

## 2.8 Yard requirements.

|  |                       | <i>Minimum in Feet</i>        |                                 |                      |
|--|-----------------------|-------------------------------|---------------------------------|----------------------|
|  | <i>Front<br/>Yard</i> | <i>Side Yard,<br/>Minimum</i> | <i>Side Yard,<br/>Aggregate</i> | <i>Rear<br/>Yard</i> |
| 1. Single-family dwelling on the following proposed rights-of-way: |                       |                               |                                 |                      |
| (a) 160 ft. rights-of-way  | 125                   | 25                            | 50                              | 40                   |
| (b) 80 ft. rights-of-way   | 100                   | 25                            | 50                              | 40                   |
| (c) 60 ft. rights-of-way   | 70                    | 25                            | 50                              | 40                   |
| (d) 50 ft. rights-of-way   | 60                    | 25                            | 50                              | 30                   |

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

2. Other structures same or as required in district regulations.

2.9 Height requirements. Single-family dwellings and all other structures not specifically exempted in article 7: Maximum height 2—2½ stories, but not to exceed 35 feet.

2.10 Off-street parking and loading requirements. Off-street parking and loading requirements are contained in article 7.

### **TITLE III—SUBDIVISION—TEN TO TWENTY-FIVE ACRES**

§ 4

**2-6 Subdivision:** The division of a tract or parcel of land into three (3) or more parts, any of which contain an area of ten (10) or more acres, but less than twenty-five (25) acres, for the purpose, whether immediate or at some future time, of transfer of ownership of any such parcels. The sale or exchange of parcels between adjoining lot owners where such sale or exchange does not create additional building lots shall be exempt from the provisions of this ordinance. The division or partitioning of land in an estate by court order or by the heirs of the original owner shall also be exempted from the provisions of this ordinance.

**2-7 Tract:** A parcel of land with an area of between ten (10) and twenty-five (25) acres.

#### **Section 3. Administration.**

**3-1 Administrator:** The agent appointed by the board of supervisors is hereby delegated to administer this ordinance. In so acting, the agent shall be considered the agent of the governing body and approval or disapproval as though it were given by the governing body. In the event the agent is not the commission, the agent may consult with the commission on matters contained herein.

**3-2 Duties:** The agent shall perform its duties, as regards subdivision and subdividing in accordance with this ordinance.

**3-3 To consult:** In the performance of its duties, the agent may call for opinions or decisions, either verbal or written, from other departments in considering details of any submitted plat.

**3-4 Additional authority:** In addition to the regulations herein contained for the platting of the private road subdivision, the agent may, from time to time, establish any reasonable additional administrative procedures deemed necessary for the proper administration of this ordinance.

#### **Section 4. Procedure for making and recording plats.**

**4-1 Platting required:** The owner or developer of any tract of land situated within Hanover County who subdivides the same into a private road subdivision shall cause a plat of such subdivision, with reference to known or permanent monuments, to be made and recorded in the office of the clerk of the Circuit Court of Hanover County, Virginia. No such plat of subdivision shall be recorded unless and until it shall have been submitted, approved and certified by the agent in accordance with the regulations set forth in this ordinance. No tract shall be sold in any such subdivision before the plat shall have been recorded.

**4-1.1** In the event a plan for subdivision is disapproved by the agent, the subdivider may appeal to the circuit court as provided in section 15.1-475 of the Code of Virginia.

**4-2 Draw and certify:** Every such plat shall be prepared by an engineer or surveyor duly licensed by the State of Virginia, who shall endorse upon each plat a  
Supp. No. 9

1953



# **Title III Subdivisions Status 10/9/96**

| Name of Subdivision                              | Number of<br>Subdv. lots | Number of<br>1st Divsns. | Acreage | Date<br>Received | Date Letter<br>Was Mailed | Date of<br>Resubmittal | Date of<br>Response | Magist.<br>District |
|--|--------------------------|--------------------------|---------|------------------|---------------------------|------------------------|---------------------|---------------------|
| <i>Recorded After 9/25/96 and Before 10/9/96</i> |                          |                          |         |                  |                           |                        |                     |                     |
| Bluffs at Taylors Creek, A-C                     | 9                        | 3                        | 87      | 6/21/96          | 8/14/96                   | 9/5/96                 |                     | SA                  |
| Stagfield West, Sec. 1                           | 3                        | 1                        | 26      | 5/18/95          | 6/16/95                   | 6/25/96                | 8/20/96             | SA                  |
| Teman Mill, Secs. A & B                          | 6                        | 2                        | 54      | 3/15/96          | 5/13/96                   | 8/13/96                |                     | B                   |
| Summer Breeze                                    | 3                        | 1                        | 26      | 4/2/96           | 5/13/96                   | 7/15/96                | 7/23/96             | SA                  |
| Clay Springs, Secs. A & B                        | 7                        | 2                        | 60      | 6/17/96          | 7/25/96                   | 8/28/96                |                     | H                   |
| Pinehurst, Secs. J, K, & L                       | 10                       | 3                        | 82      | 7/1/96           | 8/16/96                   |                        |                     | B                   |
| The Furlong Estates                              | 5                        | 1                        | 53      | 8/4/95           | 9/8/95                    |                        |                     | H                   |
| Robins Nest                                      | 3                        | 1                        | 25      | 8/8/96           | 9/24/96                   |                        |                     | SA                  |
|  | <hr/>                    | <hr/>                    | <hr/>   |                  |                           |                        |                     |                     |
|  | 46                       | 14                       | 413     | (subtotal)       |                           |                        |                     |                     |
| <i>Subdivision Applications Filed by 9/25/96</i> |                          |                          |         |                  |                           |                        |                     |                     |
| Stagfield West, Sec. 2                           | 3                        | 1                        | 26      | 5/18/95          | 6/16/95                   | 6/25/96<br>10/9/96     | 8/20/96             | SA                  |
| Little River Estates, Sec. 9 & 10                | 6                        | 2                        | 52      | 12/18/95         | 2/14/96                   | 3/29/96                | 5/9/96<br>7/10/96   | B                   |
| Harlow Meadows                                   | 2                        | 0                        | 18      | 6/5/96           | 7/25/96                   |                        |                     | A                   |
| White & Wanzer                                   | 3                        | 1                        | 27      | 6/21/96          | 7/12/96                   |                        |                     | SA                  |
| Farmington, Secs. L, M, N, & O                   | 12                       | 4                        | 100     | 7/19/96          | 9/17/96                   | 10/8/96                |                     | CH                  |
| Hawkins  | 2                        | 0                        | 30      | 7/22/96          | 8/26/96                   | 10/1/96                |                     | B                   |
| White House Farm, Secs. A-E                      | 15                       | 5                        | 130     | 8/21/96          |                           |                        |                     | B                   |
| Parson's Ridge, Secs. A-R                        | 54                       | 18                       | 450     | 8/23/96          |                           |                        |                     | B                   |
| Hickory Creek Estates                            | 2                        | 0                        | 12      | 8/29/96          |                           |                        |                     | CH                  |
| Cochrane Place, Secs. A-C                        | 9                        | 3                        | 75      | 8/30/96          |                           |                        |                     | SA                  |
| Ingalls  | 2                        | 0                        | 17      | 9/3/96           |                           |                        |                     | CK                  |
| Farston, Secs. A-B                               | 6                        | 2                        | 66      | 9/10/96          |                           |                        |                     |                     |
| Summit Hill, Secs. A-B                           | 5                        | 2                        | 45      | 9/12/96          |                           |                        |                     | SA                  |
| Henessey, Secs. A-B                              | 6                        | 2                        | 56      | 9/16/96          |                           |                        |                     | B                   |
| Ingleside, Sec. C                                | 3                        | 1                        | 25      | 9/18/96          |                           |                        |                     | CH                  |
| Little River Falls                               | 3                        | 1                        | 28      | 9/20/96          |                           |                        |                     | B                   |
| Pleasant Woods                                   | 2                        | 0                        | 16      | 9/20/96          |                           |                        |                     | B                   |
| Toler Place                                      | 4                        | 1                        | 39      | 9/20/96          |                           |                        |                     | SA                  |



|                             |       |       |       |            |    |
|-----------------------------|-------|-------|-------|------------|----|
| Goodman Hall                | 2     | 1     | 22    | 9/20/96    | B  |
| Cedar Creek Farms, Sec. A-C | 11    | 0     | 110   | 9/24/96    | SA |
| Country Creek Estates, A-C  | 11    | 3     | 81    | 9/25/96    | CH |
| Rose Cottage, Secs. A-B     | 8     | 2     | 71    | 9/25/96    | B  |
|                             | <hr/> | <hr/> | <hr/> |            |    |
|                             | 171   | 49    | 1496  | (subtotal) |    |

***Subdivision Applications After 9/25/96 and Before 10/9/96***

|                               |       |       |       |            |    |
|-------------------------------|-------|-------|-------|------------|----|
| Trinity Acres                 | 3     | 1     | 33    | 9/27/96    | B  |
| Watson, Sec. A                | 3     | 1     | 26    | 10/1/96    | B  |
| Kelly Grove Estates, Sec. A-C | 10    | 3     | 85    | 10/3/96    | SA |
| Hobby Horse Farm              | 4     | 1     | 40    | 10/3/96    | H  |
| Lairds Trace                  | 3     | 1     | 42    | 10/3/96    | SA |
| Eagles Trace                  | 2     | 0     | 10    | 10/3/96    | A  |
| William Kirby                 | 2     | 0     | 18    | 10/4/96    | SA |
| Rolling Meadows, Secs. A-B    | 6     | 2     | 62    | 10/4/96    | SA |
| Landora Bridge Estates        | 4     | 1     | 37    | 10/7/96    | B  |
| Bourne Acres West, Sec. B     | 4     | 1     | 34    | 10/8/96    | SA |
| Rocky Mills, Sec. B           | 3     | 1     | 25    | 10/8/96    | SA |
| Keyes, Secs. A-I              | 27    | 9     | 282   | 10/8/96    | SA |
| Willoughby, Secs. A-D         | 14    | 4     | 113   | 10/8/96    | SA |
| White House Farm, Secs. F-J   | 15    | 5     | 125   | 10/8/96    | B  |
| Stagg Creek West, Sec. A-C    | 9     | 3     | 75    | 10/9/96    | SA |
| Poplar Gate, Secs. A-I        | 18    | 9     | 241   | 10/9/96    | H  |
| Furlong, Sec. J-S             | 20    | 10    | 274   | 10/9/96    | H  |
| Buckwood Estates, Sec. A-C    | 10    | 3     | 84    | 10/9/96    | H  |
| Sugar Maple, Secs. A-E        | 15    | 5     | 130   | 10/9/96    | SA |
|                               | <hr/> | <hr/> | <hr/> |            |    |
|                               | 172   | 60    | 3232  | (subtotal) |    |

**343      109      (Grand Totals Pending)**

**343 + 109 = 452 total lots**

**on 3232 total acres**

**3232 / 452 = 7.15 ac. (avg. lot size)**

## Subdivisions Sent Back

(Filed Prior to Oct. 10)

| Subdivision            | Section | Date Filed | Date Returned | Reason  |
|------------------------|---------|------------|---------------|---|
| Cochrane Place         | A - C   | 8/30/96    | 10/25/96      | 1st Div. not recorded properly                  |
| Ingalls                |         | 9/3/96     | 10/29/96      | No 1st Div. recorded                            |
| Farston                | A & B   | 9/10/96    | 10/4/96       | Title IV plat not recorded correctly            |
| Rose Cottage           | 1 & 2   | 9/25/96    | 10/31/96      | Title IV plat not recorded correctly            |
| Kelley Grove Estates   | A - C   | 10/3/96    | 10/29/96      | No metes and bounds                             |
| Eagles Trace           |         | 10/3/96    | 10/29/96      | Ineligible for lots < 10 acres                  |
| Landora Bridge Estates |         | 10/7/96    | 10/29/96      | No 1st Div. recorded                            |
| Bourne Acres West      | B       | 10/8/96    | 10/29/96      | Incomplete metes and bounds                     |
| Rocky Mills            | B       | 10/8/96    | 10/29/96      | No metes and bounds                             |
| Sugar Maple            | A - E   | 10/9/96    | 10/31/96      | No 1st Div. recorded                            |
| Poplar Gate            | A - I   | 10/9/96    | 10/29/96      | 25-acre and 1st divisions recorded on same plat |
| Furlong                | J - S   | 10/9/96    | 10/29/96      | 25-acre and 1st divisions recorded on same plat |





**BOARD OF SUPERVISORS**

**J.T. "Jack" Ward, Chairman**  
Mechanicsville District

**Aubrey M. Stanley, Jr., Vice-Chairman**  
Beaverdam District

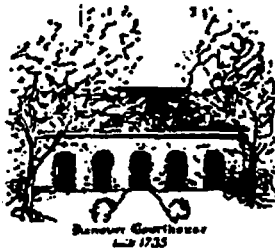
**Timothy E. Ernst**  
Ashland District

**Tom Giles**  
Chickahominy District

**John E. Gordon, Jr.**  
South Anna District

**R.J. Klotz, Jr.**  
Henry District

**Elton J. Wade, Sr.**  
Cold Harbor District



**Hanover County**  
**P. O. Box 470**  
**Hanover, VA 23069-0470**

**March 31, 1997**

**John F. Berry**  
County Administrator

**Richard R. Johnson**  
Deputy County Administrator

**Sterling E. Rives, III**  
County Attorney

**File No.: 5155**

**(804) 537-6035**

**Richard L. Shelton, Clerk**  
**Hanover County Circuit Court**  
**Hanover, Virginia 23069**

**Re: A. G. Bertozzi v. Hanover County, Virginia**  
**Case No. 594-96**

**Dear Mr. Shelton:**

Enclosed is Hanover County's Memorandum for filing in this matter. Thank you for your help.

Sincerely,

**A. Lisa Barker**  
Senior Assistant County Attorney

**ALB:cdc**

**Enc.**

**cc w/enc.:**

**John H. Hodges, Director of Planning**  
**Michael E. Crescenzo, Deputy Director of Planning**  
**J. Keith Thompson, Principal Planner**  
**Bruce P. Ganey, Esq.**

**RECEIVED and/or FILED**  
**MAR 5 1997**  
**CLERK OF COURT**  
**HANOVER CIRCUIT COURT**

VIRGINIA:

**IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER**

A. G. BERTOZZI,

Appellant,

RECEIVED and/or FILED

v.

Case No. CH594-96

APR - 1 1997

HANOVER COUNTY, VIRGINIA,

CLERK'S OFFICE Appellee.  
HANOVER CIRCUIT COURT

**BRIEF OF APPELLANT**

Comes now the Appellant, by counsel, and submits the following as his Statement of Facts and Memorandum of Law applicable thereto:

**STATEMENT OF FACTS**

1. Appellant, A. G. Bertozzi, was the sole owner of 181.1 acres of land in South Anna District, Hanover County, Virginia (see attached Exhibit "A") (Plat Book 35, page 373).
2. That on October 3, 1995, Appellant hired Richard L. Baird, Jr., consulting engineer, to prepare and file all necessary applications and survey work to allow a Title IV and then a Title III subdivision of the 181.1 acres and to be known as Sugar Maple Subdivision.
3. That the said Richard L. Baird, Jr. did all necessary research, revision of recorded plats and County Topo and proposed lot layouts.
4. That the said Richard L. Baird, Jr. had a soil feasibility study completed by Tim Sexton, Inc.
5. That the said Richard L. Baird, Jr. had a boundary survey prepared by Charles Patterson, C.L.S.
6. That on May 7, 1996, a proposed subdivision layout of Sugar Maple Subdivision (of both Title III and Title IV subdivisions) was submitted to the Hanover County Planning Department. At that time, Appellant requested a review and comments regarding general conformance with the Hanover County Subdivision Ordinance. (See letter of May 7, 1996 attached hereto as Exhibit "B").

7. That on October 9, 1996, a Title IV subdivision of the 181.1 acres was recorded in the Clerk's Office of the Hanover Circuit Court.
8. That on October 9, 1996, Appellant filed a Title III subdivision application with the Hanover County Planning Department along with the necessary filing fees.
9. That said application included filing for Sections A - E and referred to the fact that Sections F and G would be forthcoming. (See attached Exhibit "C").
10. That at the time of the filing, Appellant's application for Sugar Maple Subdivision was in compliance with the Hanover County Subdivision Ordinance.
11. That on the night of October 9, 1996, the Hanover County Board of Supervisors adopted a new zoning and subdivision ordinance. Along with this change, the Board also approved a provision which permitted the review of complete applications for final subdivision approval which were in compliance with all substantive zoning and subdivision ordinance requirements in effect on the date of submission. (See attached Exhibit "D").
12. That on October 29, 1996, Michael E. Crescenzo, Deputy Director of Planning, did forward a letter of disapproval to Richard L. Baird, Jr. (see letter of October 29, 1996 attached hereto as Exhibit "E").
13. That on October 9, 1996, the Hanover County Subdivision ordinance required all proposed Title III subdivisions to be filed in the Planning Department for approval and certification by an authorized agent.
14. That in 1995, Appellant filed and recorded a Title III subdivision known as "Pin Oak" located in the South Anna District, Hanover County, Virginia, utilizing the same engineer and procedures and was approved by the County.
15. That on December 6, 1996, the County disapproved a Title III subdivision known as Stag Creek Subdivision citing five deficiencies of said subdivision application. That said subdivision application was filed on October 9, 1996, the same date as your Appellant's application; was disapproved as was Appellant's application; but was allowed to re-submit a corrected application for review (see attached Exhibit "F").

16. That Appellant, A. G. Bertozzi, was not given the option to file a revised application.

17. That Appellant filed a timely appeal of the disapproval pursuant to Virginia Code Section 15.1-475.

#### **APPLICABLE LAW**

The applicable law for review of the Sugar Maple Subdivision is the law existing prior to the enactment of the new ordinance enacted on the night of October 9, 1996. The rationale for this is that the old Title III subdivision ordinance was the only law existing at the time Appellant, A. G. Bertozzi, filed his application on October 9, 1996. Further, the enactment of the new ordinance provided that any applicant who filed prior to enactment shall be reviewed and approved under the old and new ordinance if it was in conformance with the pre-existing law (see new ordinance).

The only law in effect at the close of business on October 9, 1996, was the pre-existing law: "Title III Subdivision Ordinance - ten to twenty-five Acres" (see attached Exhibit "G"). That ordinance required any subdivider to file with the Hanover County Planning Department a plat of the proposed subdivision, including all necessary roads and monuments. The applicant must include the required filing fee. The application must be reviewed by an agent of the Zoning Administration within sixty (60) days. Section 15.1-475 B(1) provides as follows:

The local commissioner or other agent shall act on any proposed plat within sixty days after it has been submitted for approval by either approving or disapproving such plat in writing, and giving with the latter specific reasons therefor. Specific reasons for disapproval may be contained in a separate document or may be written on the plat itself. The reasons for disapproval shall identify deficiencies in the plat which cause the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall generally identify such modification or correction as will permit approval of the plat.

On October 29, 1996, Appellant received the letter of disapproval. The letter cites the reason for disapproval as "failure to record first division lots Title I, Article 5, Section 2.7-1 (of the Hanover County Subdivision Ordinance)".

Title I, Article 5, Section 2.7-1 (see attached Exhibit "H") does not state anything about recording first division lots. The cited ordinance is void of any language to rely upon a disapproval as cited in the letter of October 29, 1996. Appellant can only speculate as to why he was denied according to the letter of October 29, 1996. Further, the letter fails in any way to meet the requirement that the letter shall generally identify such modifications or corrections as will permit approval of the plat. (see Section 15.1-475 B(1)).

The fact of the matter is that there is no basis to deny any application for a Title III subdivision. The underlying tenant of the Title III subdivision ordinance is to allow the planning department to assist the applicant to meet all requirements of the ordinance. Even if a particular plat is deficient in some area, Section 15.1-475 requires the County agent to identify the corrections necessary for approval of the plat. An example of this is the case of the Stagg Creek Subdivision. Stagg Creek was a Title III subdivision application filed on October 9, 1996, by another applicant. This subdivision application was disapproved on December 6, 1996. The disapproval letter cited five deficiencies. Unlike Sugar Maple, the County then permitted Stagg Creek to refile the subdivision plat with the necessary corrections.

Appellant's application submitted on October 9, 1996, was in compliance with the subdivision ordinance. The agent for the Zoning Administration was required by law to review and, if disapproved, advise as to the method for compliance. If Appellant could reasonably comply with the reasons cited by the agent for disapproval, then the applicant should be allowed to make such corrections and then resubmit the application. There is no justification for treating the Stagg Creek Subdivision any differently than the Appellant's Sugar Maple Subdivision.

Appellant's application for Sections A - E of Sugar Maple Subdivision clearly shows a division of 25 acres or more in each section that has been divided into four (4) lots containing two ten-acre lots; one residual and one first division lot. The subdivision ordinance does not state in any section when the first division is to be recorded. The application and section plats must be submitted for prior approval before final recordation of the plats.

The Planning Department only needs to suggest to the applicant as to corrections or comments to meet the Department's ordinance. A final plat on each section is contemplated with necessary corrections. There was no reason to disapprove this application without the benefit to correct any problems. We do not reach this point in the present case as there is no basis under the existing ordinance or the cited ordinance to deny the application as filed.

**CONCLUSION**

Appellant followed the same procedure as he did in 1995 in the approval of Pin Oak Subdivision, a Title III subdivision. He again followed the same steps and procedures with the County for the Sugar Maple Subdivision. There is no reason why the subdivision application would not be approved except the County's arbitrary and capricious decision to deny the Appellant. In addition, the County has failed to follow the applicable laws as cited herein.

The Appellant has been denied his rights under due process of the Virginia State and United States Constitutions. He has suffered and continues to suffer irreparable harm in being denied the right to pursue the best use of his property.

WHEREFORE, Appellant prays that the Court order that the application be accepted, including Sections F and G which were submitted to the County on October 10, 1996; and to award to the Appellant reasonable attorney's fees and costs expended in this action.

RESPECTFULLY SUBMITTED,

**A. G. BERTOZZI**

BY: 

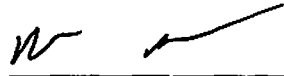
\_\_\_\_\_  
OF COUNSEL

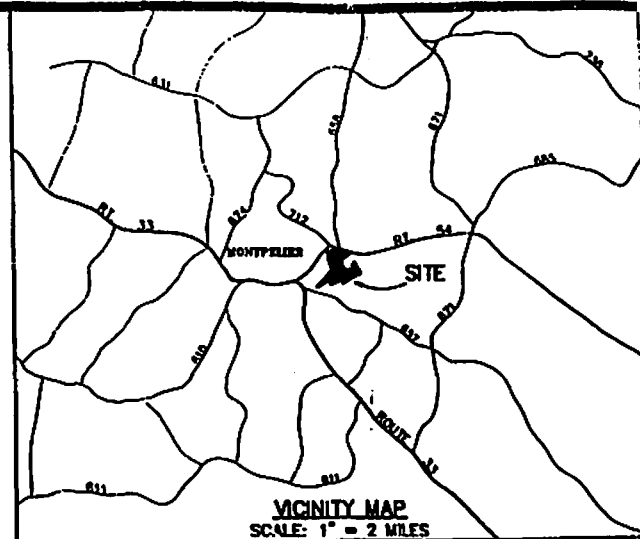
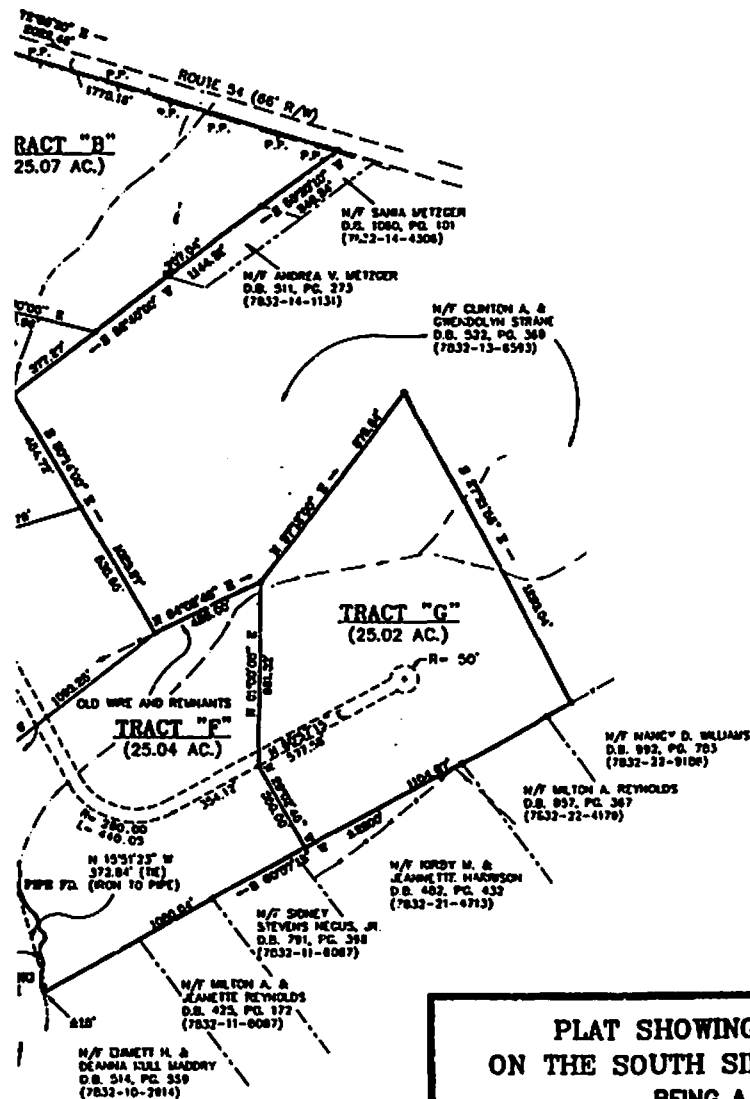
Bruce P. Ganey, Esquire  
GANEY & LAIBSTAIN, P.C.  
P.O. Box 646  
Ashland, Virginia 23005  
(804) 798-2579

**CERTIFICATE**

I hereby certify that a true and exact copy of the foregoing Brief of Appellant was hand-delivered this 1<sup>st</sup> day of April, 1997, to:

A. Lisa Barker, Esquire  
Senior Assistant County Attorney  
P.O. Box 470  
Hanover, Virginia 23069

  
\_\_\_\_\_  
Bruce P. Ganey



Owner - A.G. Bertozzi  
Deed Book - 733 pg. 761  
Deed Book - 1148 ps. 571  
Deed Book - 1105 pg. 159  
Deed Book - 1210 ps. 185

[illegible]

PLAT SHOWING SEVEN TRACTS OF LAND SITUATED  
ON THE SOUTH SIDE OF ROUTE NO. 54 NEAR MONTPELIER

BEING A DIVISION OF ±181.1 ACRES C<sup>1</sup> LAND  
RECORDED IN PLAT BOOK 35, PG. 173

**SOUTH ANNA MAGISTERIAL DISTRICT ;  
HANOVER COUNTY, VIRGINIA**

**SEPTEMBER 27, 1995**

**CHARLES G. PATTERSON**

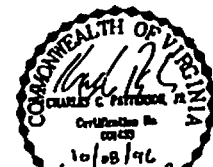
400

Q

400

500

**1200**





**RICHARD L. BAIRD, P.E.** CONSULTING ENGINEER

1910 Byrd Avenue • Suite 210 • Richmond, Virginia 23230 • Tel. (804) 673-8821 • Fax (804) 673-5243

May 7, 1996

Mr. Greg Baka  
Planner  
Hanover Courthouse  
Hanover, VA 23069

Dear Greg:

Enclosed are three drawings showing tracts of land that Mr. Bertozzi is interested in developing as a Title III private road subdivision. The drawings are being submitted for review and comment regarding general conformance with the Hanover County Subdivision Ordinance.

List of drawing:

- MAP SHOWING EXISTING TAX PARCELS
- TITLE IV TENTATIVE LAYOUT
- TITLE III TENTATIVE LAYOUT

There is an existing dwelling and garage on the property which would be sold with lot 1, Section A.

The private road serving Sections 'B', 'C', 'D', 'E' and 'F' has been located so that it aligns with the intersection of Rt. 54 and Rt. 658. Section "G" would be served by a private road continuing from the end of Rt. 775.

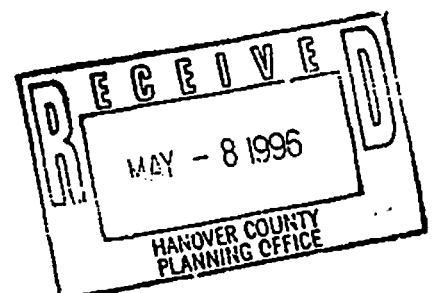
If you have any questions regarding this submittal please give me a call.

Sincerely,



Richard Baird

copy: Mr. A.G. Bertozzi



**RICHARD L. BAIRD, P.E.** CONSULTING ENGINEER

1910 Byrd Avenue • Suite 210 • Richmond, Virginia 23230 • Tel. (804) 673-8821 • Fax (804) 673-5243

October 9, 1996

Mr. Greg Baka  
Planner  
Hanover Courthouse  
Hanover, VA 23069

**RE: SUGAR MAPLE - SECTION "A" through SECTION "E"**

Dear Greg:

Enclosed for final subdivision plat review are the following:

- 1) Application for final approval with checklist and filing fee of \$230 for each Section.
- 2) Hanover County health Department Application for each Section.
- 3) Water Quality Impact Assessment with filing fee of \$100 for each section.
- 4) Fifteen prints of subdivision plat of each section.

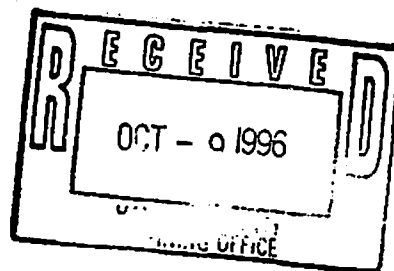
Filing for review of Sections "F" and "G" will be forthcoming.

If there are any questions regarding the plat please give me a call.

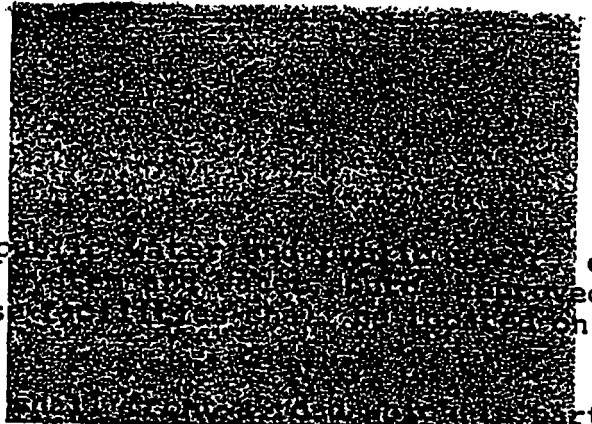
Sincerely,



Richard Baird P.E.



copy: Mr. A.G. Bertozzi



- iii. For property not served with public water and sewer, each lot shall have its septic tank installed and approved by the Health Department, and those lots shall be located on the lot served.
  - iv. Each lot or parcel of property shall front upon a part of the Virginia System of Highways or shall front upon a private drive or road which is in a right-of-way no less than twenty (20) feet in width. Such right-of-way shall remain private and shall include a driveway within it consisting of, at a minimum, an all-weather surface of rock, stone, or gravel, with a minimum depth of one (1) inch and a width of ten (10) feet. An erosion and sediment control plan with appropriate surety shall be submitted for approval if the proposed right-of-way and drive construction disturbs more than two thousand five hundred ((2,500) square feet of the property.
6. If any part, section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, declared to be unconstitutional or invalid, such portion of the ordinance shall be severed from the remainder of this ordinance, and the remainder shall continue in full force and effect.
7. This Ordinance shall be effective upon adoption; provided, however, that:
- a. Complete applications for final subdivision approval which have been filed before the close of business on October 9, 1996, which were in compliance with all substantive zoning and subdivision ordinance requirements in effect on that date shall be reviewed in accordance with those requirements.
  - b. All lots or parcels described in deeds or plats recorded in the Hanover County Circuit Court Clerk's Office prior to the close of business on October 9, 1996, which meet all zoning and subdivision requirements for yards, setbacks, and access in effect on the date of building permit application shall be deemed to be in compliance with the lot dimension and area requirements of the Zoning Ordinance and requirements of the Subdivision Ordinance.

Public Hearing: October 9, 1996

Adopted: October 9, 1996

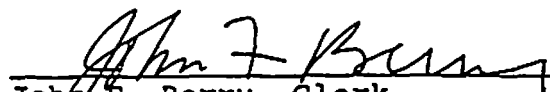
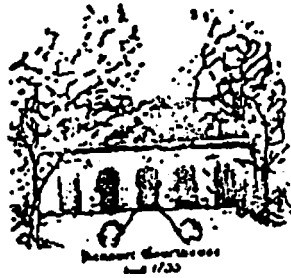
  
John F. Berry, Clerk  
Hanover County Board of Supervisors

Exhibit "E"



HANOVER COUNTY  
P. O. BOX 470  
HANOVER, VIRGINIA 23069-0470

October 29, 1996

Richard L. Baird, Jr.  
1910 Byrd Avenue, Suite 210  
Richmond, VA 23230

CERTIFIED MAIL - RETURN  
RECEIPT REQUESTED

Re: Subdivision Application - Sugar Maple, Sect. A - E

Dear Mr. Baird:

On October 9, 1996, the Hanover County Board of Supervisors adopted zoning and subdivision ordinances which significantly change rural subdivision development requirements. The new ordinance eliminated the distinction among Title II, Title III, and Title IV subdivisions, as well as both "first divisions" and "the 25 acre rule" as interpretations of the zoning and subdivision ordinances.

However, the Board also approved a provision which permits the review of "complete applications for final subdivision approval which...were in compliance with all substantive zoning and subdivision ordinance requirements in effect on [the date of submittal]". Because your application was received prior to adoption of the new ordinance, this provision applies to your subdivision.

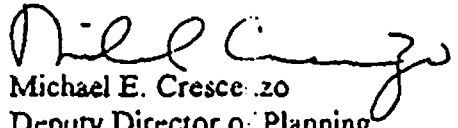
The staff has completed its review of your application and is notifying you that your subdivision plat and application, filed on October 9, 1996, titled "Sugar Maple", prepared by Charles G. Patterson, Jr., and dated October 8, 1996, is **DISAPPROVED** because of failure to record first division lots (Title I, Art. 5, Sect. 2.7-1).

Your application, plats, and fees are being returned to you. Attached are copies of Ordinance 96-17 and 96-18 (the revised zoning and subdivision ordinances) for your use. Should you wish to reapply for subdivision approval, the standards specified in these ordinances will apply.

Richard L. Baird  
October 29, 1996  
page 2

Should you have any questions regarding this action, or if we can assist you in your reapplication, please contact J. Keith Thompson, Principal Planner; Jenifer Reiner, Applicant Liaison; or me.

Sincerely,

  
Michael E. Crescenzo  
Deputy Director of Planning

copies: A. G. Bertozzi (Owner)  
file: Sugar Maple

**BOARD OF SUPERVISORS**

RJ KLOIZ, JR., CHAIRMAN  
HENRY DISTRICT

J.T. "JACK" WARD, VICE-CHAIRMAN  
MECHANICSVILLE DISTRICT

IMOTHY E. ERNST  
ASHLAND DISTRICT

TONY GILES  
CHECKAHOMINY DISTRICT

JOHN E. GORDON, JR.  
SOUTH ANNA DISTRICT

AURNEY M. STANLEY, JR.  
BEAVERDAM DISTRICT

ELTON J. WADE, SR.  
COLD HARBOR DISTRICT



**HANOVER COUNTY**

P.O. BOX 470

HANOVER, VIRGINIA 23069-0470

December 6, 1996

JACK BERRY  
COUNTY ATTORNEY

RICHARD H. J. ...  
DEPUTY ATTORNEY

SHERMAN E. ...  
COUNTY ATTORNEY

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Paul Jalbert  
Goodfellow, Jalbert, & Beard, Inc.  
P.O. Box 539  
Mechanicsville, VA 23111

RE: Stagg Creek Subdivision, Secs. A-C

Dear Mr. Jalbert:

On October 9, 1996, the Hanover County Board of Supervisors adopted zoning and subdivision ordinances which significantly change rural subdivision development requirements. The new ordinance eliminated the distinction among Title II, Title III, and Title IV subdivisions, as well as both "first divisions" and "the 25 acre rule" as interpretations of the zoning and subdivision ordinances.

However, the Board also approved a provision which permits the review of "complete applications for final subdivision approval which...were in compliance with all substantive zoning and subdivision ordinance requirements in effect on [the date of submittal]". Because your application was received prior to adoption of the new ordinance, this provision applies to your subdivision.

The staff has completed its review of your application and is notifying you that your subdivision plat and application, filed on October 9, 1996, entitled Stagg Creek Subdivision -- Sections A-C, prepared by Paul Jalbert, and dated September 27, 1996, is **DISAPPROVED** because of the following:

1. The location of the road as drawn splits Lot 2 of Section A into two pieces which is not permitted by ordinance. It is necessary that the road be reconfigured so that it follows the edge of a property line and does not split any lot lines (HCP 84-7, Checklist for Final Subdivision Plats", Item #20-A).

Mr. Paul Jalbert  
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December 6, 1996

2. Add the approximate number of acres of floodplain area in each lot to the plat (HCP 84-7, Checklist for Final Subdivision Plats", Item #6-I).
3. Add the word "Residual" to the residual lots in each section (HCP 84-7, Checklist for Final Subdivision Plats", Item #20-A).
4. Please label the proposed lot number and section for all adjacent lots of Stagg Creek Subdivision (HCP 84-7, Checklist for Final Subdivision Plats", Item #17).
5. Please submit a copy of all three First Division deeds (HCP 84-7, Checklist for Final Subdivision Plats", Item #40).

You may correct your plats and submit the revised application to this office for review. Revisions must be submitted within sixty (60) days of the date of receipt of this letter. Failure to do so will result in application of the new standards adopted October 9, 1996, to your request.

In addition, staff has the following comments:

1. If the subdivision plats are to be recorded prior to the completion of the road, a Deed of Easement must be executed. This would be done when final mylars are submitted.
2. The private road must be built to or exceed the following minimum standards before issuance of any building permits:  
  
*"Private roads shall include no less than eighteen (18) feet of usable road surface covered with gravel of a minimum depth of one inch at the time of inspection, exclusive of drainage facilities, cleared of obstructions, with positive drainage."*
3. Private road street signs must also be installed at all intersections in the subdivision before the road is approved.

Mr. Paul Jalbert  
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4. The Department of Public Works has commented that the wetland delineation must be confirmed by the Army Corps of Engineers and an Erosion and Sediment Control Plan will be required for the road prior to recordation.
5. VDOT offers the following comments: Entrance location must meet VDOT sight distance requirements. A subdivision street tie-in permit will be required.

For recordation please add a revision date, remove the topography, and submit the following:

1. Two (2) 16" x 24" mylars. Only the original or a first generation unreduced black line copy of the original shall be accepted for recordation. Original signatures area required.
2. Five (5) 16" x 24" paper prints with original signatures.
3. One (1) paper print reduction at 1" = 400' scale.
4. Recordation fee, at \$16.00 per sheet, payable to R.L. Shelton, Clerk.

Should you have any questions regarding this action, or if we can assist you in your reapplication, please contact J. Keith Thompson, Principal Planner or Greg Baka, Planner.

Sincerely,

  
Michael E. Crescenzo  
Deputy Director of Planning

GB/

cc: Emma Lee Davenport



## Title III

## SUBDIVISION ORDINANCE

## TEN TO TWENTY-FIVE ACRES\*

AN ORDINANCE to regulate the subdivision of property into lots of from ten to twenty-five acres in size with private roads to provide for the making and recording of such subdivision and the certification of same, and to provide for the approval of plats.

WHEREAS, under Section 15.1-465 et seq.; of the Code of Virginia, 1950, as amended, the Board of Supervisors of Hanover County, Virginia, is authorized to adopt regulations to assure the orderly subdivision of land and its development in the county, and for distribution of population which will tend to create conditions favorable to health, safety, convenience, and prosperity, and

WHEREAS, the County of Hanover has heretofore adopted a county subdivision ordinance designated as Title II of the [Appendix to the] Hanover County Code which ordinance regulates the development of lots up to five acres in size, and

WHEREAS, it is deemed necessary to regulate the development of lots of from ten to twenty-five acres in size.

THEREFORE, BE IT ORDAINED, by the Board of Supervisors of Hanover County, that the following regulations are hereby adopted for the subdivision of land into lots of from ten to twenty-five acres in size with private roads within Hanover County and from and after the effective date of this ordinance, every owner who divides such tract as provided in such regulations shall cause a plat of such private subdivision, developed and prepared in accordance with such regulations, with reference to known or permanent monuments, to be made and recorded in the Office of Clerk of the Circuit Court, wherein deeds conveying such land are required by law to be recorded.

\*Editor's note—The subdivision ordinance was adopted by the board of supervisors on September 27, 1972. It is included herein, with amendments through August, 1979, as compiled by county personnel. Amendments subsequent to August, 1979, have been added by the editor and are indicated by history notes appearing in parentheses ( ) at the end of the amended section or subsection. Any words or figures appearing in brackets [ ] were added by the editor for clarity.

Cross references—Subdivision ordinances not affected by Code or ordinance adopting Code, § 1-6(5); buildings and construction regulations, Ch. 6; erosion and sediment control, Ch. 10; fire prevention and protection, Ch. 11; floodplain and drainage control, Ch. 12; traffic, Ch. 15; sewers and sewage control, Ch. 20; water code, Ch. 23; zoning ordinance, Title I of this Appendix; less than ten acre tract subdivision ordinance, Title II of this Appendix.

State law reference—Land subdivision and development, Code of Virginia, § 15.1-465 et seq.

**Section 1. Purpose and title.**

*1-1 Purpose:* The purpose of this ordinance is to establish certain private road subdivision standards and procedures for Hanover County, Virginia, and such of its environs as come under the jurisdiction of the Board of Supervisors as provided by the 1950 Code of Virginia, as amended. These are part of a long-range county plan to guide and facilitate the orderly beneficial growth of the community, and to promote the public health, safety, convenience, comfort, prosperity and general welfare. More specifically, the purposes of these standards and procedures are to provide orderly growth with a reasonable density of population; to provide a guide for the change that occurs when land and acreage is reduced in area as a result of development for residential, business or industrial purposes, to provide assurance that the purchasers of lots are buying a commodity that is suitable for development and use; and to make possible the provision of public services in a safe, adequate and efficient manner.

*1-2 Title:* This ordinance is known and may be cited as the Ten Acre to Twenty-Five Acre Tract Private Road Subdivision Ordinance of Hanover County, Virginia.

**Section 2. Definitions.**

*Words and terms:* For the purpose of this ordinance, certain words and terms used herein shall be interpreted or defined as follows: Words used in the present tense include the future, words in the singular number include the plural, and the plural the singular, unless the natural construction of the word indicates otherwise; the word "lot" includes the word "tract," the word "shall" is mandatory and not directory; the word "approve" shall be considered to be followed by the words "or disapprove;" any reference to this ordinance includes all ordinances amending or supplementing the same; all distances and areas refer to measurement in a horizontal plane.

*2-1 Definitions adopted by reference:* Such of those definitions which are set forth in Title II [of this Appendix] that are applicable to and used in this ordinance are hereby adopted by reference.

*2-2 Private road:* The restricted use of a specific area of right-of-way as a means of private access to two (2) or more abutting properties which have been cut into parcels or tracts under this ordinance.

*2-3 Restrictive covenants:* Those easements, restrictions, and conditions which are made of record upon the title to a subdivision or one or more of its tracts, which are subject to this ordinance.

*2-4 Affidavit:* A written statement duly signed, acknowledged and recorded by a buyer of a tract which is subject to this ordinance, whereby the buyer recognizes the private nature of the road or roads in a subdivision.

*2-5 Road width:* The total width of the strip of land reserved for private travel, including roadway.

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**2-6 Subdivision:** The division of a tract or parcel of land into three (3) or more lots, any of which contain an area of ten (10) or more acres, but less than twenty-five (25) acres, for the purpose, whether immediate or at some future time, of transfer of ownership of any such parcels. The sale or exchange of parcels between adjoining lot owners where such sale or exchange does not create additional building lots shall be exempt from the provisions of this ordinance. The division or partitioning of land in an estate by court order or by the heirs of the original owner shall also be exempted from the provisions of this ordinance.

**2-7 Tract:** A parcel of land with an area of between ten (10) and twenty-five (25) acres.

### **Section 3. Administration.**

**3-1 Administrator:** The agent appointed by the board of supervisors is hereby delegated to administer this ordinance. In so acting, the agent shall be considered the agent of the governing body and approval or disapproval as though it were given by the governing body. In the event the agent is not the commission, the agent may consult with the commission on matters contained herein.

**3-2 Duties:** The agent shall perform its duties, as regards subdivision and subdividing in accordance with this ordinance.

**3-3 To consult:** In the performance of its duties, the agent may call for opinions or decisions, either verbal or written, from other departments in considering details of any submitted plat.

**3-4 Additional authority:** In addition to the regulations herein contained for the platting of the private road subdivision, the agent may, from time to time, establish any reasonable additional administrative procedures deemed necessary for the proper administration of this ordinance.

### **Section 4. Procedure for making and recording plats.**

**4-1 Platting required:** The owner or developer of any tract of land situated within Hanover County who subdivides the same into a private road subdivision shall cause a plat of such subdivision, with reference to known or permanent monuments, to be made and recorded in the office of the clerk of the Circuit Court of Hanover County, Virginia. No such plat of subdivision shall be recorded unless and until it shall have been submitted, approved and certified by the agent in accordance with the regulations set forth in this ordinance. No tract shall be sold in any such subdivision before the plat shall have been recorded.

**4.1.1** In the event a plan for subdivision is disapproved by the agent, the subdivider may appeal to the circuit court as provided in section 15.1-475 of the Code of Virginia.

**4-2 Draw and certify:** Every such plat shall be prepared by an engineer or surveyor duly licensed by the State of Virginia, who shall endorse upon each plat.

certificate signed by him setting forth the source of title of the land subdivided, and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat, within an insert block, or by means of a dotted boundary line upon the plat.

**4-3 Owner's statement:** Every such plat, or deed of dedication to which such plat is attached, shall contain, in addition to the engineer's or surveyor's certificate, a statement to the effect, "the above and foregoing private road subdivision as appears in this plat is with the free consent and in accordance with the desires of the undersigned owners, proprietors, and trustees, if any, and the purchasers of tracts in this subdivision are hereby notified that the roadways reserved and shown on this plat are private in nature and will not be maintained as a public road by the State Highway Department or any public road or highway agency." The plat shall be signed by the owners, proprietors, and trustees, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds, and when thus executed and approved as herein specified shall be filed and recorded in the office of the clerk of the Circuit Court of Hanover County, Virginia, and indexed under the name of the landowners signing such statement and under the name of the private road subdivision, if such subdivision be named upon the plat.

**4-4 No one exempt:** No person shall subdivide any tract of land with an area between ten (10) and twenty-five (25) acres that is located within Hanover County except in conformity with the provisions of this ordinance.

**4-5 Necessary changes:** No change, erasure or revision shall be made on any preliminary or final plat, nor on accompanying data sheets, after approval of the agent has been endorsed in writing on the plat or sheets, unless authorization for such changes has been granted in writing by the agent.

**4-6 Fees:**

1. There shall be a charge in connection with an application for the examination and approval of plat submitted pursuant to the requirements of this Ordinance, in accordance with a schedule of fees as adopted by the board of supervisors from time to time:
2. No fee paid pursuant to this section shall be refunded unless a written request for withdrawal of the application is received by the Planning Department within five (5) working days after the date of application. (Ord. No. 81-13, § 2, 8-26-81; Ord. No. 84-30, § 1(a), (b), 10-24-84)

**Section 5. General regulations.**

**5-1 Mutual responsibility:** There is a mutual responsibility between the subdivider and the county to divide the land so as to improve the general use pattern of the land being subdivided.

**5-2 [Repealed]**

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**5-3 Flooding:** Land subject to flooding and land deemed to be topographically suitable shall not be platted for residential occupancy, nor for such other uses as increase danger of [to] health, life or property, or aggravate erosion or flood ard.

**5-4 Restrictive covenant:** The deed to each tract in a private road subdivision shall carry a restrictive covenant to the effect that the roads in the subdivision are private in nature and shall not be maintained by the state highway department or other public road agency and that the maintenance and improvement thereof shall be the mutual obligation of the landowners in the subdivision abutting said roads; that such private roads shall not be taken into the state secondary system unless and until the abutting landowners shall have constructed and dedicated the private roads in accordance with the latest Virginia Department of Highway road and bridge specifications, and hereafter the Board of Supervisors of Hanover County shall have recommended that said road be taken into the state secondary system of highways.

**5-5 Affidavit of buyer:** No deed to a tract of land in a private road subdivision shall be recorded unless the same carries an affidavit duly signed and acknowledged by the grantee in said deed to the effect that he acknowledges that the roads in said subdivision are private roads and shall not be maintained or improved by the state highway department or other public road agency, and that it is the mutual duty and obligation of the abutting landowners to maintain and improve the roads in said subdivision.

**5-5-1 Off-site sewage and drainage improvements:** Whenever the board of supervisors has established a general sewer and drainage improvement program applicable to the land proposed for subdivision or a portion thereof, the subdivider shall pay a pro-rata share of the cost of providing reasonable and necessary sewage and drainage facilities located outside the property limits of the land owned or controlled by him which facilities are necessitated or required, at least in part, by the construction or improvement of his subdivision or development. Such share shall be the proportion of the total estimated cost which the increased sewage flow and/or increased volume and velocity of storm water run-off to be actually caused by the subdivision or development bears to total estimated volume and velocity of such sewage and/or run-off from such area in its fully developed state. Each such payment received shall be expended only for the construction of those facilities for which the payment was required, and until so expended shall be held in an interest bearing account for the benefit of the subdivider or developer.

#### ADDITIONAL REGULATIONS

**5-6 Resubdivision prohibited; procedures for vacations:**

- (a) None of the tracts shown on the approved private road subdivision plat may be further divided without the approval of the Hanover County Board of Supervisors.
- (b) Notwithstanding the provisions of part (a) above, upon application by the property owner, the Agent may approve a resubdivision which involves the vacation of a lot

line for the purpose of adjusting a lot boundary or combining two (2) or more lots, but which does not involve the creation of additional building lots or the vacation of any street, alley, easement for public passage, or other public area. For the purposes of review and approval of a resubdivision made under this part (b), the Director of Planning shall be the Agent.

- (c) The vacation of any feature of any approved subdivision, other than a lot line, which may be vacated under the provisions of (b) above, shall be subjected to the provisions of state law governing the vacation of a subdivision. (Ord. No. 82-10, § 1, 6-23-82)

### LOTS

**5-7 Shape:** The lot arrangement, design, and shape shall be such that lots will provide satisfactory and desirable sites for buildings, and be properly related to topography and conform to requirements set forth herein.

**5-8 Location:** Each lot shall abut upon a private road reserved by the subdivision plat.

**5-9 Remnants:** All remnants of lots below minimum size left over after subdividing a tract may be added to adjacent lots, or otherwise disposed of and are allowed to remain as unusable parcels. (Ord. No. 84-27, § 12, 9-26-84)

**5-10 Septic tanks:** In private road subdivisions where septic tanks or individual wells are contemplated and the health department determines that there are factors of drainage, soil conditions, or other conditions to cause potential health problems, the agent shall require the data from percolation tests be submitted as a basis for passing upon subdivisions depending upon septic tanks as a means of sewage disposal.

### PRIVATE ROADS

**5-11 Alignment and layout:** The arrangement of private roads in new subdivisions shall make provision for the continuation of existing private roads in adjoining areas. The road arrangement must be such as to cause no unnecessary hardship to owners of adjoining property when they plat their land and seek to provide for convenient access to it. Where in the opinion of the agent, it is desirable to provide for road access to adjoining property, proposed roads shall be extended by reservation to the boundary of such property. Half roads along the boundary of land proposed for subdivision may not be permitted. Whenever possible, roads should intersect at right angles. In all hillside areas, roads running with contours shall be required to intersect at angles of not less than sixty (60) degrees, unless approved by the agent. All road intersections shall have a distance of at least two hundred (200) feet between center lines.

**5-12. Approach angle:** Roads shall approach each other at angles of not less than eighty (80) degrees, unless the agent shall approve a lesser angle of approach for reasons of contour, terrain or matching of existing patterns. The minimum width of all private road rights-of-way shall in no case be less than fifty (50) feet in width.

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5-13 Each cul-de-sac must terminate in a turn-around of a right-of-way radius of not less than fifty (50) feet.

5-13.1. *Standards for improvement.* Private roads shall include no less than eighteen (18) feet of usable road surface covered with gravel of a minimum depth of one inch at the time of inspection, exclusive of drainage facilities, cleared of obstructions, with positive drainage. (Ord. No. 91-32, § 1, 11-27-91)

5-13.2. *Administration of requirements.*

- (1) Prior to issuance of any building permit in the subdivision a plan shall be provided describing the road improvements required by this Subdivision Ordinance and meeting the requirements of the Hanover County Code and appendix relating to environmental management, drainage and zoning. The plan shall include a typical cross-section of the required fifty-foot right-of-way with proposed improvements.
- (2) Prior to issuance of any building permit for a lot in a subdivision, all roads in the section of the subdivision in which the lot is located and those roads necessary to provide access to a road improved to these standards or to a public road shall be improved to these standards. In lieu of completion of improvements the owner of the subject lot shall have entered into a performance agreement requiring the owner, successors, personal representatives or assigns to complete the required improvements within eighteen (18) months from the date of issuance of the building permit. The performance agreement shall be accompanied by surety in an amount sufficient to provide for the improvements identified in the performance agreement. All surety shall be provided in a form approved by the County Attorney and in an amount approved by the Planning Director and shall be conditioned on the completion of the improvements. Such surety shall be in one or more of the following forms:
  - (a) Personal or corporate bond with cash or corporate surety provided by a firm licensed to do business in the Commonwealth, in an amount equal to the cost of construction; or
  - (b) A letter of credit issued by a bank or savings and loan institution having an office located in the State of Virginia and being regulated by the State of Virginia or the United States Government, or a letter of credit issued by a regulated bank or savings and loan institution with payment of the full amount of the letter of credit being confirmed and guaranteed by a regulated bank or savings and loan institution with an office located in the State of Virginia in the amount of the estimated cost of construction.
  - (c) The cost of improvements shall equal an estimate made by the Director of Public Works based on unit prices for the improvements. A twenty-five (25) percent allowance for estimated administrative cost, including attorneys' fees if applicable, inflation, and potential damage to existing roads or utilities, shall be included in the estimate and shall be paid by the owner, surety or financial institution in the event of default.

- (d) Periodic partial releases of surety shall be provided in accordance with Title II, Subdivision Ordinance.
- (3) No improvements shall be considered complete until the Director of Public Works has inspected and approved the improvements. The Director of Public Works shall inspect improvements upon written request. (Ord. No. 91-32, § 1, 11-27-91)

### MONUMENTS

**5-14. Location—Iron pipe:** The corners of all tracts shall be marked with iron pipe not less than three-quarter inch in diameter and twenty-four (24) inches long and driven so as to be flush with the finished grade. When rock is encountered, drill a hole four (4) inches deep in the rock and cement a steel rod one-half inch in diameter whose top shall be flush with the finished grade line.

### Section 6. Approval of plats for subdivisions of five (5) or more lots.

**6-1 Application for approval:** The private road subdivision plat, together with a copy of the restrictive covenants required under section 5, and a copy of the affidavit to be signed by the buyer provided for under section 5, shall be submitted to the agent, or the appointed representative of the agent, with written application for approval by the subdivider. The required number of copies shall be determined by the agent. Such application shall be submitted in order to allow the agent at least thirty (30) days from the date of the submission for review and investigation. The agent shall, within thirty (30) days from the date of submission, act thereon as submitted or modified. If approved, the agent shall express its approval, as conditional approval, if any, or if disapproved, shall express its approval and its reasons therefor. (Ord. No. 84-7, § 1, 3-28-84; Ord. No. 84-30, § 1(a), (b), 10-24-84)

**6-2 Plat information:** The plat shall include the following information:

1. Title block, to be located consistently on all sheets, and to include the following information:
  - a. Name of subdivision.
  - b. Magisterial district, county, state.
  - c. Name(s) of owner(s) and developer.
  - d. Name of surveyor or engineer who prepared the plat.
  - e. Scale of plat (no larger than one inch equals two hundred (200) feet, unless previously approved by the agent).
  - f. Date of completion and any subsequent revisions.
  - g. Number of sheets—match lines.
2. Information block, to include the following information:
  - a. Total area in subdivision.
  - b. Total area in lots.
  - c. Total area in road rights-of-way.
  - d. Total area in common areas.
  - e. Total number of lots.

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- f. Parcel numbers (from county tax maps). (Note: if subdivision comprises more than one parcel, the parcel number and area of each should be shown).
- g. Zoning of parcel(s).

Approval block, three (3) inches by five (5) inches.

True north arrow.

Vicinity sketch, at a scale of one inch equals two thousand (2,000) feet.

- Boundary survey, showing bearings and distances.
- Zoning boundaries and districts on site.
- The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten (10) seconds, for the following:
  - a. Lot layout, lot numbers, block letters, and dimensions of lots.
  - b. Area and frontage of lots.
  - c. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
  - d. Location, width, and purpose of other rights-of-way and easements.
  - e. Location of existing physical features, including buildings, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplains.
  - f. Location of the subdivision as part of some larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.
- 9. The data of all curves along the road frontage shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.
- 10. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the director.
- 11. Names and locations of abutting subdivisions.
- 12. Names of owners both within and adjoining subdivision.
- 13. Owner's statement.
- 14. Surveyor's/engineer's certificate.
- 15. Source of title certificate.

Ord. No. 84-30, § 1(a), (b), 10-24-84)

**6-3 Conditions:** The plat shall not be approved until the subdivider has complied with the general requirements of this ordinance.

**6-4 Approval of plats for subdivisions of four (4) or less lots:** This procedure applies only to subdivisions containing four (4) lots or less where no roads, utility, or drainage construction

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is necessary. This procedure may only be used one time on any parcel of land. The applicant shall submit copies of the plan of development with every application. The required number of copies shall be determined by the agent. The plan of development shall include the following information:

1. Title block, to be located consistently on all sheets, and to include the following information:
  - a. Name of subdivision.
  - b. Magisterial district, county, state.
  - c. Name(s) of owner(s) and developer.
  - d. Name of surveyor or engineer who prepared the plat.
  - e. Scale of plat (no larger than one inch equals two hundred (200) feet, unless previously approved by the agent).
  - f. Date of completion and any subsequent revisions.
  - g. Number of sheets—match lines.
2. Information block, to include the following information:
  - a. Total area in subdivision.
  - b. Total area in lots.
  - c. Total area in road rights-of-way.
  - d. Total area in common areas.
  - e. Total number of lots.
  - f. Parcel numbers (from county tax maps). (Note: if subdivision comprises more than one parcel, the parcel number and area of each should be shown).
  - g. Zoning of parcel(s).
3. Approval block, three (3) inches by five (5) inches.
4. True north arrow.
5. Vicinity sketch, at a scale of one inch equals two thousand (2,000) feet.
6. Boundary survey, showing bearings and distances.
7. Zoning boundaries and districts on site.
8. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten (10) seconds, for the following:
  - a. Lot layout, lot numbers, block letters, and dimension of lots.
  - b. Area and frontage of lots.
  - c. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
  - d. Location, width, and purpose of other rights-of-way and easements.

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12. Name:

13. Owner

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15. Source  
(Ord. No. 84-30

6-5 Proce  
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## Section 7. Ef

## 7-1 Excep

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- e. Location of existing physical features, including buildings, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplains.
  - f. Location of the subdivision as part of some larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.
9. The data of all curves along the road frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.
  10. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the director.
  11. Names and locations of abutting subdivisions.
  12. Names of owners both within and adjoining subdivision.
  13. Owner's statement.
  14. Surveyor's/engineer's certificate.
  15. Source of title certificate.
- d. No. 84-30, § 1(a), (b), 10-24-84)

**6-5 Procedure:** The subdivider shall submit his application and all required documents and plats to the director according to rules and procedures established by the agent. The subdivider shall be notified within thirty (30) days of any action taken by the director. (Ord. No. 80-3, § 1, 2-29-80; Ord. No. 84-7, § 1, 3-28-84)

**6-6 Conditions:** The plat shall not be finally approved until the subdivider has complied with the requirements of this ordinance. Approval of the plat shall be written by the director on the face thereof. (Ord. No. 84-7, § 1, 3-28-84)

## **Section 7. Effectual clauses.**

### **7-1 Exceptions:**

1. Where the subdivider can show the provision of these standards would cause unnecessary hardship if strictly adhered to, and where, because of topographical or other conditions peculiar to the site, in the opinion of the agent, a departure may be made without destroying the intent of such provisions, the agent may authorize an exception. Any exception thus authorized is to be stated in writing in the report of the agent with the reasoning, on which the departure was justified, set forth.
2. An exception to the rules and procedures shall be granted by the director for a single division for homestead purpose of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner. Such an exception, and the division of a lot or parcel thereunder, shall be subject to the following limitations and conditions: (Ord. No. 84-7, § 1, 3-28-84)

- (a) Only one such division shall be allowed per family member and shall not be for the purpose of circumventing this subsection. For the purpose of this subsection a member of the immediate family is defined as any person who is a natural or legally defined offspring, spouse, or parent of the owner.
- (b) Any lot created hereunder shall conform to the provisions of the Zoning Ordinance prior to issuance of a building permit.

9-3. The  
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**7-2 Penalties:** Any owner or proprietor of any tract of land who subdivides the tract of land and who violates any of the provisions of this ordinance shall be guilty of a misdemeanor, punishable by a fine of not less than ten dollars (\$10.00) nor more than two hundred and fifty dollars (\$250.00), and each day after the first during which violation shall continue shall constitute a separate violation.

**7-3 Validity:** Should any article, section, subsection or provision of this Subdivision Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the Subdivision Ordinance as a whole or any part other than the part so declared to be invalid or unconstitutional.

**7-4 Repeal:** The provisions of this ordinance shall not be construed to repeal the provisions of Title II or Title III of the Subdivision Ordinances of Hanover County, Virginia.

**7-5 Amendments:** This ordinance may be amended in whole or in part as provided by law, by the governing body, provided that any such amendment may either originate with or be submitted to the commission for recommendation.

**7-6 Effective date:** This ordinance was duly considered following a required public hearing on July 26, 1972, and was adopted by the Board of Supervisors of Hanover County, Virginia, at its regular meeting held on September 27, 1972.

## **Section 8. Chesapeake Bay Preservation.**

All submittals made pursuant to this title shall include a water quality impact assessment or other documents and information as may be required by the Hanover County Code, Chapter 10. No preliminary or final plat shall be considered complete without the required information. No preliminary or final plat shall be approved unless the proposed development is in compliance with all requirements of Chapter 10. (Ord. No. 90-27, § 6, 10-24-90)

## **Section 9. Additional requirements.**

**9-1.** All buildable lots including residual lots created by the subdivision shall be shown on the subdivision plat. (Ord. No. 91-32, § 2, 11-27-91)

**9-2.** Prior to approval of the subdivision, the subdivider shall have conveyed an easement to the County providing for access to the private roads within the subdivision, in the event of default by the developer. The content of the deed of conveyance shall be approved by the Director of Public Works and the deed shall be in a form approved by the County Attorney. (Ord. No. 91-32, § 2, 11-27-91)

**TITLE III-SUBDIVISION-TEN TO TWENTY-FIVE ACRES**

**§ 9**

**1. The following statement shall be prominently printed on the subdivision plat:**

**Before issuance of any building permit in this subdivision all roads shall be improved to the standards required by the Hanover County Subdivision Ordinance or the applicant for permit shall enter into a performance agreement and provide security for completion of the improvements. (Ord. No. 91-32, § 2, 11-27-91)**

**[The next page is 2209]**

## TITLE I—ZONING

## Art. 5 § 2

## 2.7 Lot size requirements.

|  | <i>Minimum,<br/>Average<br/>Lot Area</i> | <i>Square Feet<br/>Minimum<br/>Lot Area</i>                              | <i>Minimum,<br/>Lot<br/>Width</i> | <i>Feet<br/>Lot<br/>Depth</i> |
|--|--|--|-----------------------------------|-------------------------------|
| 1. Single-family dwelling on the following proposed rights-of-way:                       | —  | 2 acres, after the first conveyance all lots must be 10 acres or greater |                                   |                               |
| (a) 160 ft. rights-of-way  |  |  | 450                               | 200                           |
| (b) 80 ft. rights-of-way   |  |  | 400                               | 200                           |
| (c) 60 ft. rights-of-way   |  |  | 275                               | 200                           |
| (d) 50 ft. rights-of-way   |  |  | 250                               | 200                           |
| 2. Churches, rectories, parish houses, convents and monasteries, temples and synagogues  | —  | 1 acre   | 200                               | 200                           |
| 3. Animal hospital, larger animals   |  | 10 acres   | 300                               | 300                           |
| 4. Animal hospital, small animals, open pens or kennels                                  |  | 5 acres  | 300                               | 300                           |
| 5. Recreation uses clubs, campgrounds  |  | 5 acres  | 200                               | 200                           |
| 6. Stable, commercial  |  | 5 acres  | 200                               | 200                           |
| 7. Stable, private   |  | 2 acres  | 200                               | 200                           |
| 8. Frog or fish farms, or the raising for sale of small animals                          | —  | 5 acres  | 200                               | 200                           |
| 9. Medical office  |  | 2 acres  | 300                               | 200                           |
| 10. Business office and equipment storage yards for construction and service contractors |  | 2 acres  | 300                               | 200                           |

Lot width is measured at the building line.

Minimum street frontage is twenty (20) feet.

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

(Ord. No. 85-13, § 2, 10-23-85; Ord. No. 90-11, § 2, 7-18-90; Ord. No. 90-15, § 1, 7-18-90; Ord. No. 91-02, § 1, 4-24-91)

HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE [ ] TITLE [ ] ADMINISTRATIVE [X]

HCP 84-6  
REVISED 4/2/92

Please type or print in black ink

Name of Subdivision SUGAR MAPLE  
Section A Area 23.12 Ac Zoning Class A-1  
No. of Lots 3 Tax Parcel No(s). —  
Owner A. G. Beetzzi Telephone 266-9656  
Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226  
Developer (SAME AS OWNER) Telephone —  
Address —

\* Engineer (Survey) Charles G. Patterson Telephone 262-8878  
Address 1007 ETHELWOOD ROAD, GLEN ALLEN, VA 23060

Water: Public [ ] Private [X] Sewer: Public [ ] Private [X]

Is the property within an Agricultural/Forestal District? Yes [ ] No [X]

Has sludge ever been deposited on the property? Yes [ ] No [X] Date —

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES [ ] NO [X] If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

As owner of this property or the authorized agent therefore, I hereby certify this application is complete and accurate to the best of my knowledge.

Respectfully submitted this 9 day of October, 19 96

SIGNED A. G. Beetzzi

Print Name A. G. Beetzzi

Correspondence and/or questions should be directed to:

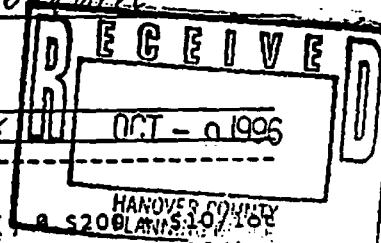
Name A. G. Beetzzi Telephone —  
Address 3006 Impala place, Richmond VA 23228-4226

FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) [ ] @ \$500 (With lots) [ ] @ \$200  
Residential [X] @ \$200 + \$10/lot 3 = 30 Resubdivision [ ] \$100 + \$10/lot  
Preliminary Approved No [ ] Yes [ ] Date —

NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

\* Engineer Richard L. Baird Jr. 673-8821  
1910 Byrd Ave Suite 200, Richmond VA 23230  
\$730 120 RR & Mtl.



HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE ☐ TITLE ☐ ADMINISTRATIVE ☒

HCP 84-6  
REVISED 4-2-92

Please type or print in black ink

Name of Subdivision SUGAR MAPLE  
Section B Area 22.72 Ac Zoning Class A-1  
No. of Lots 3 Tax Parcel No(s). —  
Owner A. G. Bertozzi Telephone 266-9656  
Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226  
Developer (SAME AS OWNER) Telephone —  
Address —

\* Engineer (Survey) Charles G. Patterson Telephone 262-8878  
Address 1007 ETHELWOOD ROAD, Glen Allen, VA 23060

Water: Public ☐ Private ☒ Sewer: Public ☐ Private ☒

Is the property within an Agricultural/Forestal District? Yes ☐ No ☐

Has sludge ever been deposited on the property? Yes ☐ No ☒ Date —

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES ☐ NO ☐ If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

As owner of this property or the authorized agent therefore, I hereby certify this application is complete and accurate to the best of my knowledge.

Respectfully submitted this 9 day of Feb 19 96

SIGNED A. G. Bertozzi

Print Name A. G. Bertozzi

Correspondence and/or questions should be directed to:

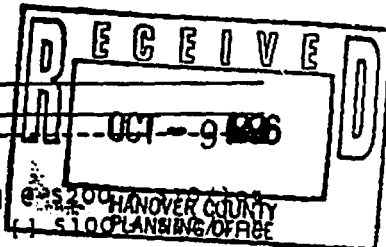
Name A. G. Bertozzi Telephone —  
Address 3006 IMPALA PLACE, RICHMOND VA 23228-4226

FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) ☐ @ \$500 (With lots) ☐ @ \$200  
Residential ☒ @ \$200 + \$10/lot 3630 Resubdivision ☐ @ \$100  
Preliminary Approved No ☐ Yes ☐ Date —

NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

\* Engineer Richard L. Baird Jr. 673-8821  
1910 Byrd Ave Suite 210, Richmond VA 23230  
\$2302.00 pd 10/4/96





HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE [] TITLE [] ADMINISTRATIVE [X]

HCP 84-6  
REVISED 4/2/92 PC

Please type or print in black ink

Name of Subdivision SUGAR MAPLE  
Section C Area 24.31 Zoning Class A-1  
No. of Lots 3 Tax Parcel No(s). —  
Owner A. G. Bertozzi Telephone 266-9656  
Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226  
Developer (SAME AS OWNER) Telephone —  
Address —

\* Engineer (Survey) Charles G. Patterson Telephone 262-8878  
Address 1007 ETHELWOOD ROAD, GLEN ALLEN, VA 23060

Water: Public [] Private [X] Sewer: Public [] Private [X]

Is the property within an Agricultural/Forestral District? Yes [] No [X]

Has sludge ever been deposited on the property? Yes [] No [X] Date —

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES [] NO [X] If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

As owner of this property or the authorized agent therefore, I hereby certify this application is complete and accurate to the best of my knowledge.

Respectfully submitted this 7 day  
of Sept October, 1996

SIGNED A. G. Bertozzi

Print Name A. G. Bertozzi

Correspondence and/or questions should be directed to:

Name A. G. Bertozzi Telephone —  
Address 3006 IMPALA PLACE, RICHMOND VA 23228-4226

FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) [] @ \$500 (With lots) [] @ \$200 + \$10/lot  
Residential [X] @ \$200 + \$10/lot 3 = 30 Resubdivision [] \$100 + \$10/lot  
Preliminary Approved No [X] Yes [] Date —

NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

\* Engineer Richard L. Baird Jr. 673-8821  
1910 Byrd Ave Suite 200, Richmond VA 23230  
#220 PA 1228 10/9/96

HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE [ ] TITLE [ ] ADMINISTRATIVE [X]

HCP 84-6  
REVISED 4:2:92

Please type or print in black ink

Name of Subdivision SUGAR MAPLE  
Section D Area ± 24.08 Ac Zoning Class A-1  
No. of Lots 3 Tax Parcel No(s). —  
Owner A. G. Bertozzi Telephone 266-9656  
Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226  
Developer (SAME AS OWNER) Telephone —  
Address —

★ Engineer (Survey) Charles G. Patterson Telephone 262-8878  
Address 1007 ETHELWOOD ROAD, Glen Allen, VA 23060

Water: Public [ ] Private [X] Sewer: Public [ ] Private [X]

Is the property within an Agricultural/Forestral District? Yes [ ] No [X]

Has sludge ever been deposited on the property? Yes [ ] No [X] Date —

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES [ ] NO [X] If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

As owner of this property or the authorized agent therefore, I hereby certify this application is complete and accurate to the best of my knowledge.

Respectfully submitted this 9 day of Feb 1996

SIGNED A. G. Bertozzi

Print Name A. G. Bertozzi

Correspondence and/or questions should be directed to:

Name A. G. Bertozzi Telephone —  
Address 3006 Impala place, Richmond VA 23228-4226

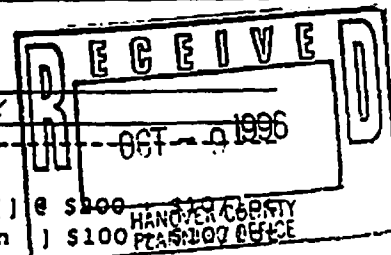
FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) [ ] @ \$500 (With lots) [ ] @ \$200  
Residential [X] @ \$200 + \$10/lot 3 = 30 Resubdivision [ ] \$100  
Preliminary Approved No [ ] Yes [ ] Date —

NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

★ Engineer Richard L. Baird Jr. 673-8821  
1910 Byrd Ave, Suite 200, Richmond VA 23230

\$238 pd 6B 10/9/96  
123



HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE [ ] TITLE [ ] ADMINISTRATIVE [X]

HCP 84-6  
REVISED 4/2/92

Please type or print in black ink

Name of Subdivision SUGAR MAPLE

Section E Area 22.71 ac Zoning Class A-1

No. of Lots 3 Tax Parcel NO(s). —

Owner A.G. Bertozzi Telephone 266-9656

Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226

Developer (SAME AS OWNER) Telephone —

Address —

★ Engineer (Survey) Charles G. Patterson Telephone 262-8878

Address 1007 ETHELWOOD ROAD, GLEN ALLEN, VA 23060

Water: Public [ ] Private [X] Sewer: Public [ ] Private [X]

Is the property within an Agricultural/Forestral District? Yes [ ] No [X]

Has sludge ever been deposited on the property? Yes [ ] No [X] Date —

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES [ ] NO [X] If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

As owner of this property or the authorized agent therefore, I hereby certify this application is complete and accurate to the best of my knowledge.

Respectfully submitted this 9 day of Feb, 19 96

SIGNED A. G. Bertozzi

Print Name A. G. Bertozzi

Correspondence and/or questions should be directed to:

Name A.G. Bertozzi Telephone —  
Address 3006 IMPALA PLACE, RICHMOND VA 23228-4226

FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) [ ] @ \$500

Residential [X] @ \$200 + \$10/lot

Preliminary Approved

No [X]

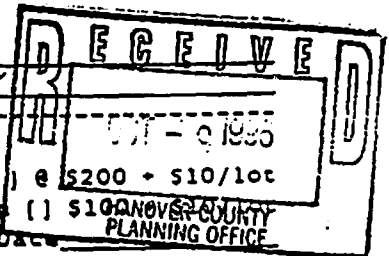
NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

(With lots) [ ] @ \$200 + \$10/lot

Resubdivision [ ] \$100

Yes [ ]

Date —



★ Engineer Richard L. Baird Jr. 673-8821  
1910 Byrd Ave, Suite 200, Richmond VA 23230  
\$230 pd GB 10/9/96  
124



# COMMONWEALTH of VIRGINIA

## HANOVER COUNTY HEALTH DEPARTMENT

BOX 67, HANOVER, VIRGINIA 23060

IN COOPERATION WITH THE  
STATE DEPARTMENT OF HEALTH

Name of Proposed Subdivision SUGAR MAPLE

Number of Acres in Proposed Subdivision ± 23.0

Location ON RT. 54 NEAR MOUNTAIN

Section F Parcel

Land Owner and/or Developer's Name A.B. Beatozzi

Address 3006 IMPALA PLACE

Phone No. 266-9656

Name of Engineering Firm Richard L. Baird, Jr. P.E.

Address 1910 Byrd Ave Suite 710

Phone No. 673-2821

Public Water: Yes ☐ No ☒ If Answer Is No, State Reason

water lines do not extend to this area

Public Sewer: Yes ☐ No ☒ If Answer Is No, State Reason

Public Sewer not serving this area

Number of Proposed Lots 3

Minimum Size of Lots: Length 2350 Width 250

Proposed Setback 60 Feet 25 side 50 opposite side, 30 rear

Maximum Number Bedrooms Per House

Signature A.B. Beatozzi  
Owner and/or Developer

HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE [ ] TITLE [ ] ADMINISTRATIVE [X]

HCP 84-6  
REVISED 4:2:5

Please type or print in black ink

Name of Subdivision SUGAR MAPLE  
Section G Area 22.66 Zoning Class A-1  
No. of Lots 3 Tax Parcel No(s). —  
Owner A. G. Bertozzi Telephone 266-9656  
Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226  
Developer (SAME AS OWNER) Telephone —  
Address —

\* Engineer (Survey) Charles G. Patterson Telephone 262-8878  
Address 1007 ETHELWOOD ROAD, Glen Allen, VA 23060

Water: Public [ ] Private [X] Sewer: Public [ ] Private [X]

Is the property within an Agricultural/Forestral District? Yes [ ] No [X]

Has sludge ever been deposited on the property? Yes [ ] No [X] Date —

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES [ ] NO [X] If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

As owner of this property or the authorized agent therefore, I hereby certify this application is complete and accurate to the best of my knowledge.

Respectfully submitted this 9 day of Sept 1996

SIGNED A. G. Bertozzi

Print Name A. G. Bertozzi

Correspondence and/or questions should be directed to:

Name A. G. Bertozzi Telephone —  
Address 3006 IMPALA PLACE, RICHMOND VA 23228-4226

FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) [ ] @ \$500 (With lots) [ ] @ \$200 + \$10/lot  
Residential [ ] @ \$200 + \$10/lot Resubdivision [ ] \$100 + \$10/lot  
Preliminary Approved No [ ] Yes [ ] Date —

NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

\* Engineer Richard L. Baird Jr. 673-8821  
1900 Byrd Ave, Suite 210, Richmond VA 23230

# Commonwealth of Virginia

*file copy*

## JUDGES

RICHARD H.C. TAYLOR

P.O. BOX 22

HANOVER, VIRGINIA 23069-0022  
(804) 537-6161

WILLIAM H. LEDBETTER, JR.

P.O. BOX 1179

SPOTSYLVANIA, VIRGINIA 22553-1179  
(540) 582-7229  
FAX (540) 582-7973

JOSEPH E. SPRUILL, JR.

P.O. BOX 1819

TAPPAHANNOCK, VIRGINIA 22560-1819  
(804) 443-2321  
FAX (804) 443-4041

## FIFTEENTH JUDICIAL CIRCUIT



### COUNTIES OF

CAROLINE ESSEX HANOVER  
KING GEORGE LANCASTER NORTHUMBERLAND  
RICHMOND SPOTSYLVANIA STAFFORD WESTMORELAND  
CITY OF FREDERICKSBURG

## JUDGES

JAMES W. HALEY, JR.

P.O. BOX 89

STAFFORD, VIRGINIA 22555-0089  
(540) 659-6789

J. PEYTON FARMER

P.O. BOX 917

BOWLING GREEN, VIRGINIA 22427-0917  
(804) 633-4541  
FAX (804) 633-4462

JOHN W. SCOTT, JR.

P.O. BOX 7326

FREDERICKSBURG, VIRGINIA 22404-7326  
(540) 372-1171  
FAX (540) 372-1174

April 8, 1997

Bruce P. Ganey, Esquire  
Ganey & Laibstain, P.C.  
P. O. Box 646  
Ashland, Virginia 23005

A. Lisa Barker, Esquire  
Assistant County Attorney  
Hanover County  
P. O. Box 470  
Hanover, Virginia 23069

Re: A. G. Bertozzi v. Hanover County  
Chancery No. 594-96

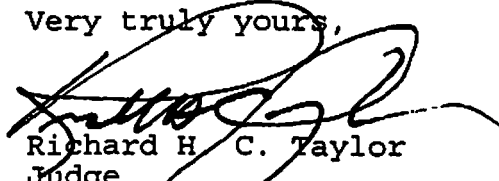
Dear Mr. Ganey and Ms. Barker:

In this case it appears that Mr. Bertozzi was "a day late and a \$1 short". However, the record shows something different. And the Supervisors told staff that if the "late" or "short" was not with intent to get around the new ordinance, then re-examine the application. Three applications were re-examined: one was granted, one didn't fight for approval, and Bertozzi's.

The Court believes that Bertozzi should be given the opportunity to comply with the new ordinance (in furtherance of the Supervisors' intention) and if, within a reasonable time in a reasonable way, he complies, approval should be granted.

The Court at this time, will enter no order. The matter will be retained on the docket.

Very truly yours,

  
Richard H. C. Taylor  
Judge

RHCT/nvs

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00000003

CLERK  
SUPREME COURT OF VIRGINIA

RECEIVED  
NOV 10 1997  
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RICHMOND, VIRGINIA

1

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER  
RICHMOND, VIRGINIA

A. G. BERTOZZI

vs.

HANOVER COUNTY, VIRGINIA

CA# C594-96

June 24, 1997

Hanover, Virginia

ORIGINAL

Complete transcript in the above heard before The  
Honorable Richard H. C. Taylor, Judge.

RECEIVED and/or FILED

AUG 10 1997

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HANOVER CIRCUIT COURT

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Richmond, Virginia 23221  
(804) 359-1984

## 1 APPEARANCES:

2  
3 Bruce P. Ganey, Esquire  
4 Ganey & Laibstain, P.C.  
5 210 South Railroad Avenue, Suite 1  
6 Ashland, Virginia 23005  
7 Counsel for the plaintiff

8 A. Lisa Barker, Esquire  
9 Senior Assistant County Attorney  
10 County of Hanover  
11 P. O. Box 470  
12 Hanover Courthouse  
13 Hanover, Virginia 23069-0470  
14 Counsel for the defendant  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COOK &amp; WILEY, INC.



1 THE COURT: All right. This thing says you all are  
2 going to present me an order.

3 MS. BARKER: Judge Taylor, I'd like to make some  
4 comments.

5 THE COURT: All right.

6 MS. BARKER: I don't know what you are looking at  
7 there. Of course, Mr. Ganey asked for my available dates  
8 for presentation of a final order. I guess that was  
9 several weeks ago. Just a few minutes ago I got a copy  
10 of the draft order. I would just note that there has  
11 been no evidence presented in this case and no documents  
12 admitted into evidence. So I'm not aware of the basis  
13 for any final order in this matter. Looking at the draft  
14 order, I think it raises a number of issues. And if the  
15 Court is inclined to consider this order, I suggest that  
16 we consider those issues so that the County knows what to  
17 do.

18 THE COURT: Well, as I said in the letter, I really  
19 didn't know what to tell you to do either because we are  
20 at a point where there wasn't a clear cut one way or  
21 another. I think that Mr. Bertozzi was off base, but I  
22 think he ought to have the opportunity to get on base is  
23 what I'm saying.

24 MS. BARKER: On that point if I may just comment on  
25 the two -- I think there are two separate categories of

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1 subdivision sections. One category is A through E. The  
2 other one is F and G. For A through E Mr. Bertozzi did  
3 file a subdivision application on October 9. Am I  
4 correct, Mr. Ganey?

5 MR. GANEY: That's correct.

6 MS. BARKER: For F and G he filed something after  
7 October 9. Of course, the grandfather clauses in the  
8 ordinance applied to actions that were done on or before  
9 October 9. So I'm not aware of any basis for  
10 grandfathering Sections F and G.

11 THE COURT: It was not my intent to say you had to  
12 grandfather it. My intent was to say that he ought to  
13 have the opportunity to comply with the ordinance, the  
14 new ordinance.

15 MS. BARKER: But, Judge Taylor, you see if he wants  
16 to subdivide under the new ordinance, he'll have to meet  
17 the ten-acre minimum. Under the old ordinance, of  
18 course, there were some provisions that allowed him to  
19 subdivide with less than ten acres as a minimum.

20 MR. GANEY: Judge, maybe I can --

21 THE COURT: Let's keep talking about it.

22 MR. GANEY: Judge, since the letter ruling, we  
23 contacted the County, my client did. Of course, he's  
24 ready to go. They started this thing back in '95. He  
25 has spent a substantial amount of money, over \$100,000 in

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1 engineering plans and all kinds of things to build the  
2 whole 181 acres according to the existing laws in Hanover  
3 County.

4 This is the entire parcel, 181 acres. It was set up  
5 and he filed back in May of '96 tentative subdivision  
6 plats for the entire subdivision, both Title 3 and Title  
7 4 showing all Sections A through G. I mean, A through --

8 MS. BARKER: Judge Taylor, I don't object to Mr.  
9 Ganey explaining and trying to help us work this out.  
10 But I would just have to say that Mr. Ganey is referring  
11 to tentative subdivision plats under those Title 3. The  
12 former Title 3 and Title 4 ordinances there were no  
13 official tentative plats. I think Mr. Bertozzi filed  
14 some proposed plats and sketches and things for his  
15 development back in May.

16 THE COURT: I'm not opening the evidentiary side.

17 MR. GANEY: I'm just using those to describe what  
18 happened. Just to show that, Judge, he did on October 9,  
19 when nothing had been resolved, he filed his subdivision  
20 application -- and it's part of the file in my brief --  
21 that the initial application showed Sections A through E,  
22 which were five sections. And in the initial letter  
23 following the application, it says, "Sections F and G  
24 will follow," which I'm showing you the plat to show you  
25 the layout. This is F and G here. The rest is A through

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1 E.

2 THE COURT: Yes, that plat was attached.

3 MR. GANEY: After your letter ruling, Mr. Bertozzi  
4 contacted Mr. Gordon, contacted people in the county. He  
5 was ready to go forward and refile the applications, pay  
6 whatever he had to pay and get going. The County's  
7 position was, and Ms. Barker relayed this to me, is they  
8 would give A through E under the old law but felt F and G  
9 should not apply because the actual application and plats  
10 for F and G were filed a couple days after. I think it  
11 was just a couple days later.

12 MR. BERTOZZI: The next day.

13 MR. GANEY: And the County did accept those. Well,  
14 then Mr. Bertozzi had some meetings with different people  
15 in the County about the new ordinance as to what could be  
16 done or not be done. The problem with that was at that  
17 time they weren't sure what the new ordinance ought to be  
18 because I think they just in May passed the changes about  
19 what the density would be with the lots. Mr. Bertozzi is  
20 sitting there. And based on what they told him or what  
21 we understood, economically he couldn't do and he  
22 wouldn't have started this whole thing a year and a half  
23 ago to begin with.

24 What we're asking today based on the letter ruling  
25 is we felt if his application should be accepted based on

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1           what it was October 9 and as long as he complies with all  
2           the requirements that were there then, he's ready to go  
3           forward and do it. If not, if F and G is taken out of  
4           it, then he's got almost a third of his project that he  
5           anticipated doing what he was doing and it cuts into the  
6           cash flow and the economic feasibility of doing it.  
7           Under the new ordinance, the simple fact of the matter is  
8           I don't think economically he can do it all. That's the  
9           problem with the new ordinance.

10           THE COURT: If he put it all back into hodgepodge,  
11           he can't?

12           MR. GANEY: The way he did it was under the old  
13           hodgepodge rule. He's fine then. That's what he planned  
14           on doing. The hodgepodge is 25 divided --

15           MS. BARKER: I must say we didn't refer to it by  
16           that title.

17           MR. GANEY: We called it the hodgepodge. He can  
18           make it work under the hodgepodge. My order is pretty  
19           simple. All it says is that, "The Court order decree  
20           that the subdivision plat and application entitled Sugar  
21           Maple, Sections A through G, be accepted and processed by  
22           the County as the law existed prior to October 9, 1996.  
23           Further ordered that the appellant must meet all other  
24           requirement plans with the County under the zoning  
25           subdivision immediately prior to October 9, 1996."

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1           That he can do. He's ready, willing and able to do.  
2           He's got everything laid out. He can file the first  
3           divisions. All he needed was the County to say it's  
4           okay. That's what we're asking for. And I understand  
5           the County's position. They are saying we'll give you  
6           the five sections but not F and G to settle it all. They  
7           would prefer, and we spoke with --

8           THE COURT: I think he has approval for five of  
9           them.

10          MR. GANEY: If that's what it is, that's what it  
11          is. You know, here is the problem. Again I'm not trying  
12          to testify at all. F and G nobody still knows what to do  
13          with them. And if you do them under the new thing, where  
14          is the open space and all that?

15          MS. BARKER: Mr. Ganey, let me just say that you all  
16          have not submitted an application for the F and G area.  
17          When you do, we will review it. You are referring to  
18          open space. There is a new ordinance that allows higher  
19          density development with some open space being in  
20          reserve. That may be one of Mr. Bertozzi's options.

21          But legally I think either Mr. Bertozzi has a vested  
22          right or -- I mean, your argument would be he has a  
23          vested right or he's grandfathered. It's got to be one  
24          or the other. Otherwise, there is no basis for  
25          proceeding.

1 With regard to F and G, our position is he's not  
2 grandfathered for F and G because that application was  
3 not submitted in accordance with the grandfather clause.  
4 The Virginia Supreme Court just decided in the town of  
5 Rocky Mount case that you don't have a vested right  
6 unless you have a plan approval or some official  
7 government approval. Mr. Bertozzi certainly doesn't have  
8 any approval for F and G. And he doesn't fall into that  
9 grandfather category because he didn't file his  
10 application in time. A number of people wanted to  
11 develop but they didn't file their applications in time.  
12 So he's not alone.

13 MR. GANEY: I agree. I'm familiar with the Rocky  
14 Mount case. And I've made the same argument to Judge  
15 Taylor in another case. It wasn't real successful.

16 THE COURT: Well, that was entirely different.

17 MS. BARKER: I wish you would have warned me about  
18 that, Bruce. I wouldn't have cited that case.

19 THE COURT: That guy is way off base, Mr. Ganey.

20 MR. GANEY: I understand, Judge. I think my guy he  
21 rises and falls if it's F and G on the grandfather  
22 issue. I don't think there is a question about that.  
23 His argument is when he filed it, all along, all the  
24 paperwork, whether it's tentative or proposed, everything  
25 showed F and G. F and G was part of the project, part

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1 and parcel. What happened was on October 9 when the  
2 engineer came up here and he filed A through E and he put  
3 in the letter -- that's in the brief -- F and G is  
4 coming, he came the next day and said, "No, the ordinance  
5 is changed."

6 My argument is substantially F and G was part and  
7 parcel of the whole project because I don't think he  
8 would have done that and cut his leg off of this whole  
9 deal. If that's the ruling, that's the ruling. But our  
10 position is if you are taking one, why not take all of  
11 it. It makes a lot more sense the way it looks. It was  
12 contemplated to be part of it. That's my argument. I  
13 agree it's not a vested right. I agree with that.

14 MS. BARKER: Your Honor, I understand the  
15 intention. I'm not hearing the legal basis for accepting  
16 those.

17 THE COURT: As I noted in the letter, there were  
18 some comments in there somewhere where the supervisors  
19 mentioned to the staff to see if they could get so they  
20 could comply, not this one but others, whether or not it  
21 was being filed just to get under the -- or whether it  
22 was a reason for it being late.

23 MS. BARKER: Well, the grandfather clause provided  
24 that applications that were filed on or before October 9  
25 that were substantially complete were grandfathered. But



1 that was the key.

2 THE COURT: Mr. Ganey's argument is by mentioning F  
3 and G that he wants to be grandfathered.

4 MS. BARKER: And, Your Honor, our position is that  
5 we get a lot of proposed plans and sketches and people  
6 have a lot of intentions, but that doesn't constitute  
7 approval on our part.

8 MR. GANEY: I agree. I don't think -- see, that's  
9 what I'm saying. That's why I've made my litany in my  
10 brief is because he started this thing in '95 when they  
11 did the layout of the water and the well sites, and all  
12 along his engineers were meeting with the County people.  
13 I'm not saying what was said at those things. But all  
14 along it was contemplated for the whole 181 acres.  
15 Whether they were proposed plats or layouts in May of '96  
16 had all 181 acres. And Mr. Bertozzi was like every other  
17 citizen. He saw the notices that came out about what may  
18 happen, what may not happen. And the bottom line is he  
19 called his engineer up and says, "You better get it in  
20 before October 9." That's what was filed. For whatever  
21 reason, he filed A through E, but he put in the letter F  
22 and G is coming. It wasn't like the County -- and I'm  
23 not saying you -- but someone in that staff was aware of  
24 it. It was May 7, 1996 with the tentative Title 3 and  
25 Title 4 was submitted to Hanover Planning requesting

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1 review and comments regarding general conformance with  
2 Hanover County subdivision, May of '96. It's not like  
3 this came out of the blue and he was running in there at  
4 the last minute to put the other two in. He just didn't  
5 conclude it in the original filing.

6 My argument is just like the judge said, whether it  
7 applies or not, substantially that's what he intended to  
8 do and the County had been aware of it. And I think  
9 under the substantial compliance it should be considered  
10 all part and parcel the same.

11 THE COURT: The problem, and both arguments have  
12 problems, but the intent of the subdivider was not to get  
13 around the new ordinance. If the new ordinance had been  
14 into effect when he started the process, he would have  
15 complied with the new ordinance because it was then  
16 economically feasible. But he has spent all his money  
17 now and he doesn't have anything to show for it. That's  
18 the difference I'm having a problem with from a fairness  
19 standpoint. I don't know that he ought to be penalized.  
20 I think that's what the supervisors meant, that the  
21 subdivision people are going to work with the landowner  
22 to try to work out something. That's what I'm trying to  
23 force. I don't want to make a decision.

24 MS. BARKER: We certainly don't want to be  
25 obstructive.

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1 THE COURT: I know that. Everybody is trying to  
2 work. Your problem is if you say yes, then everybody  
3 else is lined up and says, "You said yes to him, you say  
4 yes to me." But I think it might be different.

5 MR. GANEY: I think we're the only one that can do  
6 it because we're the only ones that filed and preserved  
7 our rights. We were aware of that. We checked to see  
8 what people were going to do about it. The whole thing  
9 is if he can do it -- and we have looked at it in every  
10 way. His engineers -- the fact of the matter is  
11 economically he can't do it under the new thing. If he  
12 could -- he owns other land, and down the road he's got  
13 to do it. This project because of the way it's laid out,  
14 it can't be done is what his engineers have said. It's  
15 about a half million dollars different, isn't it?

16 MR. BERTOZZI: (Nodding head yes.)

17 THE COURT: I can certainly understand. I've  
18 subdivided enough land in Hanover to understand that. In  
19 fact, I can't remember the doctor's name now from Newport  
20 News or somewhere, he had 800 acres down there off of  
21 360. We laid one out. I mean, it was beautiful. We had  
22 apartments, shopping centers, ponds, golf courses. Man  
23 said, "Looks good. Looks good. Go forward. Go  
24 forward." And the vote was four to three. Mr. West  
25 casted the voting side against me.

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1 MR. BERTOZZI: You've got to be kidding.

2 THE COURT: No. They must have put in \$50,000 to  
3 \$100,000.

4 MS. BARKER: Well, Your Honor, you see that's the  
5 perfect illustration of the fact that developers take  
6 their chances. That's the way the system works.

7 THE COURT: I would have really been peed if he had  
8 let me build a lake down there and not let me build  
9 anything else. That's the problem. That's entirely  
10 different. We laid the groundwork for that.

11 MS. BARKER: Judge Taylor, I would like for this  
12 order to be clarified.

13 THE COURT: I haven't even seen the order.

14 MS. BARKER: One, so that we will know what the  
15 intentions of the Court are. The first paragraph refers  
16 to the subdivision plats being accepted and processed as  
17 the law existed prior to October 9, 1996. Mr. Ganey, do  
18 you intend by that then to allow Mr. Bertozzi to record  
19 the first division and thereby comply with that  
20 interpretation?

21 MR. GANEY: My intent is to do it just like the old  
22 way and do it exactly right. If he has to file the first  
23 division first, he'll do that. That's why he sent them  
24 in in May of '96 to see what do we do. That was my  
25 point.

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1 MS. BARKER: Let me just say the order is drafted to  
2 say as the law existed. The law actually said there was  
3 a ten-acre minimum. So I don't think this is really  
4 literally what is intended.

5 MR. GANEY: I can literally change anything. I was  
6 trying to avoid the word "grandfather" simply because of  
7 what the judge just made a point of, of what happened  
8 here or not happened. I was trying to say he does it.  
9 And if you have to do the first division, he will record  
10 it. I think on the plats that are over there it said  
11 first division and it has a blank, D Book, page number.  
12 He's ready and prepared to do that. And if he does that,  
13 it will record the plats the day after if that's the way  
14 it's done.

15 MS. BARKER: So he will be given an opportunity to  
16 comply with the law and interpretations in effect prior  
17 to October 9?

18 MR. GANEY: Right. We don't want to hedge about  
19 that. Whatever is the easiest way to do, he'll do it  
20 anyway the County wants it done.

21 THE COURT: Is there any doubt in anybody's mind if  
22 he had filed this on the 8th that it would have been  
23 approved?

24 MS. BARKER: Your Honor, it would have been  
25 processed in accordance with the rules prior to October

1           9. So, of course, we have prior to October 9 and now  
2           there are some requirements for improvements of private  
3           roads, conveyance of easements, and things like that. So  
4           he would have to do that. If he filed the traffic  
5           compliance and he refused the easement, it wouldn't have  
6           been approved. Assuming that he complies with all those  
7           other requirements, it would have been processed in  
8           accordance with the old rules.

9           THE COURT: Then I'm going to rule in favor of the  
10          Mr. Bertozzi and I'll let you draw the order.

11          MS. BARKER: And that's for Sections A through G?

12          THE COURT: A through G.

13          MS. BARKER: Mr. Ganey and I can work something out.

14          THE COURT: Yes. You all work it out.

15  
16                   \* \* \* \* \*

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

|                           |   |                        |
|---------------------------|---|------------------------|
| A. G. BERTOZZI,           | ) |                        |
|                           | ) |                        |
| Appellant,                | ) |                        |
|                           | ) |                        |
| v.                        | ) | In Chancery No. 594-96 |
|                           | ) |                        |
| HANOVER COUNTY, VIRGINIA, | ) |                        |
|                           | ) |                        |
| Appellee.                 | ) |                        |

**FINAL DECREE**

Pursuant to the Petition for Appeal filed by the Appellant ("Mr. Bertozzi"), and the Response of the Appellee ("the County"); after consideration of the Memorandum filed by the County and the Brief of Appellant, and argument of counsel on June 24, 1997, it appearing proper to the Court,

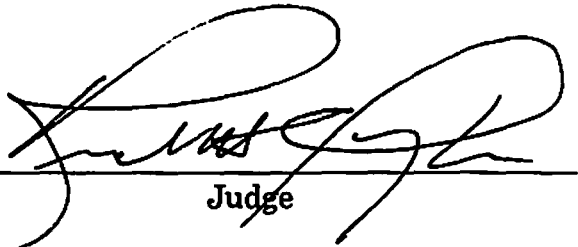
The Court DECREES that the subdivision plats titled Sugar Maple, Sections A - G ("the Plats"), shall be accepted and reviewed by the County pursuant to the requirements of ordinances in effect prior to October 9, 1996, and

Further, it is ORDERED that the County shall provide written comments to Mr. Bertozzi, with regard to the conformance of the Plats with applicable laws and regulations, within sixty days of the entry of this Order; that Mr. Bertozzi shall then submit revised plats with any necessary corrections, within sixty days of the date of the County's written comments, and the County shall approve or disapprove the revised plats, within sixty days, all pursuant to the ordinances in effect prior to October 9, 1996.


And nothing further remaining to be done in this case, it is ORDERED that this cause is stricken from the docket and placed among the ended causes.

The Clerk shall send a certified copy of this Order to counsel of record.

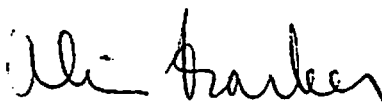
ENTERED: 7/30/97

  
Judge

I ask for this:

  
\_\_\_\_\_  
Bruce P. Ganey, Esq.  
Ganey & Laibstain, P.C.  
P. O. Box 646  
Ashland, VA 23005  
(804) 798-2579  
Counsel for the Appellant

Seen and objected to for the reasons stated in the record of this case, including statements of counsel at the hearing on June 24, 1997, and in the Memorandum of the County filed on March 31, 1997, and for the lack of evidence or law supporting the decree:

  
\_\_\_\_\_  
A. Lisa Barker  
Senior Assistant County Attorney  
P. O. Box 470  
Hanover, Virginia 23069  
(804) 537-6035  
Counsel for the Appellee



VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

A. G. BERTOZZI,

Appellant,

v.

HANOVER COUNTY, VIRGINIA,

Appellee.

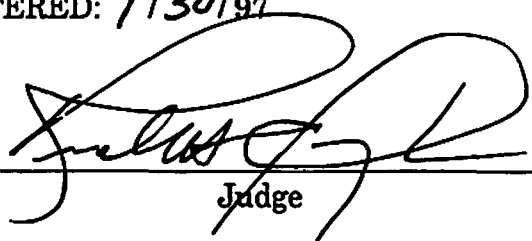
In Chancery No. 594-96

DECREE

On motion of the County, it is ORDERED that the execution of the Final Decree in this case shall be stayed, during the prosecution of an appeal to the Virginia Supreme Court, and that no action shall be required or taken pursuant to this Decree, prior to the date of either denial of a writ of certiorari or issuance of a decision in the case by the Virginia Supreme Court. The suspension of execution in this case shall be exempt from the requirement of security, pursuant to Va. Code §8.01-676.1(J) and shall be void thirty days from the date of entry of this Decree, in the event the County fails to file a Notice of Appeal.

The Clerk shall send a certified copy of this Order to counsel of record.

ENTERED: 7/30/97

  
Judge

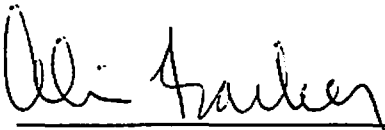
I ask for this:



---

Bruce P. Ganey, Esq.  
Ganey & Laibstain, P.C.  
P. O. Box 646  
Ashland, VA 23005  
(804) 798-2579  
Counsel for the Appellant

Seen and objected to for the reasons stated in the record of this case, including statements of counsel at the hearing on June 24, 1997, and in the Memorandum of the County filed on March 31, 1997, and for the lack of evidence or law supporting the decree:



---

A. Lisa Barker  
Senior Assistant County Attorney  
P. O. Box 470  
Hanover, Virginia 23069  
(804) 537-6035  
Counsel for the Appellee

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY, VIRGINIA  
RECEIVED and/or FILED

A. G. BERTOZZI,

Appellant,

v.

HANOVER COUNTY, VIRGINIA,

Appellee.

AUG 19 1997

CLERK'S OFFICE  
HANOVER CIRCUIT COURT  
In Chancery No. 594-96

NOTICE OF APPEAL

Hanover County, Virginia, gives notice of appeal to the Supreme Court of Virginia from the Final Decree of this Court entered on the 30th day of July, 1997, and further gives notice that a transcript of the proceedings has been filed.

HANOVER COUNTY, VIRGINIA

By: 

Of Counsel

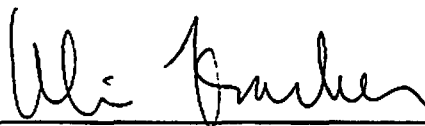
Sterling E. Rives, III  
Hanover County Attorney  
A. Lisa Barker  
Senior Assistant County Attorney  
P. O. Box 470  
Hanover, Virginia 23069  
(804) 537-6035

CERTIFICATE

I, A. Lisa Barker, counsel for Hanover County, Virginia, certify that:

1. The name and address of the Appellant is Hanover County, Virginia, 7497 County Complex Road, P. O. Box 470, Hanover, Virginia 23069.

2. The name, address, and telephone number of counsel for Appellant is A. Lisa Barker, Senior Assistant County Attorney, 7497 County Complex Road, P. O. Box 470, Hanover, Virginia 23069.
3. The name and address of Appellee is A. G. Bertozzi, 3006 Impala Place, Richmond, Virginia 23228.
4. The name, address and telephone number of counsel for Appellee is Bruce P. Ganey, Esq., Ganey & Laibstain, P. C., P. O. Box 646, Ashland, Virginia 23005, (804) 798-2579.
5. The transcript of the proceedings has been filed as required by Rules of the Supreme Court of Virginia 5:11(a).
6. A copy of this Notice of Appeal has been mailed or delivered to opposing counsel, to the Clerk of the Supreme Court of Virginia and to the Hanover County Circuit Court Clerk, this 19th day of August, 1997.

A handwritten signature in cursive script, appearing to read "A. Lisa Barker", is written over a horizontal line.

A. Lisa Barker

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the  
City of Richmond on Tuesday the 17th day of February, 1998.*

Hanover County,

Appellant,

against

Record No. 972283

Circuit Court No. 594-96

A. G. Bertozzi,

Appellee.

From the Circuit Court of Hanover County

Upon the petition of Hanover County an appeal is awarded  
it from a judgment rendered by the Circuit Court of Hanover County  
on the 30th day of July, 1997; no security being required.

A Copy,

Teste:

  
Clerk

file & index 5153

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the  
City of Richmond on Friday the 18th day of September, 1998.*

Hanover County,

Appellant,

against

Record No. 972283

Circuit Court No. 594-96

A. G. Bertozzi,

Appellee.

Upon an appeal from a  
judgment rendered by the Circuit  
Court of Hanover County on the  
30th day of July, 1997.

For reasons stated in writing and filed with the record,  
the Court is of opinion that the judgment appealed from is  
erroneous. Accordingly, the judgment with respect to Sections F and  
G of the appellee's proposed subdivision titled Sugar Maple is  
reversed, and final judgment is entered in favor of the appellant.  
The judgment as to Sections A through E also is reversed, and the  
case is remanded to the said circuit court for an evidentiary  
hearing regarding whether the appellant's disapproval of Sections A  
through E of the subdivision was "not properly based on the  
ordinance applicable thereto, or was arbitrary or capricious."

This order shall be certified to the said circuit court.

A Copy,

Teste:

  
Clerk

Present: All the Justices

HANOVER COUNTY

OPINION BY JUSTICE CYNTHIA D. KINSER

v. Record No. 972283

September 18, 1998

A.G. BERTOZZI

FROM THE CIRCUIT COURT OF HANOVER COUNTY  
Richard H.C. Taylor, Judge

Hanover County (the County) seeks reversal of the circuit court's judgment ordering the County to review A.G. Bertozzi's (Bertozzi) plats for Sections A through G of his proposed subdivision titled Sugar Maple under the terms of zoning and subdivision ordinances in effect prior to October 9, 1996. Because Bertozzi failed to submit complete applications and plats for Sections F and G before an October 9, 1996 deadline, we will reverse the circuit court's judgment with respect to those two sections. As to Sections A through E, we will reverse the trial court's judgment and remand the case because the record is devoid of any evidence concerning whether the County's disapproval of Bertozzi's applications and plats for those sections was based on the applicable ordinance, or was arbitrary or capricious.

I.

On October 9, 1996, the Hanover County Board of Supervisors (the Board) adopted zoning and subdivision

Ordinance Nos. 96-17 and 96-18, which significantly changed the rural subdivision requirements for the County.

However, the revised ordinances contained a "grandfather clause" that permitted "[c]omplete applications for final subdivision approval which have been filed before the close of business on October 9, 1996, which were in compliance with all substantive zoning and subdivision ordinance requirements in effect on that date [to] be reviewed in accordance with those requirements."

In a letter dated May 7, 1996, Bertozzi's agent informed the Hanover County Planning Office (the Planning Office) that Bertozzi was interested in developing a subdivision on 181 acres of real estate that he owned in the County. Bertozzi sent the Planning Office three drawings that showed the existing division of the land for tax purposes and two tentative subdivision layouts.

Subsequently, on October 9, 1996, Bertozzi recorded a plat subdividing his property into seven tracts labeled Sections A through G. Each section contained slightly more than 25 acres. That same day, Bertozzi filed applications with the Planning Office for final approval of "SECTION 'A' through SECTION 'E'" of Sugar Maple subdivision. Along with the application for each 23-acre section of the subdivision, Bertozzi submitted a plat showing the division



of the section into four lots. On each plat one lot was labeled the "First Division" and contained approximately two acres. The remaining 23 acres were subdivided into three lots, one consisting of approximately two acres and the remaining two containing approximately ten acres each. However, the letter to the Planning Office that accompanied the applications stated that the "[f]iling for review of Sections 'F' and 'G' will be forthcoming." Thus, Bertozzi did not file applications or plats for final approval of Sections F and G before the close of business on October 9, 1996.<sup>1</sup>

The Board, by a letter dated October 29, 1996, notified Bertozzi that it disapproved his subdivision applications for Sections A through E of Sugar Maple "because of failure to record first division lots (Title I, Art. 5, Sect. 2.7-1)." The noted defect in Bertozzi's applications was based on an alleged administrative interpretation of the previous zoning and subdivision ordinances. This interpretation, referred to as the

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<sup>1</sup> The applications and plats for Sections A through E bear a stamp showing receipt by the Planning Office on October 9, 1996. The applications and plats for Sections F and G contain no such receipt stamps. Bertozzi acknowledged in his brief to this Court that the plats for Sections F and G were not submitted to the Planning Office until October 10, 1996.

"twenty-five acre Rule" (the "Rule"), permitted developers to subdivide their land into more lots than would have been allowed under a strict interpretation of the previous ordinances. Allegedly, under the "Rule," a landowner, who recorded a plat subdividing a large parcel of land into 25-acre tracts, must next record, by deed or plat, a two-acre "First Division" lot in each of the 25-acre parcels. The landowner could then subdivide the remaining 23 acres into two ten-acre tracts and one three-acre tract.<sup>2</sup> According to the Board, Bertozzi did not comply with the "Rule" because he submitted his subdivision plats for Sections A through E before he recorded a deed or plat for the "First Division" lot in each of the 25-acre sections.

Bertozzi appealed the Board's disapproval to the circuit court and asserted that his applications and plats fully complied with all the requirements of the County's zoning and subdivision ordinances in effect before the

---

<sup>2</sup> The "Rule" was purportedly based on two provisions of the prior ordinances, specifically the definition of the term "subdivision" and the minimum lot size for a single-family dwelling. "Subdivision" was defined as "[t]he division of a tract or parcel of land into three (3) or more parts, any of which contain an area of ten (10) or more acres, but less than twenty-five (25) acres . . . ." Hanover County, Va., Code tit. III, § 2-6 (1972). The minimum lot size for a single-family dwelling in the A-1 Agricultural District was "2 acres, after the first conveyance all lots must be 10 acres or greater." *Id.* at tit. I, art. 5, § 2.7-1.

October 9, 1996 revisions and that the Board's disapproval was, therefore, both "improper" and "arbitrary and/or capricious." After considering memoranda and argument by both parties, but without receiving any evidence, the court ruled in favor of Bertozzi. In its decree dated July 30, 1997, the court directed that the "subdivision plats titled Sugar Maple, Sections A-G . . . be accepted and reviewed by the County pursuant to the requirements of ordinances in effect prior to October 9, 1996 . . . ." The County appeals.

## II.

We will first address whether the circuit court erred in giving Bertozzi the benefit of the "grandfather clause" with regard to Sections F and G. Although Bertozzi did not submit the final plats for Sections F and G to the Planning Office before the close of business on October 9, 1996, he argues that his applications were, nevertheless, complete by that deadline. According to Bertozzi, he advised the County on October 9, 1996, that the plats for Sections F and G would be forthcoming and that they were, in fact, submitted the next day. He also argues that the County had notice of Sections F and G because he gave the County tentative drawings of the entire subdivision on May 7, 1996. We disagree.

"Where the language in an ordinance . . . is plain and unambiguous, it must be given that plain meaning or intent." Board of Supervisors of Fauquier County v. Machnick, 242 Va. 452, 456, 410 S.E.2d 607, 609 (1991). In order to have a subdivision plat reviewed under the terms of the County's prior ordinances, the plain and unambiguous language of the "grandfather clause" requires a landowner to have filed an application for final subdivision approval before the close of business on October 9, 1996. The application had to be complete and in compliance with all substantive zoning and subdivision ordinance requirements. Bertozzi did not file applications and plats for Sections F and G before the October 9, 1996 deadline. Neither his cursory statement in his October 9, 1996 letter to the Planning Office that final plats for Sections F and G would be "forthcoming" nor his tentative May 1996 drawings showing Sections F and G constitute a complete application. Thus, Bertozzi did not comply with the requirements necessary to receive the benefit of the "grandfather clause." We hold, therefore, that the circuit court erred in ordering the County to review Sections F and G under the terms of the zoning and subdivision ordinances in effect prior to October 9, 1996.

We next address the circuit court's decision regarding Sections A through E of the subdivision. In doing so, we must "examine the record to determine whether the evidence sustains the court's findings of fact . . . and those of the [County]." West v. Mills, 238 Va. 162, 168, 380 S.E.2d 917, 921 (1989).

The circuit court reviewed the County's disapproval of Bertozzi's application pursuant to Code § 15.1-475(B) (3) (now Code § 15.2-2259(C)) which provides, in pertinent part:

If a local commission or other agent disapproves a plat and the subdivider contends that such disapproval was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction of such land and the court shall hear and determine the case . . . .

Thus, Code § 15.1-475 limits the circuit court's review to a determination regarding whether the County's disapproval was "not properly based on the ordinance applicable thereto, or was arbitrary or capricious." West, 238 Va. at 168, 380 S.E.2d at 920.<sup>3</sup>

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<sup>3</sup> This limitation on the scope of the circuit court's review does not mean that the court cannot approve a plat after finding that a disapproval was not based on the applicable ordinance, or was arbitrary or capricious. See Hylton Enter., Inc. v. Board of Supervisors of Prince William County, 220 Va. 435, 442, 258 S.E.2d 577, 582 (1979) (finding statutory language authorizes circuit court to approve plat).

Despite this specific statutory directive regarding the scope of its review, the circuit court never enunciated any finding that the County's disapproval was either not based on the applicable ordinance, or was arbitrary or capricious. In fact, the court could not have made any such finding because it did not receive sufficient evidence from either party upon which to base a decision.

For example, the County applied the requirements of the so-called "Rule" to disapprove Bertozzi's applications; however, this "Rule" was an unwritten, administrative interpretation of the County's prior zoning and subdivision ordinances that is not readily apparent from reading the ordinances. Therefore, evidence regarding the existence of the "Rule," its purpose, and its prior application was crucial. Without such evidence, the circuit court could not have determined whether the County's disapproval "was not properly based on the ordinance applicable thereto, or was arbitrary or capricious."

Nevertheless, Bertozzi contends that on March 14, 1997, the circuit court held a hearing during which the court heard evidence and reviewed exhibits. However, correspondence between counsel reflects that the March 14, 1997 meeting with the circuit court was a "pre-trial conference" to "review the status" of the case and was not

an evidentiary hearing. In addition, no transcript or written statement of facts of that conference exists. See Rule 5:11.

Furthermore, during oral argument on June 24, 1997, for the purported purpose of presenting a final decree to the court, the County noted the lack of evidence and questioned the basis for a final order. The County also included the lack of evidence in its objections to the final decree. Moreover, the circuit court stated in its decree that it had reached its decision after considering Bertozzi's petition, the County's response, memoranda, and argument of counsel. Thus, the court itself acknowledged that it did not receive or consider any evidence on the issue. Therefore, having a record devoid of any evidence and factual findings, we cannot "examine the record to determine whether the evidence sustains the court's findings of fact." West, 238 Va. at 168, 380 S.E.2d at 921.

Accordingly, we will reverse the circuit court's judgment with respect to Sections F and G and enter final judgment in favor of the County. We will also reverse the circuit court's judgment as to Sections A through E, but remand the case for an evidentiary hearing regarding whether the County's disapproval of Sections A through E of

the subdivision was "not properly based on the ordinance applicable thereto, or was arbitrary or capricious."

Reversed and remanded.



Virginia:

IN THE CIRCUIT COURT OF HANOVER COUNTY

|                          |   |                        |
|--------------------------|---|------------------------|
| A. G. BERTOZZI,          | ) |                        |
|                          | ) |                        |
| Appellant,               | ) |                        |
|                          | ) |                        |
| v.                       | ) | In Chancery No. 594-96 |
|                          | ) |                        |
| HANOVER COUNTY, VIRGINIA | ) |                        |
|                          | ) |                        |
| Appellee.                | ) |                        |

**MOTION FOR ORDER COMPELLING DISCOVERY**

Hanover County, the Appellee ("the County"), by counsel, moves this Court for entry of the attached order compelling the Appellant to provide answers to the County's First Set of Interrogatories to Appellant mailed January 21, 1999, and to produce all documents and things requested by the County in its First Request for Production of Documents to A. G. Bertozzi mailed January 21, 1999. The County further moves the Court for such other relief as may be provided by law.

Respectfully submitted,

HANOVER COUNTY, VIRGINIA

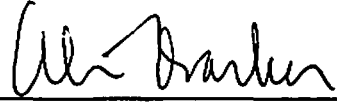
By Counsel



A. Lisa Barker  
Senior Assistant County Attorney  
P. O. Box 470  
Hanover, Virginia 23069  
(804) 537-6035

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **Motion for Order Compelling Discovery** was mailed by certified and first class mail, postage prepaid, this 19<sup>th</sup> day of February, 1999, to Bruce P. Ganey, P. O. Box 646, Ashland, Virginia 23005.

A handwritten signature in cursive script, appearing to read "A. Lisa Barker", written over a horizontal line.

A. Lisa Barker

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

A. G. BERTOZZI,

Appellant,

v.

HANOVER COUNTY, VIRGINIA,

Appellee.

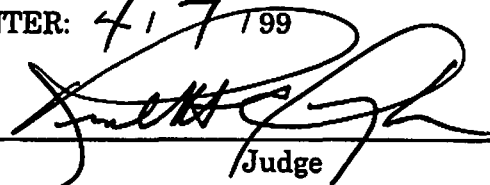
In Chancery No. 594-96

ORDER


On Motion of the County, by counsel, it appearing proper to the Court, there having been an incomplete response to Hanover County's First Set of Interrogatories to Appellant mailed to Plaintiff's counsel on January 21, 1999, it is

ORDERED that counsel for Mr. Bertozzi shall provide to the County no later than April 9, 1999, at 10:00 a.m.: a) the full names, addresses and telephone numbers of the following witnesses: Richard L. Baird, Jr., P.E., Roy Crawford, Larry Madison and Thomas Pollard; and b) a summary of the subjects of the proposed testimony of the following witnesses: Richard L. Baird, Jr., P.E., Roy Crawford, Larry Madison, Thomas Pollard, A.G. Bertozzi, Emma Lee Davenport, Frank Dunbar, W. Pettus Gilman, Sr., Pat Lamberti, Charles G. Patterson, Jr., and Colin Woods, Jr.

ENTER: 4/7/99

  
Judge

I ask for this:



A. Lisa Barker, Senior Assistant County Attorney  
P. O. Box 470  
Hanover, Virginia 23069  
(804) 537-6035

✓

Seen:



---

Bruce P. Ganey  
P. O. Box 646  
Ashland, Virginia 23005  
(804) 798-2579

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

|                           |   |                        |
|---------------------------|---|------------------------|
| A. G. BERTOZZI,           | ) |                        |
|                           | ) |                        |
| Appellant,                | ) |                        |
|                           | ) |                        |
| v.                        | ) | In Chancery No. 594-96 |
|                           | ) |                        |
| HANOVER COUNTY, VIRGINIA, | ) |                        |
|                           | ) |                        |
| Appellee.                 | ) |                        |

**MEMORANDUM OF HANOVER COUNTY, VIRGINIA  
IN RESPONSE TO PETITION FOR APPEAL OF DECISION  
OF THE HANOVER COUNTY PLANNING OFFICE**

**Nature Of The Case And Material Proceedings**

On October 9, 1996, A. G. Bertozzi ("Bertozzi") filed an application for final approval of the development called "Sugar Maple" consisting of subdivision plats for Sections A through E ("the Subdivision"). All of those subdivision plats were disapproved by letter dated October 29, 1996, from Michael E. Crescenzo, Deputy Director of Planning for Hanover County, to Richard L. Baird, Jr. Bertozzi appealed that disapproval to the Hanover County Circuit Court pursuant to Virginia Code § 15.1-475 (now recodified as Va. Code §15.2-2259).

The appeal requested that the Court enter an order directing Hanover County ("the County") to approve Sections A through E and two additional sections which had not been filed with the County, Sections F and G. The

trial court entered an order directing that the sections submitted prior to the deadline of the grandfather clause adopted by the Board of Supervisors along with zoning and subdivision ordinance amendments (A through E), as well as the two sections not submitted in accordance with that deadline (F and G), be reviewed in accordance with the clause, as though they met the requirements of the clause, both substantive and procedural.

The County appealed that decision. The Virginia Supreme Court rendered a decision dated September 18, 1998, reversing the ruling of the Circuit Court with regard to Sections F and G, and remanding the appeal of the disapproval of Sections A through E to this Court. The matter now before this Court is Bertozzi's appeal of the disapproval by the County of subdivision plats for Sugar Maple Subdivision, Sections A through E.

### Statement Of Facts

#### I. Bertozzi Filed An Application for Subdivision Approval for "Sugar Maple", Sections A through E.

On October 9, 1996, Bertozzi filed an application for final approval of subdivision plats for Sections A through E of "Sugar Maple" ("the Subdivision"). Sections A through E consist of approximately 125 acres zoned A-1, Agricultural. That acreage is part of a parcel of about 181 acres. The 181-acre tract was depicted in a previously approved and recorded "Title IV" Subdivision plat titled "Plat Showing Seven Tracts of Land Situated on the South Side of Route No. 54 Near Montpelier," dividing the land into parcels of about twenty-five acres each. (Exhibit 1).

Each of the plats for Sections A through E depicts a parcel of about 25 acres ("Title IV" parcels), divided into four lots, two of which are ten acres or greater and two of which are less than ten acres. All of those subdivision plats were disapproved by the County, by letter dated October 29, 1996, because of Bertozzi's "failure to record first division lots ([Hanover County Zoning Ordinance] Title I, Article 5, Section 2.7-1)." (Exhibit 2).

**II. Adoption of Zoning and Subdivision Ordinance Revisions Eliminated the "Twenty-Five Acre Rule" and Changed Other Ordinance Provisions.**

On the evening of October 9, 1996, the Hanover County Board of Supervisors adopted Ordinance No. 96-17 and Ordinance No. 96-18, revising the Zoning and Subdivision ordinances. (Exhibit 3 and Exhibit 4). In brief, among other changes, the Subdivision Ordinance revisions made every division of property a subdivision and imposed some additional development standards. The Zoning Ordinance revisions deleted the two-acre minimum lot size for "first divisions", making the minimum lot size ten acres in the A-1 Agricultural District. Except for developments which were "grandfathered", as described below, those changes effectively eliminated the "Twenty-Five Acre Rule" ("the Rule") which was a long-standing staff interpretation, applied to development of thousands of lots during the past couple of decades. The Rule, in effect, provided a bonus for developers, in allowing additional lots over those which would have been allowed with a strict ordinance interpretation.

The basis of the Rule included the provision relating to minimum lot size in the A-1, Agricultural District. Title I, Article 5, Section 2.7, of the Hanover County Zoning Ordinance stated that the minimum lot size for a single family dwelling was "two acres, after the first conveyance, all lots must be ten acres or greater." (Exhibit 5). The definition of "subdivision", Hanover County Subdivision Ordinance, Title III - Subdivision - 10 to 25 Acres, Section 2-6 was "[t]he division of a tract or parcel of land into three (3) or more parts, any of which contain an area of ten (10) or more acres, but less than twenty-five (25) acres . . . ."

The resulting County interpretation was that a landowner could record a plat (a "Title IV Subdivision plat") or deeds dividing a large parcel into tracts of 25 acres. The owner could then record a two-acre "first division" (or, "first conveyance", in the language of the zoning ordinance) for each of those tracts. Plats for Title III subdivisions could then be submitted, which would divide each of the remaining 23 acre parcels into two ten-acre tracts and one three-acre tract (the "residual"), for a total of four lots. Exhibit 6 is a diagram of division of a fifty acre tract benefiting from the Rule. Exhibit 7 is a diagram of division of the same tract, without use of the Rule. The recording of the "first division" prior to submission of the Title III subdivision application was an essential element of the Rule, since otherwise the division would not have been "first", and the language of the Zoning Ordinance minimum lot size provision would have had no meaning.



Following the "letter of the law" set out in the Zoning and Subdivision ordinances, without the Rule, Bertozzi would have been entitled to one two-acre conveyance from his original tract of 181 acres, and one residual tract of less than ten acres. (The Rule also provided that the "residual" was legal and buildable, as long as it was more than two acres, even if it was less than ten.) Any other lots would have been required to be at least ten acres in size. For the 125 acres included in proposed Sections A through E, Bertozzi, if he had correctly used the Rule, would have been granted approval for six lots, in addition to the divisions allowed pursuant to the actual language of the prior ordinance.

Bertozzi, despite prior discussions with the County staff, failed to create and record "first divisions" in accordance with the Rule. The Rule required that there be an actual first division, not merely a lot denoted on a Title III subdivision plat as the "first division." In other words, the lot designated as a "first division" for each 25-acre lot would have had to have been recorded by deed or plat prior to the submission of the Title III subdivision plat.

That aspect of the Rule had been followed countless times by applicants, and Title III subdivision plats had been routinely rejected, for failure to follow that process. Placing the label "first division" on one of the lots, as Bertozzi did for each 25-acre section of "Sugar Maple", did not comply with the Rule.

### Argument and Applicable Law

#### **I. The Board of Supervisors Adopted Specific Conditions for "Grandfathering," and the Staff Reasonably Interpreted Them.**

The zoning and subdivision ordinances adopted on October 9, 1996, included an identical "grandfather clause" as follows:

This ordinance shall be effective upon adoption; provided, however, that:

a. Complete applications for final subdivision approval which have been filed before the close of business on October 9, 1996, which were in compliance with all substantive zoning and subdivision ordinance requirements in effect on that date shall be reviewed in accordance with those requirements.

b. All lots or parcels described in deeds or plats recorded in the Hanover County Circuit Court Clerk's Office prior to the close of business on October 9, 1996, which meet all zoning and subdivision requirements for yards, setbacks, and access in effect on the date of building permit application shall be deemed to be in compliance with the lot dimension and area requirements of the Zoning Ordinance and the requirements of the Subdivision Ordinance.

[Subparagraph (a) above is relevant to this case.]

In applying those grandfather clauses, the County staff gave applicants the benefit of the Rule in determining whether applications were filed "in compliance with all substantive zoning and subdivision requirements . . . ." In the case of Sugar Maple, Sections A through E, the staff determined that

there was not compliance with the requirements of the Rule. Absent application of the Rule, the Subdivision did not comply with either old or new requirements, in that lot sizes were less than the old or new minimums.

**II. The County Interpretation Of The Zoning And Subdivision Ordinances In Effect Prior to October, 1996, Should Not Be the Subject of Judicial Intervention.**

The Hanover County Planning Department, for a period beginning in the 1970s through October 9, 1996, adhered to the Rule. John H. Hodges, Deputy County Administrator, Michael E. Crescenzo, Planning Director and J. Keith Thompson, Principal Planner, will testify to the consistent interpretation and application of the Rule. "[G]reat weight is given the consistent construction of an ordinance by the officials charged with its enforcement." Cook v. Board of Zoning Appeals of the City of Falls Church, 244 Va. 107 at 111 (1992). Such interpretations should be reversed only if "plainly wrong or based on erroneous legal principles." Donovan v. Board of Zoning Appeals, 251 Va. 271 (1996). There is no indication that the sequence of events required by the Rule was "plainly wrong." The principle of judicial deference to administrative interpretations has also been applied in the federal courts. United States of America v. Hoechst Celanese Corporation, et al., 128 F.3d 216 (1997).

Notwithstanding the possibility of an occasional staff error in reviewing thousands of lots over a period of decades, the consistent requirement that "first divisions" were required to actually precede any other divisions, should

be given deference. That requirement is a reasonable interpretation of the Zoning Ordinance language, by officials charged with the responsibility of administration, and liberalized the effect of the ordinances.

County disapproval of Sections A through E was based on the applicable ordinances and long-standing interpretations. There is nothing about the decision which is "arbitrary and capricious" as alleged by Bertozzi.

Bertozzi has not in any way been prevented from developing his land. Bertozzi still has the option of subdividing his property pursuant to the revised ordinances now in effect.

**III. The Interpretation by the Staff of the Grandfather Clause Adopted by the Board of Supervisors Should Not Be the Subject of Judicial Intervention.**

The "grandfather clause" ("the Clause") adopted by the Board of Supervisors in connection with subdivision and zoning ordinance changes effective October 9, 1996 included criteria relating to factual matters affecting individual applications. The applicable portion of the Clause for this case is subparagraph (a), which applies only if an application was submitted by October 9, 1996, in complete form, and in compliance with substantive ordinance requirements.

In applying the Clause, the County staff gave applicants the benefit of the Rule in determining whether applications were filed "in compliance with all substantive zoning and subdivision requirements . . . ." In other words, strictly applying the ordinance provisions, as mentioned above, Bertozzi could

have taken only one two-acre "first division" and left one residual lot, from the original tract of about 181 acres. Any remaining lots would have been required to be at least ten acres in size. Bertozzi's proposal did not comply with the Rule because he had skipped a step in the prescribed process. It did not comply with the actual terms of the prior Zoning and Subdivision ordinance requirements.

There is no requirement that County ordinances include grandfather clauses. The transition provided for by the Board of Supervisors, the Clause, did not allow circumvention of prior ordinance requirements. If Bertozzi's subdivision plats had been approved, he would have been allowed to ignore the procedures required of many other applicants over a long period of time, including other applicants filing the eleven plats listed on a sheet titled "Subdivisions Sent Back (Filed Prior to October 10)" (Exhibit 8) at the same time as Bertozzi. Bertozzi has provided no basis for his having a benefit given to no one else. The "substantive compliance" standard allowed for those meeting all except trivial requirements to receive the benefit of the liberal ordinance interpretation. The Clause is a form of what has been referred to as "legislative grace" for those landowners who followed all of the appropriate procedures prior to the ordinance changes. There is no evidence that Bertozzi did so.

The only statutory reference to grandfathering of subdivisions is in Virginia Code Section 15.2-2254 (formerly Section 15.1-473). That statute,

subparagraph 3, provides that land shall not be transferred without approval, "unless the subdivision was lawfully created prior to the adoption of a subdivision ordinance applicable thereto." The County's clause provided for a more liberal treatment of Bertozzi's subdivision than that required by State law, and the staff implemented that clause in a reasonable manner.

**Conclusion**

In conclusion, for the reasons stated above, the County respectfully moves the Court for entry of an order dismissing the Petition with prejudice and striking this case from the docket of the Court.

Respectfully submitted,

HANOVER COUNTY

By Counsel



A. Lisa Barker  
Senior Assistant County Attorney  
P. O. Box 470  
Hanover, Virginia 23069  
(804) 537-6035

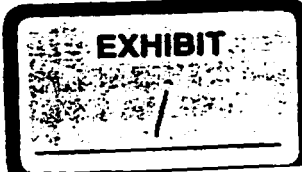
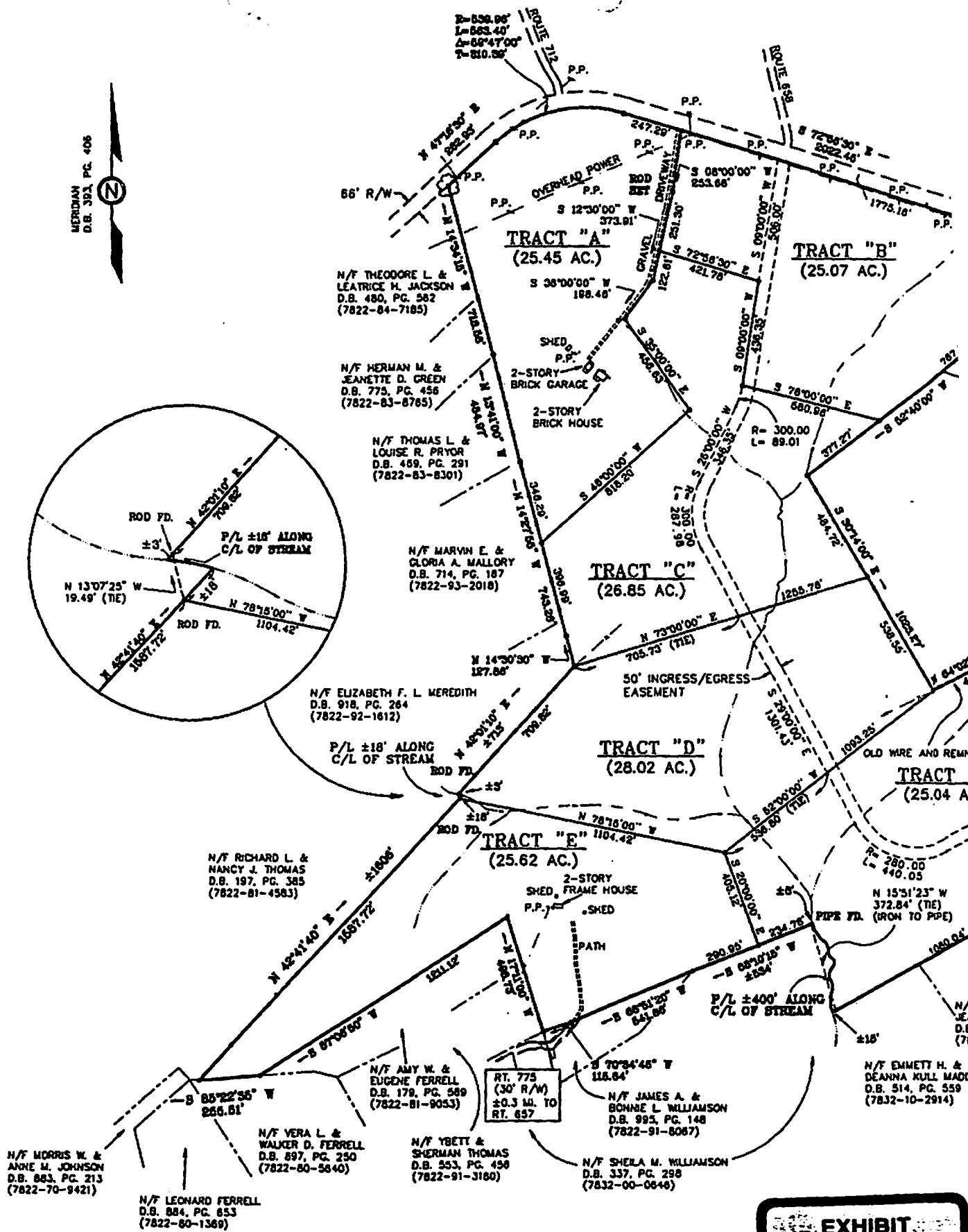
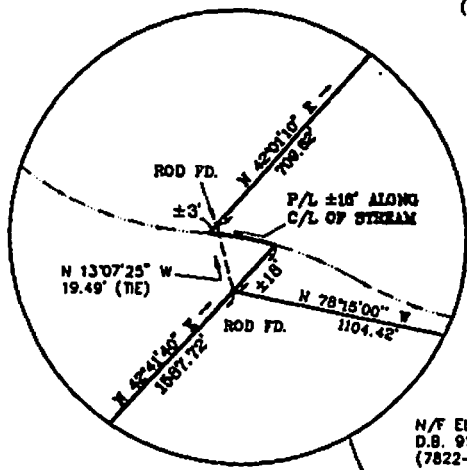
**CERTIFICATE**

I hereby certify that the foregoing Memorandum of Hanover County in Response to Petition for Appeal of Decision of the Hanover County Planning Office was mailed, postage prepaid, this 7<sup>th</sup> day of June, 1999, to Bruce P. Ganey, Esq., Ganey & Laibstain, P. C., P. O. Box 646, Ashland, Virginia.



A. Lisa Barker

MERIDIAN  
D.B. 393, PG. 406



54 (66' R/W)  
P.P. P.P.  
N/F SANIA METZGER  
D.B. 1060, PG. 101  
(7832-14-4306)  
N/F ANDREA V. METZGER  
D.B. 511, PG. 273  
(7832-14-1131)

N/F CLINTON A. &  
GWENDOLYN STRANE  
D.B. 522, PG. 368  
(7832-13-6593)

TRACT "G"  
(25.02 AC.)

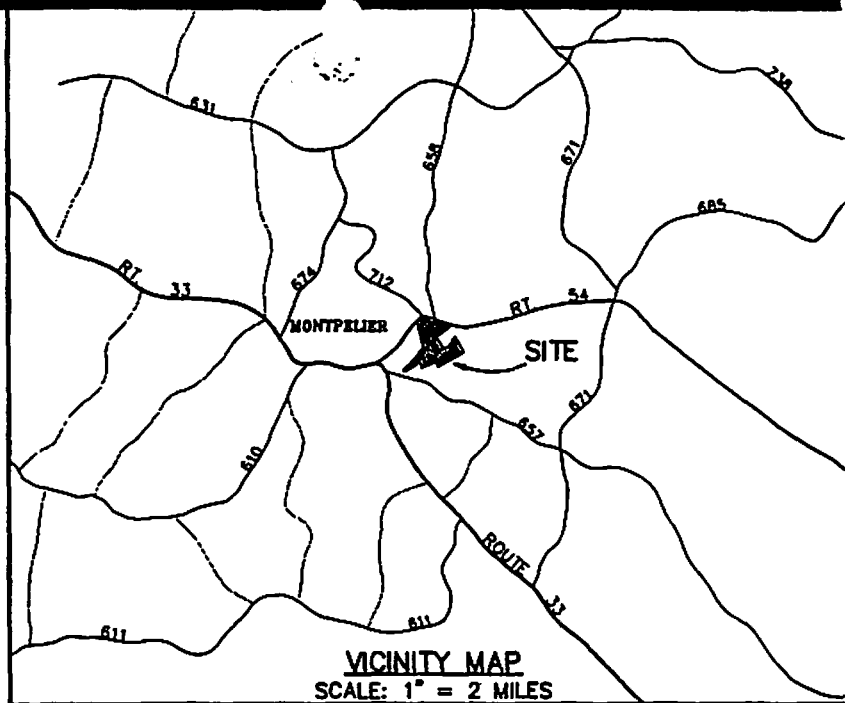
N/F NANCY D. WILLIAMS  
D.B. 992, PG. 783  
(7832-22-9186)

N/F MILTON A. REYNOLDS  
D.B. 857, PG. 367  
(7832-22-4179)

N/F KIRBY M. &  
JEANNETTE HARRISON  
D.B. 482, PG. 432  
(7832-21-4713)

N/F SIDNEY  
STEVENS NEGUS, JR.  
D.B. 791, PG. 388  
(7832-11-6067)

TON A. &  
E REYNOLDS  
D.B. 172  
PG. 172  
(1-6067)



"The COMMISSIONER of the DEPARTMENT OF TRANSPORTATION hereby certifies that the map and plat shown on this plat are correct in form and content and are in compliance with the provisions of the Code of Manover County, Virginia, and that the map and plat are in compliance with the provisions of the Code of Manover County, Virginia, and that the map and plat are in compliance with the provisions of the Code of Manover County, Virginia."

"This division has not been reviewed for compliance with, and certification of this plat does not guarantee by or specified therein is applicable under the provisions of the CODE OF MANOVER COUNTY, VIRGINIA."

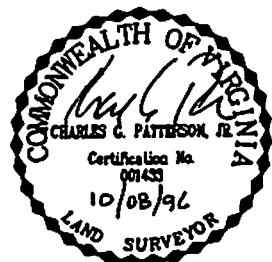
PLAT SHOWING SEVEN TRACTS OF LAND SITUATED  
ON THE SOUTH SIDE OF ROUTE NO. 54 NEAR MONTPELIER  
BEING A DIVISION OF  $\pm 181.1$  ACRES OF LAND  
RECORDED IN PLAT BOOK 35, PG. 373

SOUTH ANNA MAGISTERIAL DISTRICT  
HANOVER COUNTY, VIRGINIA

SEPTEMBER 27, 1996

CHARLES G. PATTERSON  
LAND SURVEYOR  
1007 ETHELWOOD ROAD  
GLEN ALLEN, VIRGINIA

400 0 400 800 1200  
SCALE: 1" = 400 FEET





BOARD OF SUPERVISORS

R.J. KLOTZ, JR., CHAIRMAN  
HENRY DISTRICT

J.T. "JACK" WARD, VICE-CHAIRMAN  
MECHANICSVILLE DISTRICT

TIMOTHY E. ERNST  
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CHICKAHOMINY DISTRICT

JOHN E. GORDON, JR.  
SOUTH ANNA DISTRICT

AUBREY M. STANLEY, JR.  
BEAVERDAM DISTRICT

ELTON J. WADE, SR.  
COLD HARBOR DISTRICT



HANOVER COUNTY

P. O. BOX 470

HANOVER, VIRGINIA 23069-0470

JACK BERRY  
COUNTY ADMINISTRATOR

RICHARD R. JOHNSON  
DEPUTY COUNTY ADMINISTRATOR

STERLING E. RIVES, III  
COUNTY ATTORNEY

October 29, 1996

Richard L. Baird, Jr.  
1910 Byrd Avenue, Suite 210  
Richmond, VA 23230

**CERTIFIED MAIL - RETURN  
RECEIPT REQUESTED**

Re: Subdivision Application - Sugar Maple, Sect. A - E

Dear Mr. Baird:

On October 9, 1996, the Hanover County Board of Supervisors adopted zoning and subdivision ordinances which significantly change rural subdivision development requirements. The new ordinance eliminated the distinction among Title II, Title III, and Title IV subdivisions, as well as both "first divisions" and "the 25 acre rule" as interpretations of the zoning and subdivision ordinances.

However, the Board also approved a provision which permits the review of "complete applications for final subdivision approval which...were in compliance with all substantive zoning and subdivision ordinance requirements in effect on [the date of submittal]". Because your application was received prior to adoption of the new ordinance, this provision applies to your subdivision.

The staff has completed its review of your application and is notifying you that your subdivision plat and application, filed on October 9, 1996, titled "Sugar Maple", prepared by Charles G. Patterson, Jr., and dated October 8, 1996, is **DISAPPROVED** because of failure to record first division lots (Title I, Art. 5, Sect. 2.7-1).

Your application, plats, and fees are being returned to you. Attached are copies of Ordinance 96-17 and 96-18 (the revised zoning and subdivision ordinances) for your use. Should you wish to reapply for subdivision approval, the standards specified in these ordinances will apply.

Richard L. Baird  
October 29, 1996  
page 2

Should you have any questions regarding this action, or if we can assist you in your reapplication, please contact J. Keith Thompson, Principal Planner; Jenifer Reiner, Applicant Liaison; or me.

Sincerely,

  
Michael E. Crescenzo  
Deputy Director of Planning

copies:       A. G. Bertozzi (Owner)  
              file: Sugar Maple

PS Form 3800, June 1991

*Sugar Maple, Sec A+E*

**Receipt for Certified Mail**  
No Insurance Coverage Provided  
Do not use for International Mail  
(See Reverse)

**Richard Baird**  
1910 Byrd Ave Suite 210  
Richmond, VA 23230

Postage \$

Restricted Delivery Fee 1996

Return Receipt for Merchandise

Postmark Date

*HANOVER PLANNING OFFICE*

*WAT P 151 586 884*

*ping*

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

*Sugar Maple, Sec A+E*

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address

2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

*Richard Baird*  
*1910 Byrd Ave*  
*Suite 210*  
*Richmond, Va. 23230*

4a. Article Number

*P-151-586-884*

4b. Service Type

☐ Registered ☐ Certified

☐ Express Mail ☐ Insured

☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

*12-15-94*

5. Received By: (Print Name)

*Richard Baird*

6. Signature: (Addressee or Agent)

*X [Signature]*

8. Addressee's Address (Only if requested and fee is paid)

*NOV - 5 1994*

PS Form 3811, December 1994

**Domestic Return Receipt**

*HANOVER PLANNING OFFICE*

Thank you for using Return Receipt Service.

Adopted 10/9/96  
M.C.C. 11/28/97

ORDINANCE 96 - 17  
October 9, 1996

AN ORDINANCE TO REPEAL TITLES III AND IV OF THE HANOVER COUNTY CODE AND TO AMEND THE HANOVER COUNTY CODE, TITLE II.- SUBDIVISION ORDINANCE - LESS THAN TEN ACRES, TO REDEFINE THE TERM "SUBDIVISION"; TO PROVIDE FOR THE REVIEW AND APPROVAL OF SUBDIVISIONS WITH PRIVATE ROADS; TO REVISE THE REQUIREMENTS FOR THE PROVISION OF ROADS; AND TO REVISE THE STANDARDS FOR PREPARATION, SUBMITTAL, AND APPROVAL OF PRELIMINARY AND FINAL PLATS.

BE IT ORDAINED BY THE HANOVER COUNTY BOARD OF SUPERVISORS:

1. That the Hanover County Code, Appendix, Title III: Subdivision Ordinance - Ten to Twenty-five Acres, and Title IV: Subdivision Ordinance - Twenty-five Acres or Greater (Private Road), are hereby REPEALED.
2. That the Hanover County Code, Appendix, Title II: Subdivision Ordinance - Less Than Ten Acres, shall be amended to read in its entirety as follows:

Title II  
SUBDIVISION ORDINANCE

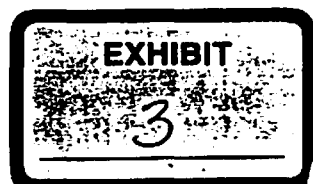
Section 1. Purpose and Title.

1-1 Purpose: The purpose of this Ordinance is to establish certain subdivision standards and procedures for Hanover County, Virginia, and such of its environs as come under the jurisdiction of the Board of Supervisors as provided by the Code of Virginia, 1950, as amended. These are part of a long-range plan to guide and facilitate the orderly beneficial growth of the community, and to promote the public health, safety, convenience, comfort, prosperity, and general welfare. More specifically, the purposes of these standards and procedures are to provide a guide for the change that occurs when lands and acreage become urban in character as a result of development for residential, business, or industrial purposes; to provide assurance that the purchasers of lots are buying a commodity that is suitable for development and use; and to make possible the provision of public services in a safe, adequate, and efficient manner.

1-2 Title: This Ordinance is known and may be cited as the "Subdivision Ordinance" of Hanover County, Virginia.

Section 2. Words and terms.

For the purpose of this Ordinance, certain words and terms used herein shall be interpreted or defined as follows: Words used in the present tense include the future; words in the singular number include the plural, and the plural, the singular, unless the natural construction of the word indicates otherwise; the word "lot" includes the word "parcel"; the word "shall" is mandatory and not directory; the word "approve" shall be considered to be followed by the words "or disapprove"; any reference to this ordinance includes all ordinances amending or supplementing the same; and all distances and areas refer to measurement in a horizontal plane.



- 2-1 Agent: The Hanover County Planning Commission.
- 2-2 Alley: A permanent service way providing a secondary means of access to abutting properties.
- 2-3 Building development: Any erection of any buildings or structures which is required to have a minimum lot size pursuant to the General District Regulations of the Hanover County Zoning Ordinance or which requires the issuance of a building permit by Hanover County.
- 2-4 Building setback: The minimum distance that a building must be set back from a street or lot line as required by a building setback line so designated on a plat of subdivision. The building setback line may be more but shall not be less than required in the Zoning Ordinance. The building setback line shall not be more than one-half the total lot depth.
- 2-5 Commission: The Planning Commission of Hanover County, Virginia.
- 2-6 Cul-de-sac: A street with only one outlet and having an appropriate turnaround for a safe, convenient reverse traffic movement.
- 2-7 Developer: An owner of property being subdivided.
- 2-7.1 Director: The Director of Planning for Hanover County.
- 2-8 Engineer: An engineer licensed by the Commonwealth of Virginia to lay out subdivisions.
- 2-9 Easement: A grant by a property owner of the use of land for a specific purpose or purposes.
- 2-10 Governing body: The Board of Supervisors of Hanover County, Virginia.
- 2-11 Health official: The health director of Hanover County or the sanitarian.
- 2-12 Highway engineer: The resident engineer employed by the Virginia Department of Transportation.
- 2-13 Jurisdiction: The area of territory subject to the legislative control of the governing body.
- 2-14 Lot: A numbered and recorded portion of a subdivision intended for transfer of ownership or for building development for a single building and its accessory buildings.
- 2-15 Lot, corner: A lot abutting upon two (2) or more streets at their intersection. The shortest side fronting upon a street shall be considered the front of the lot, and the longest side fronting upon a street shall be considered the side of the lot.

- 2-16 Lot, depth of: The mean horizontal distance between the front and rear lot lines.
- 2-17 Lot, double frontage: An interior lot having frontage on two (2) streets.
- 2-18 Reserved.
- 2-19 Lot, interior: A lot other than a corner lot.
- 2-20 Lot of record: A lot which has been recorded in the office of the Clerk of the Circuit Court of Hanover County, Virginia.
- 2-21 Lot, width of: The horizontal distance between the side lot line measured at the front building setback line.
- 2-22 Physical improvements: Any structure such as a drainage structure, central water systems, central sewage disposal systems, bridges, etc., and such other improvements as the agent may designate.
- 2-22.1 Plat: Includes the terms map, plan, plot, replat, or replot; map or plan of a tract or parcel or land which is to be, or which has been, subdivided. When used as a verb "plat" is synonymous with "subdivided."
- 2-23 Property: Any tract, lot, parcel, or several of the same collected together for the purpose of subdividing.
- 2-24 Street or road: A public or private thoroughfare which affords the principal means of access to abutting properties, whether designated as a freeway, expressway, highway, road, avenue, boulevard, lane, place, circle, or however otherwise designated.
- 2-25 Street or alley, public use of: The unrestricted use of a specified area or right-of-way for ingress and egress to two (2) or more abutting properties.
- 2-26 Street, major: A street or highway so designated on the Major Thoroughfare Plan of Hanover County.
- 2-27 Street, minor: A street other than a major street or collector street so designated on the Major Thoroughfare Plan of Hanover County, and intended primarily for providing access to abutting property.
- 2-28 Street, service drive: A public right-of-way generally parallel and contiguous to a major highway, primarily designed to promote safety by eliminating promiscuous ingress and egress to the right-of-way.
- 2-29 Street width: The total width of the strip of land dedicated or served for public travel, including roadway, curbs, gutters, sidewalks, and planting strips.

2-30 Subdivider: An owner of property being subdivided as defined in section 2-31.

2-31 Subdivision: The term "subdivision" shall mean the division of a parcel of land into two (2) or more lots or parcels of land for the purpose of transfer of ownership or building development, including any parcel previously separated by the owner or prior owner of such land for such purpose. The sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building lots or new roads, shall be exempt from the terms of this Ordinance. The division or partitioning of land in an estate by court order or among heirs of the original owner shall also be exempt from the provisions of this Ordinance.

2-32 Surveyor: A surveyor licensed by the Commonwealth of Virginia to lay out subdivisions.

2-33 Urban service area: All lands lying within those portions of Hanover County which are identified on a map entitled "Urban Service Area" which map is made a part of this Ordinance pursuant to the provisions of section 3A.

### Section 3. Administration.

3-1 Administrator: The agent appointed by the Board of Supervisors is hereby delegated to administer this Ordinance. In so acting, the agent shall be considered the agent of the governing body, and approval or disapproval as though it were given by the governing body. In the event the agent is not the Commission, the agent may consult with the Commission on matters contained herein.

3-2 Duties: The agent shall perform its duties as regards to subdivision and subdividing in accordance with this Ordinance and the Virginia Subdivision Act.

3-3 To consult: In the performance of its duties, the agent may call for opinions or decisions, either verbal or written, from other departments in considering details of any submitted plat. This authority by the agent shall have particular reference to the resident highway engineer and the health department.

3-4 Additional authority: In addition to the regulations herein contained for the platting of the subdivision, the agent may, from time to time, establish any reasonable additional requirements deemed necessary for the proper administration of this Ordinance or development of the property.

### Section 3A. Urban Service Area.

3A-1 Purpose and intent: The urban service area designation is intended to provide for certain regulations which are appropriate for development in urban areas but which regulations are not appropriate for development

in rural areas. The purpose of the urban service area is to clearly designate the areas in which urban development regulations shall be applicable and to also designate the areas in which rural development regulations shall be applicable.

3A-2 Establishment of urban service area: The urban service area shall consist of those portions of Hanover County described in Section 3A-2.1 et seq. and further designated as lying within an urban service area as shown on a map entitled "Hanover County, Virginia, Title 11 Subdivision Ordinance, Urban Service Areas." Such map is hereby incorporated into this Ordinance.

3A-2.1 Urban service area: The urban service area shall include all lands lying within an area described as follows: Beginning at a point 500 feet east of the intersection of the centerline of Route 615 and Interstate 295; thence in an easterly direction along the centerline of 1-295 to its intersection with the centerline of the Chickahominy River (the Hanover County/Henrico County line); thence in a northwesterly direction along the centerline of the Chickahominy River to its intersection with the centerline of the CSX Railroad; thence in a northerly direction along the centerline of the CSX Railroad to its intersection with the corporate line of the Town of Ashland; thence in a southerly direction, thence in an easterly direction, thence in a northeasterly direction along the corporate line of the Town of Ashland to its intersection with the right-of-way line of Interstate 95; thence in a southerly direction along the right-of-way line of 1-95 to a point 500 feet north of its intersection with the centerline of Route 657; thence in a southeasterly direction along a line 500 feet north of, and parallel to, the centerline of Route 657 to a point where said line intersects a line 500 feet northeast of, and parallel to, the centerline of Route 656; thence southerly along said line 500 feet east of, and parallel to, the centerline of Route 656 to a point where said line intersects with a line 500 feet north of, and parallel to, the centerline of Route 643; thence southeasterly, along said line 500 feet north of, and parallel to, the centerline of Route 643 to a point where said line intersects a line 500 feet north of, and parallel to, the centerline of Route 627; thence in an easterly direction along said line 500 feet north of, and parallel to, the centerline of Route 627 to a point where said line intersects a line 500 feet northeast of, and parallel to, the centerline of Route 615; thence in a southerly direction along a line 500 feet east of, and parallel to, the centerline of Route 615 to the point of beginning.

3A-3 Official map document; public information copies: The Official Urban Service Area Map shall be an original drawing maintained within the Planning Department offices and available for public inspection at reasonable times. Nothing in this Ordinance shall be interpreted as prohibiting the reproduction and public distribution of copies of said map, provided that such copies are clearly designated as copies and indicate the location of the official map and its availability for inspection. One copy of the map and this Ordinance shall be maintained in the Office of the Clerk of the Hanover County Circuit Court.



3A-4 Interpretations: The detailed descriptions contained in Section 3A-2.1 et seq. shall be inclusive as to the location of urban service area boundaries. The Agent shall provide, upon formal request, an interpretation as to the location of the boundaries of an urban service area.

Section 4. Procedure for making and recording plats.

4-1 Platting required: Any owner or developer of any tract of land situated within Hanover County who subdivides the same shall cause a plat of such subdivision, with reference to known or permanent monuments, to be made and recorded in the office of the Clerk of the Circuit Court of Hanover County, Virginia. No such plat of a subdivision shall be recorded unless and until it shall have been submitted, approved, and certified by the agent in accordance with regulations set forth in this Ordinance. No lot shall be sold in any such subdivision before the plat shall have been recorded.

4-1-1 In the event a plat for a subdivision is disapproved by the agent, the subdivider may appeal to the Board of Supervisors. The Board may then override the recommendation of the agent and approve said plat.

4-2 Draw and certify: Every such plat shall be prepared by a civil engineer or surveyor duly licensed by the State of Virginia, who shall endorse upon each plat a certificate signed by him setting forth the source of the title of the land subdivided, and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat, within an insert block, or by means of dotted boundary line upon the plat.

4-3 Owner's statement: Every such plat, or the deed of dedication to which such plat is attached, shall contain, in addition to the engineer's or surveyor's certificate, a statement to the effect that "the above and foregoing subdivision of (here insert correct description of land subdivided) as appears in this plat is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any" and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds, and when thus executed and approved as herein specified shall be filed and recorded with the office of the Clerk of the Circuit Court of Hanover County, Virginia, and indexed under the name of the landowners signing such statement and under the name of said subdivision.

4-4 No one exempt: No person shall subdivide any tract of land that is located within Hanover County as defined in the Virginia Land Subdivision Act except in conformity with the provisions of this Ordinance.

4-5 Private contracts: This Ordinance bears no relation to any private easement, covenant, agreement, or restriction, nor is the responsibility of enforcing such private easement, covenant, agreement, or restriction

implied herein to any public official. When this Ordinance calls for more restrictive standards than are required by private contract, the provisions of this Ordinance shall control.

4-6 Necessary changes: No change, erasure, or revision shall be made on any preliminary or final plat, nor on accompanying data sheets, after approval of the agent has been endorsed in writing on the plat or sheets, unless authorization for such changes has been granted in writing by the agent.

4-7 Fees:

1. There shall be a charge in connection with an application for the examination and approval of plat submitted pursuant to the requirements of this Ordinance, in accordance with a schedule of fees as adopted by the Board of Supervisors from time to time.
2. No fee paid pursuant to this section shall be refunded unless a written request for withdrawal of the application is received by the Planning Department within five (5) working days after the date of application.

Section 5. General regulations.

5-1 Mutual responsibility: There is a mutual responsibility between the subdivider and the county to divide the land so as to improve the general use pattern of the land being subdivided.

5-2 Repealed.

5-3 Flooding: Land subject to flooding and land deemed to the topographically unsuitable shall not be platted for uses that may increase danger to health, life, or property, or aggravate erosion or flood hazard. Such land within the subdivision shall be set aside on the plat for such uses as allowed by the Hanover Drainage and Floodplain Ordinance. To insure that residents will have sufficient land upon which to build which is flood-free, the agent may require the subdivider to provide elevations and flood profiles sufficient to demonstrate the land to be completely free of the danger of flood waters.

5-4 Building site: Grading plans for each lot in the subdivision may be required prior to or at the time that application is made for a building permit. Such grading plan shall be prepared by a certified civil engineer or land surveyor and shall show the location of the proposed building, the existing and proposed elevations at the building corner, lot corners, and the finished floor elevation of the ground floor, and the proposed direction of flow of the drainage on the lot.

5-5 Improvements: All required improvements shall be installed by the subdivider at his cost. The subdivider's bond shall not be released until construction, in conformance with the requirements of this Ordinance, has been inspected and approved by the agent or highway

engineer. All improvements in addition to the foregoing shall include the following requirements:

5-5-1A Lot size: The dimension and area of all lots shall comply with the requirements of the zoning district in which they are located. In zoning districts where lot averaging is permitted, the number of lots which may be smaller than the minimum average lot size shall be calculated for the entire property for which preliminary subdivision approval is granted. Individual sections of the subdivision may contain a higher percentage of lots smaller than the minimum average lot size permitted within the zoning district, but at no time shall the number of lots smaller than the minimum average lot size exceed the maximum percentage permitted within the zoning district in which the subdivision is located when calculated as a percentage of all lots having received final approval. Notwithstanding requirements of the zoning regulations, greater lot areas may be required where individual septic tanks or individual wells are used, if the health official determines that there are factors of drainage, soil conditions, or other conditions to cause potential health problems. The agent shall require that data from percolation tests be submitted as a basis for passing upon subdivisions dependent upon septic tanks as a means of sewage disposal.

5-5-1B Flood control and drainage: The subdivider shall provide all necessary information needed to determine what improvements are necessary to properly develop the subject property, including contour intervals, drainage plans, and flood control devices. The subdivider shall also provide plans for all improvements together with an engineer's or survey's statement that such improvements, when properly installed, will be adequate for property development. All improvements shall be in conformance with the Hanover County Floodplain and Drainage Ordinance and approved by the County of Hanover.

5-5-1C Erosion and sediment control: All subdivision plans shall include adequate provisions for control of temporary flooding or erosion and sediment control, both during construction and after completion of construction, in conformance with applicable ordinances.

5-5-2 Easements: The agent may require that easements for drainage through adjoining property be provided by the subdivider. Easements of not less than sixteen (16) feet in width shall be provided for water, sewer, power lines, and other utilities in the subdivision, when required by the agent.

5-5-3 Sanitary sewers: Sanitary sewers shall be required in all subdivisions where sanitary sewer is available. The agent may require the installation and capping of sanitary sewer mains and house connections if public utilities will be available within three (3) years from the date of recordation of the subdivision as prescribed by the Hanover Utility Improvement Plan. Plans for sanitary sewer installation shall be submitted and approved prior to the recordation of the final subdivision plat.

5-5-4 Public water:

- (a) Any subdivision located within an urban service area and located within an AR-2, AR-1, R, B, or M zoning district shall provide a central water system which conforms to the requirements of the design standards and specifications and the water regulations in effect on the date of final subdivision approval. Such central water system, upon completion by the developer and approval by the Director, shall be dedicated to the County of Hanover to be operated as a part of the public utility system.
- (b) Any subdivision not located within an urban service area and located in any R zoning district shall provide a central water system which conforms to the requirements of the design standards and specifications and the water regulations in effect at the time of final subdivision approval. Such central water systems shall be offered for dedication to the county, without cost, and shall be accepted by the county and operated as part of the public utility system, if the Board of Supervisors determines that county ownership and operation of the system would be consistent with the plans for the county's public utility system.
- (c) Any subdivision not located in an urban service area and not located in any R zoning district may provide a central water system. Any such system shall conform to the requirements of the design standards and specifications and the water regulations in effect at the time of final subdivision approval. Such central water systems shall be offered for dedication to the county, without cost, and shall be accepted by the county and operated as part of the public utility system, if the Board of Supervisors determines that county ownership and operation of the system would be consistent with the plans for the county's public utility system.
- (d) When a central water system is provided, the system shall include storage capacity of at least fifteen thousand (15,000) gallons in excess of requirements of the water regulations.
- (e) Where a subdivision located within an urban service area can be served by the extension of an existing privately owned central water system, such extension may be made in satisfaction of this requirement, provided that if such private system is acquired by the county at a later date, no charge may be assessed against the county for the improvements made as part of such extension. Whenever the requirement for provision of a public water system is to be satisfied by this subsection, a contract between the owner of the private central water system and Hanover County shall be executed prior to final approval of the subdivision plan by the agent. Such contract shall assure the future ability of the county to

acquire the improvements made as a part of the extension without cost and shall require that the extension meet the requirements of the design standards and specifications and the water regulations in effect on the date of final approval of the subdivision.

- (f) Neither central nor public water systems shall be required in the RRC, Rural Residential Cluster District nor the AR-6, Agricultural Residential District.

5-5-5 Fire protection: The installation of adequate fire hydrants in a subdivision at locations approved by the agent may be required if a central water system is installed in the subdivision. Fire hydrants shall have a six (6) inch or longer inlet and connection, a valve opening of at least four and one-half (4 1/2) inches, a four and one-half (4 1/2) inch pumper connection, and a two and one-half (2 1/2) inch hose connection. All connections must be of a national standard thread. Fire hydrants shall be placed on water mains having a diameter of not less than six (6) inches, and hydrants shall not be located more than one thousand (1,000) feet apart. There shall be maintained a minimum of forty (40) pounds hydrant pressure under normal operating conditions for the system in supplying water for domestic usage. The agent shall consult with the governing body of the county before approving such location.

5-5-6 Underground utilities: All utility lines except those in the A-1, Agricultural District, AR-6, Agricultural Residential District, M-2, Light Industrial District, and M-3, Heavy Industrial District, including, but not limited to, electric, CATV, telephone, or other lines, constructed after May 26, 1993, shall be placed underground. This requirement shall apply to lines serving individual sites within the development and to utility lines providing service to the development. Where aerial utility service is extended from lines existing on May 26, 1993, located across a major thoroughfare, such lines may be carried overhead to a terminal pole located along the thoroughfare right-of-way but within the subdivision, where the lines shall be placed underground. This shall not apply to electric transmission lines, the placement of which is regulated by the state corporation commission. Where aerial utility lines, excluding service lines, in existence on May 26, 1993, traverse the property proposed for subdivision, such lines may remain overhead unless the lines are subsequently moved. Relocation of existing poles placed within an easement contiguous to the highway right of-way which adjoins the property being subdivided, when done as part of construction of an entrance to the subdivision shown on an approved subdivision plat, shall be exempt from these requirements.

5-5-7 Storm drainage requirements: The subdivider shall submit a plan for handling of storm drainage, in conformance with the design criteria set forth in the Hanover County Storm Drainage and Floodplain Control Ordinance.

5-5-8 Reserved.

5-5-9 Off-site sewage and drainage improvements: Whenever the Board of Supervisors has established a general sewer and drainage improvement program applicable to the land proposed for subdivision or a portion thereof, the subdivider shall pay a pro-rata share of the cost of providing reasonable and necessary sewage and drainage facilities located outside the property limits of the land owned or controlled by him, which facilities are necessitated or required, at least in part, by the construction or improvement of his subdivision or development. Such share shall be the proportion of the total estimated cost which the increased sewage flow and/or increased volume and velocity of storm water runoff to be actually caused by the subdivision or development bears to total estimated volume and velocity of sewage and/or run-off from such area in its fully developed state. Each such payment received shall be expended only for the construction of those facilities for which the payment was required, and until so expended shall be held in an interest-bearing account for the benefit of the subdivider or developer.

5-6 Performance agreements and surety:

1. Required improvement construction or performance agreement required.

- (a) Before final approval and recordation of any subdivision plat, the subdivider shall construct all required improvements in accordance with the approved plans and standards set forth in this chapter and have said improvements accepted for maintenance by the appropriate County or State agency.
- (b) In lieu of said construction and acceptance, a performance agreement shall be executed with the County. The Director shall have authority to execute the agreement on behalf of the County. Such agreement, which shall be made on forms to be supplied by the agent and approved as to form by the County Attorney, shall as a minimum provide that all improvements required or voluntarily agreed to and/or all improvements shown on the final plat of subdivision shall be completed, approved, and accepted within eighteen (18) months from the date of recordation or, in the case of residential subdivision, upon the occupancy of one-third (1/3) of the residences in the subdivision, whichever occurs first. Extensions of such time may be granted by the agent after consideration of the following criteria:
  - (1) The needs of the occupants of residences in the subdivision for safe and convenient access to their residences.
  - (2) Deterioration of the roads, drainage, and other improvements completed or partially completed.

- (3) The season of the year and the type of work which remains to be completed.
- (4) The number of residences occupied and the eligibility of the facilities for acceptance by the appropriate State or local agency.
- (c) Improvement shall include any street, curb, gutter, sidewalk, bicycle trail, drainage or sewer system, water line as part of a public system, or other improvement dedicated for public use and maintained by the County, the Commonwealth, or other public agency, and the provision of other site-related improvements voluntarily agreed to and/or required by local ordinance.

2. Surety required. The performance agreement shall be accompanied by surety in an amount sufficient to provide for the improvements identified in the performance agreement. All surety shall be provided in a form approved by the County Attorney and shall be conditioned on construction of the improvements. Such surety may take one or more of the following forms:

- (a) Certification that the construction costs have been paid to the person constructing such facilities; such certification to be by notarized letter to the County and witnessed by the person constructing such improvements. Any person constructing such improvements shall furnish a letter of credit or performance bond reciting prior payment of construction cost in full; or
- (b) Personal or corporate bond with property, cash or corporate surety licensed to do business in the Commonwealth, in an amount equal to the cost of construction; or
- (c) A contract for the construction of such facilities and the contractor's bond naming the County as obligee, with surety as required above; or
- (d) A letter of credit issued by a bank or savings and loan institution having an office located in the State of Virginia and being regulated by the State of Virginia or the United States Government; or a letter of credit issued by a regulated bank or savings and loan institution with payment of the full amount of the letter of credit being confirmed and guaranteed by a regulated bank or savings and loan institution with an office located in the State of Virginia in the amount of the estimated cost of construction.

The cost of construction shall equal an estimate made by the Director based on unit prices for new public or private sector construction in the County and a twenty-five (25) percent allowance for estimated administrative cost, including

attorneys' fees if applicable, inflation, and potential damage to existing roads or utilities.

3. Maintenance and indemnifying bond required. Where, because of factors other than quality of construction, a road for public use is not accepted into the State System of Highways within the eighteen (18) month period, the subdivider shall furnish the County a maintenance and indemnifying bond, with surety, in an amount sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the System of Highways. Such amount shall be set by the Director of Public Works. The bond shall be effective for one (1) year and if such roads have not been accepted, the bond shall be annually reviewed as to amount by the Director of Public Works and renewed. In lieu of such bond, the County may accept a letter of credit. "Maintenance of such road" shall be deemed to mean maintenance of the streets, curb, gutter, drainage facilities, utilities, or other street improvements, including the correction of defects or damages and the removal of snow, water, or debris, so as to keep such road reasonably open for public usage. Surety required by this section shall conform to the requirements for bonds and letters of credit described in the preceding section and shall be provided in a form approved by the County Attorney.

4. Action when improvements not complete and accepted. Whenever the requirements of this ordinance and any provisions of a performance agreement executed pursuant to this chapter have not been completed or complied with within the time limits established for such completion and/or compliance, the Director shall proceed to enforce the agreement and the requirements of this ordinance and shall call upon any cash, letter of credit, or surety provided to guarantee performance. If any funds remain after all requirements or provisions have been completed and complied with and no defects or deficiencies are found therein, such funds shall be returned to the subdivider.

5. Bond reductions. Periodic partial and/or final complete release of any bond, escrow, letter of credit, or other performance guarantee required by the County under this section shall be made within thirty (30) days after receipt of written notice from the subdivider or developer of completion of part or all of any facilities required to be constructed hereunder unless the County notifies said subdivider or developer in writing by certified mail return receipt of nonreceipt of approval by the applicable State agency, or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the thirty (30) day period.

If no such action is taken by the County within the time specified above, the request shall be deemed approved, and a partial release granted to the subdivider or developer. No final release shall be granted until after expiration of such thirty (30) day period. No final release shall be granted until there is an additional request in writing sent by certified mail return receipt to the Director. The County shall act within ten (10) working days of receipt of the request; then if no



action is taken, the request shall be deemed approved and final release granted to the subdivider or developer.

Upon written request by the subdivider or developer, the County shall make periodic partial releases of such bond, escrow, letter of credit, or other performance guarantee in a cumulative amount equal to no less than eighty (80) percent of the original amount of the bond, escrow, letter of credit, or other performance guarantee, based upon the percentage of facilities completed and approved by the County or State agency having jurisdiction. Periodic partial releases may not occur before the completion of at least thirty (30) percent of the facilities covered by any bond, escrow, letter of credit, or other performance guarantee, or after completion of more than eighty (80) percent of said facilities. The County shall not be required to execute more than three (3) partial releases in any twelve (12) month period. Upon final completion and acceptance of said facilities, the County shall release any remaining bond, escrow, letter of credit, or other performance guarantee to the subdivider or developer. For the purpose of final release the term "acceptance" is deemed to mean: when said public facility is accepted by and taken over for operation and maintenance by the State agency, local government department of agency, or other public authority which is responsible for maintaining and for operating such facility upon acceptance.

5-7 Plans and specifications: Prints of the plans and specifications for all required physical improvements to be installed shall be prepared by an engineer or surveyor and shall be submitted to the agent for approval or disapproval. The required number of copies shall be determined by the agent. If approved, one copy bearing certification of such approval shall be returned to the subdivider. If disapproved, all papers shall be returned to the subdivider with the reasons for disapproval in writing.

5-8 Reserved.

5-8-1 Exceptions or planned unit development. Where the land within the unincorporated territory of Hanover County is proposed for development in accordance with the provisions of the Hanover County Zoning Ordinance pertaining to the establishment of Planned Unit Development Districts, the requirements and conditions for approval as set forth in that Ordinance shall prevail in the case of any conflict with these regulations; provided, however, that nothing in this section shall be construed as permitting any exception from the requirements of these regulations with regard to design, arrangement, or improvement of streets and highways within any proposed planned unit development except as specifically provided herein.

5-9 Part of a tract: Whenever part of a tract is proposed for platting and it is intended to subdivide additional parts in the future, a sketch plan for the entire tract shall be submitted with the preliminary plat.

[LOTS]

5-10 Shape: The lot arrangement, design, and shape shall be such that lots will provide satisfactory and desirable sites for buildings, and be properly related to topography, and conform to requirements set forth herein. Lots shall not contain peculiarly-shaped elongations solely to provide necessary square footage or area which would be unusable for normal purposes.

5-11 Location: Each lot shall abut on a street dedicated by the subdivision plat, or on an existing public dedicated street, or on a street which has become public by right of use unless otherwise specified herein. If the existing streets are not forty (40) feet in width and a greater width is not required by the Major Thoroughfare Plan, the subdivider shall make provisions in the deeds to the lots for all buildings to be constructed as to permit the widening by dedication of said roads or streets to a width of fifty (50) feet.

5-12 Corner lots: Corner lots shall be required to maintain a front yard setback only along the street upon which the majority of the lots in the block fronts. Building setback lines alongside yard frontages shall be a minimum of one-half the required front yard setback.

5-13 Side lines: Side lines of lots shall be approximately at right angles or radial to the street line.

5-14 Remnants: There shall be no remnants of parcels after subdivision. All property subdivided shall be included into the lots created or conveyed to adjoining property owners as additions to the existing lots.

5-15 Separate ownership: When the land covered by a subdivision includes two (2) or more parcels in separate ownership, and lot arrangement is such that a property ownership line divides one or more lots, the land in each lot so divided shall be transferred by deed to single ownership, simultaneous with the recording of the final plat. Said deed is to be deposited with the agent and held with the final plat until the subdivider is ready to record same, and they both shall be then recorded together.

5-16 Septic tanks and wells: In subdivisions where septic tanks or individual wells are contemplated the agent may require that the lot areas be greater than those required herein. If the health department determines that there are factors of drainage, soil conditions, or other conditions to cause potential health problems, the agent shall require the data from percolation tests be submitted as a basis for passing upon subdivisions dependent upon septic tanks as a means of sewage disposal. Each septic system and individual well shall be located on the lot served.

[BLOCKS]

5-17 Length: The maximum length of blocks generally shall be twelve hundred (1200) feet and the minimum length of blocks upon which lots have frontage of five hundred (500) feet.

5-18 Width: Blocks shall be wide enough to allow two (2) tiers of lots of minimum depth, except where fronting on major streets or prevented by topographical conditions or size of the property, in which case the agent may approve a single tier of lots of minimum depth.

5-19 Orientation: Where a subdivision adjoins a public road, the agent or commission may require that the greater dimension of the block shall front and/or back upon such public thoroughfare to avoid unnecessary ingress and egress which would cause dangerous traffic conditions or reduce the traffic-carrying capacity of the public road.

5-20 Business or industrial: Blocks intended for business or industrial use shall be designed specifically for such purposes with adequate space set aside for off-street parking and delivery facilities. Individual lots within blocks of subdivisions which have been zoned to a business or industrial classification may be omitted from the final plat allowing the property to be divided in block form only. The subsequent transfer of parcels within the previously recorded business or industrial subdivision shall not be construed as a resubdivision of the property; however, prior to the issuance of any building permit, the subdivider shall have plats for the division of the property approved by the Hanover County Planning Office to insure that all requirements of the Hanover County Subdivision Ordinance have been met.

[STREETS]

5-21-1 Alignment and layout of streets. Existing or proposed streets shall be designed in accordance with the requirements of the Major Thoroughfare Plan, including the minimum widths as specified hereunder. The arrangements of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas. The street arrangement must be such as to cause no unnecessary hardship to owners of adjoining property when they plat their own land; provide for convenient access to adjoining property; and avoid environmentally-sensitive lands. Proposed streets shall be extended by dedication to the boundary of such property and all streets proposed to extend beyond the property boundary shall be designed beyond the boundary to the point where the vertical curvature of the street coincides with the natural topography (figure 3). Half streets along the boundary of land proposed for subdivision may not be permitted. Whenever possible, streets should intersect at right angles. In all hillside areas, streets running with contours shall be required to intersect at angles of not less than sixty (60) degrees, unless approved by the highway engineer. All street intersections shall have a distance of at least two hundred (200) feet between center lines.

#### 5-21-2 Construction of streets.

- (a) Streets which provide lot access. All streets shown within the subdivision on the approved preliminary plan which provide lot access shall be constructed and paved, where required, to the boundary of the property being subdivided unless the slope at the boundary is greater than 3:1. In those cases, the road shall either be constructed and paved to the property line or to the point necessary to provide for access and to allow for all necessary slope, drainage, and other easements to be provided on site (figure 1).
- (b) Streets which do not provide access. Streets which do not provide lot access shall be constructed and paved, where required, for a minimum distance of fifty (50) feet from the edge of pavement of a road providing lot access. The remainder of the road to the property line or to a point where the approved road grade would create a slope no greater than 3:1 between the construction stub and the property line shall be graded and stabilized in accordance with the approved cross-section (figure 2).
- (c) Provision of easements. All necessary slope and other easements necessary for completion of road construction to the property line shall be provided prior to recordation of the final plat (figures 1, 2).
- (d) Completion of road construction. When property adjoining an existing subdivision with streets designed to be extended into the property is proposed for development, the developer shall complete construction of those streets contiguous to the property to be subdivided.

5-22 Service drives: Whenever a proposed subdivision contains or is adjacent to a limited access highway or expressway, provision shall be made for a service drive or marginal street approximately parallel to such right-of-way at a distance suitable for an appropriate use of land between such highway and the proposed subdivision. Such distances shall be determined with due consideration of the minimum distance required for ingress and egress to the main thoroughfare. The right-of-way of any major highway or street projected across any railroad, limited access highway, or expressway shall be of adequate width to provide for the cuts or fills required for any future separation of grades.

5-23 Approach angle: Minor streets shall approach the major or other streets at an angle of not less than eighty (80) degrees, unless the agent, upon recommendation of the highway engineer, shall approve a lesser angle of approach for reasons of contours, terrain, or matching of existing patterns.

5-24 Minimum width: The minimum width of proposed streets, measured from lot line to lot line, shall be shown on the plat, and shall be in accordance with the latest standards of the Virginia Department of

Transportation.

5-24-1 Alleys. If permitted, not less than twenty (20) nor more than twenty-eight (28) feet.

5-25 Alleys: Alleys should be avoided wherever possible.

5-26 Grading and paving: The grading, base, and pavement shall be in accordance with the latest minimum standards and specifications for subdivision streets and roads of the Virginia Department of Transportation.

5-27 Dead end: Dead end alleys shall be avoided wherever possible, but if unavoidable shall be provided with adequate turnaround facilities as determined by the agent.

5-28 Culs-de-sac: Street culs-de-sac shall meet the latest standards of the Virginia Department of Transportation. The maximum length of culs-de-sac may be increased in an acreage subdivision or planned unit development if justified by topography and environmental design considerations.

5-29 Names: Proposed streets, which are obviously in alignment with others already existing and named, shall bear the name of the existing streets. In no case shall the name of proposed streets duplicate existing street names irrespective of the use of the suffix avenue, boulevard, driveway, place, lane, or court. Street names shall be indicated on the preliminary and final plats and shall be approved by the agent.

Names of existing streets shall not be changed except by approval of the governing body.

5-30 Identification signs: Street identification signs shall be installed at all intersections according to the standards of the Virginia Department of Transportation.

5-31 Grades: The grades and sight distances of streets shall be in accordance with specifications established by the Virginia Department of Transportation.

5-31-1 Buyer's affidavit. No deed to a tract of land in a subdivision which contains private streets shall be recorded unless the same carries an affidavit duly signed and acknowledged by the grantee (buyer) in said deed to the effect that he acknowledges that all private roads in the subdivision shall not be maintained or improved by the Virginia Department of Transportation or any other public agency, and that it is the mutual duty and obligation of the abutting landowners or homeowners association (as applicable) to maintain and improve the roads which are private in nature and use.

5-32 Private streets: May be allowed only in subdivisions zoned to an A-1, Agricultural; AR-6, Agricultural Residential; RRC, Rural Residential Cluster; R-4, Residential Cluster; or Residential PUD classification where at no time in the future such streets will carry through traffic. Any subdivision containing private streets shall in the deed to each tract or lot carry a restrictive covenant to the effect that certain roads in the subdivision are private in nature and shall not be maintained by the Virginia Department of Transportation or other public road agency and that the maintenance and improvement thereof shall be the mutual obligation of the landowners in the subdivision and that such private roads shall not be taken into the state secondary system, unless and until the abutting landowners or homeowners' association shall have constructed and dedicated the private roads in accordance with the latest Virginia Department of Transportation specifications, and thereafter the Hanover County Board of Supervisors shall have recommended that said roads be taken into the State Secondary System of Highways.

5-32-1 Standards for private roads in A-1, Agricultural and AR-6, Agricultural Residential Districts: Private roads shall be permitted for all subdivisions in the A-1, Agricultural, and AR-6, Agricultural Residential District, in accordance with the standards set out below. No private road shall serve more than thirty-one (31) lots, including lots existing at the time of subdivision and those lots created through subdivision. Such improvements as required below shall be constructed or construction of the improvements secured in accordance with the requirements stated herein. All private roads shall either be extended and constructed to the property line of the parcel being subdivided or shall be designed and constructed as a cul-de-sac. Each cul-de-sac must terminate in a turnaround of a right-of-way radius of not less than fifty (50) feet or other turnaround design accepted by the Virginia Department of Transportation. No cul-de-sac road which intersects a public road other than one created by subdivision shall be less than two hundred (200) feet in length.

For the purpose of application of the private road standards set out below, the term "lot" shall include any real estate for which a metes and bounds description or a survey has been recorded.

When no more than four (4) lots are being created through subdivision, and the access to such lots serves no other property, a right-of-way fifty (50) feet in width shall be recorded on the plat to serve the lots. No road improvements shall be required. (fig. 4)

In subdivisions of five (5) or more lots, or when five or more lots are served by the same road, the roads in the subdivision for which approval is requested and those roads necessary to provide access to a road improved to these standards or to a public road shall be improved as specified below. (figures 5, 6)

Minimum right-of-way width: Fifty (50) feet

Minimum shoulder (width): Three (3) feet

Minimum travel surface (width): Eighteen (18) feet

Minimum travel surface (depth): Six (6) inches compacted stone (Virginia Department of Transportation standard 21-A or equivalent)

Preparation of subgrade: Subgrade shall be prepared by excavation and removal of all vegetative cover, root mat, and topsoil. Drainage systems must provide relief for surface runoff and groundwater conditions away from finished subgrade elevation. Road fill utilized to cross low areas shall be placed on excavated subgrade as described in this section, and shall consist of suitable backfill material as defined by the Virginia Department of Transportation Road and Bridge Specifications (most recent revision) or other methods as approved by the County Engineer. Inspection and approval of subgrade is required prior to placement of stone. The County Engineer will provide inspection of prepared subgrade with forty-eight (48) hours notice.

Compaction: Final compacted road surface shall be compacted in a manner such that a uniform texture is produced and the aggregates are firmly keyed. Irregularities in the surface shall be corrected by scarifying, remixing, reshaping, and recompacting until a smooth surface is secured. The compacted aggregate will be inspected for depth and surface condition by the County Engineer. Final inspections shall be provided with forty-eight (48) hours notice.

Maximum degree of curvature (radius): One hundred ten (110) feet

Maximum grade (percent): Ten (10) percent

Minimum stopping sight distance<sup>1</sup>: One hundred twenty-five (125) feet

Minimum intersection sight distance<sup>2</sup>: Two hundred (200) feet

Road identification signs shall be installed at all intersections in accordance with the Hanover County Property Numbering and Street Naming Manual and with Virginia Department of Transportation standard stop sign specifications.

<sup>1</sup> Distance based on 3.5' height of eye and 0.5' height of object.

<sup>2</sup> Distance based on 3.5' height of eye and 4.25' height of object.

Prior to approval, a Licensed Professional Engineer or Land Surveyor must certify that these requirements are met. If construction of roads is not completed prior to final approval of the plat, sufficient engineering design information must be submitted to the County Engineer prior to final approval. Sight distance easements and temporary slope easements must be dedicated on the final plat.

5-32-2 Public roads in A-1, Agricultural and AR-6, Agricultural Residential Districts: In subdivisions of thirty-two (32) or more lots, or when thirty-two or more lots are served by the same road, the roads in the subdivision for which approval is requested and those roads necessary to provide access to a public road shall be improved to public road standards and the developer shall take all other actions necessary for acceptance into the State System of Highways. (fig. 7)

5-33 Scenic drives: Where an existing or proposed street or road is designated as a scenic drive on the Comprehensive Plan, of which the Major Thoroughfare Plan is a part, the purpose and standards established for such drives to maintain their scenic qualities shall be observed in design and development of an adjacent subdivision, including, but not limited to, such factors as maintenance of existing alignments and natural vegetation, appropriate pavement design, and due care with respect to location and design of access points and building setback.

5-34 Visible for inspection: Upon completion of subdivision streets, sewers, and other improvements, the subdivider shall make certain that all monuments required by this Ordinance are clearly visible for inspection and use. Such monuments shall be inspected and approved by the engineer or agent before any improvements are accepted by the governing body.

#### [MONUMENTS]

5-35 Location-Concrete: Concrete monuments four (4) inches in diameter or square, three (3) feet long, with a flat top, containing four (4) numbers, three (3) steel bars, thirty-four (34) inches long and having one-half inch of cover, placed so that they are evenly spaced around the perimeter in the case of round monuments, and one in each corner in the case of square monuments, shall be set at all street corners, at all points where the street line intersects the exterior boundaries of the subdivision, and at angle points and points of curve in each street. The top of the monument shall have an exposed solid steel bar one-half inch in diameter located in the center of the monument so that it can be punched to identify properly the location of all points. The monument shall be set flush with the finished grade line.

5-36 Location-Iron pipe: All other lot corners shall be marked with iron pipes not less than three-fourths inch in diameter and twenty-four (24) inches long and driven so as to be flush with the finished grade. When rock is encountered, drill a hole four (4) inches deep in the rock and cement a steel rod one-half inch in diameter whose top shall be flush with the finished grade line.

5-37 Resubdivision prohibited; procedure for vacations:

- (a) Unless otherwise excepted, none of the lots shown on the approved subdivision plat may be further divided without approval of the Board of Supervisors.



- (b) Notwithstanding the provisions of part (a) above, upon application by the property owner, the Agent may approve a resubdivision which involves the vacation of a lot line for the purpose of adjusting a lot boundary or combining two (2) or more lots, but which does not involve the creation of additional building lots or the vacation of any street, alley, easement for public passage, or other public area. For the purposes of review and approval of a resubdivision made under this part (b), the Director of Planning shall be the agent.
- (c) The vacation of any feature of an approved subdivision, other than a lot line, which may be vacated under the provisions of (b) above, shall be subjected to the provisions of state law governing the vacation of a subdivision.

#### Section 6. Approval of plats.

6-1 Approval of an application: An application shall be approved by the agent unless they find the proposed subdivision detrimental to the public health, safety, or general welfare, including, but not limited to, those items set forth in section 6-3.

6-2 Approval required before sale: Whenever any subdivision of land is proposed, and before any permit for the erection of a structure shall be granted, the subdivider or his agent shall make formal application to the agent for approval of the subdivision plat. No lot shall be sold until a final plat for the subdivision shall have been approved by the agent and recorded with the Clerk of the Circuit Court.

6-3 Elements of the public health, safety, and general welfare: The purpose of this Ordinance being to promote and protect the public health, safety, and general welfare, through the provisions of this Ordinance including the plan of the proposed subdivision, the performance guarantee bond and the design standards, the agent shall also consider the following elements of public health, safety, and general welfare in determining if the proposal conforms to the purpose of this Ordinance. Approval shall be granted only if such proposal promotes the public health, safety, and general welfare with respect to the following:

- a. The proposal will not result in undue water pollution. In making this determination, the agent will consider: The amount of rainfall received in the area; the relation of the land of floodplain; the nature of the soil and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the presence of streams as related to effluent disposal; the applicable health and water resources department regulations.
- b. The proposal will have sufficient water available per lot, both physically and legally, for the foreseeable needs of the subdivision development.

- c. The proposal will not cause an unreasonable depreciation on an existing water supply.
- d. The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
- e. The proposal will not cause undue air pollution.
- f. The proposal will not cause unreasonable highway congestion or unsafe conditions with respect to use of the highways existing or proposed.
- g. The proposal will be in keeping with the character of the existing area and will aid in the orderly development of the county and the efficient use of public funds.
- h. The proposal will not cause an unreasonable burden on the capacity of the school system.
- i. The proposal will not place an unreasonable burden on the ability of the local government to provide water, sewage, fire, police, solid waste disposal, and other services.
- j. The proposal will not have an undue adverse effect on aesthetics, historic sites, or rare or irreplaceable natural areas (or upon wildlife and their habitat).

6-4 Preliminary plat of development for subdivisions of five (5) or more lots with public roads: The applicant shall submit copies of the preliminary plat of development with every application for preliminary approval. The required number of copies shall be determined by the agent. The preliminary plat shall include the following information:

- 1. Name of subdivision.
- 2. Magisterial district.
- 3. County and state.
- 4. Name of owner and developer.
- 5. Name of engineer or surveyor who prepared the plat.
- 6. Vicinity sketch, at a scale of one inch to two thousand (2,000) feet.
- 7. Scale of plat (no larger than one inch to two hundred (200) feet, unless previously approved by the agent).
- 8. North arrow.

9. Date of completion and any subsequent revisions.
10. Number of sheets - match lines.
11. Boundary survey, showing bearings and distances.
12. Zoning boundaries and districts on site.
13. Total acreage of subdivided area.
14. Number of lots in subdivision.
15. Approximate area and frontage of each lot.
16. Names and locations of abutting subdivisions.
17. Names of owners both within and adjoining subdivision.
18. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
19. Location, width, and purpose of other rights-of-way and easements.
20. Location of existing physical features, including buildings, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplain limits of one-hundred-year floods.
21. Proposed location of streets, showing widths and names.
22. Proposed lot layout, lot numbers, block letters, and approximate dimensions of lots (or locations of cluster development or planned unit development).
23. Location of the subdivision as part of some larger subdivision (or a tract of land) and by reference to permanent survey monuments with a tie to a section corner.
24. Estimated total number of gallons per day of water system requirements where a distribution system is proposed.
25. Estimated total number of gallons to be treated where a central sewage facility is proposed; or sewage disposal means and suitability where no central sewage facility is proposed.
26. Topography at vertical intervals of two (2) feet, unless waived or requested at a greater interval by the director.
27. Such other information as may be required from time to time by the agent.

6-4-1 Preliminary plat of development for subdivisions of five (5) or more lots with private roads: The applicant shall submit copies of the preliminary plat of development with every application for preliminary approval. The required number of copies shall be determined by the agent. The preliminary plat shall include the following information:

1. Proposed name of subdivision or name of the owner(s) of the tax parcel to be divided.
2. Magisterial district, County, and state.
3. Name(s) of owner(s) and developer(s) (if applicable).
4. Scale of plan (no greater than 1":400').
5. Tax map parcel number(s) of property to be divided.
6. Existing boundaries of property to be divided, including name and number of adjoining public roads (based on County base maps).
7. Lot layout with approximate dimensions.
8. Layout of proposed roads, including evidence of access which meets Code requirements to the subdivision.
9. Topography, at intervals of 5 feet.
10. North arrow.

6-5 Final plat of development for subdivisions of five (5) or more lots: The applicant shall submit sets of final construction plans for roads, drainage facilities, water and sewage systems, and erosion and sedimentation control for review and approval prior to the submission of a final plat of development. The required number of copies shall be determined by the agent. The final plat of development shall consist of the following:

1. Title block, to be located consistently on all sheets, and to include the following information:
  - a. Name of subdivision.
  - b. Magisterial district, county, state.
  - c. Name(s) of owner(s) and developer.
  - d. Name of surveyor or engineer who prepared the plat.
  - e. Scale of plat (no larger than one inch to two hundred (200) feet, unless previously approved by the agent).
  - f. Date of completion and any subsequent revisions.
  - g. Number of sheets-match lines.

2. Information block, to include the following information:
  - a. Total area in subdivision.
  - b. Total area in lots.
  - c. Total area in road rights-of-way.
  - d. Total area in common areas.
  - e. Total number of Iota.
  - f. Parcel numbers (from county tax maps). (Note: if subdivision comprises more than one parcel, the parcel number and area of each should be shown).
  - g. Zoning of parcel(s).
3. Approval block, three (3) inches by five (5) inches.
4. True north arrow.
5. Vicinity sketch, at a scale of one inch equals two thousand (2,000) feet.
6. Boundary survey, showing bearings and distances.
7. Zoning boundaries and districts on site.
8. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten (10) seconds, for the following:
  - a. Lot layout, lot numbers, block letters, and dimensions of lots.
  - b. Area and frontage of lots.
  - c. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
  - d. Location, width, and purpose of other rights-of-way and easements.
  - e. Location of existing physical features, including buildings, and all streams, we, or ditches, including direction of @ water level elevations, and floodplain--
  - f. Location of the subdivision as part of same larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.
9. The data of all curves along the road frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.
10. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the director.

11. Names and locations of abutting subdivisions.
12. Names of owners both within and adjoining subdivision.
13. Owner's statement.
14. Surveyor's/engineer's certificate and buyer's affidavit, if necessary.
15. Source of title certificate.
16. Location(s) of streets, showing widths and names.
17. Estimated total number of gallons per day of water system requirements where a distribution system is proposed.
18. Estimated total number of gallons per day to be treated where a central sewage facility is proposed.
19. Location, size, and types of existing and proposed utilities, including sanitary sewers, storm drains, water mains, manholes, and underground conduits.

6-6 Procedure: The subdivider shall submit his application for preliminary approval, together with all required documents and plats, to the agent according to rules and procedures established by the agent. For private road subdivisions, the Director shall be the agent. The subdivider shall be notified within thirty (30) sixty (60) days of any action taken by the agent. Application for final approval, together with all required documents and plats, shall be made to the director. The subdivider shall be notified within sixty (60) days of any action taken by the director.

6-7 No guarantee: Approval by the agent of the preliminary plat does not constitute a guarantee of approval of the final plat.

6-8 Procedure for review of final plat; recordation:

1. Notwithstanding the existence of an approved preliminary plat, the final plat shall not be approved by the director unless it conforms to all provisions of this chapter; to all other applicable county ordinances in effect as of the date of application for final plat approval; and substantially to the approved preliminary plat and conditions, when applicable.
2. When the plat for final approval is submitted and the director finds that substantial changes in the character of the area, either through development or proposals for development, the comprehensive plan, or development regulations require the review of a new preliminary plan, he may require the submission, review, and approval of a new preliminary plan prior to approval of the final plat.

3. The director shall, within sixty (60) days after the date of submission of a complete final application and plat, approve or disapprove the final plat in writing, giving with the latter specific reasons therefor. Specific reasons for disapproval shall be contained in a letter to the applicant, and shall relate in general terms such modifications or corrections as will permit approval of the plat. The date of submission of such complete application and plat shall constitute official submission as contemplated by section 15.1-475 of the Code of Virginia.
4. If the developer records a final plat which may be a section of a subdivision as shown on an approved preliminary plat and enters into a performance agreement and furnishes to the County surety in accordance with this chapter in the amount of the estimated cost of construction of the facilities to be dedicated within said section for public use and maintained by the County, the Commonwealth, or other public agency, the developer shall have the right to record the remaining sections shown on the preliminary plat for a period of five years from the recordation date of the first section, subject to the terms and conditions of this chapter in effect at the time of final approval and subject to engineering and construction standards and zoning requirements in effect at the time that each remaining section is recorded.
5. Upon final approval, the director shall record the plat in the Office of the Clerk of the Circuit Court of Hanover County.

6-9 Reserved.

6-10 Plat of development for subdivisions of four (4) or less lots: This procedure applies only to subdivisions containing four (4) lots or less where no roads, utility, or drainage construction is necessary. This procedure may only be used one time on any parcel of land. The applicant shall submit copies of the plat of development with every application. The required number of copies shall be determined by the agent. The plat of development shall include the following information:

1. Title block, to be located consistently on all sheets, and to include the following information:
  - a. Name of subdivision.
  - b. Magisterial district, county, state.
  - c. Name(s) of owner(s) and developer.
  - d. Name of surveyor or engineer who prepared the plat.
  - e. Scale of plat (no larger than one inch equals two hundred (200) feet, unless previously approved by the agent).
  - f. Date of completion and any subsequent revisions.
  - g. Number of sheets - match lines.

2. Information block, to include the following information:
  - a. Total area in subdivision.
  - b. Total area in lots.
  - c. Total area in road right&d-way.
  - d. Total area in common areas.
  - e. Total number of lots.
  - f. Parcel numbers (from county tax maps). (Note: if subdivision comprises more than one parcel, the parcel number and area of each should be shown).
  - g. Zoning of parcel(a).
3. Approval block, three (3) inches by five (5) inches.
4. True north arrow.
5. Vicinity sketch, at a scale of one inch equals two thousand (2,000) feet.
6. Boundary survey, showing bearings and distances.
7. Zoning boundaries and districts on site.
8. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten (10) seconds, for the following:
  - a. Lot layout, lot numbers, block letters, and dimensions of lots.
  - b. Area and frontage of lots.
  - c. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
  - d. Location, width, and purpose of other rights-of-way and easements.
  - e. Location of existing physical features, including buildings, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplains.
  - f. Location of the subdivision as part of some larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.
9. The data of all curves along the road frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.
10. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the director.



11. Names and locations of abutting subdivisions.
12. Names of owners both within and adjoining subdivision.
13. Owner's statement.
14. Surveyor's/engineer's certificate.
15. Source of title certificate.

6-11 Procedure: The subdivider shall submit his application and all required documents and plats to the director according to rules and procedures established by the agent. The subdivider shall be notified within sixty (60) days of any action taken by the director.

6-12 Conditions: The plat shall not be finally approved until the subdivider has complied with the requirements of this ordinance. Approval of the plat shall be written by the director on the face thereof.

## Section 7. Effectual clauses.

### 7-1 Exceptions:

1. Where the subdivider can show the provision of these standards would cause unnecessary hardship if strictly adhered to, and where, because of topographical or other conditions peculiar to the site, in the opinion of the agent a departure may be made without destroying the intent of such provisions, the agent may authorize an exception. Any exception thus authorized is to be stated in writing in the report of the agent with the reasoning, on which the departure was justified, set forth.
2. An exception to the rules and procedures shall be granted by the director for a single division for homestead purpose of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner. Such an exception, and the division of a lot or parcel thereunder, shall be subject to the following limitations and conditions:
  - (a) Only one such division shall be allowed per family member and shall not be for the purpose of circumventing this subsection. For the purpose of this subsection a member of the immediate family is defined as any person who is a natural or legally defined offspring, spouse, grandchild, grandparent, or parent of the owner.
  - (b) Any lot created hereunder shall conform to the provisions of the Zoning Ordinance prior to issuance of a building permit.

7-2 Penalties: Any owner or proprietor of any tract of land who subdivides that tract of land and who violates any of the provisions of

this Ordinance shall be guilty of a misdemeanor, punishable by fine of not less than ten dollars (\$10.00) nor more than two hundred dollars (\$200.00), and each day after the first during which violation shall continue shall constitute a separate violation.

7.3 Validity: Should any article, section, subsection, or provision of this Subdivision Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the Subdivision Ordinance as a whole or any part other than the part so declared to be invalid or unconstitutional.

7-4 Repeal: All ordinances or portions of ordinance in conflict with this Ordinance are hereby repealed to the extent of their conflict.

7-5 Amendments: This Ordinance may be amended in whole or in part, as provided by law, by the governing body provided that any such amendment may either originate with or be submitted to the commission for recommendation.

7-6 Appeal procedures: Except where the Board of Supervisors is "agent," decisions of the agent may be appealed to the Board of Supervisors. Such appeals may be filed in writing within forty-five (45) days of action by the agent.

7-7 Effective date: This Ordinance was adopted by the Board of Supervisors of Hanover County, Virginia, on October 9, 1996.

#### Section 8. Chesapeake Bay Preservation.

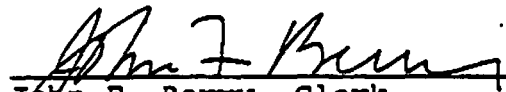
All submittals made pursuant to this title shall include a water quality impact assessment or other documents and information as may be required by the Hanover County Code, Chapter 10. No preliminary or final plat shall be considered complete without the required information. No preliminary or final plat shall be approved unless the proposed development is in compliance with all requirements of Chapter 10.

3. If any part, section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, declared to be unconstitutional or invalid, such portion of the ordinance shall be severed from the remainder of this ordinance, and the remainder shall continue in full force and effect.
4. This Ordinance shall be effective upon adoption; provided, however, that:
  - a. Complete applications for final subdivision approval which have been filed before the close of business on October 9, 1996, which were in compliance with all substantive zoning and subdivision ordinance requirements in effect on that date shall be reviewed in accordance with those requirements.

b. All lots or parcels described in deeds or plats recorded in the Hanover County Circuit Court Clerk's Office prior to the close of business on October 9, 1996, which meet all zoning and subdivision requirements for yards, setbacks, and access in effect on the date of building permit application shall be deemed to be in compliance with the lot dimension and area requirements of the Zoning Ordinance and requirements of the Subdivision Ordinance.

Public Hearing: October 9, 1996

Adopted: October 9, 1996

  
\_\_\_\_\_  
John F. Berry, Clerk  
Hanover County Board of Supervisors

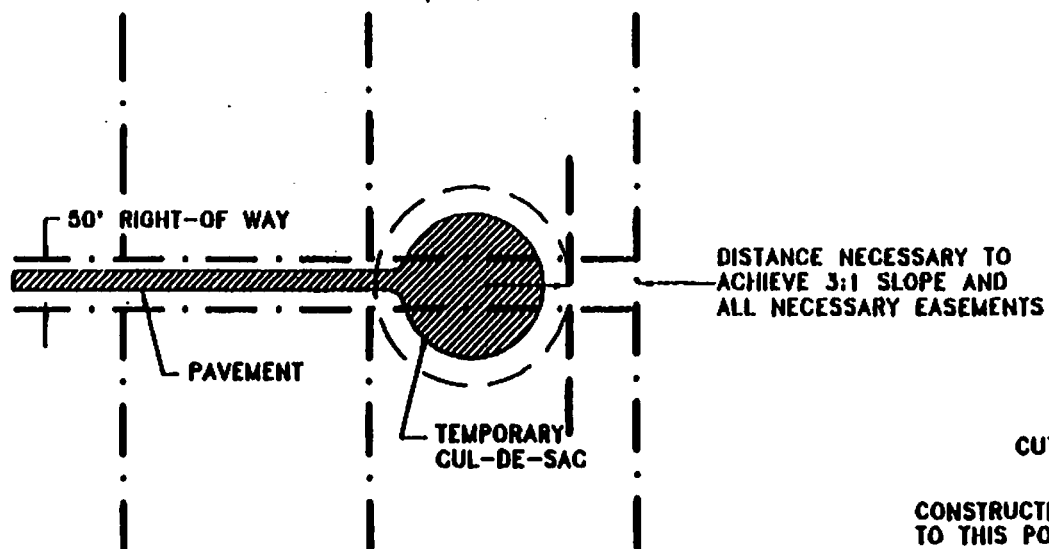


FIGURE 1  
ROADS WHICH PROVIDE LOT ACCESS

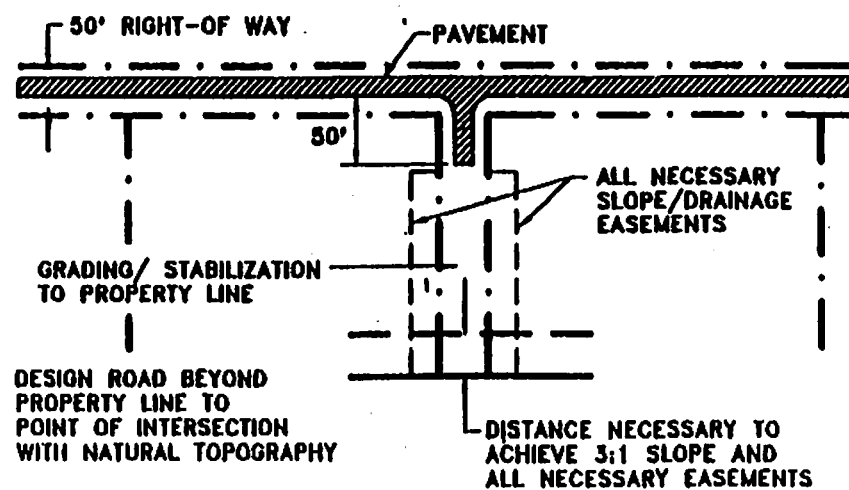


FIGURE 2  
ROADS WHICH DO NOT PROVIDE LOT ACCESS

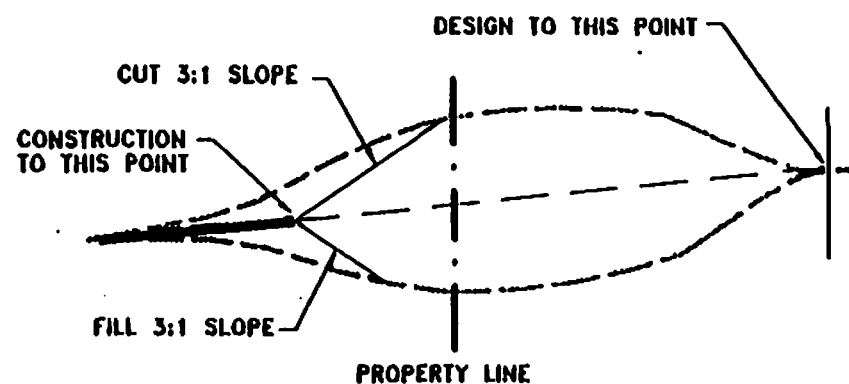
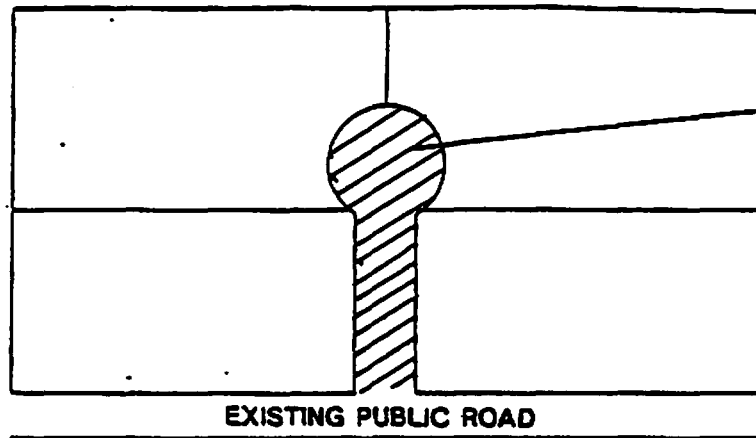


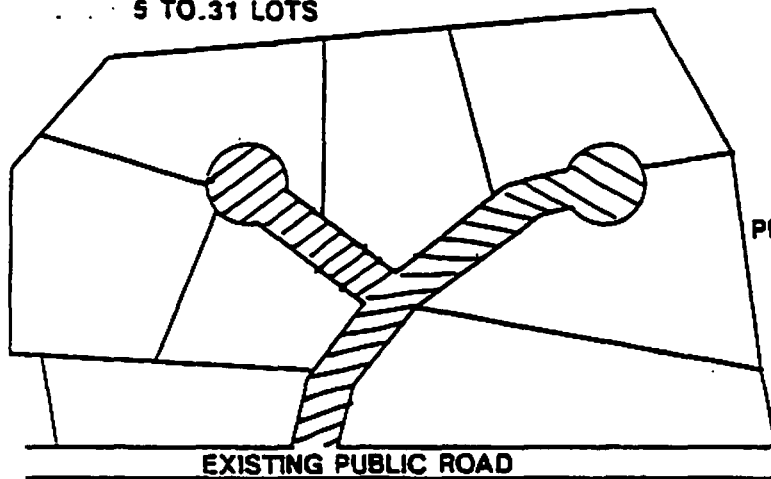
FIGURE 3  
CROSS SECTION

**FIG. 4 FOUR OR FEWER LOTS**



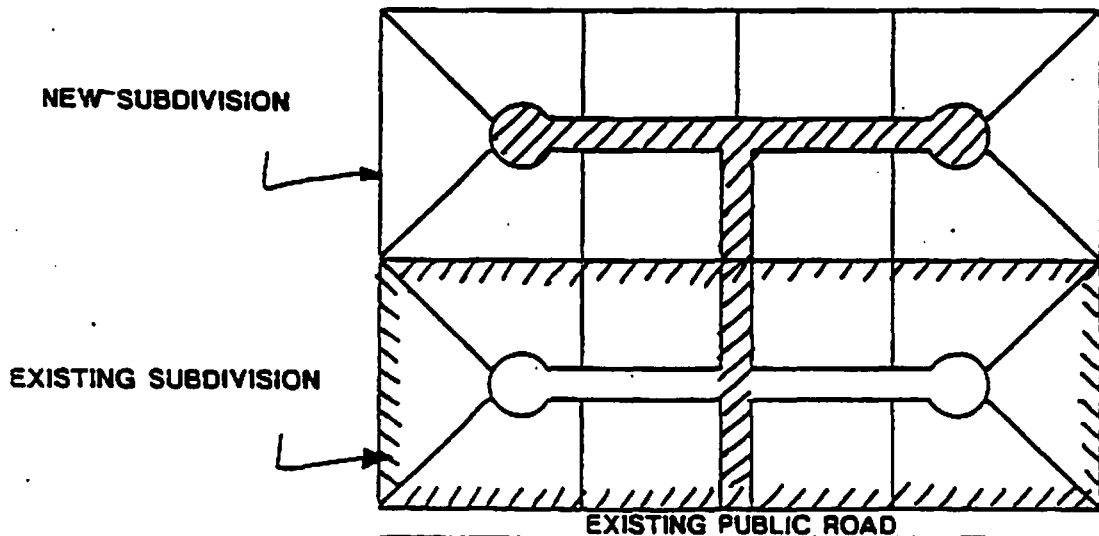
**50' R.O.W. -  
NO ROAD IMPROVEMENT  
REQUIRED**

**FIG. 5  
5 TO 31 LOTS**



**ALL ROADS SHADED  
IMPROVED TO NEW  
PRIVATE ROAD STANDARDS**

**FIG. 6.  
EXISTING ACCESS ROAD**

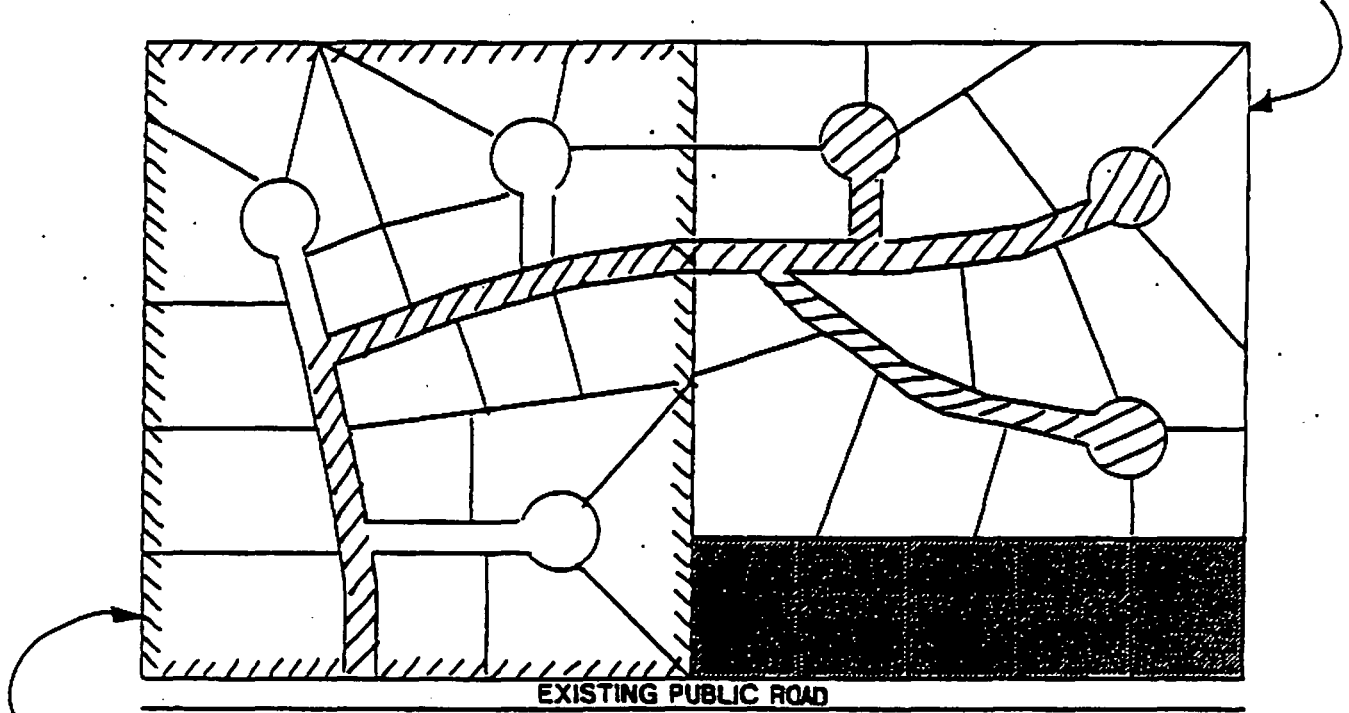


**ALL ROADS SHADED  
IMPROVED TO NEW  
PRIVATE ROAD STANDARDS**

FIG. 27

32+ LOTS - EXISTING ACCESS  
(LOT COUNT IS CUMULATIVE)

NEW SUBDIVISION



EXISTING SUBDIVISION

ALL ROADS SHADED IMPROVED TO PUBLIC ROAD STANDARDS

Adopted 10/19/96  
MCC 1/28/97

ORDINANCE 96-13  
October 9, 1996

AN ORDINANCE TO AMEND THE HANOVER COUNTY CODE, TITLE I.- ZONING, TO DELETE THE AC, AGRICULTURAL CONSERVATION DISTRICT; TO CREATE AN AR-6, AGRICULTURAL RESIDENTIAL DISTRICT; TO REVISE THE A-1, AGRICULTURAL DISTRICT REQUIREMENTS FOR LOT SIZES; AND TO PROVIDE FOR FAMILY PROPERTY CONVEYANCES OF LOTS WITH LESS THAN TEN ACRES OF AREA IN THE A-1, AGRICULTURAL DISTRICT.

BE IT ORDAINED BY THE HANOVER COUNTY BOARD OF SUPERVISORS:

1. That the Hanover County Code, Appendix, Title I, Zoning, Article 2, Section 2, definition of "lot area", shall be adopted, and the definition of "subdivision" shall be amended. The definitions shall read as follows:

Lot, area: The gross acreage of the property less the acreage of public and private roads, unless otherwise specified in this Ordinance. In all districts other than A-1, Agricultural, and AR-6, Agricultural Residential, the acreage in floodplains shall not be included in lot area.

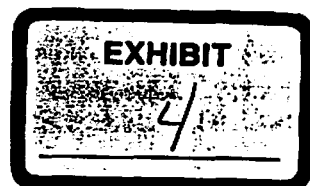
Subdivision: The term "subdivision" shall mean the division of a parcel of land into two (2) or more lots or parcels of land for the purpose of transfer of ownership or building development, including any parcel previously separated by the owner or prior owner of such land for such purposes. The sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building lots, shall be exempt from the terms of the ordinance. The division or partitioning of land in an estate by court order or among heirs of the original owner shall also be exempt from the provisions of this ordinance.

2. That the Hanover County Code, Appendix, Title I, Zoning, Article 5, Section 1, "A-C, Agricultural Conservation District", shall be deleted in its entirety, and Section 2, "A-1, Agricultural District", shall be redesignated as "Section 1". The section shall read in its entirety as follows:

ARTICLE 5. DISTRICT REGULATIONS

Section 1. A-1, Agricultural District.

1.1 Purpose of the district. The purpose of this district is to provide for a full range of agricultural activities and to protect agricultural land, as one of the county's most valuable natural resources, from the depreciating effect of objectionable, hazardous, and unsightly uses. The district is also intended for protection of watersheds, water resources, forest areas, and scenic values, and at the same time to provide for spacious residential development for those who choose this environment and to prevent untimely scattering of more dense urban uses which should be confined to areas planned for efficient extension of public service.



1.2 Permitted uses. A building or land shall be used only for the following purposes:

1. Detached single-family dwellings.
2. Agriculture, including horticultural, chemical, or general farming, truck gardens, cultivation of field crops, orchards, groves, or nurseries for growing or propagation of plants, trees, and shrubs, including temporary sawmills for cutting trees grown on the premises and use of heavy cultivating machinery, spray planes, or irrigating machinery, dairy farming, keeping or raising for sale of large or small animals, reptiles, fish, birds, or poultry, and including structures for processing and sale of products raised on the premises; provided:
  - (a) Any sawmill, grain drier, commercial feed lot or hog raising operation shall be located at least two hundred fifty (250) feet from any dwelling not located on the premises.
  - (b) Structures for commercial poultry raising shall be located at least two hundred (200) feet from any dwelling not located on the premises and at least one hundred (100) feet from any street or road.
  - (c) Commercial slaughtering and processing of large animals, such as horses, cows, pigs, sheep, or goats shall not be conducted on the premises.
3. Reserved.
4. Dog kennels, noncommercial; provided any open pens, runs, cages or kennels or any place for keeping more than five (5) adult dogs shall be located at least two hundred (200) feet from any side or rear lot lines.
5. Golf courses, not lighted for night play and not including miniature golf courses, putting greens, driving ranges, and similar activities operated as a business, but including a building for a golf shop, locker room, and snack bar as an accessory use to a permitted golf course, providing no such building is located closer than one hundred (100) feet from adjoining property lines. Practice greens and tees may accompany a standard nine (9) hole or eighteen (18) hole golf course occupying at least seventy-five (75) acres.
6. Facilities and structures necessary for rendering utility service, including poles, wires, transformers, telephone booths, and the like for normal electrical power distribution or communication service, and pipelines or conduits for electrical, gas, sewer, or water service, but not including buildings, treatment plants, pumping or regulator stations, substations and power transmission lines which are permitted as conditional uses.
7. Grain storage structures.



8. Greenhouse, commercial.
9. Hospital or clinic for large or small animals; provided that all buildings, structures, pens, or open kennels shall be located at least two hundred (200) feet from any lot line.
10. Hospital or clinic for small animals (dogs, cats, birds, and the like); provided such hospital or clinic and any treatment rooms, cages, pens, or kennels be maintained within a completely enclosed, soundproof building, and that such hospital or clinic be operated in such a way as to produce no objectionable odors outside its walls.
11. Military bases and appurtenances and parks operated by the United States Government or agencies of the Commonwealth of Virginia.
12. Public and private forests, wildlife reservations, similar conservation projects.
13. Railroad rights-of-way, including a strip of land with tracks and auxiliary facilities for track operations, but not including passenger stations, freight terminals, switching and classification yards, repair shops, round houses, power houses, interlocking towers, and fueling, sanding and watering stations.
14. Recreational uses such as tennis courts, swimming pools, and other similar activities operated exclusively for the use of private membership and not for commercial purposes; provided that no such use, structure, or accessory use is located closer than fifty (50) feet to any adjoining property line.
15. Stable, public or commercial; provided that any building for keeping of animals shall be located at least two hundred (200) feet from any side or rear lot lines, and that there shall be housed on the premises no more than one horse or pony for each acre of land.
16. Stable, private, or keeping of horses, ponies or other livestock for personal enjoyment and not as a business; provided that any building for keeping of animals shall be located at least one hundred (100) feet from any side or rear lot lines and that there shall be housed or kept on the premises no more than one horse or pony for each acre of land.
17. Raising for sale of birds, bees, fish, rabbits, and other small animals, provided any use shall be located at least two hundred (200) feet from any side or rear lot lines.
18. Frog or fish farms, provided any use shall be located at least two hundred (200) feet from any side or rear lot lines.
19. Medical office, limited to two (2) doctors and their staffs (no more than two (2) staff members per doctor).

### 1.3 Permitted accessory uses.

1. Accessory uses as follows on a farm of ten (10) acres or more:
  - (a) Accessory structures for sale or processing of farm products raised on the premises.
  - (b) Accessory, open or enclosed storage of farm materials, products, or equipment.
  - (c) Accessory farm buildings, including barns, stables, sheds, tool rooms, shops, bins, tanks and silos.
  - (d) Dwellings for persons permanently employed on the premises.
2. Domestic storage in main building or in accessory building.
3. Garage, private.
4. Guest houses.
5. Home occupations in a main building.
6. Keeping of small animals, insects, reptiles, fish, or birds, but only for personal enjoyment or household use and not for a business, as an accessory to a nonfarm dwelling on a lot of not less than two (2) acres.
7. Servants' quarters.
8. Storage of a boat trailer or camp trailer or a boat, but not in front yard.
9. Swimming pool and game courts, lighted or unlighted, for use of occupants or their guests.
10. Signs as regulated in article 7, section 3.
11. Temporary buildings, the uses of which are incidental to construction operation during development being conducted on the same or adjoining tract or subdivision and which shall be removed upon completion or abandonment of such construction, or upon the expiration of a period of two (2) years of the time of erection of such temporary buildings, whichever is sooner.
12. Accessory off-street parking and loading spaces. Open or enclosed space for parking one commercial vehicle of not more than one ton capacity and used by the occupant of a dwelling shall be permitted as accessory.
13. The location of office or construction trailers for a period not to exceed one year.

14. Noncommercial fuel alcohol distillery.

15. Foster care and adult family care.

1.4 Reserved.

1.5 Conditional Uses. The following uses may be permitted as conditional uses if approved by the Board of Supervisors in accordance with the procedures, guides and standards of articles 7 and 9:

1. Airports and landing fields, provided they shall comply with the recommendations of the Federal Aviation Agency.
2. Camps, day or boarding, private or commercial.
3. Cemetery, including a crematorium.
4. Circus or carnival grounds, amusement park, zoo or midway, permanent or temporary for a specified time period.
5. Exposition center or fairground.
6. Heliport or helistop.
7. Hospitals and sanitariums.
8. Institutions, educational or philanthropic, including museums, art galleries and libraries.
9. Livestock auction market.
10. Private clubs.
11. Public or governmental buildings and uses, including schools, fire stations (volunteer or otherwise), parks, parkways, and playgrounds; and public boat landings.
12. Public utilities or public service uses, buildings, generating or treatment plants, pumping or regulator stations, substations and transmission lines.
13. Race track, any type, including horses, stock cars, or drag strip.
14. Recreation facility, commercially operated, such as fishing or boating lake, camp ground, picnic grounds, or dude ranch, and accessory facilities, including sale of food, beverages, bait, supplies and equipment.
15. Sanitary landfill or trash collection site.
16. (a) Excavation or filling, borrow pits, extraction of stone, sand or gravel, stripping of topsoil (but not including stripping

of sod) and other major excavations other than for construction of swimming pools and foundations for buildings and other than those approved in connection with a street, subdivision or planned residential development.

- (b) Crushing, treating, washing and/or processing of materials resulting from a use permitted in paragraph (a) above when conducted on the same property.
- 17. Sports area or stadium, commercial athletic field or baseball park.
- 18. Swimming or tennis club, commercially operated.
- 19. Reserved.
- 20. Radio or television broadcasting station or tower more than one hundred twenty-five (125) feet in height, provided construction and safety features are approved by the Administrator in accordance with applicable regulations and provided no hazard is created in an Airport Approach Zone.
- 21. Churches, rectories, parish houses, convents and monasteries, temples, and synagogues, or the expansion of any existing church, temple, or synagogue by more than fifty (50) percent of its floor area.
- 22. Agricultural and forestal support center.
- 23. Antique shop.

1.6 Uses permitted as special exceptions. The following uses may be permitted as special exceptions, if approved by the Board of Supervisors in accordance with the procedures, guides, and standards of article 8:

- 1. Temporary and conditional permits for the following uses:
  - (a) Archery ranges.
  - (b) Asphalt batching plants or concrete batching plants.
  - (c) Commercial dog kennels.
  - (d) Miniature golf courses or driving ranges.
  - (e) Nonaccessory tents for special purposes.
  - (f) Outdoor displays or promotional activities.
  - (g) Pony rings.
  - (h) Raising for sale of birds, bees, fish, rabbits and other small animals in an Overlay Urban Development District only.

- (i) Rifle or pistol ranges, trap, or skeet shooting.
- (j) Sawmill for cutting timber not grown on the premises.
- (k) Temporary buildings for use as a sales or rental office for an approved real estate development or subdivision.
- (l) A private garage for more than four (4) automobiles.
- (m) Cemetery for pets.
- (n) Convalescent homes, nursing homes, or homes for the aged.
- (o) Day nurseries or child or adult day care centers.
- (p) Frog or fish farms, in an Overlay Urban Development District only.
- (q) Sale of farm products not raised on the premises. Such sale shall be permitted only in conjunction with sales pursuant to section 2.3(1) above and only on a lot no less than ten (10) acres in area.
- (r) Mobile homes for living quarters as follows:
  - (1) accessory to a farm;
  - (2) in cases of hardship, as defined in section 2.6B.2(b), below;
  - (3) during the actual construction phase of a residential dwelling unit by the occupant of the mobile home;
  - (4) or during the actual repair when the permanent dwelling of the applicant has been rendered uninhabitable by a fire, natural disaster, or sudden accidental event.
- (s) Equipment storage yards accessory to a business office for construction or service contractors, operated as a home occupation, when located outside of the Overlay Urban Development District, provided:
  - i) The maximum number of employees on site shall not exceed ten (10) per establishment.
  - ii) There shall be no more than ten (10) pieces of motor propelled equipment stored per site, related to the designated use.
  - iii) There shall be a minimum lot size of five (5) acres, and no more than two (2) acres shall be devoted to the use permitted pursuant to this section.

- iv) There shall be no associated structure on site larger than five thousand (5,000) square feet in size.
- v) When equipment storage is within one hundred (100) feet of a property zoned for residential use, the equipment shall be screened in accordance with the standards specified in Article 7, Section 2A.
- vi) Applications shall be accompanied by a sketch plan prepared in accordance with the standards specified in Article 7, Section 7.2.
- (t) Home occupations in an accessory building, home craft shops, or retail sales businesses conducted as a home occupation.
- (u) Sale of Christmas trees not raised on the premises.
- (v) Auction sales, on a lot no less than ten (10) acres in area, located outside of the Overlay Urban Development District, with no more than four (4) such sales in any calendar year.
- (w) Open or enclosed space for the storage of one (1) commercial vehicle with greater than one (1) ton capacity on property located outside of the Overlay Urban Development District and outside of an approved subdivision, subject to the following standards:
  - i) the Tax Parcel on which the vehicle is stored shall be a minimum of two (2) acres in area and shall have public road frontage;
  - ii) if the vehicle is stored in an open space, the space shall be located at least one hundred feet (100') from any property zoned for residential use or shall be screened in accordance with the standards specified in Article 7, Section 2A; and
  - iii) a sketch plan shall be submitted for review at the time of application, in accordance with the standards specified in Article 7, Section 7.2.
- (x) Bed and breakfast, in accordance with the specific standards and requirements of Article 7, Section 8.9.

1.6A. Temporary mobile home use. Mobile homes may be used for a period of six (6) months from the date of an event rendering a dwelling uninhabitable, in the event of destruction of the dwelling or damage to the dwelling which renders the dwelling uninhabitable, provided that a permit for such use is obtained from the Zoning Administrator.

1. The Zoning Administrator shall have the authority to issue permits for such use if the applicant meets the following requirements:

- (a) An application shall be filed in the Planning Office on a form provided by the Zoning Administrator. The application shall include a verified statement that use of the mobile home is necessary because of damage or destruction to a dwelling on the site where the mobile home will be located and that the mobile home will be used only as a dwelling for the residents of the original dwelling. The application shall also document the nature and date of the event causing the damage or destruction.
  - (b) The site must comply with all requirements of the Hanover County Code, including the Zoning Ordinance and Subdivision Ordinance.
- 2. The permit shall be valid for a period of six (6) months from the date of the event causing the damage or destruction.
  - 3. The site shall remain in compliance with all requirements of the Hanover County Code, including the Zoning Ordinance and Subdivision Ordinance, during the term of the permit. The permit shall be void upon failure of the applicant to maintain compliance with all requirements.
  - 4. Prior to the expiration date or the voiding of any permit the mobile home shall be removed from the site by the owner or applicant.

1.6B. Standards for Special Exceptions for mobile homes as temporary living quarters.

- 1. For any request to use a mobile home as temporary living quarters during the actual construction phase of a residential dwelling unit by the occupant of the mobile home, or during the actual repair when the permanent dwelling of the applicant has been rendered uninhabitable by a fire, other natural disaster, or sudden accidental event, the following standards shall apply:
  - a. The time period for the initial Special Exception shall not exceed one (1) year from the date of approval. The total time period, including extensions, for the temporary use of the mobile home shall not exceed three (3) years from the date of approval of the Special Exception by the Board of Supervisors, except when permitted by the Board of Supervisors upon demonstration by the applicant of extenuating circumstances. When an extension is denied, or upon expiration of the Special Exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.
  - b. When such a Special Exception is granted, improvements shall be completed in accordance with the following schedule:

- 1) Year One (1): At a minimum, mobile home placement, well installation, septic tank installation, and provision of access shall be completed.
  - 2) Year Two (2): At a minimum, the Building Permit for the permanent dwelling shall be obtained, construction of the footing and the foundation completed, and the dwelling framed and protected from weather.
  - 3) Year Three (3): At a minimum, finish work shall be completed, a Certificate of Occupancy obtained, and the mobile home removed from the site within sixty (60) days of issuance of the Certificate of Occupancy.
- c. Requests for extensions for completion during the three (3) year period following the date of original approval of the Special Exception by the Board of Supervisors may be granted by the Board of Supervisors upon demonstration by the applicant of continuing compliance with the schedule for completion as set forth in Section 2.6B-1(b) above, provided that the application for extension is filed prior to expiration of the Special Exception.
2. For any request to use a mobile home as temporary living quarters in the case of a hardship, the following standards shall apply:
- a. The time period for the initial Special Exception shall not exceed two (2) years from the date of original approval of the Special Exception by the Board of Supervisors. Extensions may be granted in two (2) year increments for the duration of the hardship, in accordance with the procedures and standards specified below.
  - b. "Hardship" shall be defined as being when, for health reasons verified by a medical practitioner, licensed by the State of Virginia, through provision of a signed certificate specifying same, a person requires continuous care by another, and both persons will reside on the same or adjoining Tax Map Parcels.
  - c. Extensions may be granted pursuant to the following procedures:
    - 1) The application for a Special Exception shall not be accepted unless a signed certificate, as described above, verifying the need for living assistance due to age or medical reasons, accompanies the application.
    - 2) Extensions for continued use of the mobile home may be granted upon review and approval by the Board of Supervisors of an application, accompanied by confirmation of the continuation of the hardship, filed prior to the two (2) year anniversary date of original



approval of the Special Exception or of any subsequent extension.

- 3) When an extension is denied, or upon expiration of a Special Exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.
- d. The Special Exception shall be issued to specific individual(s) only, and only for the duration of the verified hardship.
- e. The mobile home may be occupied by either the person(s) needing care or the person(s) providing care. However, upon cessation of the hardship, the mobile home shall be removed from the site within sixty (60) days regardless of whether it is occupied by the person(s) needing care or providing care.
3. Consideration by the Board of Supervisors of a Special Exception request for placement of a mobile home for use as living quarters as specified herein shall include the potential for adverse impact of the use on the surrounding properties.

1.7 Lot size requirements.

|   |   | <u>Minimum, Square Ft.</u>  | <u>Minimum, Feet</u>        |   |
|---|---|-----------------------------|-----------------------------|---|
|   |   | <u>Average<br/>Lot Area</u> | <u>Minimum<br/>Lot Area</u> | <u>Lot<br/>Width</u> <u>Lot<br/>Depth</u> |
| 1.a. Single-family dwelling<br>on the following proposed<br>rights-of-way:                      | - |                             | 10 acres                    |   |
| (a) 160 ft. rights-of-way   |   |                             |                             | 450   200                                 |
| (b) 80 ft. rights-of-way  |   |                             |                             | 400   200                                 |
| (c) 60 ft. rights-of-way  |   |                             |                             | 275   200                                 |
| (d) 50 ft. rights-of-way  |   |                             |                             | 250   200                                 |
| 1.b. Family homesteads, pursuant<br>to provisions specified in<br>Article 10:                   |   |                             | 2 acres                     | 250   200                                 |
| 2. Churches, rectories, parish<br>houses, convents and monas-<br>teries, temples and synagogues | - |                             | 1 acre                      | 200   200                                 |
| 3. Animal hospital, larger animals  | - |                             | 10 acres                    | 300   300                                 |
| 4. Animal hospital, small animals,<br>open pens or kennels                                      | - |                             | 5 acres                     | 300   300                                 |

|    |  |   |         |     |     |
|----|--|---|---------|-----|-----|
|    | Recreation uses clubs, campgrounds                           | - | 5 acres | 200 | 200 |
| 6. | Stable, commercial   |   | 5 acres | 200 | 200 |
| 7. | Stable, private  |   | 2 acres | 200 | 200 |
| 8. | Frog or fish farms, or the raising for sale of small animals | - | 5 acres | 200 | 200 |
| 9. | Medical office   | - | 2 acres | 300 | 200 |

Lot width is measured at the front lot line for any lot located along any public road except those public roads created through the subdivision process; for lots located along a private road or a public road created through the subdivision of a parcel, lot width is measured at a point within the front half of the total depth of the lot. When access to a lot exempt from subdivision requirements is provided by use of a right-of-way with a width of fifty (50) feet or less, the lot shall meet the minimum width requirements for any lot which has frontage on a fifty (50) foot right-of-way.

Minimum frontage for development on private roads or any other road created through subdivision is twenty (20) feet; frontage on any other public road shall be the minimum required lot width.

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

### 1.8 Yard requirements.

#### Minimum in Feet

|  | <u>Front<br/>Yard</u> | <u>Side Yard,<br/>Minimum</u> | <u>Side Yard,<br/>Aggregate</u> | <u>Rear<br/>Yard</u> |
|--|-----------------------|-------------------------------|---------------------------------|----------------------|
| 1. Single-family dwelling on the following proposed rights-of-way: |                       |                               |                                 |                      |
| (a) 160 ft. rights-of-way  | 125                   | 25                            | 50                              | 40                   |
| (b) 80 ft. rights-of-way   | 100                   | 25                            | 50                              | 40                   |
| (c) 60 ft. rights-of-way   | 70                    | 25                            | 50                              | 40                   |
| (d) 50 ft. rights-of-way   | 60                    | 25                            | 50                              | 30                   |

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

2. Other structures same or as required in district regulations.

1.9 Height requirements. Single-family dwellings and all other structures not specifically exempted in article 7: Maximum height 2-2½ stories, but not to exceed 35 feet.

1.10 Off-street parking and loading requirements. Off-street parking and loading requirements are contained in article 7.

1.11 Public roads in the agricultural district.

1. The minimum lot area required in the agricultural district may be reduced by the amount of land necessary to be dedicated to improve an adjacent private right of way to public road standards, if the lot is part of a subdivision recorded prior to April 25, 1990. All lots affected by the proposed public road shall meet all other zoning requirements, except that lots containing residential structures existing on April 25, 1990, shall be exempt from yard requirements. The amount of reduction shall be no more than one (1) acre. No such dedication shall create an unusable residual parcel.
  2. The area necessary for the road must meet the requirements of the Virginia Department of Transportation and shall be conveyed to the county by general warranty deed or by dedication on an approved subdivision plat. The County shall be provided with all necessary assurances of title. The road shall be built in accordance with applicable requirements of the Virginia Department of Transportation and the Hanover County Code, and the developer or owner shall be responsible for applying for acceptance of the roads by the Virginia Department of Transportation.
  3. Construction of the road or execution of a performance agreement and provision of security, in accordance with procedures set out in the subdivision ordinance, shall be required prior to any issuance of any building permit for any lot affected by this exception.
3. That the Hanover County Code, Appendix, Title I, Zoning, Article 5, shall be amended to include the following language, which shall be designated "Section 2":

Section 2. AR-6, Agricultural Residential District.

2.1 Purpose of the district. The purpose of this district is to provide for spacious residential development for those who choose this environment; to provide for a full range of agricultural activities; and to protect agricultural land, as one of the county's most valuable natural resources, from the effect of objectionable, hazardous, and unsightly uses.

The district is also intended to provide for protection of watersheds, water resources, forest areas, and scenic values.

2.2 Permitted uses. A building or land shall be used only for the following purposes:

1. Detached single-family dwellings.
2. Agriculture, including horticultural, chemical, or general farming, truck gardens, cultivation of field crops, orchards, groves, or nurseries for growing or propagation of plants, trees, and shrubs, including temporary sawmills for cutting trees grown on the premises and use of heavy cultivating machinery, spray planes, or irrigating machinery, dairy farming, keeping or raising for sale of large or small animals, reptiles, fish, birds, or poultry, and including structures for processing and sale of products raised on the premises; provided:
  - (a) Any sawmill, grain drier, commercial feed lot or hog raising operation shall be located at least two hundred fifty (250) feet from any dwelling not located on the premises.
  - (b) Structures for commercial poultry raising shall be located at least two hundred (200) feet from any dwelling not located on the premises and at least one hundred (100) feet from any street or road.
  - (c) Commercial slaughtering and processing of large animals, such as horses, cows, pigs, sheep, or goats shall not be conducted on the premises.
3. Reserved.
4. Dog kennels, noncommercial; provided any open pens, runs, cages or kennels or any place for keeping more than five (5) adult dogs shall be located at least two hundred (200) feet from any side or rear lot lines.
5. Golf courses, not lighted for night play and not including miniature golf courses, putting greens, driving ranges, and similar activities operated as a business, but including a building for a golf shop, locker room, and snack bar as an accessory use to a permitted golf course, providing no such building is located closer than one hundred (100) feet from adjoining property lines. Practice greens and tees may accompany a standard nine (9) hole or eighteen (18) hole golf course occupying at least seventy-five (75) acres.
6. Facilities and structures necessary for rendering utility service, including poles, wires, transformers, telephone booths, and the like for normal electrical power distribution or communication

service, and pipelines or conduits for electrical, gas, sewer, or water service, but not including buildings, treatment plants, pumping or regulator stations, substations and power transmission lines which are permitted as conditional uses.

7. Grain storage structures.
8. Greenhouse, commercial.
9. Hospital or clinic for large or small animals; provided that all buildings, structures, pens, or open kennels shall be located at least two hundred (200) feet from any lot line.
10. Hospital or clinic for small animals (dogs, cats, birds, and the like); provided such hospital or clinic and any treatment rooms, cages, pens, or kennels be maintained within a completely enclosed, soundproof building, and that such hospital or clinic be operated in such a way as to produce no objectionable odors outside its walls.
11. Military bases and appurtenances and parks operated by the United States Government or agencies of the Commonwealth of Virginia.
12. Public and private forests, wildlife reservations, similar conservation projects.
13. Railroad rights-of-way, including a strip of land with tracks and auxiliary facilities for track operations, but not including passenger stations, freight terminals, switching and classification yards, repair shops, round houses, power houses, interlocking towers, and fueling, sanding and watering stations.
14. Recreational uses such as tennis courts, swimming pools, and other similar activities operated exclusively for the use of private membership and not for commercial purposes; provided that no such use, structure, or accessory use is located closer than fifty (50) feet to any adjoining property line.
15. Stable, public or commercial; provided that any building for keeping of animals shall be located at least two hundred (200) feet from any side or rear lot lines, and that there shall be housed on the premises no more than one horse or pony for each acre of land.
16. Stable, private, or keeping of horses, ponies or other livestock for personal enjoyment and not as a business; provided that any building for keeping of animals shall be located at least one hundred (100) feet from any side or rear lot lines and that there shall be housed or kept on the premises no more than one horse or pony for each acre of land.

17. Raising for sale of birds, bees, fish, rabbits, and other small animals, provided any use shall be located at least two hundred (200) feet from any side or rear lot lines.
18. Frog or fish farms, provided any use shall be located at least two hundred (200) feet from any side or rear lot lines.
19. Medical office, limited to two (2) doctors and their staffs (no more than two (2) staff members per doctor).

### 2.3 Permitted accessory uses.

1. Accessory uses as follows on a farm of ten (10) acres or more:
  - (a) Accessory structures for sale or processing of farm products raised on the premises.
  - (b) Accessory, open or enclosed storage of farm materials, products, or equipment.
  - (c) Accessory farm buildings, including barns, stables, sheds, tool rooms, shops, bins, tanks and silos.
  - (d) Dwellings for persons permanently employed on the premises.
2. Domestic storage in main building or in accessory building.
3. Garage, private.
4. Guest houses.
5. Home occupations in a main building.
6. Keeping of small animals, insects, reptiles, fish, or birds, but only for personal enjoyment or household use and not for a business, as an accessory to a nonfarm dwelling on a lot of not less than two (2) acres.
7. Servants' quarters.
8. Storage of a boat trailer or camp trailer or a boat, but not in front yard.
9. Swimming pool and game courts, lighted or unlighted, for use of occupants or their guests.
10. Signs as regulated in article 7, section 3.
11. Temporary buildings, the uses of which are incidental to construction operation during development being conducted on the same or adjoining tract or subdivision and which shall be removed upon completion or abandonment of such construction, or upon the

expiration of a period of two (2) years of the time of erection of such temporary buildings, whichever is sooner.

12. Accessory off-street parking and loading spaces. Open or enclosed space for parking one commercial vehicle of not more than one ton capacity and used by the occupant of a dwelling shall be permitted as accessory.
13. The location of office or construction trailers for a period not to exceed one year.
14. Noncommercial fuel alcohol distillery.
15. Foster care and adult family care.

2.4 Conditional Uses. The following uses may be permitted as conditional uses if approved by the Board of Supervisors in accordance with the procedures set out in this appendix:

1. Airports and landing fields, provided they shall comply with the recommendations of the Federal Aviation Agency.
2. Camps, day or boarding, private or commercial.
3. Cemetery, including a crematorium.
4. Circus or carnival grounds, amusement park, zoo or midway, permanent or temporary for a specified time period.
5. Exposition center or fairground.
6. Heliport or helistop.
7. Hospitals and sanitariums.
8. Institutions, educational or philanthropic, including museums, art galleries and libraries.
9. Livestock auction market.
10. Private clubs.
11. Public or governmental buildings and uses, including schools, fire stations (volunteer or otherwise), parks, parkways, and playgrounds; and public boat landings.
12. Public utilities or public service uses, buildings, generating or treatment plants, pumping or regulator stations, substations and transmission lines.
13. Race track, any type, including horses, stock cars, or drag strip.

14. Recreation facility, commercially operated, such as fishing or boating lake, camp ground, picnic grounds, or dude ranch, and accessory facilities, including sale of food, beverages, bait, supplies and equipment.
15. Sanitary landfill or trash collection site.
16. (a) Excavation or filling, borrow pits, extraction of stone, sand or gravel, stripping of topsoil (but not including stripping of sod) and other major excavations other than for construction of swimming pools and foundations for buildings and other than those approved in connection with a street, subdivision or planned residential development.  
  
(b) Crushing, treating, washing and/or processing of materials resulting from a use permitted in paragraph (a) above when conducted on the same property.
17. Sports area or stadium, commercial athletic field or baseball park.
18. Swimming or tennis club, commercially operated.
19. Reserved.
20. Radio or television broadcasting station or tower more than one hundred twenty-five (125) feet in height, provided construction and safety features are approved by the Administrator in accordance with applicable regulations and provided no hazard is created in an Airport Approach Zone.
21. Churches, rectories, parish houses, convents and monasteries, temples, and synagogues, or the expansion of any existing church, temple, or synagogue by more than fifty (50) percent of its floor area.
22. Agricultural and forestal support center.
23. Antique shop.

2.5 Uses permitted as special exceptions. The following uses may be permitted as special exceptions, if approved by the Board of Supervisors in accordance with the procedures set out in this appendix:

1. Temporary and conditional permits for the following uses:
  - (a) Archery ranges.
  - (b) Asphalt batching plants or concrete batching plants.
  - (c) Commercial dog kennels.
  - (d) Miniature golf courses or driving ranges.



- (e) Nonaccessory tents for special purposes.
- (f) Outdoor displays or promotional activities.
- (g) Pony rings.
- (h) Raising for sale of birds, bees, fish, rabbits and other small animals in an Overlay Urban Development District only.
- (i) Rifle or pistol ranges, trap, or skeet shooting.
- (j) Sawmill for cutting timber not grown on the premises.
- (k) Temporary buildings for use as a sales or rental office for an approved real estate development or subdivision.
- (l) A private garage for more than four (4) automobiles.
- (m) Cemetery for pets.
- (n) Convalescent homes, nursing homes, or homes for the aged.
- (o) Day nurseries or child or adult day care centers.
- (p) Frog or fish farms, in an Overlay Urban Development District only.
- (q) Sale of farm products not raised on the premises. Such sale shall be permitted only in conjunction with sales pursuant to section 2.3(1) above and only on a lot no less than ten (10) acres in area.
- (r) Mobile homes for living quarters as follows:
  - (1) accessory to a farm;
  - (2) in cases of hardship, as defined in section 2.6B.2(b), below;
  - (3) during the actual construction phase of a residential dwelling unit by the occupant of the mobile home;
  - (4) or during the actual repair when the permanent dwelling of the applicant has been rendered uninhabitable by a fire, natural disaster, or sudden accidental event.
- (s) Equipment storage yards accessory to a business office for construction or service contractors, operated as a home occupation, when located outside of the Overlay Urban Development District, provided:

- i) The maximum number of employees on site shall not exceed ten (10) per establishment.
  - ii) There shall be no more than ten (10) pieces of motor propelled equipment stored per site, related to the designated use.
  - iii) There shall be a minimum lot size of five (5) acres, and no more than two (2) acres shall be devoted to the use permitted pursuant to this section.
  - iv) There shall be no associated structure on site larger than five thousand (5,000) square feet in size.
  - v) When equipment storage is within one hundred (100) feet of a property zoned for residential use, the equipment shall be screened in accordance with the standards specified in Article 7, Section 2A.
  - vi) Applications shall be accompanied by a sketch plan prepared in accordance with the standards specified in Article 7, Section 7.2.
- (t) Home occupations in an accessory building, home craft shops, or retail sales businesses conducted as a home occupation.
  - (u) Sale of Christmas trees not raised on the premises.
  - (v) Auction sales, on a lot no less than ten (10) acres in area, located outside of the Overlay Urban Development District, with no more than four (4) such sales in any calendar year.
  - (w) Open or enclosed space for the storage of one (1) commercial vehicle with greater than one (1) ton capacity on property located outside of the Overlay Urban Development District and outside of an approved subdivision, subject to the following standards:
    - i) the Tax Parcel on which the vehicle is stored shall be a minimum of two (2) acres in area and shall have public road frontage;
    - ii) if the vehicle is stored in an open space, the space shall be located at least one hundred feet (100') from any property zoned for residential use or shall be screened in accordance with the standards specified in Article 7, Section 2A; and
    - iii) a sketch plan shall be submitted for review at the time of application, in accordance with the standards specified in Article 7, Section 7.2.

- (x) Bed and breakfast, in accordance with the specific standards and requirements of Article 7, Section 8.9.

2.6 Temporary mobile home use. Mobile homes may be used for a period of six (6) months from the date of an event rendering a dwelling uninhabitable, in the event of destruction of the dwelling or damage to the dwelling which renders the dwelling uninhabitable, provided that a permit for such use is obtained from the Zoning Administrator.

1. The Zoning Administrator shall have the authority to issue permits for such use if the applicant meets the following requirements:
  - (a) An application shall be filed in the Planning Office on a form provided by the Zoning Administrator. The application shall include a verified statement that use of the mobile home is necessary because of damage or destruction to a dwelling on the site where the mobile home will be located and that the mobile home will be used only as a dwelling for the residents of the original dwelling. The application shall also document the nature and date of the event causing the damage or destruction.
  - (b) The site must comply with all requirements of the Hanover County Code, including the Zoning Ordinance and Subdivision Ordinance.
2. The permit shall be valid for a period of six (6) months from the date of the event causing the damage or destruction.
3. The site shall remain in compliance with all requirements of the Hanover County Code, including the Zoning Ordinance and Subdivision Ordinance, during the term of the permit. The permit shall be void upon failure of the applicant to maintain compliance with all requirements.
4. Prior to the expiration date or the voiding of any permit the mobile home shall be removed from the site by the owner or applicant.

2.7 Standards for Special Exceptions for mobile homes as temporary living quarters.

1. For any request to use a mobile home as temporary living quarters during the actual construction phase of a residential dwelling unit by the occupant of the mobile home, or during the actual repair when the permanent dwelling of the applicant has been rendered uninhabitable by a fire, other natural disaster, or sudden accidental event, the following standards shall apply:
  - a. The time period for the initial Special Exception shall not exceed one (1) year from the date of approval. The total time period, including extensions, for the temporary use of the

mobile home shall not exceed three (3) years from the date of approval of the Special Exception by the Board of Supervisors, except when permitted by the Board of Supervisors upon demonstration by the applicant of extenuating circumstances. When an extension is denied, or upon expiration of the Special Exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.

b. When such a Special Exception is granted, improvements shall be completed in accordance with the following schedule:

- 1) Year One (1): At a minimum, mobile home placement, well installation, septic tank installation, and provision of access shall be completed.
- 2) Year Two (2): At a minimum, the Building Permit for the permanent dwelling shall be obtained, construction of the footing and the foundation completed, and the dwelling framed and protected from weather.
- 3) Year Three (3): At a minimum, finish work shall be completed, a Certificate of Occupancy obtained, and the mobile home removed from the site within sixty (60) days of issuance of the Certificate of Occupancy.

c. Requests for extensions for completion during the three (3) year period following the date of original approval of the Special Exception by the Board of Supervisors may be granted by the Board of Supervisors upon demonstration by the applicant of continuing compliance with the schedule for completion as set forth in Section 2.6B-1(b) above, provided that the application for extension is filed prior to expiration of the Special Exception.

2. For any request to use a mobile home as temporary living quarters in the case of a hardship, the following standards shall apply:

- a. The time period for the initial Special Exception shall not exceed two (2) years from the date of original approval of the Special Exception by the Board of Supervisors. Extensions may be granted in two (2) year increments for the duration of the hardship, in accordance with the procedures and standards specified below.
- b. "Hardship" shall be defined as being when, for health reasons verified by a medical practitioner, licensed by the State of Virginia, through provision of a signed certificate specifying same, a person requires continuous care by another, and both persons will reside on the same or adjoining Tax Map Parcels.

c. Extensions may be granted pursuant to the following procedures:

- 1) The application for a Special Exception shall not be accepted unless a signed certificate, as described above, verifying the need for living assistance due to age or medical reasons, accompanies the application.
- 2) Extensions for continued use of the mobile home may be granted upon review and approval by the Board of Supervisors of an application, accompanied by confirmation of the continuation of the hardship, filed prior to the two (2) year anniversary date of original approval of the Special Exception or of any subsequent extension.
- 3) When an extension is denied, or upon expiration of a Special Exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.

d. The Special Exception shall be issued to specific individual(s) only, and only for the duration of the verified hardship.

e. The mobile home may be occupied by either the person(s) needing care or the person(s) providing care. However, upon cessation of the hardship, the mobile home shall be removed from the site within sixty (60) days regardless of whether it is occupied by the person(s) needing care or providing care.

3. Consideration by the Board of Supervisors of a Special Exception request for placement of a mobile home for use as living quarters as specified herein shall include the potential for adverse impact of the use on the surrounding properties.

2.8 Minimum area for application; density. The minimum parcel size for consideration of AR-6, Agricultural Residential District zoning shall be four (4) acres. The zoning request shall apply to the subject parcel in its entirety. Permissible density shall be calculated as follows:

- (1) For parcels four (4) to thirteen and 99/100 (13.99) acres in area: two (2) lots, with a minimum lot size of two (2) acres
- (2) For parcels fourteen (14) to twenty-four and 99/100 (24.99) acres in area: three (3) lots, with a minimum lot size of two (2) acres
- (3) For parcels twenty-five (25) acres or greater in area: one (1) lot per six and 1/4 (6.25) acres

Fractions resulting from the calculation shall be rounded down to the next whole number.

2.9 Subdivision lots prohibited. No lot less than twenty (20) acres in area which is part of a recorded subdivision shall be eligible for consideration for AR-6, Agricultural Residential District zoning.

2.10 Lot size requirements.

|    |  | <u>Minimum, Acres</u>                 | <u>Minimum, Feet</u> |                  |
|----|--|---------------------------------------|----------------------|------------------|
|    |  | <u>Lot Area</u>                       | <u>Lot Width</u>     | <u>Lot Depth</u> |
| 1. | Single-family dwelling on the following proposed rights-of-way:                      | 5 acres<br>(except as provided above) |                      |                  |
|    | (a) 160 ft. rights-of-way  |                                       | 450                  | 200              |
|    | (b) 80 ft. rights-of-way   |                                       | 400                  | 200              |
|    | (c) 60 ft. rights-of-way   |                                       | 275                  | 200              |
|    | (d) 50 ft. rights-of-way   |                                       | 250                  | 200              |
| 2. | Churches, rectories, parish houses, convents and monasteries, temples and synagogues | 1 acre                                | 200                  | 200              |
| 3. | Animal hospital, larger animals  | 10 acres                              | 300                  | 300              |
| 4. | Animal hospital, small animals, open pens or kennels                                 | 5 acres                               | 300                  | 300              |
| 5. | Recreation uses clubs, campgrounds   | 5 acres                               | 200                  | 200              |
| 6. | Stable, commercial   | 5 acres                               | 200                  | 200              |
| 7. | Stable, private  | 2 acres                               | 200                  | 200              |
| 8. | Frog or fish farms, or the raising for sale of small animals                         | 5 acres                               | 200                  | 200              |
| 9. | Medical office   | 2 acres                               | 300                  | 200              |

Lot width is measured at the front lot line for any lot located along any public road except those public roads created through the subdivision process; for lots located along a private road or a public road created through the subdivision of a parcel, lot width is measured at a point within the front half of the total depth of the lot. When access to a lot exempt from subdivision requirements is provided by use of a right-of-way with a width of fifty (50) feet or less, the lot shall meet the minimum width requirements for any lot which has frontage on a fifty (50) foot right-of-way.

Minimum frontage for development on private roads or any other road created through subdivision is twenty (20) feet; frontage on any other public road shall be the minimum required lot width.

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

2.11 Yard requirements.

|     |   | <u>Minimum in Feet</u> |                               |                                 |                      |
|-----|---|------------------------|-------------------------------|---------------------------------|----------------------|
|     |   | <u>Front<br/>Yard</u>  | <u>Side Yard,<br/>Minimum</u> | <u>Side Yard,<br/>Aggregate</u> | <u>Rear<br/>Yard</u> |
| 1.  | Single-family dwelling on the following proposed rights-of-way: |                        |                               |                                 |                      |
| (a) | 160 ft.<br>rights-of-way  | 125                    | 25                            | 50                              | 40                   |
| (b) | 80 ft.<br>rights-of-way   | 100                    | 25                            | 50                              | 40                   |
| (c) | 60 ft.<br>rights-of-way   | 70                     | 25                            | 50                              | 40                   |
| (d) | 50 ft.<br>rights-of-way   | 60                     | 25                            | 50                              | 30                   |

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

2. Other structures same or as required in district regulations.

2.12 Height requirements. Single-family dwellings and all other structures not specifically exempted in article 7: Maximum height 2-2½ stories, but not to exceed 35 feet.

2.13 Off-street parking and loading requirements. Off-street parking and loading requirements are contained in article 7.

4. That the Hanover County Code, Appendix, Title I, Zoning, Article 10, Section 3, shall be amended to read in its entirety as follows:

Section 3A. Permits.

3A.1 No building shall be erected, constructed, altered, moved, converted, extended, or enlarged, without the owner or owners first having obtained a building permit. Such permit shall require conformity with the provisions of this Ordinance. When issued, such permit shall be valid for a period of six (6) months.

3A.2 No building permit by the Administrator, lawfully issued prior to the effective date of this Ordinance, or of any amendment hereto, and which permit, by its own terms and provisions, is in force and effect at said date, shall be invalidated by the passage of this Ordinance, or any such amendment, but shall remain a valid and subsisting permit, subject only to its own terms and provisions and ordinances, rules, and regulations pertaining thereto, and in effect at the time of the issuance of such permit; provided, that all such permits shall expire not later than sixty (60) days from the effective date of this Ordinance, unless actual construction shall have theretofore begun and continued pursuant to the terms of said permit.

Section 3B. Family homesteads. A lot or parcel with a minimum area of two (2) acres is permitted for the purpose of constructing a home to be occupied by the natural or legally defined offspring, spouse, grandchild, grandparent, or parent of the owner of the tract from which the homestead lot is divided. The creation and use of a homestead lot shall be subject to the following provisions:


- i. (a) Only one homestead lot may be created for any one family member, and such lot shall not be created for the purpose of circumventing this Ordinance. No homestead lot shall be created prior to compliance with the requirements of this Section. Any homestead lot created under this Section shall be titled in the name of the family member for whom the home is built for a period of no less than three (3) years following issuance of the Certificate of Occupancy unless the lot is the subject of an involuntary transfer such as foreclosure, death, judicial sale, condemnation, or bankruptcy. The requirements of this Section shall be set forth in an agreement to be executed by the grantor and grantee of the lot in a form prescribed by the Director. This agreement shall be recorded in the Hanover County Circuit Court Clerk's Office prior to the creation of the lot.  
  
(b) Prior to the creation of a homestead lot, the grantor and grantee shall submit to the Director documentation as to compliance with these requirements, as required by the Director, along with an affidavit describing the purpose of the conveyance and identifying the members of the immediate family receiving the lot created.  
  
(c) An application for a building permit shall be submitted within two (2) years of creation of any homestead lot and shall include confirmation of previously submitted documentation. A Certificate of Occupancy for the residence must be obtained within three (3) years after creation of any homestead lot, unless this time period is extended by the Planning Director, for good cause, consistent with the purpose of this Section, demonstrated by the applicant.
- ii. The minimum width, yard, and area requirements of all such lots, including the remaining property from which the lot is divided, shall be in accordance with the Zoning Ordinance.



- iii. For property not served with public water and public sewer, each lot shall have its septic tank system and water source approved by the Health Department, and those facilities shall be located on the lot served.
  - iv. Each lot or parcel of property shall front a road which is part of the Virginia System of Highways or shall front upon a private drive or road which is in a right-of-way no less than twenty (20) feet in width. Such right-of-way shall remain private and shall include a driveway within it consisting of, at a minimum, an all-weather surface of rock, stone, or gravel, with a minimum depth of one (1) inch and a width of ten (10) feet. An erosion and sediment control plan with appropriate surety shall be submitted for approval if the proposed right-of-way and drive construction disturbs more than two thousand five hundred ((2,500) square feet of the property.
6. If any part, section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, declared to be unconstitutional or invalid, such portion of the ordinance shall be severed from the remainder of this ordinance, and the remainder shall continue in full force and effect.
7. This Ordinance shall be effective upon adoption; provided, however, that:
- a. Complete applications for final subdivision approval which have been filed before the close of business on October 9, 1996, which were in compliance with all substantive zoning and subdivision ordinance requirements in effect on that date shall be reviewed in accordance with those requirements.
  - b. All lots or parcels described in deeds or plats recorded in the Hanover County Circuit Court Clerk's Office prior to the close of business on October 9, 1996, which meet all zoning and subdivision requirements for yards, setbacks, and access in effect on the date of building permit application shall be deemed to be in compliance with the lot dimension and area requirements of the Zoning Ordinance and requirements of the Subdivision Ordinance.

Public Hearing: October 9, 1996

Adopted: October 9, 1996

  
John F. Berry, Clerk  
Hanover County Board of Supervisors

- c. Extensions may be granted pursuant to the following procedures:
- (1) The application for a special exception shall not be accepted unless a signed certificate, as described above, verifying the need for living assistance due to age or medical reasons, accompanies the application.
  - (2) Extensions for continued use of the mobile home may be granted upon review and approval by the Board of Supervisors of an application, accompanied by confirmation of the continuation of the hardship, filed prior to the two (2) year anniversary date of original approval of the special exception or of any subsequent extension.
  - (3) When an extension is denied, or upon expiration of a special exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.
- d. The special exception shall be issued to specific individual(s) only, and only for the duration of the verified hardship.
- e. The mobile home may be occupied by either the person(s) needing care or the person(s) providing care. However, upon cessation of the hardship, the mobile home shall be removed from the site within sixty (60) days regardless of whether it is occupied by the person(s) needing care or providing care.
3. Consideration by the Board of Supervisors of a special exception request for placement of a mobile home for use as living quarters as specified herein shall include the potential for adverse impact of the use on the surrounding properties. (Ord. No. 93-29, § 3, 2-23-94; Ord. No. 94-17, § 2, 8-23-94)

**2.7. Lot size requirements.**

|   | <i>Minimum,<br/>Average<br/>Lot Area</i> | <i>Square Feet<br/>Minimum<br/>Lot Area</i>                              | <i>Min-<br/>imum,<br/>Lot<br/>Width</i> | <i>Feet<br/>Lot<br/>Depth</i> |
|---|--|--|---|-------------------------------|
| 1. Single-family dwelling on the following proposed rights-of-way:                      | —  | 2 acres, after the first conveyance all lots must be 10 acres or greater |   |                               |
| (a) 160 ft. rights-of-way   |  |  | 450                                     | 200                           |
| (b) 80 ft. rights-of-way  |  |  | 400                                     | 200                           |
| (c) 60 ft. rights-of-way  |  |  | 275                                     | 200                           |
| (d) 50 ft. rights-of-way  |  |  | 250                                     | 200                           |
| 2. Churches, rectories, parish houses, convents and monasteries, temples and synagogues | —  | 1 acre   | 200                                     | 200                           |
| 3. Animal hospital, larger animals  |  | 10 acres   | 300                                     | 300                           |



# TITLE I—ZONING

Art. 5, § 2

|  | <i>Minimum,<br/>Average<br/>Lot Area</i> | <i>Square Feet<br/>Minimum<br/>Lot Area</i> | <i>Min-<br/>imum,<br/>Lot<br/>Width</i> | <i>Feet<br/>Lot<br/>Depth</i> |
|--|--|---|---|-------------------------------|
| 4. Animal hospital, small animals, open pens or kennels                                  |  | 5 acres                                     | 300                                     | 300                           |
| 5. Recreation uses clubs, campgrounds  |  | 5 acres                                     | 200                                     | 200                           |
| 6. Stable, commercial  |  | 5 acres                                     | 200                                     | 200                           |
| 7. Stable, private   |  | 2 acres                                     | 200                                     | 200                           |
| 8. Frog or fish farms, or the raising for sale of small animals                          | —  | 5 acres                                     | 200                                     | 200                           |
| 9. Medical office  |  | 2 acres                                     | 300                                     | 200                           |
| 10. Business office and equipment storage yards for construction and service contractors |  | 2 acres                                     | 300                                     | 200                           |

Lot width is measured at the building line.

Minimum street frontage is twenty (20) feet.

Proposed rights-of-way are those designated by the Major Thoroughfare Plan. (Ord. No. 85-13, § 2, 10-23-85; Ord. No. 90-11, § 2, 7-18-90; Ord. No. 90-15, § 1, 7-18-90; Ord. No. 91-02, § 1, 4-24-91)

## 2.8 Yard requirements.

|  | <i>Front<br/>Yard</i> | <i>Minimum in Feet</i>        |                                 |                      |
|--|-----------------------|-------------------------------|---------------------------------|----------------------|
|  |                       | <i>Side Yard,<br/>Minimum</i> | <i>Side Yard,<br/>Aggregate</i> | <i>Rear<br/>Yard</i> |
| 1. Single-family dwelling on the following proposed rights-of-way: |                       |                               |                                 |                      |
| (a) 160 ft. rights-of-way  | 125                   | 25                            | 50                              | 40                   |
| (b) 80 ft. rights-of-way   | 100                   | 25                            | 50                              | 40                   |
| (c) 60 ft. rights-of-way   | 70                    | 25                            | 50                              | 40                   |
| (d) 50 ft. rights-of-way   | 60                    | 25                            | 50                              | 30                   |

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

- Other structures same or as required in district regulations.

**2.9 Height requirements.** Single-family dwellings and all other structures not specifically exempted in article 7: Maximum height 2—2½ stories, but not to exceed 35 feet.

**2.10 Off-street parking and loading requirements.** Off-street parking and loading requirements are contained in article 7.

**Sec. 2.11 Public roads in the agricultural district.**

1. The minimum lot area required in the agricultural district may be reduced by the amount of land necessary to be dedicated to improve an adjacent private right of way to public road standards, if the lot is part of a subdivision recorded prior to April 25, 1990. All lots affected by the proposed public road shall meet all other zoning requirements, except that lots containing residential structures existing on April 25, 1990, shall be exempt from yard requirements. The amount of reduction shall be no more than one acre. No such dedication shall create an unusable residual parcel.
2. The area necessary for the road must meet the requirements of the Virginia Department of Transportation and shall be conveyed to the county by general warranty deed or by dedication on an approved subdivision plat. The County shall be provided with all necessary assurances of title. The road shall be built in accordance with applicable requirements of the Virginia Department of Transportation and the Hanover County Code, and the developer or owner shall be responsible for applying for acceptance of the roads by the Virginia Department of Transportation.
3. Construction of the road or execution of a performance agreement and provision of security, in accordance with procedures set out in the subdivision ordinance, shall be required prior to issuance of any building permit for any lot affected by this exception. (Ord. No. 90-01, § 1, 4-25-90)

**Section 2A. AR-1 Agricultural Residential District.**

**2A.1 Purpose of the district.** The purpose of the district is to provide for limited residential development in rural areas where such development will be:

1. Ancillary to agriculturally zoned property and agricultural operations.
2. Where properties are not suitable for agricultural use because of soil conditions, topography, location or other natural features.
3. Where development will not be in conflict with adjacent agricultural uses.

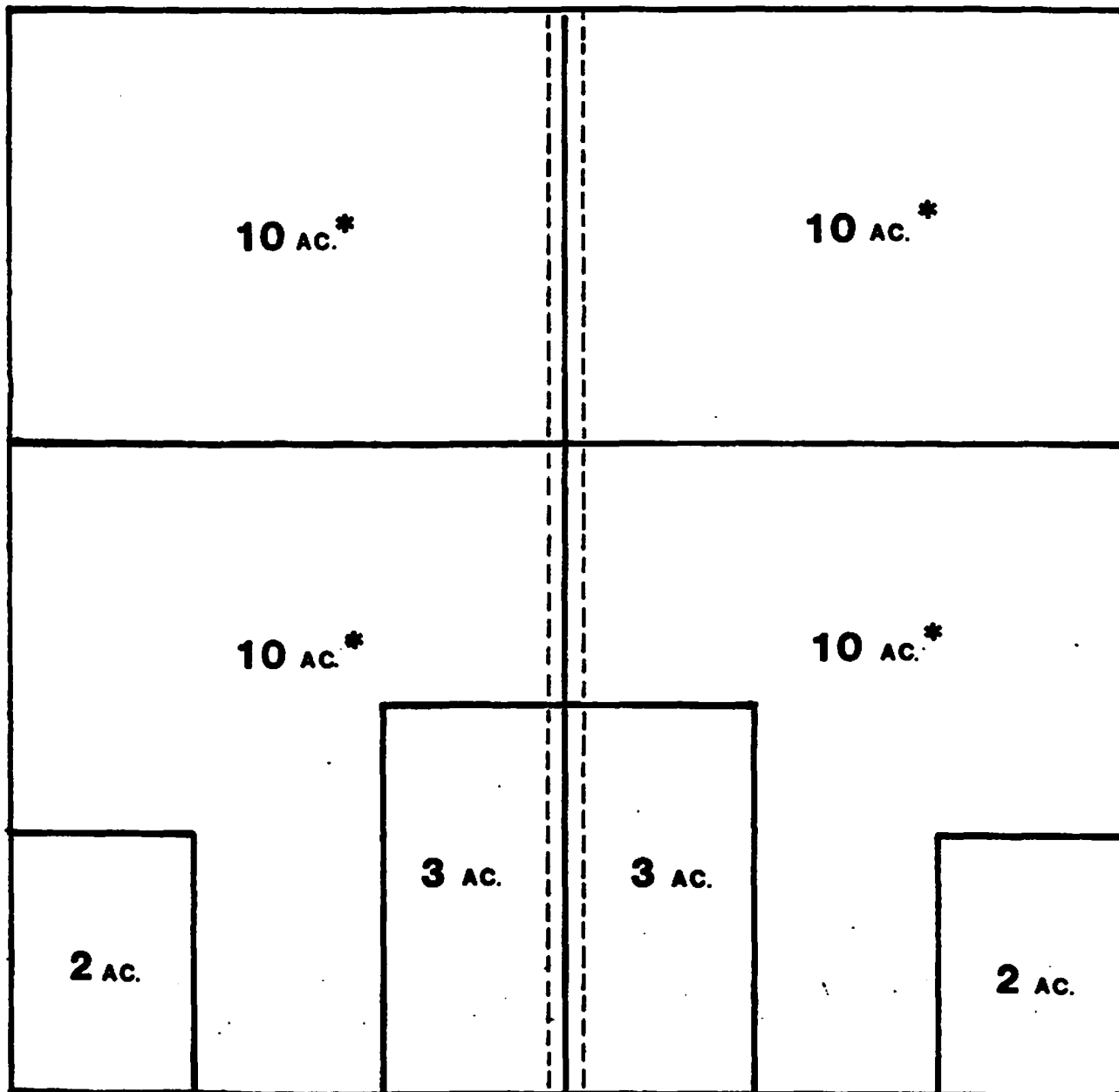
**2A.2 Permitted uses.** A building or land shall be used for the following purposes:

1. Detached single-family dwellings.
2. Reserved. (Ord. No. 87-6, § 1, 11-18-87)
3. Golf courses, not lighted for night play and not including miniature golf courses, putting greens, driving ranges, and similar activities operated as a business, but including a building for a golf shop, locker room, and snack bar as an accessory use to a permitted golf course; providing no such building is located closer than one hundred (100) feet to adjoining property lines. Practice greens and tees may accompany a standard nine (9) hole or eighteen (18) hole golf course occupying at least seventy-five (75) acres.
4. Facilities and structures necessary for rendering utility service, including poles, wires, transformers, telephone booths, and the like for normal electrical power

**50 ACRE PARCEL**

**A-1 ZONE**

**TOTAL LOTS: 8 LOTS/4 LESS THAN 10 ACRES**

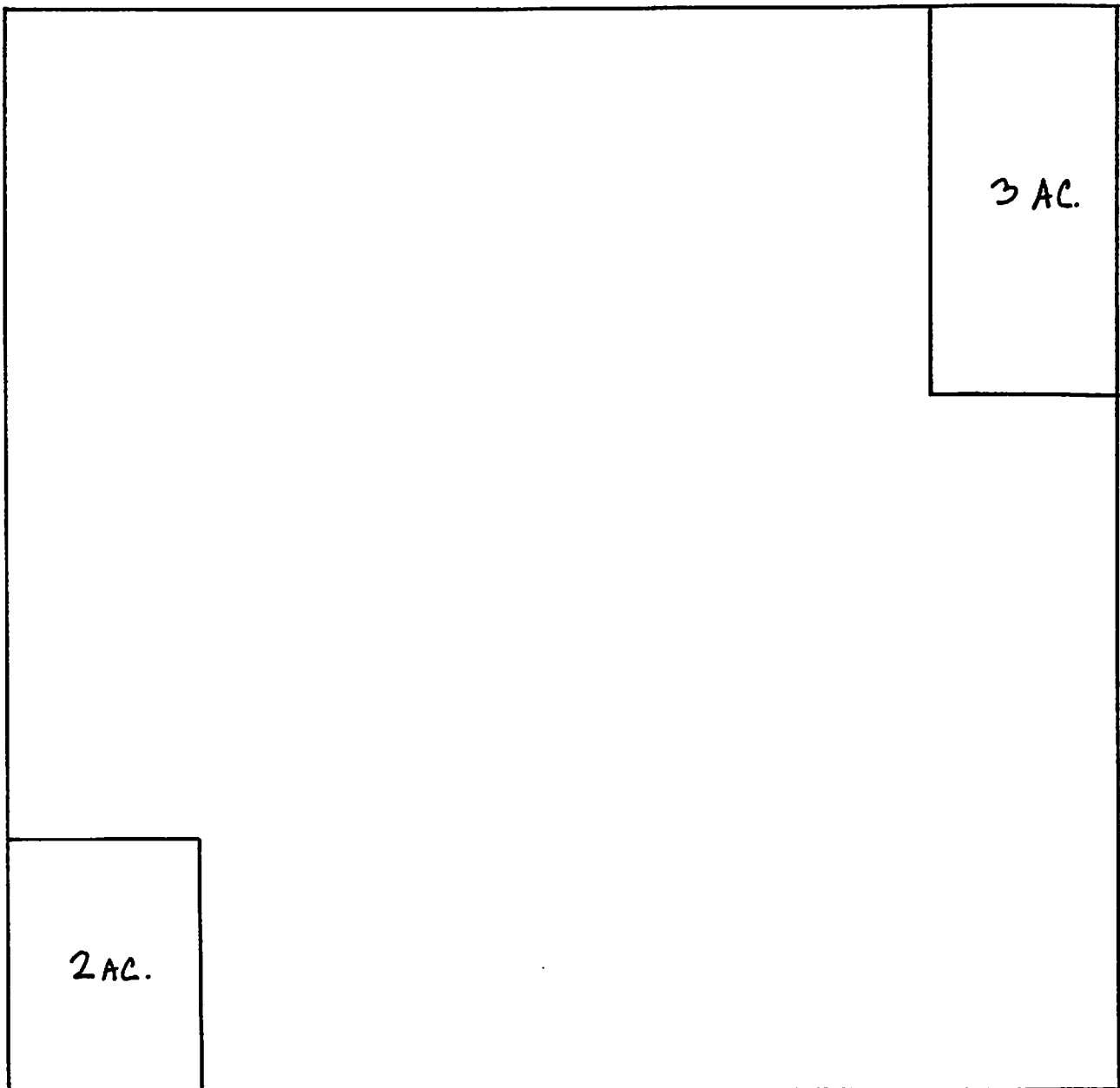


**STATE ROAD (50' R/W)**

**\* SUBDIVISION LOTS**

"25-Acre Rule," 246 Division





Division Without  
Use of "25-Acre Rule"

## Subdivisions Sent Back

(Filed Prior to Oct. 10)

| Subdivision            | Section | Date Filed | Date Returned | Reason  |
|------------------------|---------|------------|---------------|---|
| Cochrane Place         | A - C   | 8/30/96    | 10/25/96      | 1st Div. not recorded properly                  |
| Ingalls                |         | 9/3/96     | 10/29/96      | No 1st Div. recorded                            |
| Farston                | A & B   | 9/10/96    | 10/4/96       | Title IV plat not recorded correctly            |
| Rose Cottage           | 1 & 2   | 9/25/96    | 10/31/96      | Title IV plat not recorded correctly            |
| Kelley Grove Estates   | A - C   | 10/3/96    | 10/29/96      | No metes and bounds                             |
| Eagles Trace           |         | 10/3/96    | 10/29/96      | Ineligible for lots < 10 acres                  |
| Landora Bridge Estates |         | 10/7/96    | 10/29/96      | No 1st Div. recorded                            |
| Bourne Acres West      | B       | 10/8/96    | 10/29/96      | Incomplete metes and bounds                     |
| Rocky Mills            | B       | 10/8/96    | 10/29/96      | No metes and bounds                             |
| Sugar Maple            | A - E   | 10/9/96    | 10/31/96      | No 1st Div. recorded                            |
| Poplar Gate            | A - I   | 10/9/96    | 10/29/96      | 25-acre and 1st divisions recorded on same plat |
| Furlong                | J - S   | 10/9/96    | 10/29/96      | 25-acre and 1st divisions recorded on same plat |



## Citation/Title

418 S.E.2d 879, 244 Va. 107, Cook v. Board of Zoning Appeals of City of Falls Church, (Va. 1992)

\*879 418 S.E.2d 879

244 Va. 107

Malcolm W. COOK, et al.

v.

BOARD OF ZONING APPEALS OF THE CITY OF FALLS CHURCH.

Record No. 911067.

Supreme Court of Virginia.

June 5, 1992.

Board of zoning appeals determined that owner of vacant house was required to obtain approval for demolition permit by Architectural Review Board. Owner appealed. The Circuit Court, Arlington County, Benjamin N.A. Kenrick, J., affirmed and owner appealed. The Supreme Court, Lacy, J., held that approval of Architectural Review Board was not required under terms of ordinance since house was not listed on official register and designation was not recorded in land records.

Reversed and final judgment.

1. ZONING AND PLANNING Ⓒ676
  - 414 ----
  - 414X Judicial Review or Relief
  - 414X(C) Scope of Review
  - 414X(C)3 Presumptions
  - 414k676 Decisions of boards or officers in general.

Formerly 414k745

[See headnote text below]

1. ZONING AND PLANNING Ⓒ745.1
  - 414 ----
  - 414X Judicial Review or Relief

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418 S.E.2d 879, 244 Va. 107, Cook v. Board of Zoning Appeals of City of Falls Church, (Va. 1992)

414X(E) Further Review  
 414k745 Scope and Extent of Review  
 414k745.1 In general.

Va. 1992.

Decision of board of zoning appeals is presumed correct on appeal and judgment of circuit court affirming that decision is accorded presumption of correctness on appeal to Supreme Court.

2. ZONING AND PLANNING §745.1

414 ----

414X Judicial Review or Relief  
 414X(E) Further Review  
 414k745 Scope and Extent of Review  
 414k745.1 In general.

Formerly 414k745

Va. 1992.

Circuit court's affirmance of decision of board of zoning appeals will be reversed only if the board applied erroneous principles of law or was plainly wrong and in violation of purpose and intent of zoning ordinance.

3. ZONING AND PLANNING §231

414 ----

414V Construction, Operation and Effect  
 414V(A) In General  
 414k231 Construction of regulations in general.

Va. 1992.

Great weight is given to consistent construction of zoning ordinance by officials charged with its enforcement.

4. ZONING AND PLANNING §233

414 ----

414V Construction, Operation and Effect  
 414V(A) In General  
 414k233 Meaning of language.

Va. 1992.

Administrative interpretation of portion of zoning ordinance at odds with plain language used in ordinance as a whole must be reversed as plainly wrong.

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418 S.E.2d 879, 244 Va. 107, Cook v. Board of Zoning Appeals of City of Falls Church, (Va. 1992)

- 5. HEALTH AND ENVIRONMENT §25.5(8)
  - 199 ----
  - 199II Regulations and Offenses
  - 199k25.5 Environmental Protection in General
  - 199k25.5(3) Particular Applications
  - 199k25.5(8) Historical preservation.

Va. 1992.

House for which owner sought demolition permit was not subject to historic and cultural conservation district ordinance, even though house was built before 1910 and ordinance applied to all residences constructed before 1910, since house was not listed as designated structure on official register and designation was not recorded in land records, as required by ordinance.

[244 Va. 108] William M. Baskin, Jr. (Baskin, Jackson & Hansbarger, on briefs), Falls Church, for appellants.

David R. Lasso, City Atty., for appellee.

[244 Va. 107] Present: CARRICO, C.J., COMPTON, STEPHENSON, WHITING, LACY and HASSELL, JJ., and POFF, Senior Justice.

[244 Va. 108] LACY, Justice.

\*880 On November 3, 1989, the trustees (FN1) of Columbia Baptist Church (the Church) acquired title to a vacant house on a lot in Falls Church. Ten days later, the Church applied for a permit to demolish the house. By letter dated November 27, the Falls Church zoning administrator informed the Church that, because the structure had been built as a residence before 1910, the property was subject to the provisions of the Falls Church City Code § 38-39, historic and cultural conservation district ordinance (HCC District ordinance), and, that under the terms of that ordinance, the Architectural Review Board (ARB) had to approve the demolition permit.

The Board of Zoning Appeals (BZA) sustained the zoning administrator's decision and the Church appealed. The trial court upheld the BZA's finding that its construction of the ordinance was a "legally reasonable construction of the HCC ordinance" and that the decision was not arbitrary, capricious, contrary to law, or an abuse of discretion. We awarded the Church an appeal and reverse.

In 1984, the City of Falls Church enacted the HCC District ordinance which created an historical and conservation district coterminous with the boundaries

of the City. The ordinance provides in relevant part:

[244 Va. 109] Sec. 38-39. HCC, historic and cultural conservation district

....

(c) *Historic and cultural conservation ("HCC") district created ....*  
The HCC District regulations contained herein shall be applicable to the following:

(1) All structures built as residences during or before 1910, and the parcels or lots on which these structures are located, and

(2) Other designated structures and sites of historical, cultural or architectural significance.

(d) *Official register of protected structures and sites.* All designated structures and sites shall be listed in the Official Register of Protected Structures and Sites and the designation shall be recorded in the land records.

(e) *Certification of structures built during or before 1910.*

(1) The Falls Church Historical Commission shall certify to the planning department the date upon which the structure ... was built....

(2) Upon receipt of such certification, the planning department shall notify the owner(s) of the structure that the structure has been placed in the Official Register of Protected Structures and Sites, which action shall be permanent unless an appeal is filed within thirty (30) days....

(3) The planning commission shall hear and decide all objections to the accuracy of the certification....

(4) The owner may appeal the decision of the planning commission to the city council....

....

[244 Va. 110] (g) *Permits required for properties subject to regulation.* In addition to the use regulations within the zoning district overlaid by the HCC District, the following regulations shall apply:

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418 S.E.2d 879, 244 Va. 107, Cook v. Board of Zoning Appeals of City of Falls Church, (Va. 1992)

....

(2) No structure on the Official Register of Protected Structures and Sites shall be demolished or moved without first obtaining a permit from the building inspector, which shall be issued only after approval of the same by the ARB, or on appeal, by the city council after consultation with the ARB.

This dispute centers on whether, as a matter of law, all structures built as residences before 1910 were deemed to be on the Official Register of Protected Property and Sites at the time the ordinance was enacted or whether successful completion \*881 of the certification procedure pursuant to § 38-39(e) is a prerequisite to placing such properties on the Official Register.

The Church maintains that only residences which have been certified in accordance with § 38-39(e) of the ordinance can be placed on the Official Register. Because its property had not gone through the certification process when the Church applied for the demolition permit, the Church insists that the property was not on the Official Register and, therefore, approval of the ARB for the demolition permit was not required. (FN2)

The BZA argues that residential structures built before 1910 were automatically placed on the Official Register upon adoption of the HCC District ordinance in 1984. HCC ordinance, § 38-39(c). The BZA characterizes the certification process as one which allows property owners to have their structures removed from the application of the HCC District ordinance. It is merely a "check on the accuracy of the age of the structure and of its initial use," and, the BZA notes, this process "should not be confused with being a designated structure."

[1] [2] [3] [4] The standard of review applicable to this appeal is well established: The decision of the BZA is presumed to be correct, and [244 Va. 111] the judgment of the circuit court affirming that decision is accorded the presumption of correctness on appeal to this Court. *Masterson v. Board of Zoning Appeals*, 233 Va. 37, 44, 353 S.E.2d 727, 733 (1987). And we will reverse the circuit court only if the BZA applied erroneous principles of law or was plainly wrong and in violation of the purpose and intent of the zoning ordinance. *Id.* at 44, 353 S.E.2d at 732-33. Furthermore, great weight is given the consistent construction of an ordinance by the officials charged with its enforcement. *Id.* at 44, 353 S.E.2d at 733. Nevertheless, if the administrative interpretation of a portion of an ordinance is so at odds with the plain language used in the ordinance as a whole, such interpretation is

418 S.E.2d 879, 244 Va. 107, Cook v. Board of Zoning Appeals of City of Falls Church, (Va. 1992)

plainly wrong, and must be reversed.

[5] There is no dispute that the requirement of ARB approval of a demolition permit applies only to structures on the Official Register. HCC ordinance, § 38-39(g)(2). Subsection (d) of the ordinance states that designated structures shall be listed on the Official Register and the designation recorded in the land records. Even if structures were "designated" by the enactment of the ordinance, this language indicates that more must be done before the structure is on the Official Register or recorded in the land records. This language does not "deem" a designated structure to be on the Official Register any more than the designation is "deemed" recorded in the land records. Listing the structure on the Official Register as directed by subsection (d) refers to some further action. Subsections (e) and (f) provide the procedures necessary to accomplish that transition. Section 38-39(e)(2) provides in unequivocal terms that when the Planning Commission receives certification from the Historical Commission, the owner is notified that "the structure has been placed on" the Official Register and "such action shall be permanent," unless appealed.

The requirement of certification by the Historical Commission under subsection (e) as a prerequisite to listing on the Official Register is not one required by the plain language of the act but it is consistent with the action of the City itself. The City maintained a list entitled "The Official Register of Protected Structures and Sites." That list identified only property which had completed the certification process or had been certified by the Historical Commission but removed from the list as a result of the owner's appeal. The City also maintained a map of the City which, the parties agree, now is also entitled "The Official Register of Protected Structures and Sites." Although this map has no legend, some properties on [244 Va. 112] the map are colored in and others are merely outlined. The City's senior planner testified that when a property completed the certification process, the outlined property was colored solid, showing a distinction between those properties which have completed the certification process and those which have not.

Finally, in a prior contested case regarding the point at which a structure required approval by the ARB for a demolition permit, the City Council recognized that, even if § 38-39(c) did not control, "the critical date would be when the certification was made, rather than when it was recorded." (FN3)

We hold, therefore, that the decision of the BZA as affirmed by the trial court was plainly wrong. Accordingly, the judgment of the trial court will be reversed and we will enter final judgment for the Church.

418 S.E.2d 879, 244 Va. 107, Cook v. Board of Zoning Appeals of City of Falls Church, (Va. 1992)

*Reversed and final judgment.*

- FN1. The trustees are Malcolm W. Cook, Garnett H. Harvey, G. Lloyd Knight, Claude H. Rhea, III, and Mary B. Wilson. The appellants in this case are these trustees and Brian Gilman, the administrator of Columbia Baptist Church.
- FN2. The property at issue had been investigated by the Historical Society in 1984, but had not been certified by the Historical Commission.
- FN3. The certification by the Historical Commission was made in that case on August 2, 1985, and the application for the demolition permit was made "in early August," presumably after the date of certification.

U.S. 1032 (1985). Thus, I cannot say that an award of \$1,000 is unreasonable, considering the evidence.\*

Next, I shall turn to the issue of punitive damages. Generally, the imposition of punitive damages is not favored and, because they are in the nature of a penalty, they should be assessed only in cases of most egregious conduct. *Owens-Corning Fiberglas Corp. v. Watson*, 243 Va. 128, 144, 413 S.E.2d 630, 639 (1992). And, the punitive damage award "should bear some reasonable proportion to the real damages sustained and to the measure of punishment required." *Stubbs v. Cowden*, 179 Va. 190, 201, 18 S.E.2d 275, 280 (1942).

The majority correctly recognizes that we must determine whether the trial court acted "improperly." Nevertheless, they determine that the jury's award was not "unreasonable" and is not "an inappropriate punishment" for defendant's conduct. This is another example of disregard for a settled standard of appellate review.

Certainly, this defendant's conduct was egregious and supported the finding that the statements were uttered with the requisite malice. However, given the lack of real damages sustained by the plaintiff and considering the sum I would approve for compensatory damages, I cannot say, from a review of this record, that the trial court acted "improperly" in fixing the punitive damages at \$2,500.

Consequently, I would affirm the trial court's judgment.

\* Citizens of the Commonwealth, especially those supporting a family on a tight budget, will be surprised to learn from the majority that the sum of \$1,000 is "a nominal or trivial amount."

EDWARD DONOVAN, ET AL.

v.

BOARD OF ZONING APPEALS OF  
ROCKINGHAM COUNTY, ET AL.

Record No. 951196

March 1, 1996

Present: All the Justices

*Since the trial court erred in upholding a decision by a board of zoning appeals affirming a zoning administrator's interpretation on the application of a zoning ordinance, that judgment is reversed and final judgment is rendered.*

Zoning — Nonconforming Uses — Real Property — Automobile Graveyards  
— Special Permits — Construction of Zoning Ordinances — Jurisdiction

The county enacted its first zoning ordinance in 1969 when the property held by the landowners and used by them as an automobile graveyard was zoned for agricultural use. Automobile graveyards were not a permitted use, but the ordinance allowed the continuation of nonconforming uses which were already in existence. The use of the property as an automobile graveyard has continued without interruption. In 1994, the zoning administrator notified the landowners that they were in violation of the county code because they had failed to file for an automobile graveyard permit with a screening plan by 1972 and failure to file terminated the right to continue the nonconforming use granted by the 1969 ordinance. The landowners appealed the decision to the board of zoning of appeals which, following a hearing, upheld the zoning administrator's decision. On appeal, the circuit court found that the 1969 ordinance, as interpreted by the zoning administrator, applied to the landowners' property and dismissed their petition for a writ of certiorari. The circuit court stated that the determination of whether a zoning ordinance conflicts with a statute is beyond the court's jurisdiction in a certiorari proceeding because it involves the validity of the ordinance. The landowners appeal.

1. The principles of construction applicable to zoning ordinances are well established: the words of the ordinance are to be given their plain and natural meaning and the ordinance should not be extended by interpretation or construction beyond its intended purpose.
2. In reviewing a decision by a board of zoning appeals, great weight is given to the interpretation of the ordinance by those officials charged with its administration and the decision will be reversed only if it is plainly wrong or based on erroneous legal principles.
3. The county does not contest the landowners' assertion that their operation of the automobile graveyard was a valid nonconforming use following the

adoption of the 1969 zoning ordinance, but maintains that it lost that status as a lawful use of land entitling it to continue as a nonconforming use under the provisions of the county code because the owners failed to screen the operation from public view by 1972.

4. Assuming that the county code made the screening provisions applicable to all automobile graveyards existing on the effective date of the ordinance, a provision requiring that a particular nonconforming use be screened from public view is not the same as a provision invalidating the nonconforming use for failure to comply with the screening requirement.
5. The failure to screen an automobile graveyard is not identified as a circumstance which terminates the status of the use as a valid nonconforming use, nor is termination of such status listed as the penalty for violation of or failure to conform to the screening provision contained in the 1969 zoning ordinance.
6. Under the authority of Code §§ 15.1-491 and -499, the county could have enforced the screening requirement by seeking an injunction to prevent the landowners from operating the automobile graveyard until they complied with the screening requirement.
7. Nothing in the ordinance provides that the failure to screen an automobile graveyard terminates a valid nonconforming use and the failure of the landowners to do so within 3 years of the effective date of the 1969 ordinance did not terminate the status of their operation as a valid nonconforming use.

Appeal from a judgment of the Circuit Court of Rockingham County. Hon. Joshua L. Robinson, judge designate presiding.

*Reversed and final judgment.*

C. Waverly Parker for appellants.

G. Chris Brown (Glenn M. Hodge; Wharton, Aldhizer & Weaver, on brief), for appellees.

JUSTICE LACY delivered the opinion of the Court.

In this appeal we consider whether the trial court properly upheld a decision by the board of zoning appeals affirming the zoning administrator's interpretation and application of a zoning ordinance.

Rockingham County enacted its first zoning ordinance in 1969. At that time, property currently owned by appellants, Edward, Jean, Brownie, and David Donovan, Jr., (collectively, the Donovans) and used by them as an automobile graveyard, was zoned A-1, agricultural. Automobile graveyards were not a per-

mitted use in an A-1 district; however, the 1969 ordinance allowed the continuation of nonconforming uses which were in existence on the effective date of the ordinance. The use of the Donovans' parcel as an automobile graveyard has continued without interruption.

In 1994, the zoning administrator of Rockingham County notified the Donovans by letter that they were in violation of the Rockingham County Code (hereafter, County Code). According to the zoning administrator, the 1969 ordinance required the Donovans to file for an "automobile graveyard permit with a screening plan" by 1972 and failure to file for the permit terminated the right to continue the nonconforming use granted by the 1969 ordinance. Because the Donovans had not filed for such a permit, Rockingham County did not consider the Donovans' present operation to be valid nonconforming use. The zoning administrator informed the Donovans that they could "validate" the operation of their automobile graveyard by obtaining a special use permit and an automobile graveyard permit with a screening plan.<sup>1</sup>

The Donovans appealed the decision of the zoning administrator to the Board of Zoning Appeals (BZA).<sup>2</sup> Following a hearing, the BZA upheld the zoning administrator's decision and refused to consider whether that interpretation of the ordinance resulted in a conflict between the ordinance and Code § 15.1-492. The Donovans filed a petition for writ of certiorari in the circuit court. The Donovans argued that the zoning administrator and the BZA incorrectly applied and interpreted the 1969 ordinance, and failed to consider the Donovan's contention that such an interpretation conflicted with their vested rights established by the Virginia Constitution and Code § 15.1-492.

The circuit court found that the 1969 ordinance as interpreted by the zoning administrator applied to the Donovans' property and dismissed the writ of certiorari. In its order, the circuit court stated that the determination of whether a zoning ordinance conflicts with a statute is beyond the court's jurisdiction in a certio-

<sup>1</sup> The current zoning classification for the Donovans' property, A-2, permits the operation of an automobile graveyard with a special use permit. County Code § 17-27, Chapter 3 of the County Code, enacted in 1973 pursuant to Code § 15.1-28, regulates automobile graveyards and includes the current screening requirements. County Code § 5-2.

<sup>2</sup> The Donovans also filed a screening plan under County Code § 5-2, but the county has deferred action on the plan pending the outcome of this litigation.



rari proceeding because it involves the validity of the ordinance, and that the effect of the court's holding was "to affirm the decision of the Board of Zoning Appeals of Rockingham County." We awarded the Donovans an appeal and, because we conclude that the zoning administrator's interpretation of the 1969 zoning ordinance was incorrect, we will reverse the order of the circuit court.

[1-2] The principles relevant to the construction of a zoning ordinance are well established. The words of the ordinance are to be given their plain and natural meaning. *McClung v. County of Henrico*, 200 Va. 870, 875, 108 S.E.2d 513, 516 (1959). The purpose and intent of the ordinance should be considered but the ordinance should not be extended by interpretation or construction beyond its intended purpose. *Gough v. Shaner*, 197 Va. 572, 575, 90 S.E.2d 171, 174 (1955). In reviewing a decision of the BZA, we give "great weight" to the interpretation of the ordinance by those officials charged with its administration, and we will reverse the decision only if it is plainly wrong or based on erroneous legal principles. *Cook v. Board of Zoning Appeals of the City of Falls Church*, 244 Va. 107, 111, 418 S.E.2d 879, 881 (1992); *Masterson v. Board of Zoning Appeals of the City of Virginia Beach*, 233 Va. 37, 44, 353 S.E.2d 727, 732-33 (1987).

[3] The county does not contest the Donovans' assertion that their operation of the automobile graveyard was a valid nonconforming use following the adoption of the 1969 zoning ordinance. The county maintains, however, that the Donovans' automobile graveyard lost its status as a valid nonconforming use because they failed to screen the operation from public view by 1972. Thus, at the time of the county's enforcement action, although the cross-references to sections dealing with automobile graveyards had been deleted in 1984, the Donovans' automobile graveyard no longer was "a lawful use of land" entitling them to continue the operation as a nonconforming use under the provisions of the current zoning ordinance, County Code § 17-161.

The county's position is based on its application of the following portions of the 1969 ordinance:

#### ARTICLE 8—NONCONFORMING USES

...

8-1-1. If at the time of enactment of this ordinance, any legal activity, except those dealt with in section 7-2-5,

which is being pursued, or any lot or structure legally utilized in a manner or for a purpose which does not conform to the provisions of this ordinance, such manner of use or purpose may be continued as herein provided . . . .

....

#### ARTICLE 7—INDUSTRIAL, GENERAL, DISTRICT M-1

....

7-2-5. Automobile graveyards and junkyards in existence at the time [of] the adoption of this ordinance are to be considered as nonconforming uses. They may be allowed up to three (3) years after adoption of this ordinance in which to completely screen on any side open to view from a public road . . . .

The county contends that even though Chapter 7 relates to M-1 districts, the reference in County Code § 8-1-1 to § 7-2-5 extends the screening requirements of that section to all automobile graveyards existing in 1969. Any other interpretation, the county asserts, would allow automobile graveyards in districts other than M-1 to remain unscreened, a condition inconsistent with the purpose of the ordinance.

[4] We agree with the county's assertion that one of the purposes of the 1969 zoning ordinance was to require screening of all automobile graveyards, and we will assume, without deciding, that County Code § 8-1-1 made the screening provisions of County Code § 7-2-5 applicable to all automobile graveyards existing on the effective date of the ordinance. Nevertheless, a provision requiring that a particular nonconforming use be screened from public view is not the same as a provision invalidating the nonconforming use itself for failure to comply with the screening requirement.

[5] The ordinance identifies certain circumstances which result in the termination of a valid nonconforming use: if the use is discontinued for more than two years after the enactment of the ordinance, it is deemed abandoned, County Code § 8-1-3; if the use is changed to a more limited use, the prior, more expansive use is lost, County Code § 8-1-4; and after two years advertising structures must be relocated to districts where they are permitted

uses, County Code § 8-1-1. The failure to screen an automobile graveyard is not identified as a circumstance which terminates the status of the use as a valid nonconforming use, nor is termination of such status listed as the penalty for violation of or failure to conform to the screening provisions contained in the 1969 zoning ordinance.

[6] The ordinance is silent as to any specific consequences of the failure to screen. The absence of a specific consequence does not render the requirement meaningless, however. County Code § 11-2 states that a violation of the ordinance is a misdemeanor which subjects the violator to a fine of up to \$250 for each day the ordinance is violated. Furthermore, under the authority of Code §§ 15.1-491 and -499, the county could have enforced the screening requirement by seeking an injunction to prevent the Donovans from operating the automobile graveyard until they complied with the screening requirement. *McNair v. Clatterbuck*, 212 Va. 532, 533, 186 S.E.2d 45, 46 (1972).<sup>3</sup> Enforcement of the screening requirement by injunction would be consistent with the purpose of screening all automobile graveyards from public view without terminating a valid nonconforming use arising under County Code § 8-1-1.

[7] Applying the principles applicable to the construction of zoning ordinances, we conclude that the interpretation of the 1969 zoning ordinance by the zoning administrator as approved by the BZA was plainly wrong and based on erroneous principles of law. Nothing in the ordinance provides that the failure to screen an automobile graveyard terminates a valid nonconforming use. Therefore, the failure of the Donovans to screen their automobile graveyard within three years of the effective date of the 1969 ordinance did not terminate the status of their operation as a valid nonconforming use.<sup>4</sup>

Accordingly, we will reverse the order of the circuit court and enter final judgment in favor of the Donovans.

*Reversed and final judgment.*

<sup>3</sup> The zoning ordinance was amended in 1984 to specifically give the zoning administrator the authority to insure compliance with the chapter by instituting legal action including injunctions. County Code § 17-200.

<sup>4</sup> In light of this conclusion, we need not address the Donovans' other arguments.

GERALD M. MOORE AND SON, INCORPORATED

v.

JOSEPH S. DREWRY, JR., AND  
DREWRY AND ASSOCIATES, INCORPORATED

Record No. 951365

March 1, 1996

Present: All the Justices

*In the absence of privity, a person cannot be held liable for economic loss damages caused by his negligent performance of a contract and a question of Virginia law involving the application of the economic loss doctrine to an award of damages for negligent performance of a contract certified from the United States Court of Appeals for the Fourth Circuit is answered in the negative.*

Contracts — Privity — Torts — Negligence — Economic Loss Doctrine — Damages

Plaintiff, a corporation which owns and operates an industrial plant, entered into a contract with defendant engineering firm to design and furnish a furnace for thermal remediation of petroleum contaminated soil. The contract was signed by the president of the firm, who performed all of the engineering work on the project. When the furnace did not function properly because of design defects, the plaintiff filed suit alleging breach of contract, breach of warranties, and negligence. The individual engineer was added as a defendant in the negligence count. The firm was found liable for breach of contract and both the firm and the engineer were found liable for negligence. The corporation was awarded damages based on its economic loss and the firm and the engineer were held jointly and severally liable for the entire amount. In considering the engineer's appeal, the United States Court of Appeals certified the question:

Whether the president of the firm, as the engineer who performed the work for which the contract between the parties called, is liable for the purely economic losses resulting from the negligent performance of the contract.

1. The response to the certified question assumes that there is no privity between the engineer and the plaintiff corporation.
2. Under Virginia law, an agent can be held liable for negligent performance of a contract to which he is not party, but to which his principal is a party.
3. However, even if the agent's negligence is established, absent privity of contract, Virginia's economic loss doctrine precludes the recovery of damages based on economic loss alone.



(Cite as: 128 F.3d 216)

45 ERC 1481, 28 Env'tl. L. Rep. 20,236

UNITED STATES of America, Plaintiff-Appellant,

v.

♦HOECHST CELANESE♦ CORPORATION, Defendant-Appellee.

Chemical Manufacturer's Association; Corporate Environmental Enforcement Council; National Association of Manufacturers; Pharmaceutical Research and Manufacturers of America; Commonwealth of Virginia; Virginia Department of Environmental Quality; Science & Environmental Policy Project; Texas Institute for Advancement of Chemical Technology Incorporated; National Society of Professional Engineers; Texas Natural Resource Conservation Commission (TNRCC), Amici Curiae.

UNITED STATES of America, Plaintiff-Appellee,

v.

♦HOECHST CELANESE♦ CORPORATION, Defendant-Appellant.

Chemical Manufacturer's Association; Corporate Environmental Enforcement Council; National Association of Manufacturers; Pharmaceutical Research and Manufacturers of America; Commonwealth of Virginia; Virginia Department of Environmental Quality; Science & Environmental Policy Project; Texas Institute for Advancement of Chemical Technology Incorporated; National Society of Professional Engineers; Texas Natural Resource Conservation Commission (TNRCC), Amici Curiae.

Nos. 96-2003, 96-2051.

United States Court of Appeals,

Fourth Circuit.

Argued May 5, 1997.

Decided Oct. 27, 1997.

Government brought action against owner of plant which recycled benzene, alleging violation of Clean Air Act (CAA) and National Emission Standard for Hazardous Air Pollutants (NESHAP) for benzene. On motions for summary judgment, the United States District Court for the District of South Carolina, Joseph F. Anderson, Jr., J., 964 F.Supp. 967, found that interpretation of benzene regulations by Environmental Protection Agency (EPA) was reasonable, but that, because EPA did not provide owner with "fair notice" of EPA's interpretation, owner was not liable for any regulatory violations. Both parties appealed. The Court of Appeals, Diana Gribbon Motz, Circuit Judge, held that: (1) EPA's interpretation of regulatory exemption deserved deference; (2) owner did not have fair notice of EPA's interpretation of exemption during period before EPA contacted owner directly; (3) EPA's contacts with owner gave owner fair notice of EPA's interpretation; (4) EPA's failure to respond to proposed compliance schedule did not preclude liability; and (5) owner's likely receipt of waiver if it had asked for waiver did not preclude liability.

Affirmed in part and reversed and remanded in part.

Niemeyer, Circuit Judge, concurred in part, dissented in part, and filed opinion.

U.S. v. ♦Hoechst Celanese♦ Corp.

[1] KeyCite this headnote

⇒ 199 HEALTH AND ENVIRONMENT

⇒ 199II Regulations and Offenses

⇒ 199k25.5 Environmental Protection in General

⇒ 199k25.6 Air Pollution

⇒ 199k25.6(7) k. Extensions, variances, and exceptions.

C.A.4 (S.C.), 1997.

Interpretation by Environmental Protection Agency (EPA) of regulatory exemption for equipment at plants designed to "use" less than 1,000 megagrams of benzene per year, by which "use" was not limited to amount consumed, and recycled benzene was counted each time it cycled through two separate points within system, deserved deference because interpretation was not inconsistent with regulation or Clean Air Act, and interpretation was not "created" for litigation. Clean Air Act, § 101(b)(1), as amended, 42 U.S.C.A. § 7401(b)(1); 40 C.F.R. § 61.110(c)(2).

U.S. v. Hoechst Celanese Corp.

[2] KeyCite this headnote

199 HEALTH AND ENVIRONMENT

199II Regulations and Offenses

199k25.5 Environmental Protection in General

199k25.15 Judicial Review or Intervention

199k25.15(5.1) k. Evidence.

C.A.4 (S.C.), 1997.

Affidavit of former employee of Environmental Protection Agency (EPA), which was prepared and submitted on behalf of company that claimed exemption from EPA regulations on benzene emissions, for purpose of litigation, would be given no weight as to meaning of regulatory exemption, which was promulgated eleven years earlier. 40 C.F.R. § 61.110(c)(2).  
U.S. v. Hoechst Celanese Corp.

[3] KeyCite this headnote

92 CONSTITUTIONAL LAW

92XII Due Process of Law

92k299 Creation or Discharge of Liability in General

92k303 k. Penalties or forfeitures.

C.A.4 (S.C.), 1997.

To satisfy due process, regulation which allows monetary penalties against those who violate it must give fair warning of conduct it prohibits or requires, and it must provide reasonably clear standard of culpability to circumscribe discretion of enforcing authority and its agents. U.S.C.A. Const.Amend. 5.

U.S. v. Hoechst Celanese Corp.

[4] KeyCite this headnote

92 CONSTITUTIONAL LAW

92XII Due Process of Law

92k278.1 k. Health and environmental regulations.

C.A.4 (S.C.), 1997.

Plant owner was not afforded fair notice of interpretation, by Environmental Protection Agency (EPA), of exemption from benzene regulation, by which recycled benzene was counted each time it cycled through two separate points within system, prior to time that EPA directly contacted owner regarding its benzene use and, thus, due process precluded imposition of civil penalty for violation of regulation prior to that time; language and purpose of exemption did not clearly set forth definition of "use," and owner's communications with state agency supported owner's claim that owner's interpretation, equating consumption with "use" of benzene, was accurate. U.S.C.A. Const.Amend. 5; 40 C.F.R. § 61.110(c)(2).

U.S. v. Hoechst Celanese Corp.

[4] KeyCite this headnote

199 HEALTH AND ENVIRONMENT

199II Regulations and Offenses

199k25.5 Environmental Protection in General

199k25.6 Air Pollution

199k25.6(9) k. Enforcement and penalties.

C.A.4 (S.C.), 1997.

Plant owner was not afforded fair notice of interpretation, by Environmental Protection Agency (EPA), of exemption from benzene regulation, by which recycled benzene was counted each time it cycled through two separate points within system, prior to time that EPA directly contacted owner regarding its benzene use and, thus, due process precluded imposition of civil penalty for violation of regulation prior to that time; language and purpose of exemption did not clearly set forth definition of "use," and owner's communications with state agency supported owner's claim that owner's interpretation, equating consumption with "use" of benzene, was accurate. U.S.C.A. Const.Amend. 5; 40 C.F.R. § 61.110(c)(2).

U.S. v. Hoechst Celanese Corp.

[5] KeyCite this headnote

199 HEALTH AND ENVIRONMENT

199II Regulations and Offenses

199k25.5 Environmental Protection in General

199k25.6 Air Pollution

199k25.6(7) k. Extensions, variances, and exceptions.

C.A.4 (S.C.), 1997.

If owner of plant that recycled benzene had duty to ask for clarification of meaning of term "use" before it could justifiably claim exemption from federal benzene regulations for plants that used less than specified amount benzene, owner fulfilled that duty by communicating with state agency that Environmental Protection Agency (EPA) had empowered to implement and enforce regulations in Texas. 40 C.F.R. § 61.110(c)(2).

U.S. v. Hoechst Celanese Corp.

[6] [KeyCite this headnote](#)

⇨ 199 HEALTH AND ENVIRONMENT

⇨ 199II Regulations and Offenses

⇨ 199k25.5 Environmental Protection in General

⇨ 199k25.6 Air Pollution

⇨ 199k25.6(8) k. Administrative boards and proceedings.

C.A.4 (S.C.), 1997.

Plant owner did not have fair notice of any duty to apply for exemption from benzene regulations, on basis that plant "used" less than specified amount of benzene, or to file initial report, where regulations did not include procedures for such application, and reporting requirement was linked to exemption, which also did not provide fair notice of its terms to owner. 40 C.F.R. §§ 61.10(a), 61.110(c)(2).

U.S. v. Hoechst Celanese Corp.

[7] [KeyCite this headnote](#)

⇨ 199 HEALTH AND ENVIRONMENT

⇨ 199II Regulations and Offenses

⇨ 199k25.5 Environmental Protection in General

⇨ 199k25.6 Air Pollution

⇨ 199k25.6(9) k. Enforcement and penalties.

C.A.4 (S.C.), 1997.

Direct contacts between Environmental Protection Agency (EPA) and owner of plant which recycled benzene gave owner fair notice of EPA's interpretation of exemption from benzene regulations, pursuant to which "use" of benzene was not limited to amount consumed, and recycled benzene was counted each time it cycled through two separate points within system, and owner thus could be held liable for failure to comply with regulations, notwithstanding allegedly contrary opinions given by EPA and state agency to other plant owners or operators. U.S.C.A. Const. Amend. 5; 40 C.F.R. § 61.110(c)(2).

U.S. v. Hoechst Celanese Corp.

[8] [KeyCite this headnote](#)

⇨ 199 HEALTH AND ENVIRONMENT

⇨ 199II Regulations and Offenses

⇨ 199k25.5 Environmental Protection in General

⇨ 199k25.6 Air Pollution

⇨ 199k25.6(9) k. Enforcement and penalties.

C.A.4 (S.C.), 1997.

Plant owner's efforts to bring plant into compliance with benzene regulations were not relevant to owner's liability for violation of regulations, but only to penalty determination. Clean Air Act, § 113(e), as amended, 42 U.S.C.A. § 7413(e); 40 C.F.R. §§ 61.01 et seq., 61.110 et seq., 61.240 et seq.

U.S. v. Hoechst Celanese Corp.

[9] [KeyCite this headnote](#)

⇨ 199 HEALTH AND ENVIRONMENT

⇨ 199II Regulations and Offenses

⇨ 199k25.5 Environmental Protection in General

⇨ 199k25.6 Air Pollution

⇨ 199k25.6(9) k. Enforcement and penalties.

C.A.4 (S.C.), 1997.

Environmental Protection Agency (EPA) is not deemed to accept plant's proposed compliance schedule, in relation to benzene regulations, if EPA fails to respond within certain period of time after receiving schedule, and EPA's lack of response to proposed compliance schedule does not preclude it from imposing civil penalties on plant owner. 40 C.F.R. §§ 61.01 et seq., 61.110 et seq., 61.240 et seq.

U.S. v. Hoechst Celanese Corp.

[10] [KeyCite this headnote](#)

199 HEALTH AND ENVIRONMENT

199II Regulations and Offenses

199k25.5 Environmental Protection in General

199k25.6 Air Pollution

199k25.6(9) k. Enforcement and penalties.

C.A.4 (S.C.), 1997.

Likelihood that plant owner would have received waiver with respect to compliance with federal benzene emissions regulations, if owner had sought waiver, did not preclude civil liability for violating regulations. 40 C.F.R. § 61.11(a).

\*218

(Cite as: 128 F.3d 216, \*218)

ARGUED: David Carlisle Shilton, United States Department of Justice, Washington, DC, for Appellant. Andrea Bear Field, Hunton & Williams, Washington, DC, for Appellee. ON BRIEF: Peter Coppelman, Acting Assistant Attorney General, Environment & Natural Resources Division, John A. Bryson, Paul G. Wolfteich, United States Department of Justice, Washington, DC; Charles Garlow, Mary Ellen Levine, United States Environmental Protection Agency, Washington, DC; David Savage, United States Environmental Protection Agency, Atlanta, GA, for Appellant. David F. Geneson, Lee A. Casey, Hunton & Williams, Washington, DC; Douglas W. Davis, John Charles Thomas, Claudia T. Farr, Hunton & Williams, Richmond, VA, for Appellee. Paul G. Wallach, Wendy E. Anderson, Hale & Dorr, Washington, DC; David F. Zoll, General Counsel, James W. Conrad, Jr., Assistant General Counsel, Chemical Manufacturers Association, Arlington, VA; Jan S. Amundson, General Counsel, Quentin Riegel, Deputy General Counsel, National Association of Manufacturers, Washington, DC; Russel A. Bantham, General Counsel, Marjorie E. Powell, Assistant General Counsel, Pharmaceutical Research and Manufacturers of America, Washington, DC, for Amici Curiae-Chemical Manufacturers of America, et al. James S. Gilmore, III, Attorney General of Virginia, Roger L. Chaffee, Senior Assistant Attorney General, Mary Jo Leugers, Assistant Attorney General, Office of the Attorney General, Richmond, VA, for Amici Curiae Commonwealth of Virginia, \*219

(Cite as: 128 F.3d 216, \*219)

et al. Scott M. DuBoff, John W. Heiderscheid, III, Wright & Talisman, P.C., Washington, DC, for Amici Curiae Science and Environmental Policy Project, et al. Geoffrey S. Connor, General Counsel, Texas Natural Resource Conservation Commission, Austin, TX, for Amicus Curiae Commission.

Before NIEMEYER and MOTZ, Circuit Judges, and STAMP, Chief United States District Judge for the Northern District of West Virginia, sitting by designation.

No. 96-2003 affirmed in part and reversed and remanded in part and No. 96-2051 affirmed by published opinion. Judge DIANA GRIBBON MOTZ wrote the opinion, in which Chief Judge STAMP joined. Judge NIEMEYER wrote separately, concurring in part and dissenting in part.

# OPINION

DIANA GRIBBON MOTZ, Circuit Judge:

In 1984, pursuant to its authority under the Clean Air Act, the Environmental Protection Agency (EPA) promulgated regulations governing fugitive emissions of benzene, a carcinogenic pollutant posing significant risk to human health. This case involves the proper interpretation of those regulations, which impose numerous preventative and reporting requirements on industrial plants emitting benzene, but exempt plants designed to use less than 1,000 megagrams of benzene a year from these requirements. The issue here is whether a plant owned by Hoechst Celanese Corporation (HCC) is exempted from the requirements of the regulations. If not, that plant (one of the largest sources of fugitive benzene emissions in the United States from 1987 through 1993) indisputably violated the regulations in numerous respects.

The district court sustained EPA's interpretation of its own regulations, an interpretation that did not exempt the HCC plant. *United States v. Hoechst Celanese Corp.*, 964 F.Supp. 967, 971-76 (D.S.C.1996). Nevertheless, because the court concluded that the EPA did not provide HCC with "fair notice" of EPA's interpretation, the court declined to find HCC liable for any regulatory violations. *Id.* at 979-986. Both EPA and HCC appeal. In most respects, we affirm the judgment of the district court. That court correctly concluded that EPA's interpretation of its own regulations is entitled to deference. The district court also correctly held that EPA did not initially afford HCC fair notice of that interpretation and so the company cannot be held liable for violations of the regulations during the period (1984 to 1989) when it lacked fair notice. However, the court erred in concluding that HCC could rely on a fair notice defense for violations that occurred after 1989--when EPA provided the company with actual notice of EPA's interpretation of the regulations. Accordingly, we reverse the judgment of the district court in this single respect and remand the case for further proceedings consistent with this opinion.

## I.

The United States, on behalf of EPA, initiated this action against HCC for alleged violations of the National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene (NESHAP or regulations), 40 C.F.R. pt. 61, subpts. A, J, and V (1996), at HCC's Celriver plant in Rock Hill, South Carolina. The NESHAP provides controls on the amount of benzene that can be emitted into the atmosphere. EPA propounded these controls because it concluded that they could substantially "reduce the estimated annual incidence of leukemia" for persons living within 20 kilometers of plants with equipment that leaked benzene--roughly twenty to thirty million people. NESHAP preamble, 49 Fed.Reg. 23,498, 23,501 (1984). Specifically, the NESHAP requires industrial plants that are designed to produce, use, or otherwise have in service benzene to monitor equipment regularly for leaks, repair leaks promptly, and install equipment that prevents, captures, or destroys benzene emissions. The regulations include reporting and recordkeeping requirements and provide that violations are to be punished by civil penalties. The regulations, however, exempt "[a]ny equipment in benzene service that is located at a plant site designed to produce or use \*220

(Cite as: 128 F.3d 216, \*220)

less than 1,000 megagrams of benzene per year." 40 C.F.R. § 61.110(c)(2) (1996) (emphasis added). [FN1] The exemption reflects EPA's conclusion that the benefit achieved by regulating small volume users of benzene does not justify the cost involved. See NESHAP preamble, 49 Fed.Reg. at 23,510. The question that divides the parties is what does "use" mean in the exemption.

FN1. One megagram is equivalent to approximately 2,200 pounds.

The EPA defines "use" broadly to mean utilization, employment, or putting in place; this definition includes but is not limited to "consumption" of benzene, i.e., the overall amount needed to keep processes operational. The Celriver plant was designed to utilize benzene as a "quench" to cool hot ketene gases and as a "reflux agent" to help separate water and other compounds from acetic anhydride and acetic acid; after each of these uses the benzene was cooled, purified, and then recirculated as a "quench" or "reflux agent." Under EPA's definition of "use," counting each time benzene circulated through pipes and valves capable of leaking, the Celriver plant was designed to "use" more than a million megagrams of benzene a year, and was not exempt from the NESHAP. Indeed, the Celriver plant not only "used" vast amounts of benzene, it also leaked substantial amounts of the carcinogen: as the district court noted, "the Celriver plant ranked in the top 5% of all plants reporting benzene fugitive emissions in every year between 1987 and 1993." Hoechst Celanese, 964 F.Supp. at 974. ➔

Nevertheless, HCC claims the Celriver plant was exempt from the NESHAP. The company asserts that "use" in the exemption has only a single narrow meaning-- "consumption." Since the Celriver plant continually recycled benzene, the total quantity it "used," under the company's theory, never exceeded 1,000 megagrams a year and thus the plant qualified for the exemption under 40 C.F.R. § 61.110(c)(2). The company concluded that the exemption was self-executing and for this reason HCC neither filed reports for the Celriver plant nor complied with any of the monitoring or other requirements of the regulations.

Because HCC never applied for an exemption for the Celriver plant or filed any reports as to its benzene usage, EPA did not become aware of the possibility of substantial benzene emissions at the Celriver plant until 1989. At that time, EPA's Region 4 office, which exercised enforcement authority over plants located in South Carolina, expressly notified the company in writing that if "benzene is recycled or reused in any process ... the total cumulative flow through the process rather than net benzene consumption or usage" is to be counted as "use" of benzene for purposes of the regulations. After further communications between the parties, EPA determined that the Celriver plant had violated the NESHAP and so initiated this action.

EPA alleged that HCC, at its Celriver plant, violated NESHAP leak detection and repair requirements as well as requirements related to the installation of control devices, reporting, and recordkeeping. EPA asserted the Celriver plant did not qualify for the exemption and, even if it did, HCC could not claim this protection because it never applied to EPA for the exemption. In response, HCC argued that EPA's interpretation of the exemption was erroneous and merited no deference. Alternatively, HCC contended that if EPA's interpretation were accepted, HCC should not be held responsible for any violations of the regulations because it lacked fair notice of that interpretation. On cross-motions for summary judgment, the district court sustained EPA's interpretation of the regulations, but concluded that HCC lacked fair notice of this interpretation both before and after EPA's direct contacts with HCC in 1989. The court therefore refused to find HCC liable for any violations of the regulations.

## II.

[1] The Clean Air Act unquestionably provides EPA with broad powers to promulgate regulations necessary to identify and control hazardous air pollutants. See 42 U.S.C.A. §§ 7401-7671q (West 1995 & Supp. 1997). HCC makes no claim that the benzene regulations in any way violate or are \*221

(Cite as: 128 F.3d 216, \*221)

contrary to EPA's statutory authority. Cf. Chevron, U.S.A., Inc. v. NRDC, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984) (rejecting appellant's contentions that agency's interpretation conflicts with language and legislative history of statute). Nor does the company assert that either the Clean Air Act or the NESHAP contravenes any constitutional provision. Finally, HCC does not contend that EPA's procedures in promulgating the regulations were flawed. Thus, the initial question before us is simply whether EPA's interpretation of its own authorized, and properly promulgated, regulations should be accorded deference.

The Supreme Court has continually reaffirmed that an agency's interpretation of its own regulations is entitled to substantial deference. See, e.g., Thomas Jefferson Univ. v. Shalala, 512 U.S. 504, 512, 114 S.Ct. 2381, 2386, 129 L.Ed.2d 405 (1994) ("We must give substantial deference to an agency's interpretation of its own regulations."); Stinson v. United States, 508 U.S. 36, 45, 113 S.Ct. 1913, 1919, 123 L.Ed.2d 598 (1993) ("[P]rovided an agency's interpretation of its own regulations does not violate the Constitution or a federal statute, it must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation."). When an agency applies its "regulation to complex or changing circumstances," the Court has explained, this "calls upon the agency's unique expertise and policymaking prerogatives" and courts must "presume that the power authoritatively to interpret its own regulations is a component of the agency's delegated lawmaking powers." Martin v. OSHRC, 499 U.S. 144, 151, 111 S.Ct. 1171, 1176, 113 L.Ed.2d 117 (1991). At least implicitly, HCC acknowledges that generally EPA's interpretation of properly promulgated, statutorily authorized, regulations is entitled to deference. HCC contends, however, that "[t]his is not a deference case." Brief of Appellee at 22. The company asserts that the plain language of the NESHAP does not permit EPA's interpretation. It further argues that EPA's interpretation merits no deference because the agency assertedly did not espouse its present interpretation when it originally promulgated the regulations, but only "created" that interpretation "during this litigation."

A.

In resolving this question, we begin with the plain language of the regulations. The NESHAP itself does not indicate any intent to limit the meaning of the term "use" to consumption. Indeed, EPA's decision to give "use" a more expansive treatment than that advocated by HCC is consistent with the ordinary meaning of "use." See Black's Law Dictionary 1541 (6th ed.1990) (defining "use" to include "to make use of, to employ" as well as "to put into action or service, to utilize"). Nor is the agency's broad interpretation nonsensical. After all, recycled benzene is just as likely to create a health threat as new benzene; each time benzene passes through a valve or pipe, it can potentially leak. Regulations designed to reduce the risk posed by this carcinogen should logically treat new and recycled benzene alike. Thus, EPA's interpretation of its own regulatory exemption harmonizes with the purpose of the authorizing statute, the Clean Air Act: "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C.A. § 7401(b)(1) (West 1995). Congress mandated that EPA set emission standards that promote the public health and welfare with "the maximum degree in reduction in emissions of the hazardous air pollutants" subject to the Act, including cancer-causing benzene. 42 U.S.C.A. § 7412(d)(2) (West 1995). A broad reading of "use" certainly best achieves this goal.

Moreover, EPA's interpretation of its exemption accords with the purpose of the exemption itself. As the preamble to the regulations notes, the exemption was designed as a "small plant exemption" intended to exclude "most research facilities, pilot plants, and intermittent users of benzene." 49 Fed.Reg. at 23,510. EPA drafted the exemption in response to comments that the proposed NESHAP (which contained no exemption) was not cost effective for small plants, explaining:

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EPA believes it is reasonable to exempt plants from the standard when the cost of the standard is unreasonably high in comparison to the achieved emission reductions. Therefore, EPA decided to determine a cutoff for exempting these plants based on a cost and emission reduction analysis. Office of Air Quality, EPA, Pub. No. 450/3-80-032b, Benzene Fugitive Emissions--Background Information for Promulgated Standards 2-104 (1982) (BID).

The agency recognized that industrial plants with the fewest pieces of equipment, and so the fewest sources of leaks, were probably the least likely to emit emissions. But it determined that it could not define the exemption in terms of number of pieces of equipment or sources of leaks because such an approach "could not be applied readily to small or intermittent users of benzene" whose "facilities often require frequent repiping." BID at 2-104. Instead, EPA conducted studies and found that when the design production of a plant was about 1,000 megagrams per year, the plant contained 87 pieces of equipment and would be expected to emit only about 6 megagrams of benzene per year; applying the proposed regulations to such plants would only result in a reduction of 4 megagrams of benzene emissions per year. EPA concluded that the cost of imposing the regulatory requirements to such small plants was "unreasonably high in comparison to the achieved emission reductions" and so those plants could properly be exempted from the regulatory requirement. *Id.* (emphasis added). [FN2]

FN2. HCC asserts that this regulatory history only demonstrates that the purpose of the exemption "was to exempt facilities from implementing the standards of the benzene NESHAP where the cost would be unreasonably



high." Brief of Appellee at 26 (emphasis added). That argument, of course, overlooks the remainder of the language from the administrative record, which is quoted and emphasized above.

Accordingly, in formulating the exemption, EPA used the 1,000 Mg cut off rate as a proxy to exempt plants that had so few sources of leaks that they would be expected to emit only 6 megagrams of fugitive benzene per year. The Celriver plant most decidedly does not fall within that category. Rather, it had thousands of sources of benzene leaks (nearly 17,000 as of November 1990) and was one of the largest sources of benzene emissions in the nation during the period at issue in this suit, with annual emissions reaching 226 megagrams (nearly 500,000 pounds). Thus, HCC's Celriver plant was not the kind of plant that EPA envisioned in creating the exemption.

In sum, EPA's interpretation accords with the plain language of the NESHAP, as well as the purposes of the Clean Air Act and of the exemption itself.

#### B.

Nevertheless, HCC asserts that EPA's interpretation merits no deference because it was one "created" after the fact for this litigation. HCC principally relies on isolated language in the preamble, BID, and EPA correspondence. [FN3] This scattered language hardly compels the company's interpretation of the regulations.

FN3. HCC erroneously asserts that "there are over 100 places in the rulemaking record where EPA uses the terms 'use' and 'consume' interchangeably." Brief of Appellee at 8. In fact, there are only a few occasions in the rulemaking record in which EPA employs "consume" in lieu of "use" and, as explained in text above, those instances are ambiguous. The additional references on which HCC relies are not contained in the rulemaking record at all. See 42 U.S.C.A. § 7607(d)(7)(A) (West 1995) (defining rulemaking "record" for purposes of judicial review); 42 U.S.C.A. § 7412(c)(4) (West 1995) (applying § 7607 standards to emissions standards). Rather, they appear in correspondence with various EPA regional offices or state environmental agencies after the NESHAP was promulgated. Many of the references in this correspondence were authored by plant owners and operators, not EPA or other environmental agencies; furthermore, the agencies' use of "consume" in lieu of "use" even in the post-promulgation correspondence is subject to differing interpretations. See *infra* n. 6.

HCC also refers to its interpretation of use as a "single counting" approach and denominates EPA's interpretation as a "multiple counting" approach. Although the district court adopted this nomenclature, it does not appear anywhere in the NESHAP or in the rulemaking record.

Accordingly, we do not employ it here.

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For example, in the preamble, EPA does occasionally employ the term "consume" in lieu of "use" in a discussion of the operations of pharmaceutical companies. See NESHAP preamble, 49 Fed. Reg. at 23,510. However, as the district court explained, this scarcely proves that EPA limited the meaning of "use" in the regulations to "consume":

These passages from the [administrative] record ... do not lead inevitably to the conclusion that EPA intended the word "use" in the exemption to mean only "consume".

◆ *Hoechst Celanese*, 964 F.Supp. at 976. ◆ (emphasis added). Clearly, one type of "use" is "consumption;" EPA does not claim to the contrary. The agency simply asserts that "use" also includes utilization or employment. Although the preamble contains evidence that "use" includes "consumption," it in no way requires the conclusion that "use" is limited to "consumption."

Similarly, EPA describes the exemption in the rulemaking record as establishing a cut off for "a plant design usage or throughput rate of benzene equal to or less than 1,000 Mg/yr per plant" and explains that "throughput" is "determined by a mass balance during the design stages of process operation, accumulating all benzene processed in 1 year." BID at 2-105. HCC asserts that "throughput" in this context can only refer to a "plant's overall net production or consumption ... not recirculation rates." But again, the district court recognized that "'throughput' and 'consumption' are not synonymous .... 'throughput' can describe, for example, the flow of benzene through equipment like the quench chamber and main still"--just as EPA asserts.

Finally, numerous EPA letters issued in the summer and fall of 1984, shortly after the initial promulgation of the NESHAP in June 1984, severely undermine HCC's entire post-hoc argument. [FN4] For example, on August 20, 1984, EPA answered an inquiry from a Texaco plant manager stating that "use" was to be determined by "the overall quantity of benzene used in equipment," not "consumption." On October 5, 1984, EPA told an applicant seeking an exemption, "the 1000 megagrams per year cut off limit is applicable to total processing rates rather than net consumption (usage) or net production, of all affected equipment at an entire plant site." (emphasis in original). That same month, EPA informed another exemption applicant that the "1,000 megagrams per year cut off limit is applicable to total processing rates, rather

than net consumption (usage) or net production." A few days later, EPA wrote still another applicant that the "1,000 megagram per year cut off limit is applicable to total processing rates of all affected equipment at an entire plant site." (emphasis in original). The next month, EPA informed its regional offices that "We have determined the cut-off is based on the throughput or processing rate, rather than consumption." There are a number of other contemporaneous letters from EPA to the same effect. In view of this evidence, it is simply impossible to conclude, as HCC argues, that EPA formulated its broad interpretation of the exemption as a strategy for litigation initiated in 1992, eight years after the regulation was originally promulgated.

FN4. Recognizing the impact of these EPA documents, HCC urges (somewhat inconsistently with its claim that EPA's interpretation is an after-the-fact creation for litigation) that these documents demonstrate EPA's attempt immediately after promulgation of the NESHAP to narrow the exemption by broadening the meaning of "use." Brief of Appellee at 15. To prevail on this argument, HCC would have to have demonstrated that "use" in the NESHAP necessarily meant only "consume." As noted above, the district court concluded and we agree that this conclusion is unwarranted.

[2] For all of these reasons, we agree with the district court that EPA's interpretation of its own regulations deserves deference. [FN5]

FN5. In reaching this conclusion, we give no weight to the 1995 affidavit of a former EPA employee, Robert Ajax, which was prepared and submitted on HCC's behalf for this litigation. Like similar affidavits from individual legislators, it is entitled to no weight as to the meaning of legislation enacted, or in this case a regulation promulgated, eleven years earlier. See Consumer Product Safety Com'n v. GTE Sylvania, Inc., 447 U.S. 102, 118 n. 13, 100 S.Ct. 2051, 2061 n. 13, 64 L.Ed.2d 766 (1980) ("Such history does not bear strong indicia of reliability ... because as time passes memories fade and a person's perception of his earlier intention may change.").

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### III.

The more difficult question is whether, and if so when, HCC was afforded fair notice of the EPA's interpretation.

[3] Due process requires that a party must receive fair notice before being deprived of property. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950). Moreover, it is well established in criminal law that no punishment can be imposed without notice. See, e.g., United States v. National Dairy Prods. Corp., 372 U.S. 29, 32-33, 83 S.Ct. 594, 597-98, 9 L.Ed.2d 561 (1963); United States v. Bennett, 984 F.2d 597, 605 (4th Cir.1993). Although the Supreme Court has not directly addressed the question, we have concluded that because civil penalties are "quasi-criminal" in nature, parties subject to such administrative sanctions are entitled to similar "clear notice." See First American Bank v. Dole, 763 F.2d 644, 651 n. 6 (4th Cir.1985). A "regulation[ ] which allow[s] monetary penalties against those who violate [it], ... must give ... fair warning of the conduct it prohibits or requires, and it must provide a reasonably clear standard of culpability to circumscribe the discretion of the enforcing authority and its agents." Id. (quoting Diamond Roofing Co. v. OSHRC, 528 F.2d 645, 649 (5th Cir.1976) (citation omitted)). To determine if a party has received fair notice, we must examine the relevant facts of each case. See Bennett, 984 F.2d at 605. In this case, that requires separate examination of two time frames: (1) the period from 1984 (when the exemption was originally promulgated) to 1989 (when EPA became aware of the operations of the Celriver plant and directly contacted HCC); and (2) the period after the 1989 contacts between EPA and HCC until 1992 (when HCC finally complied with the regulation). We address each period in turn.

#### A.

[4] In support of its claim that HCC had fair notice of EPA's broad interpretation of the regulations from the time they were originally promulgated in 1984, EPA offers two interrelated arguments.

##### 1.

First, the agency asserts that the plain language of the NESHAP and the rulemaking record should have put HCC on notice that the Celriver plant did not qualify for an exemption. For example, EPA contends that HCC should have known that its Celriver plant with nearly 17,000 pieces of equipment and substantial benzene emissions could not possibly be exempt. In support of this argument, EPA points out that "use" is a broad term, and that what is at issue here is an exemption and exemptions are to be narrowly construed. See, e.g., Duquesne Light Co. v. EPA, 698 F.2d 456 (D.C.Cir.1983) (narrowly construing a Clean Air Act exemption). EPA also notes that the rulemaking record indicates that this was intended to be a "small plant" exemption designed to accommodate companies with limited use and emissions of benzene. See NESHAP preamble, 49 Fed.Reg. at 23,510. EPA maintains that if HCC had any doubt on the matter because

of EPA's reference to "consume" in lieu of "use" in some portions of the rulemaking record, it had an obligation to contact the agency for clarification. See, e.g., Texas Eastern Products Pipeline Co. v. OSHRC, 827 F.2d 46, 50 (7th Cir.1987) (finding fault with company's failure to make any inquiry of the administrative agency responsible for the regulations at issue).

EPA's argument is not without force and in another case might well carry the day. Generally, "ignorance of the law or a mistake of the law is no defense," Cheek v. United States, 498 U.S. 192, 199, 111 S.Ct. 604, 609, 112 L.Ed.2d 617 (1991), and a claim of lack of notice "may be overcome in any specific case where reasonable persons would know that their conduct is at risk." Maynard v. Cartwright, 486 U.S. 356, 361, 108 S.Ct. 1853, 1857, 100 L.Ed.2d 372 (1988). However, as EPA recognizes, "it is crucial to examine the particular situation of the defendant, and whether it lacked reasonable notice." Brief of Appellant at 29 (emphasis in original). Examination of the particular facts of this case convinces us that, prior to 1989, HCC \*225

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did not have fair notice of the EPA's broad interpretation of the term "use."

Although as noted above, nothing in the NESHAP itself or the rulemaking record forecloses EPA's interpretation of the exemption, at the same time nothing mandates it. Indeed, some of the language in the preamble (e.g., EPA's references to "consume" in lieu of "use") supports HCC's narrower interpretation. Moreover, as the district court noted, just because the Celriver plant was not a small plant with few emissions, it was not necessarily put on notice that it was subject to the regulations, given that even under EPA's interpretation of "use," some plants with many pieces of equipment and significant emissions theoretically could be exempt. Thus, we cannot hold that the regulations, their preamble, or purpose clearly put HCC on notice that the Celriver plant did not qualify for an exemption. [FN6]

FN6. HCC also contends, and the district court held, that EPA regional offices assertedly interpreted the exemption inconsistently and that this provides additional support for the company's claim that EPA failed to provide it fair notice. See Hoechst Celanese, 964 F.Supp. at 981. ♦ Some of the EPA documents on which HCC relies can be read, as the company asserts, as providing conflicting interpretations of "use." Most, however, can at least as easily be read as consistently requiring EPA's broad interpretation whenever that question was raised and/or relevant. But given our conclusion that EPA failed to provide fair notice to HCC from 1984 to 1989, we need not reach the question of whether these documents constitute a proper additional basis for a grant of summary judgment on that question.

[5] We need not determine if, as EPA maintains, the NESHAP and rulemaking record at least provided HCC with "reason to know that its exemption claim rested on extremely shaky grounds" and so triggered an obligation to ask for clarification of the meaning of "use." Brief of Appellant at 31. If HCC did have such an obligation, it fulfilled it by communicating with the Texas Air Control Board (TACB), the state agency that EPA had empowered to implement and enforce the NESHAP in Texas.

The undisputed facts are as follows: in August 1984 (a few months after promulgation of the NESHAP), HCC sought information from the TACB as to whether an HCC plant located in Bishop, Texas, which also recycled benzene, was exempt under 40 C.F.R. § 61.110(c)(2). The TACB referred HCC to an August 1984 letter that EPA's Region 6 office sent to a Texaco facility in Texas that used recycled benzene. This letter stated that "use is not meant to imply consumption, but rather is meant to reflect the overall quantity of benzene used in equipment at a facility." This letter does seem, as EPA maintains, to support EPA's broad definition of "use." Indeed, contemporaneous HCC internal communications indicate that HCC itself so interpreted EPA's response; for example, one HCC official hand wrote on the Texaco letter "Read it and weep" and another HCC official wrote a memo noting "EPA recently advised ... that 'use' of benzene includes recycle." However, the TACB interpreted EPA Region 6's letter to Texaco as indicating that overall inventory was the determinant factor. Thus, the TACB concluded that the Bishop plant qualified for an exemption because it did not maintain an inventory of more than 1,000 megagrams of benzene. In December 1984, the TACB sent a short letter to HCC informing the company that the Bishop plant was "exempt from the requirements of Section 61.112," the section mandating source compliance with the NESHAP. Although EPA Region 6 received a copy of that letter, it took no action to rescind or invalidate the exemption. HCC then concluded that the Celriver plant, which used benzene in a manner similar to the Bishop plant, was also exempt.

In addition to the Bishop plant, HCC operated another plant in Pampa, Texas. That plant, like the Celriver and Bishop plants, continually recycled benzene through a closed loop system but because the Pampa plant "consumed" more than 1,000 megagrams of benzene per year even under HCC's interpretation of "use," it was not exempt from the NESHAP requirements. For this reason, in September 1984, HCC applied to the TACB for a two-year waiver from compliance with the NESHAP for the Pampa plant so that HCC could "reduce the quantity of benzene consumed in the plant to less than 1,000 megagrams" and thus become \*226

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exempt. In April 1985, the TACB approved the waiver request; copies of that request and TACB's approval were sent to

EPA Region 6, which took no action to invalidate the waiver.

These undisputed facts demonstrate that, although HCC made no direct inquiry as to the application of the exemption to the Celriver plant, it did not fail to make any inquiry as to the meaning of the NESHAP. Cf. Texas Eastern Products, 827 F.2d at 50. Rather, it asked TACB for an exemption and waiver of the regulation for two HCC plants located in Texas, which recycled benzene just as the Celriver plant did. In response, TACB issued the requested exemption and waiver, with copies to EPA's Region 6. We recognize that although Region 6 received copies of TACB's letters granting the exemption and waiver to the Bishop and Pampa plants respectively, those letters were short and may not have fully informed the agency of their impact. But in addressing whether a party has received fair notice, we look at the facts as they appear to the party entitled to the notice, not to the agency. On the basis of the TACB's actions and the inaction of EPA Region 6, the company had reason to believe that its interpretation of the exemption--equating "use" to "consumption"--was accurate. When these facts are viewed in the context of a rulemaking record that included some references to "use" in lieu of "consume," we must conclude that HCC did not receive fair notice of EPA's broader interpretation of the term in the 1984-89 period.

2.

[6] As a corollary to the above argument, EPA asserts that the NESHAP required a plant owner to apply for an exemption and file an initial report and that HCC's failure to do either prevents it from now claiming a right to the exemption. As noted above, immediately after EPA issued the NESHAP in 1984, numerous other plant owners inquired as to the meaning of "use," applied for exemptions, and filed initial reports. HCC, in contrast, never applied for an exemption or filed reports.

The district court held that HCC's contacts with TACB constituted an "indirect [ ]," informal application for an exemption for the Celriver plant. Hoechst Celanese, 964 F.Supp. at 979. We cannot agree. Whatever the authority of the TACB or EPA Region 6 in Texas, they had no authority to grant an exemption in South Carolina and no ability to grant an exemption (by implication) to a plant about which they knew nothing. Thus, if the NESHAP had clearly mandated that the owner of a plant seeking an exemption apply for the exemption, HCC's Celriver plant failed to meet this requirement. Accordingly, we turn again to the relevant regulatory language. The NESHAP provides in pertinent part:

Any equipment in benzene service that is located at a plant site designed to produce or use less than 1,000 megagrams of benzene per year is exempt from the requirements of § 61.112.

§ 61.110(c)(2) (emphasis added). Thus, the plain language of the regulation suggests that the exemption is self-executing and provides no discretion to the EPA administrator to determine whether or not to grant an exemption. Section 61.110(c)(1) does state that "[i]f an owner or operator applies for one of the exemptions in this paragraph," he must maintain certain records. (emphasis added). But it is impossible to conclude that this reference clearly requires a plant owner or operator to file an application for an exemption, in view of the absence of any explicit directive in § 61.110(c)(2), or any instructions in any other portion of the regulations as to how, where, when, or in what form such applications for exemptions are to be made. We note that elsewhere in the same regulations when EPA requires an application for a waiver of the NESHAP's requirements, it specifies in detail the procedures for the application. See 40 C.F.R. §§ 61.10(b), 61.11 (1996); see also § 61.112(c) (1996) (setting out procedures for application for an alternative method for attaining compliance). Thus, we do not believe the NESHAP provides fair notice that a plant owner or operator must apply for an exemption. Nor do we believe the regulations provide fair notice that the owner of exempt equipment \*227

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must file an initial report. The NESHAP requires an "owner

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or operator of [an] existing source" of benzene emissions to file an initial report within 90 days of promulgation of the regulations. 40 C.F.R. § 61.10(a) (1996). EPA asserts that the exemption in § 61.110(c)(2) does not allow an owner or operator to avoid the initial report requirement because that exemption only exempts "equipment," i.e., "sources," and does not eliminate reporting obligations imposed in other portions of the NESHAP on owners and operators of such equipment. EPA may be correct that this is what is intended. But we cannot hold that the plain language of § 61.10(a) provides clear notice of this intent. As EPA concedes, the reporting requirement is linked to the exemption provision; by requiring exempt companies to file reports, EPA can determine continued eligibility for that exemption. Since we have determined that HCC lacked fair notice of the need to apply for an exemption, we can not now hold it should have known to submit reports to monitor continued eligibility for an exemption.

In sum, we agree with the district court that prior to 1989, HCC did not have fair notice of EPA's interpretation of the NESHAP or of a regulatory obligation to apply for an exemption or file reports.

B.

[7] Finally, we must determine whether HCC continued to lack fair notice after 1989, when EPA's Region 4 office, the office responsible for enforcement of the NESHAP in South Carolina, directly informed officials at HCC's Celriver, South Carolina plant of the proper interpretation of the regulations.

1.

On June 13, 1989, EPA Region 4 wrote the HCC official responsible for regulatory compliance at the Celriver plant, informing him that "[i]f benzene is recycled" then "use" for purposes of the exemption must be calculated on the basis "of

total cumulative flow through the process rather than net benzene consumption or usage." The EPA letter stated that "it appears that [HCC] may be subject" to the NESHAP requirements and asked HCC to forward information necessary "to determine the full extent and duration of all benzene emissions" within thirty days. Two weeks later, on June 26, HCC responded. Asserting that the Celriver plant recycled benzene and so under HCC's definition of "use," i.e., consumption, the plant was exempt, the company did not forward the requested information.

However, on July 28, 1989, senior HCC Celriver officials met to discuss the EPA's June 13 letter. Minutes of that July meeting indicate that by that time, HCC officials well understood that EPA did not accept the company's interpretation of "use." The minutes of the July meeting note in pertinent part:

The EPA standard for fugitive benzene emissions may be applied to Celriver. The limit of 1000 megagrams benzene per year (2,205,000 pounds per year) is applied to throughput instead of consumption. Process throughput or recycle is considerably greater than this limit. Stringent EPA controls would thus apply to existing process equipment. The full implication of this interpretation must be determined and steps taken to meet compliance. (emphasis added).

Moreover, unaware of HCC's internal discussions of the matter, on August 18, 1989, EPA Region 4 responded to HCC's June 26 letter noting that "it appears that you are unaware of EPA's interpretation of benzene usage as the term is used to determine applicability." In this letter, EPA proceeded to explain carefully and in no uncertain terms that benzene usage equaled "total cumulative flow through equipment in benzene service rather than net consumption." The letter contained an explicit example of how to determine usage in the exemption and asked HCC to forward the information originally requested in mid-June within thirty days. In September, still noting its objection to EPA's interpretation, HCC finally forwarded the requested information--pursuant to EPA's interpretation of "use," the Celriver plant's use of benzene exceeded 2.5 million megagrams of benzene per year. On February 20, 1990, EPA Region 4 issued HCC Celriver a notice of violation and in April 1990, HCC submitted \*228

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a plan to redesign its Celriver plant to bring it into compliance with the NESHAP.

In short, HCC received in June 1989 a letter from EPA Region 4 unequivocally setting forth the agency's interpretation, and the record establishes that at

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least by July 1989 HCC well understood EPA's position. Moreover, in August 1989 EPA Region 4 expressly reiterated the interpretation stated in its June letter. Further, these 1989 letters from EPA Region 4 to HCC Celriver must be regarded as representing the agency's authoritative interpretation of the benzene exemption as it affected the Celriver plant. In its appellate brief, HCC itself concedes as much. See Brief of Appellee at 45 n. 29 ("HCC does not dispute the fact that EPA Region IV is authorized to communicate the agency's interpretations of its own regulations to the regulated community.").

## 2.

In spite of these uncontroverted facts, the district court held that HCC "did not have actual notice" of EPA's interpretation "in the summer of 1989." ♦*Hoechst Celanese*, 964 F.Supp. at 984.♦ The court reasoned that EPA Region 4's 1989 letters to HCC were contrary to "statements" in the rulemaking record (e.g., "consume" in lieu of "use") and to other letters from EPA and state environmental agencies interpreting the NESHAP. *Id.* For this reason, the court concluded that HCC had a "legitimate basis for believing" that the 1989 letters from EPA Region 4--the region charged with supervision of the Celriver plant--did not "speak[ ] for the Administrator" of the EPA. *Id.* The district court further held that even the notice of violation could "not be deemed as having provided ♦*Hoechst Celanese*♦ an authoritative interpretation of the benzene exemption." *Id.*

With regard to the asserted conflict between EPA Region 4's 1989 letters to HCC Celriver and statements in the rulemaking record, the district court's conclusion is at odds with its earlier holding deferring to EPA's interpretation of the NESHAP. The district court initially held that it should and would defer to EPA's interpretation *inter alia* because the rulemaking record did not conflict with that interpretation. We believe, as explained above, that the district court correctly analyzed this issue at the outset of its opinion, when it concluded that "[t]hese passages from the record ... do not lead inevitably to the conclusion that EPA intended the word 'use' in the exemption to mean 'consume.'" *Id.* at 976.

Accordingly, we necessarily must reject the argument that statements in Region 4's 1989 letters to HCC conflicted with the rulemaking record.

Nor can HCC rely on letters from EPA and state environmental agencies to other owners or operators about other facilities that allegedly adopt an interpretation of the exemption contrary to that which EPA directly conveyed to HCC Celriver in 1989. First, no communication from EPA Region 4--the office charged with enforcement of the NESHAP in South Carolina--conflicts with Region 4's definitive 1989 letters to HCC Celriver. [FN7]

FN7. Thus, HCC's reliance on Region 4's communications with the Department of Energy's Savannah River Site (SRS) is misplaced. Based on information

SRS initially supplied in 1989, the EPA could not determine whether the not-yet-built consolidated incineration facility (CIF) would be exempt. Subsequently, in 1995, upon learning that the CIF would recirculate benzene in amounts greater than 1,000 mg/yr, EPA concluded the operation would be subject to the benzene NESHAP.

As to the asserted contrary interpretation of "use" by other EPA offices or state agencies, HCC presents no evidence that the company knew of any contrary interpretations issued during or after 1989. Without contemporaneous knowledge of and reliance on these allegedly inconsistent interpretations, HCC had no reason to believe EPA Region 4 was providing it with anything other than EPA's definitive interpretation of the NESHAP.

Finally, the fact that previous letters from state environmental agencies concerning HCC plants in Texas and Virginia [FN8] assertedly conflict with Region 4's 1989 letters to \*229

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HCC Celriver does not in anyway undermine the force of the latter. Whether a state environmental agency had previously supplied advice that may appear to conflict with EPA Region 4's definitive instruction to the Celriver plant in the summer of 1989 is immaterial. In 1989, EPA Region 4, indisputably the office responsible for enforcement of the NESHAP in South Carolina, provided the HCC Celriver, South Carolina plant with unequivocal, actual notice as to how the regulation pertained to that plant's operations, i.e., benzene usage applied to "total cumulative flow through equipment in benzene service rather than net consumption." It is well established that "even if the agency has not given notice in the statutorily prescribed fashion, actual notice will render that decision harmless." Riverbend Farms, Inc. v. Madigan, 958 F.2d 1479, 1487 n. 7 (9th Cir.1992); Shelton v. Marsh, 902 F.2d 1201, 1206 (6th Cir.1990) (same); New York v. Bowen, 811 F.2d 776, 780 (2d Cir.1987) (same); Small Refiner Lead Phase- Down Task Force v. EPA, 705 F.2d 506, 549 (D.C.Cir.1983) (same) (dicta). See also Maryland v. Antonelli Creditors' Liquidating Trust, 123 F.3d 777 (4th Cir.1997); Greene v. Whirlpool Corp., 708 F.2d 128, 131 (4th Cir.1983).

FN8. There is little evidence in the record as to the circumstances of the Virginia exemption. However, there is no evidence that any EPA regional office approved that exemption.

It would be another matter if different officials within EPA Region 4 had issued conflicting interpretive letters to HCC Celriver. But that is not the case here. The HCC Celriver plant received but one message from EPA Region 4--recycled benzene must be counted in determining how much benzene a plant is designed to use. Letters from the EPA regional office responsible for the State of South Carolina--regardless of any conflict with previous guidance received by another HCC plant from an agency with no authority in South Carolina--placed the HCC Celriver plant on actual notice of EPA's interpretation.

For these reasons, we must conclude that EPA Region 4's 1989 communications with HCC Celriver not only should have put the company officials at the Celriver plant on notice, but did put them on notice of EPA's interpretation of the NESHAP. Minutes from HCC's July 28, 1989 meeting convened after receipt of the first EPA letter supports this conclusion. These minutes unequivocally demonstrate that HCC officials understood that "[t]he limit of 1,000 megagrams benzene per year ... is applied to throughput instead of consumption." Moreover, if HCC had had any remaining doubts after receipt of EPA's first letter, EPA's second (August 1989) letter would have eliminated them.

3.

[8] We also reject the district court's alternative grounds for refusing to find HCC Celriver liable for any violations of the NESHAP after August 1989. The district court apparently believed that imposition of liability was inappropriate for two additional reasons: (1) EPA did not object to the redesign schedule that HCC Celriver submitted in April 1990 to bring the plant in compliance with the NESHAP and the company made significant expenditures pursuant to that plan to reduce overall benzene use by August 1992; and (2) if HCC had applied for a waiver for the Celriver plant, it would likely have received one. ↪Hoechst Celanese, 964 F.Supp. at 984-85. ↪

At oral argument, HCC conceded, as it had to, that the present litigation solely addresses liability. Congress has directed that a court should address a "violator's full compliance history and good faith efforts to comply" not at the liability phase of the litigation but at the penalty phase. See 42 U.S.C.A. § 7413(e) (West 1995); see also United States v. B & W Inv. Props., 38 F.3d 362, 368 (7th Cir.1994) (applying § 7413(e) criteria in penalty deliberations). Thus, the district court erred when it factored in compliance efforts as a reason for denying liability.

[9] Moreover, nothing in the NESHAP provides that upon receiving a proposed compliance schedule, EPA is deemed to accept that schedule if the agency does not respond within a certain period of time. Nor did EPA's lack of response to the proposed compliance schedule preclude it from imposing civil penalties on HCC. The only possible legal basis for such a result would be an estoppel of some sort, and it is well-established that with rare exceptions "equitable estoppel will not lie against the Government as it lies against private litigants." \*230

(Cite as: 128 F.3d 216, \*230)

OPM v. Richmond, 496 U.S. 414, 419, 110 S.Ct. 2465, 2469, 110 L.Ed.2d 387 (1990); see also United States v. Agubata,

60 F.3d 1081, 1083 (4th Cir.1995), cert. denied, 516 U.S. 1120, 116 S.Ct. 929, 133 L.Ed.2d 857 (1996).

[10] Finally, HCC cannot rely on the NESHAP waiver provision which states:

Based on the information provided in any request ... the Administrator may grant a waiver of compliance with a standard for a period not exceeding two years after the effective date of the standard.

40 C.F.R. § 61.11(a) (1996) (emphasis added). The regulatory language unambiguously provides that the grant of a waiver is within the EPA Administrator's discretion. EPA might—or might not—have granted the HCC Celriver plant a waiver if the plant had not met NESHAP's standards within ninety days, but HCC had no right to expect one. We will therefore not presume here that the company would have received a waiver.

Officials at the HCC Celriver plant had actual notice of EPA's interpretation of the NESHAP at least by the time they received EPA's August 1989 letter. The NESHAP mandates full compliance from an existing source within ninety days of the standard's effective date. See 40 C.F.R. § 61.05(c) (1996). Since HCC lacked fair notice of EPA's interpretation at the time of promulgation of the benzene NESHAP, the ninety-day period does not commence until HCC received actual notice of that interpretation in August 1989. By failing to comply with the NESHAP's requirements within ninety days after receiving EPA's August 1989 letter, HCC Celriver necessarily violated the regulations. These violations continued at least until August 1992. We remand the case to the district court for consideration of the proper penalties, if any, for those violations.

#### IV.

We affirm the district court's order in all respects, except as to whether after August 1989, HCC Celriver had notice of EPA's interpretation of the NESHAP exemption. We hold that by August 1989, EPA had provided HCC actual notice that the Celriver, South Carolina plant did not qualify for that exemption. We remand the case to the district court so that it can determine if, and in what amount, penalties should be imposed for the post-August 1989 violations of HCC's Celriver plant.

No. 96-2003—AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

No. 96-2051—AFFIRMED.

#### CONCURRING/DISSENTING OPINION

NIEMEYER, Circuit Judge, concurring in part and dissenting in part:

I concur in Parts I., II., and III.A., but I find that I must dissent from Part III.B. I believe not only that the regulatory scheme was ambiguous but also that the EPA interpreted its regulations with considerable ambivalence, denying any person seeking to comply with them a consistent and clear course to follow. To penalize a company that, by concession of the majority opinion, was not given fair notice of any EPA interpretation at least until 1989 and then thereafter chose to follow one EPA Region's interpretation over another would be, in my judgment, fundamentally unfair. I have no difficulty with enforcing any consistent and rational EPA interpretation prospectively, but to impose penalties in the circumstances of this case is tantamount to punishment on the unfocused whim of a bureaucracy that could not itself agree on the proper reading of its own regulation.

The Clean Air Act, 42 U.S.C. § 7401 et seq., creates a diverse regulatory scheme to lessen air pollution and confers broad power on the EPA to draft regulations to implement the statute. In 1984, the EPA published regulations to control the emission standards for equipment leaks of benzene, requiring industrial plants producing or using benzene to monitor for leaks, to repair leaks, and to install equipment to capture benzene emissions. The regulations also impose reporting and record keeping requirements. Violations are subject to civil penalty. Intending to exempt small volume producers and users of benzene because of cost concerns, the regulations exempt those plants that are designed "to produce or use \*231

(Cite as: 128 F.3d 216, \*231)

less than 1,000 megagrams of benzene per year." 40 C.F.R. § 61.110(c)(2) (emphasis added). The issues in this case are whether Hoechst Celanese's Celriver (South Carolina) Plant produces or uses 1,000 megagrams of benzene per year and whether the EPA's interpretation of "produces or uses" was sufficiently clear to Hoechst Celanese in 1989 so as to justify imposing on it penalties for not complying with an EPA official's interpretation of the regulation within 90 days. Reading the regulation on its face, the words "produces or uses" are complementary terms designed to provide a basis of measurement for the amount of benzene manufactured by or employed at a plant. The amount of benzene that a plant produces would seem to be a straightforward calculation measured by the amount of benzene that exits from a plant's manufacturing process. To measure the amount of benzene that a plant "uses" in a year would appear to require a measurement of the amount of benzene introduced into the manufacturing process during the course of a year. This natural reading would thus include in the amount all inventory of benzene in use at a plant during the entire year plus any amounts consumed by the process. If that total were less than 1,000 megagrams per year, one would expect that the plant would be exempt from regulation.

At different times and in different contexts, the EPA has shared in part my natural reading of the regulation. When the EPA first published its regulations, it appears to have assumed that its own regulations were to be read so that "use"



means "consumption." This is reflected in the preamble to the regulation as originally published, where the EPA stated: The possibility that pharmaceutical operations could be adversely affected by the standard is very small. This is true for several reasons. First, most pharmaceutical plants use very little benzene. According to estimates contained in Market Input/Output Studies--Benzene Consumption as a Solvent (EPA-560/6-77-034, October 1978, p. 41), 1978 benzene consumption by pharmaceutical manufacturers was about 0.72 Gg. No companies consumed more than 1,000 Mg/yr in 1978. The commenter states that they consumed about 325 Mg/yr during 1981. Thus, it is unlikely that pharmaceutical operations would be affected by the standard because the final standard exempts equipment at plant sites that are designed to produce or use 1,000 Mg/yr or less of benzene. Second, Benzene consumption by the pharmaceutical industry is declining rapidly. The market input/output study just noted estimates that consumption declined from 2.14 Gg in 1976 to 0.72 Gg in 1978, a decline of about 66 percent over the 2-year period.

49 Fed.Reg. 23,510 (June 6, 1984) (emphasis added). But when individual representatives of the EPA interpreted EPA regulations, they recognized that if benzene was introduced into a manufacturing process and exited it, the "throughput" should be the basis for measurement in determining "use." For example, on October 16, 1984, an internal memorandum from the EPA Standard Development Branch to another section provided:

As you requested, I will articulate our position on the 1,000 Mg/yr plant site cut-off in the benzene equipment leak standard. This cut-off is based on an analysis showing plants having few [pieces of] equipment in benzene service should not be covered by the standard. This analysis relates the low number of [pieces of] equipment to a process rate in Mg/yr. This process rate is not based on consumption of benzene but rather throughput through the equipment in all process units of a plant site. The standard requires owners/operators to demonstrate the design capacity for each process unit in a plant, and we should sum these capacities and compare this sum to the 1,000 Mg/yr.

(Emphasis added). This position was reiterated a month later by the EPA's Office of Air Quality Planning and Standards which issued a memorandum to all EPA Regional Air Program Branch Chiefs as follows:

The question is whether the cut-off total is based on consumption or processing rate. We have determined the cut-off is based \*232

(Cite as: 128 F.3d 216, \*232)

on the throughput or processing rate, rather than consumption.

While various persons at the EPA were debating whether "consumption" of benzene or the "throughput" was to be the basis for measurement, the EPA Regional Director from Region VI took the position that the benzene used was to be quantified in the same way as any inventory of a plant normally would be quantified:

After review of [the regulatory provision], and based on our discussion with Headquarters' staff, we differ from you [Texaco] in our interpretation of the provision. It is EPA's position that the word use is not meant to imply consumption, but rather is meant to reflect the overall quantity of benzene used in equipment at a facility. In determining the environmental, health, economic and energy impacts in setting the benzene standard, estimates were based on the number of pieces of equipment utilizing benzene and the quantity of benzene in use, rather than on the overall plant consumption (conversion) rate of benzene. Therefore, to determine if a plant produces or uses greater than 1000 megagrams per year of benzene, the total quantity of benzene in use at the facility needs to be considered, not the consumption.

(Emphasis in original). Region VI, thus, required the amount of benzene used to be measured by the "total quantity in use" at the facility--i.e., an inventory measurement. This letter, originally written to Texaco, was provided to Hoechst Celanese by the Texas Air Control Board in the course of giving Hoechst Celanese an exemption for its Bishop Plant in Texas, as it was authorized to do under the Act.

The EPA thus had at least three different approaches for measuring use: (1) the consumption of benzene in a year, (2) the throughput of benzene through a plant for a year, and (3) the total quantity in use at the plant.

In June 1989, the EPA Regional Director in Region IV, which included jurisdiction over Hoechst Celanese's Celriver Plant, wrote Hoechst Celanese that the Celriver Plant "may be subject" to benzene regulation and requested data on Celriver's benzene throughput on an annual basis. When Hoechst Celanese responded that the Celriver Plant was exempt because it consumed less than 1,000 megagrams per year, the Region IV Director sent a letter stating that "it appears that you are unaware of EPA's interpretation of benzene usage as the term is used to determine applicability." The Region IV Director then explained:

[B]enzene usage is intended to mean total cumulative flow through equipment in benzene service rather than net consumption. [Y]ou reported your benzene usage for the years 1984 through 1989 in terms of the amount of benzene added to maintain the levels in your closed recirculation system. Therefore, the paragraph below provides an example of how to calculate benzene usage for a hypothetical example. After reviewing the example, you should have a better understanding of how the term benzene usage is to be interpreted.

The letter then described how in a closed recirculation system, the benzene should be measured at a single point so that it is counted every time it passes a fixed point. The Region IV Director considered that this form of measurement was an acceptable interpretation of "throughput."

Up until this point, the EPA as an agency had not addressed how to measure benzene in a closed recirculation system. While the EPA Region VI Director applied the regulation to a closed system by directing the measurement of the "total quantity in use" at the plant, the Region IV Director was interpreting it as the rate of flow through a single point in a closed system. Thus, Region IV proposed re counting the benzene every time it passed the single point. EPA Region IV



did not, however, explain how many measuring points should be utilized. In a complex recirculation system made up of a grid of thousands of pieces of equipment, as was involved at the Celriver Plant, there are theoretically an unlimited number of measuring points at each joint and valve. Under this method, virtually any plant with a closed recirculation system would never qualify for the 1,000-megagram-per-year usage exemption.

\*233

(Cite as: 128 F.3d 216, \*233)

While I agree with the majority that *Hoechst Celanese* had notice of the position of the EPA Region IV in August 1989, this notice should not, against the background of inconsistent EPA interpretations over time and throughout the different regions, constitute a definitive agency-wide EPA notice such that penalties could be imposed for non-compliance with one interpretation. For these reasons, I firmly believe that the district court properly concluded that the 1989 Region IV notice should not be considered the "authoritative interpretation" of the EPA.

I would go yet further and question whether the Region IV Director's notice is at all meaningful in view of the ambiguity about his interpretation.

For the foregoing reasons, I would affirm the district court's findings in their entirety.

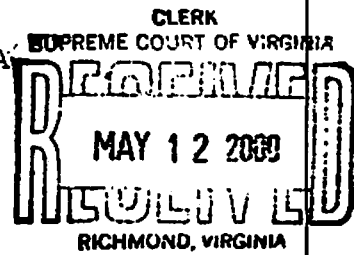
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001078

IN THE SUPREME COURT OF VIRGINIA  
AT RICHMOND



A. G. BERTOZZI,

Appellant,

v.

Record No.  
972283

HANOVER COUNTY, VIRGINIA,

Appellee.

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CLERK'S OFFICE  
HANOVER CIRCUIT COURT

Before: THE HONORABLE JOHN R. ALDERMAN, JUDGE

February 9, 2000

Hanover, Virginia



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COUNTY OF HANOVER  
By: A. LISA BARKER, ESQ.  
Senior Assistant County Attorney, of  
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O O O

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1 (The trial in the matter began at  
2 10:20 a.m.)

3  
4 (Joint Exhibit Nos. 1 through 6 were  
5 marked.)

6  
7 THE COURT: All right. The Supreme Court  
8 has remanded this case under the instruction that  
9 this Court should hold an evidentiary hearing whether  
10 the appellant's disapproval of -- that's the Board's  
11 disapproval of Sections A through E, first, was not  
12 properly based on the ordinance applicable thereto  
13 or, B, was arbitrary or capricious.

14 Anybody want to make an opening  
15 statement?

16 MR. GANEY: Yes, Your Honor, please.

17 Your Honor, please, I'm here on behalf of  
18 Mr. Bertozzi in regards to this matter that we will  
19 submit evidence to the Court that this project, which  
20 we call Sugar Maple subdivision, commenced in May of  
21 1996.

22 You will hear evidence that Mr. Bertozzi  
23 engaged Richard Baird, an engineer, to prepare the  
24 paperwork and to provide the applications and the  
25 subdivision plats to Hanover County. This was going

1 to be a Title IV subdivision of 181 acres that  
2 Mr. Bertozzi had acquired in the -- out towards  
3 Montpelier, which was agricultural property that he  
4 was going to turn into a Title IV subdivision, which  
5 are 25 acres or more, and then file a Title III  
6 subdivision to maximize the number of lots possible  
7 to use for his development with private roads.

8 Your Honor, please, the evidence will be  
9 that in good faith Mr. Baird worked with the County.  
10 He commenced the project. He filed May 7 of 1996 a  
11 tentative layout of the entire parcel of land then  
12 filed a tentative layout of the Title IV subdivision  
13 showing the 25 acre parcels, thereabouts, and then a  
14 tentative layout of a Title III subdivision, which he  
15 intended to file.

16 He asked Mr. Greg Baka of the Hanover  
17 County Planning Office for comment and review on  
18 those tentative layouts. The evidence will be that  
19 from that period forward that Mr. Baird, as well as  
20 Mr. Lamberti, who also was employed by Mr. Bertozzi,  
21 met on occasions with Mr. Baka. They had  
22 conversations over the phone, and the project went  
23 forward.

24 There were some hitches which delayed the  
25 actual presentation of the application. The evidence

1 will be that on approximately October 2 of 1996  
2 Mr. Baird became aware, in a visit to the Hanover  
3 County Planning Office, of a notice of a Board of  
4 Supervisors meeting that proposed to change the  
5 existing agricultural zoning ordinance in Hanover  
6 County.

7 Mr. Baird will testify that he was aware  
8 there was a lot of controversy about that as to what  
9 the Board may do, may not do, may change the Title  
10 III subdivision ordinance, may make other changes to  
11 the ordinances which would apply to this case.

12 He, therefore, prepared and submitted an  
13 application for Title III subdivision of Sugar Maple  
14 on October 9, 1996, prior to the end of the business  
15 day. Our position is the application was complete,  
16 and it complied with all substantive zoning and  
17 subdivision ordinances of Hanover County. He filed  
18 it for seven sections, A through F, but he only  
19 submitted the plats A through E. The Supreme Court  
20 has made its ruling on the final two sections so I  
21 will confine to A through E.

22 The application was filed. And on that  
23 evening, the evidence will be, that there was a Board  
24 of Supervisors meeting held at Atlee High School  
25 pertaining to a possible change in the ordinances.

1 You will hear evidence that the meeting was  
2 well-attended, and we'll have Mr. Cameron Wood, who  
3 was present. Mr. Bertozzi was present at that  
4 meeting. Mr. Lamberti was present.

5 And at that particular meeting, the Board  
6 enacted a totally new subdivision ordinance which  
7 eliminated the Title III and the Title IV, and it  
8 also purported to eliminate, which I will go into,  
9 what I call the 25 acre rule.

10 But the Board also enacted a grandfather  
11 clause.

12 THE COURT: Anything that was pending at  
13 the time would be considered under the old ordinance.

14 MR. GANEY: Treated under the old  
15 ordinance.

16 And we submit to the Court that on  
17 October 29, 1996, Mr. Baird received a letter from  
18 the County which disapproved the subdivision  
19 application, and the reason for the disapproval was  
20 cited to be that the applicant failed to file first  
21 division, and it cites Title I, Article 5, Section  
22 2.7-1 of the Hanover County zoning ordinance.

23 When he received that, the evidence will  
24 be, he was in shock. He looked up that particular  
25 code section, and that code section is void of any



1 requirement to record a first division deed. In  
2 fact, all it does is refer to lot sizes.

3 He then contacted Mr. Bertozzi.

4 Mr. Bertozzi reviewed the situation and decided to  
5 file the appeal under the statute, which existed at  
6 that time under 15.1-475 of the Code of Virginia, and  
7 we filed that properly and timely to this Court,  
8 which Judge Taylor entered his ruling by letter  
9 ruling which granted Mr. Bertozzi the right to  
10 proceed under the old ordinance on all sections.  
11 And, as we know, it went to the Supreme Court. The  
12 Supreme Court has reversed and indicated the  
13 instructions given by you today in open court.

14 We feel that the case is fairly simple  
15 because it applies a rule that Hanover County used  
16 for some 25 years called the 25 acre rule.

17 THE COURT: The Rule.

18 MR. GANEY: The Rule.

19 I used to call it the hodgepodge, but the  
20 Rule. And you will hear evidence of our position on  
21 what the Rule was and how it was applied in Hanover  
22 County, and that will come from Mr. Gilman, Pettus  
23 Gilman, who is present and has been involved in real  
24 estate development in Hanover County for a number of  
25 years, and also Mr. Cameron Wood, who at the time was

1 the executive director for a number of years for the  
2 Hanover Association of Business. He also  
3 participated on the committee that the Board of  
4 Supervisors appointed to review the proposed changes  
5 in the subdivision ordinance.

6 And you will hear the evidence from them  
7 that, to their knowledge, there is nothing codified  
8 in any ordinance of Hanover County that requires an  
9 applicant for Title III subdivision to record a first  
10 division deed or plat prior to the submittal of the  
11 application.

12 You will hear the same people testify  
13 that they did not know of any rule, unwritten rule or  
14 policy, that required the recordation of a first  
15 division deed or plat prior to the submission of the  
16 application. We will concede that before the final  
17 subdivision plat went to record that it had to show  
18 the first divisions with a deed book and page number.  
19 Now, we would submit and concede that that first  
20 division deed book and page number could be a deed,  
21 or it could be a plat that was recorded.

22 We will also put on evidence that will  
23 show that it would not make sense for Mr. Smith, the  
24 farmer, who has a hundred acres, to record a first  
25 division deed, unless he knew that Hanover County was

1 going to approve what he was going to do. Because if  
2 that occurred, we believe that he may put himself in  
3 jeopardy of maximizing the value of his property if  
4 he chose to develop it down the road. And it  
5 wouldn't make sense to do it beforehand, unless you  
6 knew the County was going to approve it.

7 In addition to that, Your Honor, please,  
8 we take the position that, A, the application should  
9 have been approved to begin with, should not have  
10 been disapproved under the existing subdivision and  
11 zoning ordinances of Hanover County and in the  
12 policies of Hanover County that existed at that time.

13 And the Code Section 15.1-475 required  
14 the agent for the County to give, in writing, the  
15 reason for the disapproval, but it also required in  
16 that letter to describe to the applicant what was  
17 necessary to make the necessary corrections for  
18 approval.

19 We submit that the grandfather clause  
20 that was enacted by the Board was there for a  
21 purpose, to allow people like Bertozzi who had been  
22 working for eight months on a development, that they  
23 would not be shunned out, they would not be put out,  
24 and it gives him the opportunity to do what he  
25 intended to do all along.

1           And we feel that applying the old  
2 standards that the subdivision application should  
3 have been approved, and if it merely required a  
4 letter that said, Mr. Bertozzi, on Sugar Maple,  
5 please just let us know when you record your first  
6 division deeds, give us the page number and the deed  
7 book and page number and put it on the final Mylar.

8           And, in fact, the Court will hear  
9 evidence that in 1995 Mr. Bertozzi was involved in  
10 another subdivision called Pinoak, which is, again,  
11 in the South Anna district of Hanover County. This  
12 subdivision, which was a -- we submit is a Title III  
13 subdivision, almost exactly like Sugar Maple, except  
14 that it had public roads, as opposed to private roads  
15 around it, that Mr. Bertozzi, again hired Mr. Baird.

16           Mr. Baird contacted Hanover County. He  
17 submitted an application in September of 1995 for a  
18 subdivision of Pinoak. He got written comments back  
19 from the Planning Department on October 10 of 1995.  
20 Those written comments did not disapprove the  
21 subdivision. There was no first division that had  
22 been recorded when that application was filed. In  
23 fact, it wasn't until October 25 when a  
24 subdivision -- a plat was recorded showing the first  
25 divisions with the deed book and page number.

1                   And you'll hear evidence from Mr. Baird  
2     that he contacted Mr. Baka, and he was advised, when  
3     he questioned him do I need to record a deed, does it  
4     have to be a conveyance from Mr. Smith to Mr. Jones,  
5     or can I record a plat, and he was advised you can  
6     record the plat. And that's what was done after the  
7     application was submitted and prior to the final  
8     subdivision plat going to record, which we submit was  
9     done on October 27, 1995.

10                  And my argument is this. If there is an  
11     unwritten rule that requires, as the County has  
12     stated, that required an applicant to file a first  
13     division deed and/or plat prior to the application  
14     coming in, otherwise you're disapproved, it wasn't  
15     done in Pinoak.

16                  And we submit to the Court that you're  
17     going to hear evidence that this 25 acre rule and how  
18     it applied to the applications was not uniform. And,  
19     in fact, what the County did, it worked with  
20     everybody. If you had 25 acres in Hanover County,  
21     you could get a Title III subdivision. You may have  
22     to tinker with it, make sure that the road access is  
23     correct and maybe some boundary lines could be moved  
24     about, but the bottom line is they worked and  
25     approved all of them.

1           And you're going to hear from my  
2 witnesses -- nobody is going to testify they've ever  
3 heard that a subdivision was thrown out for failure  
4 to record a deed or plat of the first division prior  
5 to the application submission.

6           And that is our case, Your Honor, please.

7           THE COURT: All right.

8           MS. BARKER: Judge Alderman, Mr. Ganey  
9 makes much of the tentative layout that was submitted  
10 in May 1996. Our evidence will show that there was  
11 no legal or official significance to a tentative  
12 layout. The County staff did discuss applications  
13 with applicants prior to the application being made  
14 and did provide advice on proposals, but there was no  
15 ordinance or other significance to that.

16           Our evidence will confirm Mr. Ganey's  
17 contention that the 25 acre rule was unwritten.  
18 Mr. Ganey complains that part of the Rule was  
19 unwritten, that is, the part about recording first  
20 conveyances. We would concede that none of the Rule  
21 was written. It was a liberal staff interpretation  
22 of the ordinances, and our witnesses will testify to  
23 that.

24           Indeed, prior to October 1996 corrections  
25 of plats were allowed and were done frequently. Lots

1 of corrections could be made, including corrections  
2 of the lack of that first division having been  
3 recorded. However, I think any of the witnesses can  
4 testify to the action of the Board of Supervisors in  
5 October 1996 which dramatically changed the  
6 ordinances and eliminated the 25 acre rule and the  
7 possibility for correction.

8 The memorandum that I have submitted sets  
9 out the essential points of the County's position.  
10 Our evidence will show that there was no compliance  
11 by Mr. Bertozzi with either the pre-October 1996  
12 requirements of the ordinance or the post-1996 --  
13 October '96 requirements nor any compliance with the  
14 liberal staff interpretation of those pre-October  
15 requirements. So the application simply did not  
16 comply with any of the ordinance requirements or the  
17 grandfather clause.

18 That staff interpretation was a bonus for  
19 owners, and it was consistently applied by the staff.  
20 Our witnesses will testify that the staff was trained  
21 in using that rule, the 25 acre rule, and that  
22 applicants were informed and that prior to October  
23 '96 corrections were often made.

24 Those grandfather clauses did require  
25 compliance with all substantive ordinance provisions.

1 The staff, after October '96, carefully considered  
2 all the applications that were in progress at that  
3 point and put them in two different categories, the  
4 ones that complied with the substantive requirements  
5 and the ones that did not. Mr. Bertozzi was  
6 determined to be in that category that did not  
7 comply.

8 THE COURT: The nature of his  
9 noncompliance was the failure to file the first  
10 division?

11 MS. BARKER: Yes, sir, the failure to  
12 record or create that first division before applying  
13 for his subdivision approval.

14 The staff did not review that plat --  
15 those plats beyond making that determination. So we  
16 did not review every detail because of that crucial  
17 error, but that was the reason for noncompliance.

18 The letter of disapproval could have said  
19 any number of things, including that Mr. Bertozzi did  
20 not comply with the 10-acre minimum lot size  
21 requirement, but, instead, the letter simply referred  
22 to the lack of recording of the first divisions and  
23 lack of compliance with the 25 acre rule.

24 Indeed, Sugar Maple was rejected, along  
25 with a number of others. Mr. Ganey's witnesses I



1 think will testify about Pinoak, a subdivision which  
2 was approved and recorded prior to October '96, and,  
3 indeed, there were corrections made in that plat  
4 before recording after the first submittal.

5 As you've mentioned, the Supreme Court  
6 has established the standard for review in this case,  
7 and the determination being made by the Court is as  
8 to whether this disapproval was based on the  
9 ordinances and whether it was arbitrary or  
10 capricious. Our evidence will show that it was based  
11 on the ordinance and was not arbitrary or capricious.

12 In order to facilitate the proceedings,  
13 Mr. Ganey and I have agreed to half a dozen exhibits  
14 which are on that center table and are marked.

15 The first exhibit is copies that are  
16 certified of all the ordinances that are applicable  
17 in this case, both pre-October '96 and post-October  
18 '96.

19 The second exhibit is copies of the  
20 application for subdivision of Sugar Maple, Sections  
21 A through E, the applications and plats that were  
22 rejected.

23 The third exhibit is a diagram of the 25  
24 acre rule division pursuant to the 25 acre rule and  
25 without the 25 acre rule.

1 Fourth exhibit is a list of subdivisions  
2 that the staff sent back, disapproved, which were in  
3 the same category as Sugar Maple.

4 Fifth exhibit is plats of Pinoak which  
5 were approved prior to October '96.

6 Sixth exhibit is plats of Stagg Creek,  
7 which was another subdivision that was rejected.

8 So Mr. Ganey and I both agree that those  
9 are appropriate exhibits and evidence in this matter.

10 THE COURT: Are they labeled for what  
11 they all are?

12 MS. BARKER: Yes, sir.

13 THE COURT: Good, because I didn't write  
14 it down.

15 MS. BARKER: Okay.

16 MR. GANEY: And, Judge, there may be some  
17 additional documents that -- I think we've got them  
18 all in there. But we've got a lot of documents here.  
19 If we do, we would like to reserve to put them in  
20 there. They would apply to --

21 THE COURT: These are just the stipulated  
22 ones is what I understand.

23 Okay. Call your first witness.

24 MR. GANEY: I call Mr. Cameron Wood.

25

1 CAMERON BRUCE WOOD,  
2 was sworn and testified as follows:

3  
4 DIRECT EXAMINATION

5 BY MR. GANEY:

6 Q Mr. Wood, for the record, would you state  
7 your full name, please.

8 A Cameron Bruce Wood.

9 Q And where are you currently employed,  
10 Mr. Wood?

11 A I am employed as a real estate broker and  
12 real estate appraiser with the firm of Gilman &  
13 Bateman at 305 South Washington Highway in Ashland,  
14 Virginia.

15 Q And how long have you been in the real  
16 estate business?

17 A Gosh, since 1974, I believe.

18 Q And has your business always been  
19 located, in that regards, on real estate in Hanover  
20 County?

21 A Yes, sir. My office has always been in  
22 the town of Ashland in Hanover.

23 Q And, Mr. Wood, you've testified in this  
24 courtroom as an expert in real estate matters?

25 A Yes, sir.

1 Q You've qualified here?

2 A Yes, sir.

3 Q You've also qualified as an expert as an  
4 appraiser in this courtroom?

5 A Yes, sir, on several occasions.

6 Q Now, in addition to --

7 THE COURT: Appraisal's not terribly at  
8 issue here; correct?

9 MR. GANEY: Right. That's correct. I'm  
10 just putting that out there.

11 BY MR. GANEY:

12 Q Mr. Wood, in addition to that, do you  
13 hold a title with the Hanover Association of  
14 Businesses? And, if so, tell the Court what that is.

15 A I serve as the executive director for the  
16 Hanover Association of Businesses, and I have been in  
17 that position since 1985.

18 Q And in that capacity do you keep watch  
19 over matters that the county government is involved  
20 in that may affect business people and developers in  
21 Hanover County?

22 A Yes, sir. We have a membership in  
23 Hanover County ranging from 200 to 250 landowners,  
24 business owners, industrialist, and it's my duty to  
25 try to keep them and the public informed of any

1 activity that may occur in the town or the county or  
2 at the state level that would impact the way they do  
3 business.

4 Q Now, in your real estate practice,  
5 Mr. Woods, have you been involved with rural  
6 subdivisions in Hanover County?

7 A Yes, sir.

8 Q And you've been doing that since you've  
9 been out here since the '70s?

10 A Yes, sir, predominately rural  
11 subdivisions.

12 Q Are you familiar and have you been  
13 familiar with the Hanover County subdivision  
14 ordinances?

15 A Yes, sir.

16 Q And are you also familiar with the  
17 so-called 25 acre rule?

18 A Yes, sir, quite familiar.

19 Q And, in fact, you, yourself, have been  
20 involved with developments and you've also counseled  
21 clients that want to develop land or to sell land or  
22 subdivide land; is that right?

23 A That is correct. That's a normal part of  
24 the business that I do.

25 Q Now, would you please tell -- first of

1 all, the 25 acre rule, did any of that rule, to your  
2 knowledge, exist in any subdivision ordinance of  
3 Hanover County prior to the night of October 9, 1996?

4 A To the best of my knowledge, the 25 acre  
5 rule was never codified; therefore, it does not  
6 appear as such in any ordinance.

7 Q Have you ever seen a memo which  
8 completely outlines the 25 acre rule from anybody in  
9 Hanover County?

10 A I'm sure we have discussed it many, many  
11 times, and we have attempted to write down the Rule.  
12 But I don't know that we were ever successful in  
13 agreeing on a written document.

14 Q All right.

15 THE COURT: Who is "we"?

16 THE WITNESS: I served on several  
17 committees in the County over the years, Your Honor,  
18 subdivision committees, in working with the Planning  
19 Department to, I guess, resolve various questions  
20 that arose as a result of the 25 acre rule.

21 BY MR. GANEY:

22 Q And you've had past discussions with  
23 Mr. Hodges, who's present here, who is involved with  
24 the Hanover Planning Office, through the years?

25 A That's correct.

1 Q Up through October 1996?

2 A That's correct.

3 Q And also Mr. Thompson, who is present in  
4 the courtroom, I believe?

5 A That's correct.

6 Q And Mr. Crascenzo?

7 A Yes, that's correct.

8 Q All were employed in Hanover County at  
9 one time in the zoning office?

10 A That's correct.

11 Q Now, do you -- prior to October 9, 1996,  
12 were you aware of any Hanover County subdivision  
13 ordinance or policy that required an applicant in the  
14 Title III subdivision to record a first division deed  
15 or plat prior to the submission of the application to  
16 Hanover County?

17 A No.

18 Q Have you ever heard of a subdivision that  
19 was denied, disapproved, by the Hanover County zoning  
20 agent because a subdivision had failed -- or  
21 subdivision applicant had failed to record a first  
22 division deed or plat prior to the submission of the  
23 application, other than what happened on October 9,  
24 1996?

25 A No, sir. You were simply told that you

1 had to record that prior to recording your final  
2 approved subdivision plat.

3 Q Were you aware of a requirement that the  
4 final subdivision plat had to show the first division  
5 deed by deed or plat with the deed book and page  
6 number --

7 A That's correct, yes.

8 Q -- when that was recorded?

9 A That's correct, yes.

10 Q And the recordation --

11 THE COURT: Hold on a second. Let me  
12 catch up.

13 You're not aware of any subdivision that  
14 was turned down for a failure to file the first  
15 division deed or plat?

16 THE WITNESS: No, Your Honor, I was not.

17 THE COURT: Out of how many?

18 THE WITNESS: Out of --

19 THE COURT: Give me numbers.

20 THE WITNESS: -- literally, probably 25  
21 or 30 that my office, particularly, worked on since  
22 1978.

23 THE COURT: And you were told what? I  
24 mean, what were you told that you had to do?

25 THE WITNESS: When you filed under the 25



1 acre rule, you were allowed what was called a first  
2 conveyance that could be as little as 2 acres in  
3 size. And most people used the 25 acre rule to take  
4 advantage of that first conveyance, the subsequent  
5 two 10-acre lots thereafter and to take advantage of  
6 the residue or residual lot that was also part of the  
7 25 acre rule. And you knew that when you submitted  
8 your subdivision application and your subdivision  
9 plan for your two 10-acre lots to the Planning  
10 Department, that once the layout and all of the  
11 details, the road alignment, the septic tank drain  
12 field locations, et cetera, had been approved, before  
13 that subdivision plat could be recorded, you would  
14 be --

15 THE COURT: You had to do the first  
16 division.

17 THE WITNESS: You had to actually record  
18 the deed or the plat for that first division lot. I  
19 would be called by someone from the Planning  
20 Department that said, Mr. Wood, we've approved your  
21 subdivision; however, you need to record your first  
22 division lots before this subdivision plat can be  
23 recorded.

24 BY MR. GANEY:

25 Q In fact, Mr. Woods, on some occasions,

1 someone may, for their own personal reasons, want to  
2 record a first division before the application is  
3 filed, is that not true also?

4 A Yes, that's also true.

5 Q All right. Would you tell the Court,  
6 describe to the best of your ability, what is the 25  
7 acre rule?

8 A Hanover County operated, prior to 1996 --  
9 in the A1 agricultural districts, you had basically  
10 two options. You could have a Title III subdivision  
11 whereby division of a tract of land into three or  
12 more parcels was permitted with the first parcel  
13 being as small as 2 acres and every lot thereafter  
14 being 10 acres or greater.

15 However, I think sometime after June the  
16 1st of '78, an interpretation was made, or it was an  
17 ordinance that 25 acre tracts were not considered a  
18 subdivision in Hanover and did not trigger the  
19 subdivision ordinance. So it became clear that you  
20 could divide a parcel into 25 acre tracts and then go  
21 through the subdivision process on each of those  
22 tracts.

23 What that amounted to was it gave you a  
24 density of four lots per every 25 acres or 16 lots  
25 per hundred, as opposed to a density of 10 lots per

1 hundred if you followed the typical Title III  
2 subdivision process.

3 Q And in that process, also, you included  
4 the first division and then 10-acre lots, and then  
5 you could have a residual; is that right?

6 A You could have a residual parcel so long  
7 as it was not less than 2 acres in size.

8 Q And that would be a buildable lot also?

9 A That's correct. That was a buildable  
10 lot. And the end result being that the property  
11 owner was able to get twice as many -- or more than  
12 twice as many, could get, perhaps -- let's see. You  
13 would get four times as many or eight times as many  
14 small parcels, 2- and 3-acre parcels, which were  
15 considered to be more salable. They were more in  
16 demand.

17 It also provided a distinct means whereby  
18 a property owner could give each of his children the  
19 same size parcel. If he did not use the 25 acre rule  
20 and he wished to gift a lot to a child, the first  
21 child would get 2 acres, and every child thereafter,  
22 the property owner would have to give that child 10  
23 acres or greater.

24 Q Now, on -- immediately prior to October  
25 9, 1996, you were on a committee that reviewed the

1 potentials or the parameters of a new subdivision  
2 ordinance that may come into effect?

3 A Yes.

4 Q And were you present at the Atlee High  
5 School when the subdivision ordinance, the new one,  
6 the current one that's in place, was enacted?

7 A Yes, sir, I was.

8 Q And were you involved in discussions with  
9 the Board regarding the use or the inclusion of a  
10 grandfather clause?

11 A Both as a real estate broker and  
12 appraiser and also in my position as executive  
13 director for the Hanover Association of Businesses,  
14 we lobbied, along with a lot of people, lobbied at  
15 length to preserve the 25 acre rule as we knew it.  
16 When we recognized that there would be a change, we  
17 tried to protect the interest of all of our members  
18 and nonmembers throughout the County who had filed  
19 applications and who desired to develop their land  
20 under the old rule and encouraged them to include a  
21 grandfather clause, if you will, to protect those  
22 people who had filed their applications.

23 Q And, in fact, you were present when that  
24 motion was made, and we've got an exhibit in that  
25 regard regarding the grandfather clause?

1           A       Yes, sir, I was.

2           Q       And did you feel at that time when you  
3 were present there that that was an important  
4 grandfather clause to be put in that ordinance?

5           A       Yes, sir, it was most important.

6                   MS. BARKER: Your Honor, I object to this  
7 line of questioning, which is irrelevant to the  
8 question of whether the decision was based on the  
9 ordinances. Some committee --

10                   THE COURT: I'm shrugging my shoulders at  
11 it, and that's -- I mean no disrespect to you, sir,  
12 doesn't have anything to do with what the Supreme  
13 Court told me to do.

14                   THE WITNESS: None taken, Your Honor.  
15 BY MR. GANEY:

16           Q       All right. Now, you weren't aware of  
17 Mr. Bertozzi's situation until after his denial had  
18 taken place; is that right?

19           A       That's correct.

20           Q       And you didn't have anything to do with  
21 Sugar Maple or Pinoak, to your knowledge?

22           A       No, sir, none whatsoever.

23                   MR. GANEY: Your Honor, I'll pass the  
24 witness.

25                   THE COURT: Ms. Barker.

1 MS. BARKER: I have no questions, Your  
2 Honor.

3 THE COURT: I can't think of any. Thank  
4 you, Mr. Wood.

5 THE WITNESS: Yes, sir. Thank you.

6 THE COURT: Appreciate it.

7 (Witness excused.)

8 MR. GANEY: Your Honor, I'd ask that he  
9 be allowed to leave, if he wants to leave. I had him  
10 subpoenaed here today.

11 MS. BARKER: I don't have any objection.

12 MR. GANEY: Cameron, you can stay or  
13 leave. Thank you very much.

14 THE COURT: Appreciate it. Stay or  
15 leave, whatever you choose to do.

16 Nobody made a motion to exclude. I take  
17 it there is none?

18 MS. BARKER: No.

19 MR. GANEY: No. We had discussed that,  
20 Judge.

21 Mr. Baird, Richard Baird will be my next  
22 witness, Your Honor.

23

24

25

1                   RICHARD LEE BAIRD, JR.,  
2                   was sworn and testified as follows:

3  
4                   DIRECT EXAMINATION

5 BY MR. GANEY:

6           Q       Richard, would you state your full name  
7 for the record, please, and where you're employed.

8           A       Richard Lee Baird, Jr., and I'm  
9 self-employed as a consultant civil engineer.

10          Q       And what is your educational background  
11 in that regard as a civil engineer?

12          A       I have a bachelor of science degree in  
13 civil engineering from the University of Virginia.

14          Q       And how long have you been in that type  
15 of work?

16          A       Approximately 20 years.

17          Q       And are you familiar with the Hanover --  
18 with the zoning ordinances in Hanover County?

19          A       Yes.

20          Q       And have you been involved in your  
21 business in regards to subdivision not only in  
22 Hanover but other jurisdictions as well?

23          A       Yes, I have.

24          Q       And do you participate in -- with clients  
25 that want to subdivide land?

1 A Yes.

2 Q And are you familiar with Mr. Bertozzi?

3 A Yes, I am.

4 Q How long -- when did you first get  
5 involved with Mr. Bertozzi regarding work?

6 A About five years ago. I think it was  
7 1994.

8 Q Now, in regards to Hanover County, have  
9 you been involved with Mr. Bertozzi in regards to  
10 subdivisions in Hanover County?

11 A Yes, I have.

12 Q And were they -- would you name the  
13 subdivisions that you participated in.

14 A Lonesome Pine subdivision, Pinoak  
15 subdivision and Sugar Maple.

16 Q Sugar Maple is the subject matter today?

17 A Yes.

18 Q Now, in regards to -- you mentioned  
19 Pinoak. Would you describe briefly, what was Pinoak?

20 A Pinoak was a Title III subdivision that  
21 involved two sections, Section A and B, and it was  
22 four lots in the first section and five lots in the  
23 second.

24 Q Now, did you familiarize yourself with  
25 Hanover County zoning ordinances that existed prior



1 to filing the Pinoak subdivision application?

2 A Yes.

3 Q Did you become aware of the so-called 25  
4 acre rule?

5 A Yes, I did.

6 Q And what was your understanding of the 25  
7 acre rule?

8 A In dividing a tract of land, if it was at  
9 least 25 acres, that you could divide the land --  
10 first division had to be a minimum of 2 acres. After  
11 that, each tract had to -- or each lot had to be a  
12 minimum of 10 acres. And if there was any residual  
13 amount, it had to be a minimum of 2 acres in order to  
14 be a viable lot.

15 THE COURT: So you could get a potential  
16 of four lots out of 25 acres?

17 THE WITNESS: Four out of 25, that's  
18 correct.

19 BY MR. GANEY:

20 Q Now, did you -- who did you work with in  
21 the Hanover County -- in the zoning or planning  
22 office in regards to Pinoak?

23 A Mr. Greg Baka.

24 Q Mr. Baka is present here today?

25 A Yes.

1 Q Now, did you, in fact, prepare an  
2 application for Pinoak, and they were Section A and  
3 Section B that you filed with Hanover County?

4 A Correct.

5 Q You have before you a copy of that dated  
6 September 14, 1995?

7 A Correct.

8 Q And that application was completed and  
9 submitted on September 14, 1995?

10 A September 14? Right.

11 Q Yes.

12 MR. GANEY: Here, Lisa. I'm sorry.

13 BY MR. GANEY:

14 Q I think that's your cover letter,  
15 September 14?

16 A September 14 is the cover letter, right.

17 Q And you did file that application --

18 A Yes, I did.

19 Q -- on Pinoak?

20 MR. GANEY: Your Honor, please, may I  
21 approach the exhibit bench?

22 Your Honor, I'd move to supplement the  
23 County's Pinoak exhibit with this package I provided.

24 THE COURT: Why don't you just add it as  
25 another exhibit.

1 MR. GANEY: Add it as another exhibit to  
2 Pinoak.

3 THE COURT: And the stipulated exhibit is  
4 which one?

5 MR. GANEY: The stipulated exhibit has a  
6 label Pinoak on it, which includes a certificate from  
7 the County. It includes a response letter from the  
8 County to Mr. Bertozzi dated --

9 THE COURT: Doesn't have a number on it,  
10 I take it?

11 MR. GANEY: Right, it doesn't have a  
12 number.

13 Exhibit Number 5. I'm sorry, Judge.

14 THE COURT: And you want to put in  
15 something to supplement it?

16 MR. GANEY: That's correct, Judge.

17 THE COURT: All right. We'll make that  
18 5A.

19 BY MR. GANEY:

20 Q Now, Mr. -- when you submitted your plat  
21 on Pinoak for Sections A and B to the County, did you  
22 include in there a provision for a first division lot  
23 in both Section A and B?

24 A Yes.

25 Q Did that lot have a deed book and page

1 number for the first division lots in Section A and  
2 B?

3 A Not at the time of the filing of the  
4 application.

5 Q Did you -- when you submitted that  
6 application, were you aware of any requirement,  
7 written or unwritten, that required Mr. Bertozzi to  
8 file a first division deed or plat prior to  
9 submitting that application on Pinoak on September  
10 14, 1995?

11 A No.

12 Q Now, you received, which is in Exhibit  
13 Number 5 of the stipulated exhibits, you received  
14 back a letter from Mr. Baka, did you not, dated  
15 October 10, 1995?

16 A Correct.

17 Q And that referred to your submissions of  
18 the plats for the two sections of Pinoak?

19 A Correct.

20 Q And the letter also had and itemized some  
21 15 different things that he wanted you to revise or  
22 check on in regards to those -- that subdivision?

23 A That's correct.

24 Q Now, in fact, did you make revisions and  
25 adhere to his requests?

1           A       Yes, I did.

2           Q       And on -- there were a number of matters  
3 that he requested, did he not?

4           A       Yes.

5           Q       And did he say anything to you or refer  
6 to anything about first division deeds?

7           A       Yes. He -- item number 12, he says to  
8 remove the first divisions from these plats, remove  
9 the bold lines and put in the deed book and page  
10 number for the first division.

11           THE COURT: Say that again.

12           THE WITNESS: To -- well, remove the bold  
13 lines. It's the same line work for the first  
14 divisions as for all of the lots. He asked to shade  
15 out the first divisions, show the deed book and --

16           THE COURT: In other words, show where  
17 they were?

18           THE WITNESS: Show where they were,  
19 right.

20           THE COURT: And that's on the plat map  
21 but not on anything else.

22           THE WITNESS: That's right. That was on  
23 the plat, right.

24           THE COURT: Well, can I see some of these  
25 things that we're referring to?

1 That Number 5?

2 MR. GANEY: Yes, Your Honor, please.

3 THE COURT: Are you referring to the  
4 letter of October 10, 1995?

5 THE WITNESS: Yes, sir.

6 THE COURT: That's the one that -- and  
7 where does it say shade out?

8 THE WITNESS: Item number 12.

9 THE COURT: Okay. Well, what are you  
10 trying to ask him about this, Mr. Ganey? It says,  
11 you know, make sure you give me a deed book and page  
12 number.

13 MR. GANEY: That's correct. I asked him  
14 if Mr. Baka advised him of anything in regards to the  
15 first division deeds.

16 THE COURT: Okay.

17 BY MR. GANEY:

18 Q After you received the letter of October  
19 10, Mr. Baird, did you do anything with the  
20 subdivision plats?

21 A Yes. I made the revisions per their  
22 request.

23 Q All right. In addition to that, did you  
24 have discussions with Mr. Baka about anything about a  
25 first division or recordation of a first division

1 deed or plat?

2 A No.

3 Q You submitted a letter to him dated  
4 October 18, 1995?

5 A Correct.

6 Q And that letter was a response to his  
7 October 10 letter?

8 A That's correct.

9 Q And did you make and comply with all  
10 revisions that he requested you to do?

11 A Yes. I had itemized the revisions that  
12 were made in that letter.

13 Q Now, in fact, did you receive -- did  
14 Mr. Baka tell you at that point that you had to  
15 record the first division deeds or a plat?

16 A Well, we knew it had to be recorded prior  
17 to the actual recordation of the subdivision.

18 THE COURT: He told you in the October 10  
19 letter to do it, didn't he?

20 THE WITNESS: Correct.

21 THE COURT: Okay.

22 BY MR. GANEY:

23 Q And, in fact, did you prepare a plat and  
24 record the subdivision deed of the plat on both  
25 parcel A and parcel B of Pinoak?

1           A       We recorded A and B of Pinoak, and we  
2 recorded the first division prior to the recordation  
3 of those two subdivisions.

4           Q       I'm going to show you two plats.  
5                    You have two plats before you?

6           A       Correct.

7           Q       Are they the first division plats that  
8 were recorded?

9           A       These are the first division plats that  
10 were recorded on October 25, 1995.

11          Q       Now, after those plats were recorded, did  
12 you prepare a final Mylar of the subdivision plat for  
13 Section A and B for Pinoak?

14          A       Yes, sir.

15          Q       And did you submit that to the County?

16          A       Yes, I did.

17          Q       And, in fact, those subdivisions were  
18 approved, stamped and recorded?

19          A       That's correct.

20          Q       And do you have a -- I think it's  
21 reflected on there October the 27th that they were  
22 recorded?

23          A       Copies I have show recorded --

24                   THE COURT: I haven't got any idea what  
25 you're talking about, Mr. Ganey. You haven't shown



1 any of them to me yet.

2 MR. GANEY: Your Honor, may I approach on  
3 Exhibit 5?

4 THE COURT: Yeah.

5 BY MR. GANEY:

6 Q You have, in the stipulated exhibits,  
7 Exhibit 5, and you're familiar with the two plats of  
8 Section A and Section B --

9 A Yes.

10 Q -- of Pinoak?

11 A Yes, I am.

12 Q And you're familiar with the approvals  
13 stamp provided by the Hanover County planning  
14 director?

15 A Yes, I am.

16 Q And you're aware that this was recorded  
17 in Hanover Circuit Court?

18 A Yes.

19 Q Now, these recorded subdivision plats  
20 stamped by the County, do they show the first  
21 divisions?

22 A Yes, they do.

23 Q And they show a deed book and page number  
24 in regards to the first division?

25 A Yes, they do.

1 Q For both Section A and B?

2 A A and B.

3 Q Now, in regards to Pinoak, did you ever  
4 receive any notification from the County --

5 THE COURT: Bring it back up here.

6 BY MR. GANEY:

7 Q -- that the subdivision for Pinoak was  
8 disapproved for failure to record first division  
9 deeds prior to submission of the application?

10 A No.

11 MR. GANEY: Your Honor, please, I would  
12 move to introduce as Exhibit 5B the letter.

13 THE COURT: I haven't seen 5A yet.

14 Any objection to 5A?

15 MS. BARKER: Could you remind me what 5A  
16 is, please, Mr. Ganey?

17 THE COURT: Show it to her.

18 MS. BARKER: It's the letter from Richard  
19 Baird to the County?

20 MR. GANEY: It's the application.

21 MS. BARKER: Yes. Okay.

22 THE COURT: All right.

23 MR. GANEY: Your Honor, please, we would  
24 move to introduce as 5B the response letter back to  
25 Mr. Greg Baka by Mr. Baird dated October 18, 19- --

1 THE COURT: Why don't you get it stamped,  
2 first.

3 All right. Mr. Baird, you're  
4 acknowledging in this letter on October 18, the first  
5 numbered thing, that the plat's not yet recorded;  
6 you'll furnish the plat book and page number when  
7 recorded. And that's in response to his paragraph  
8 12; right?

9 THE WITNESS: Yes. I'm saying that I  
10 will comply with that.

11 THE COURT: Okay.

12 THE WITNESS: Yes, sir.

13 THE COURT: All right.

14 MR. GANEY: And, Your Honor, please, we'd  
15 move to introduce as 5C the recorded plats --

16 THE COURT: That's the same as this,  
17 isn't it?

18 MR. GANEY: Yes, Your Honor, but it's a  
19 little different. I know that's included in there on  
20 the subdivision plat, but these are --

21 THE COURT: Let me see yours.

22 These correspond, Mr. Ganey, as you've  
23 handed them to me, to the same order of the maps that  
24 are in Exhibit 5, do they not?

25 MR. GANEY: That's correct, Judge, but

1 the -- the information that 5C provided was placed on  
2 5 -- the stipulated Exhibit Number 5.

3 THE COURT: I'm just trying to look at  
4 these two maps and see what --

5 MR. GANEY: The two plats were recorded  
6 prior to the subdivision plat.

7 THE COURT: All right. I got you.

8 MR. GANEY: And he included the deed book  
9 and page number in 5C on stipulated 5.

10 THE COURT: Okay.

11 MR. GANEY: Your Honor, if you could bear  
12 with me for one minute.

13 BY MR. GANEY:

14 Q All right. Mr. Baird, after the  
15 subdivision plat was recorded and the project moved  
16 on, you were no longer involved, were you not?

17 A That's correct.

18 Q On Pinoak?

19 A Pinoak.

20 Q Now, Mr. Bertozzi then came to you  
21 sometime regarding Sugar Maple?

22 A That's correct.

23 Q And in regards to Sugar Maple, what did  
24 he request for you to do?

25 A Initially, to do schematic drawings just

1 to show various lot layouts, different  
2 configurations.

3 Q All right. Would you describe briefly  
4 what comprised Sugar Maple, what type of property?

5 A It was four acreage tracts that totaled  
6 approximately 181 acres.

7 Q And what was the property zoned?

8 A Pardon?

9 Q What was the zoning for the property?

10 A Agricultural.

11 THE COURT: A1?

12 THE WITNESS: A1, yes, sir.

13 BY MR. GANEY:

14 Q And did he come to you and ask you to  
15 maximize the potential for a subdivision there?

16 A That's correct.

17 Q And, again, did you go and review the  
18 Hanover County subdivision zoning ordinances?

19 A That's correct.

20 Q Did you speak with anybody at Hanover  
21 County regarding Sugar Maple, the potential for the  
22 Sugar Maple development?

23 A Yes. In May of '96 I sent tentative  
24 layouts to Mr. Baka to ask him to review those  
25 layouts just for general conformance to the

1 subdivision ordinance.

2 Q All right. And did you have discussions  
3 with him about Sugar Maple and what you intended to  
4 do?

5 A Yes. Following that, he called me to go  
6 over his review of the layouts. He thought, in  
7 general, everything looked good. There was a couple  
8 lots we had to make some adjustments to because lot  
9 lines were going over a private road, and that  
10 created a problem. So we made some adjustments based  
11 upon his recommendations.

12 Q Now, I'm going to show you a letter dated  
13 May 7, 1996. Is that the letter you generated to  
14 Mr. Baka?

15 A Yes. This is a transmittal letter I sent  
16 with the drawings.

17 Q All right. And I'm going to ask you to  
18 review the three drawings.

19 A Yes, these are the drawings that were  
20 submitted.

21 Q They're the drawings that were submitted  
22 with your letter?

23 A That's correct.

24 Q Now, what was your overall plan? Was it  
25 to do a Title IV subdivision and then a Title III

1 subdivision?

2 A Title IV was the first step and then  
3 Title III.

4 MR. GANEY: Your Honor, I would move to  
5 introduce this letter and the three exhibits as --

6 THE COURT: Which is the exhibit for  
7 Sugar Maple?

8 MR. GANEY: That's what I'm looking for,  
9 Judge.

10 Your Honor, it's Exhibit Number 2 listing  
11 the plats. So I would ask that this be moved as 2A.

12 THE COURT: Make it 2A.

13 Let me see the plats.

14 MR. GANEY: And, again, Judge, the plats  
15 are in reverse order, 2A being the final plat.

16 MS. BARKER: Your Honor, after you review  
17 those, I wonder if we could have a moment to also  
18 look at that, at what has been submitted.

19 THE COURT: Mr. Baird, that's the -- this  
20 is the first division of the property; right?

21 MR. GANEY: That is a compiled map of the  
22 four acreage tracts that Mr. Bertozzi acquired.

23 THE COURT: But it's the way you proposed  
24 to divide them up?

25 THE WINTERESS: No, sir. That's just the

1 four contiguous tracts.

2 THE COURT: I got you. Okay.

3 Then what's this one?

4 THE WITNESS: That's the 25 acre -- the  
5 Title IV.

6 THE COURT: That's how you divided it?

7 THE WITNESS: We divided them into a  
8 minimum 25 acres.

9 THE COURT: And this is lots for that?

10 THE WITNESS: Those are the layouts for  
11 that, right.

12 THE COURT: Now I got you. All right.

13 BY MR. GANEY:

14 Q And you submitted that to Mr. Baka back  
15 in May of 1996 for his, as your letter states, for  
16 his comment and review regarding -- that's your  
17 tentative proposal?

18 A Yes, sir.

19 Q And, in fact, Mr. Baka did get back in  
20 touch with you?

21 A Yes, sir, he did.

22 Q And he had some suggestions to you?

23 A Yes, he did. Specifically, it was  
24 Section C where the lot lines extended across the  
25 private road, and he suggested that we rearrange --



1 reconfigure the lots so that they would all align to  
2 one side of the road.

3 Q In your tentative Title III layout you  
4 include in there the specific sizes of the lots. In  
5 fact, you itemize out first division lots also, do  
6 you not?

7 A Correct.

8 Q But there were no deed book and page  
9 number.

10 A No.

11 Q At any time after you submitted this  
12 tentative layout to Mr. Baka, did Mr. Baka advise you  
13 that you had to record first division deeds before  
14 you submitted your application?

15 A No, sir, he did not.

16 Q Did you discuss this matter or tentative  
17 subdivision with any other people from the Hanover  
18 County Planning and Zoning Office, to your knowledge?

19 A No, sir.

20 Q Now, when did you start preparing the  
21 final application for subdivision?

22 A Well, we had worked on it through the  
23 summer, but the boundary -- the first thing was the  
24 boundary survey, and that was recorded in the first  
25 of October. So it was in September and October that

1 we were actually working on the applications and  
2 finalizing our layouts.

3 Q Now, what occurred -- or did something  
4 occur on October 2, 1996?

5 A Yes.

6 Q And what happened? Tell the Court.

7 A October 2; right?

8 Q (Nodding head.)

9 A I was at the County on another matter,  
10 totally different project, and I happened to notice  
11 there was an announcement for public hearing, that  
12 the Board of Supervisors would be meeting regarding  
13 the subdivision ordinance, and I knew that that  
14 meeting would be coming up October 9.

15 Q And based on that potential meeting, did  
16 you speak with Mr. Bertozzi and was a decision made  
17 about the application?

18 A Yes. Yes. I -- when I saw the notice, I  
19 first asked for Mr. Baka, and I discussed it with  
20 him. And based upon those discussions, I went and  
21 talked to Mr. Bertozzi.

22 THE COURT: And the talk you had with  
23 Mr. Bertozzi was we need to get this thing going and  
24 get it finished before everything changes?

25 THE WITNESS: Yes, sir.

1 BY MR. GANEY:

2 Q And, in fact, sir, did you prepare  
3 applications for Sections A, B, C, D and E of Sugar  
4 Maple with a cover letter that you delivered to  
5 Hanover County on October 9, 1996?

6 A That's correct.

7 Q And, in fact, did you not prepare a Title  
8 IV subdivision plat for recordation dividing the 181  
9 acres up into 25 acre parcels?

10 A That's correct.

11 Q In that plat, the Title IV subdivision  
12 plat, did you submit that to the County? Did they  
13 approve that?

14 A Yes, they did.

15 Q And that was recorded on October 9, 1996?

16 A That's correct.

17 Q And after that recordation, then you --  
18 then did you deliver the applications for Sugar  
19 Maple, Sections A through E, with a cover letter  
20 dated October 9, 1996?

21 A That is correct.

22 Q And you submitted a subdivision plat, did  
23 you not, with the applications?

24 A That's correct.

25 MR. GANEY: Now, Judge, I'm going to

1 move -- I have the actual applications with the cover  
2 letter for Sections A through 5(sic) if you would  
3 like that as one exhibit.

4 THE COURT: Yeah.

5 MR. GANEY: It might be easier.

6 THE COURT: It's clear we got you at the  
7 wrong end the table, Mr. Ganey.

8 MR. GANEY: Layout of the table hasn't  
9 been conducive.

10 THE COURT: I can give you the whole jury  
11 box if you want it.

12 While they're doing that, Mr. Baird, it's  
13 not like you didn't know that the first division  
14 wasn't there. You've got seven first division lots  
15 set out on the preliminary plan.

16 THE WINETESS: Yes, sir.

17 THE CLERK: How would you like to number  
18 them?

19 MR. GANEY: I would ask that that be  
20 submitted as -- I think it would be EB.

21 THE COURT: EB?

22 MR. GANEY: I mean, excuse me, Exhibit  
23 2B.

24 THE COURT: Did you all talk before this?

25 MR. GANEY: We've been trying to talk

1 this out.

2 THE COURT: It's not EB.

3 MR. GANEY: 2B.

4 THE COURT: 2B.

5 MR. GANEY: All right.

6 MS. BARKER: Your Honor, may I just ask a  
7 question about the last exhibit?

8 It's my understanding that that was the  
9 exhibit -- that was the plat that was returned by the  
10 County?

11 MR. GANEY: No.

12 THE COURT: 2B is just the application  
13 process.

14 MS. BARKER: Oh, yes, sir.

15 THE COURT: You want to see it?

16 MS. BARKER: Thank you. Yes, sir, now I  
17 understand.

18 THE COURT: You know what it is now?

19 MS. BARKER: Yes, sir.

20 BY MR. GANEY:

21 Q Now, Mr. Baird, you have before you,  
22 which is Exhibit 2, the Sugar Maple subdivision plat  
23 that was submitted with the application, A through E?

24 A Correct.

25 Q All right. On each section you list your

1 lots, but you also have a provision on each section  
2 for a first division lot, do you not --

3 A That is correct.

4 Q -- with a deed book and page number  
5 indicated but with a blank there?

6 A That's correct.

7 Q Now, at the time that this was filed, to  
8 your knowledge, by anyone from the County, did you  
9 know that you had to have recorded a deed or plat in  
10 regards to the first divisions?

11 A Not prior to filing the application.

12 Q What is the next contact that you had  
13 with Hanover County regarding this application?

14 A I received registered mail rejecting the  
15 application.

16 Q And that's the letter of October 29?

17 A That's correct.

18 THE COURT: Could I see Exhibit 2 or  
19 whatever it was you just had? I'm not sure.

20 MR. GANEY: Your Honor, what I have is  
21 the same thing as --

22 THE COURT: Same thing as this?

23 MR. GANEY: Yes.

24 THE COURT: Then I don't need to see it.

25 BY MR. GANEY:

1           Q       In the letter of denial that you  
2 received, Mr. Baird, the basis for the denial was  
3 what, based on your understanding?

4           A       That we had not recorded the plat for the  
5 first divisions prior to making the application.

6           Q       And is this the letter -- copy of the  
7 letter you received?

8           THE COURT: Is that in the agreed upon  
9 things or not?

10          MR. GANEY: No, Your Honor.

11          A       Yes, it is.

12          MR. GANEY: Your Honor, I would move to  
13 introduce the letter of October 29, 1996, which is  
14 two pages, as 2C, Exhibit 2C.

15          THE COURT: Mr. Baird, if I take it you  
16 view the process the same way, what you expected to  
17 happen is you'd get a letter from Mr. Baka saying  
18 record the first divisions and then the approval  
19 would go forward?

20          THE WITNESS: That's correct, as part of  
21 review comments.

22          THE COURT: It would be more than just  
23 record first divisions. He would give you other  
24 comments as well.

25          THE WITNESS: Yes, sir, there would be

1 other comments.

2 BY MR. GANEY:

3 Q You fully expected to receive comments  
4 from the County?

5 A Yes. In fact, there are other blanks on  
6 those plats for information that was not available at  
7 the time.

8 Q Mr. Baird, when you received the letter  
9 of October 29, 1996, from the County disapproving the  
10 subdivision -- the letter cites Title I, Article 5,  
11 Section 2.7-1 of the Hanover County subdivision  
12 ordinance?

13 A That's correct.

14 Q Did you review that ordinance after you  
15 received this letter?

16 A I certainly did.

17 Q And on that citation that was in the  
18 letter, did you see anything that required you to  
19 file a deed -- first division deed or plat prior to  
20 submitting your application?

21 A No, sir.

22 MR. GANEY: Your Honor, please, I believe  
23 that is part of the exhibit -- of the stipulated  
24 Exhibit 1.

25 THE COURT: Not number 1, is it?



1 MR. GANEY: No, it's not, Your Honor  
2 please. I'm sorry. Exhibit 3.

3 THE COURT: What page is that on?  
4 Anybody know what page it's on?

5 MR. GANEY: Your Honor, it's not in  
6 Exhibit 3 on a page, itself. Excuse me. She had  
7 itemized it out, if you look at Exhibit 6, which is  
8 right here, I don't think you have it up there --

9 THE COURT: It's not Exhibit 6.

10 MR. GANEY: Judge, I understand the  
11 Court's comment, but I think page 89 -- or 1640 in  
12 the book, Exhibit 6, is the section. I realize that  
13 it -- it's placed within the Title 25, but that's the  
14 page.

15 THE COURT: I don't seem to have it.

16 MR. GANEY: Your Honor, please --

17 THE COURT: I found it. This purports to  
18 be Title I, Article 5, Section 2.7-1?

19 MR. GANEY: That's correct, Judge.

20 THE COURT: All right.

21 BY MR. GANEY:

22 Q Now, Mr. Baird, you reviewed that as --  
23 I've asked you the question -- and you have that  
24 before you, that section?

25 A Yes, sir.

1 Q And nothing in that section indicates a  
2 requirement to record a first division deed?

3 A No, there's not.

4 Q Or when it's supposed to be recorded?

5 A No time line at all.

6 Q It's a lot size.

7 A Lot size is right.

8 Q It does have some language in there about  
9 the first -- 2 acres after the first conveyance?

10 A Right, 2 acres after the first  
11 conveyance, all lots must be 10 acres or greater.

12 Q Now, after receiving that notification,  
13 you discussed the matter with Mr. Bertozzi?

14 A That's correct.

15 Q And a decision was made to appeal the  
16 decision of the County zoning agent --

17 A That's correct.

18 Q -- to the Hanover Circuit Court?

19 A That's correct.

20 THE COURT: You didn't have to go to the  
21 Board of Supervisors first?

22 MR. GANEY: No, by the statute.

23 THE COURT: All right.

24 BY MR. GANEY:

25 Q Now, up to the receipt of that letter of

1     October 29, 1996, had you received any written  
2     memo -- a memo or notification from Hanover County  
3     that advised you that the requirement was you record  
4     a first deed or plat prior to submission of your  
5     application?

6             A       No, no correspondence of any kind.

7             Q       Did you receive any verbal advice from  
8     anyone of Hanover County Zoning and Planning that you  
9     had to record the first division deed up until the  
10    time you got that letter of October 29?

11            A       No, sir.

12                   THE COURT:   What about the letter you got  
13    from Mr. Baka in connection with Pinoak saying --  
14    telling you to give the proper deed book and page  
15    number?

16                   THE WITNESS:   The recordation had to go  
17    on the subdivision plat.   The deed book and page  
18    number had to be placed on the plat prior to the  
19    recordation of that plat.

20                   THE COURT:   Okay.

21    BY MR. GANEY:

22             Q       And you understood that on Sugar Maple  
23    that you fully expected you're going to have to make  
24    alterations, and in the final recorded plat --  
25    subdivision plat for each section, A through E, you

1 would have to list a deed book and page number of the  
2 first division?

3 A That is correct.

4 Q Now, you're familiar with the change in  
5 the ordinance that was enacted the night of October  
6 9, 1996?

7 A Yes, I am.

8 THE COURT: And he's also familiar there  
9 was a grandfather clause. Don't ask him to interpret  
10 it.

11 MR. GANEY: I'm not going to ask him  
12 that, Judge.

13 BY MR. GANEY:

14 Q My question is, the cost impact of this  
15 project to Mr. Bertozzi --

16 THE COURT: Is irrelevant.

17 MR. GANEY: No further questions, Your  
18 Honor, please, of this witness.

19 THE COURT: Ms. Barker.

20  
21 **CROSS-EXAMINATION**

22 BY MS. BARKER:

23 Q Mr. Baird, would you agree with the  
24 statement that in October 1996 everything changed  
25 with regard to the zoning and subdivision ordinances?

1           A       Yes. Considerable changes were made,  
2       yes.

3           Q       And you discussed that at some point with  
4       Greg Baka or others, did you not?

5           A       I had discussions with Mr. Baka on  
6       October 2 about an upcoming meeting. But, of course,  
7       he didn't know what would take place at that meeting,  
8       and I certainly didn't know.

9           Q       For Pinoak, you were informed by Greg  
10      Baka, were you not, that you had to record those  
11      first divisions before final approval would be given?

12          A       Yes.

13          Q       You did not record first divisions before  
14      submitting your final plat for Sugar Maple; is that  
15      correct?

16          A       That's correct, we did not record first  
17      divisions before filing the application for Sugar  
18      Maple.

19          Q       What was the difference between Sugar  
20      Maple and Pinoak, to your way of thinking, with  
21      regard to those -- recording of those first  
22      divisions?

23          A       I thought everything was consistent, that  
24      you had to record the first division prior to  
25      recording your subdivision plat, but it's not

1 necessary to record the first division prior to  
2 making the application for the subdivision and having  
3 it reviewed.

4 Q That plat you submitted for Sugar Maple  
5 was intended to be -- those plats were intended to be  
6 the final plats, were they not?

7 A Those were intended to be the final  
8 layouts, and this is how we wanted to develop the  
9 property, that is correct.

10 But by the way the applications are done,  
11 you could not -- you could not record those plats,  
12 because, for one thing, the County's topography shown  
13 on those plats, its always as part of the application  
14 you show the County's topography. But prior to  
15 recordation of the plat, you remove the topography.

16 So there's some major changes that have  
17 to be made to the plat between the time you make the  
18 application and the time you record the plat.

19 Q The tentative layout procedure that  
20 you've described was an informal staff review, was it  
21 not?

22 A In May it was informal. I just wanted to  
23 have Mr. Baka take a look at our schematic or  
24 tentative layouts just for general conformance prior  
25 to making the application.

1           Q       And the next step after that was to  
2       comply with the comments you had gotten, was it not?

3           A       Actually, it was only one comment that  
4       had to do with lot lines on two of the lots, but then  
5       he said, you know, make the application. Everything  
6       else looks good, you know, make the application.

7           Q       Had you ever been told that you did not  
8       need to record first divisions before final approval?

9           A       Yes.

10          Q       You had been told that you did not need  
11       to record final first divisions?

12          A       I had been told that I did not need to  
13       record first divisions before submitting the  
14       application to have the subdivision reviewed.

15          Q       Was that prior to October 1996?

16          A       Yes. It was prior to filing Pinoak.

17               MS. BARKER: I don't have any further  
18       questions. Thank you.

19               MR. GANEY: No further questions, Your  
20       Honor, please.

21               THE COURT: May Mr. Baird be excused?

22               MR. GANEY: Yes, Your Honor.

23               MS. BARKER: Yes.

24               THE COURT: You may leave or stay. Thank  
25       you for coming, sir.

1 (Witness excused.)

2 MR. GANEY: Your Honor, I call Pettus  
3 Gilman as my next witness, Your Honor.

4 THE COURT: This is sort of a lot of  
5 redundant evidence?

6 MR. GANEY: Very quick.

7 THE COURT: Okay. Let's make it very  
8 quick then. Appreciate what Mr. Gilman's going to  
9 say but --

10 MR. GANEY: I understand, Judge.

11 THE COURT: It's not that I don't enjoy  
12 seeing Mr. Gilman. He's becoming a regular here.

13

14 WILBUR PETTUS GILMAN,  
15 was sworn and testified as follows:

16

17 DIRECT EXAMINATION

18 BY MR. GANEY:

19 Q Mr. Gilman, would you state your name for  
20 the record, please.

21 A I am Wilbur Pettus Gilman.

22 Q And, Mr. Gilman, what type of business  
23 are you involved in?

24 A I'm in the real estate and insurance  
25 business.



1 Q And where is that located?

2 A Located in Ashland, Virginia.

3 Q And how long have you been in that type  
4 of business?

5 A Since 1968.

6 Q And in that capacity you have developed  
7 property, rural properties and subdivisions, under  
8 the guidelines and subdivision ordinances of Hanover  
9 County through those years?

10 A Yes, I have.

11 Q You've advised clients also about  
12 potential developments and proposed developments in  
13 Hanover County through those years?

14 A I have.

15 Q Are you familiar with the 25 acre rule  
16 that existed prior to October 9, 1996?

17 A Yes, I am.

18 Q Are you a -- were aware of any  
19 requirement prior to October 9, 1996, for an  
20 applicant to file a recorded -- record a first  
21 division deed or first division plat prior to  
22 submittal of the application to the Hanover County  
23 Planning Office?

24 A I was not.

25 Q Have you -- are you aware of any

1 subdivision that has been denied prior to October 9,  
2 1996, excluding the Bertozzi case and several other  
3 cases that were denied at the same time, where the  
4 County denied a subdivision on a Title III because it  
5 failed to record a first division deed?

6 A I'm not aware of any.

7 THE COURT: You are aware that there has  
8 to be a recording of the first division at some  
9 point, aren't you?

10 THE WITNESS: I am aware that at some  
11 point you do.

12 THE COURT: What's the point you think it  
13 has to be done or had to be done?

14 THE WITNESS: When the first lot is sold.

15 THE COURT: Go ahead.

16 BY MR. GANEY:

17 Q And, in fact, that's what you did in your  
18 practice, especially if you owned the lot?

19 A That's correct.

20 MR. GANEY: That's all I have, Your  
21 Honor, please, for Mr. Gilman.

22 THE COURT: Ms. Barker.  
23  
24  
25

## CROSS-EXAMINATION

BY MS. BARKER:

Q Didn't you always record first divisions before you got final subdivision approval from the County?

A I don't believe so, Lisa. We always basically had a lot sold when they were finally approved, and it was simultaneously that we recorded when the lot was sold.

Q Were you the one who actually prepared the plats for your subdivisions? Did you prepare the plats for your subdivisions?

A No, George Robertson.

Q Who is he?

A He's Robert L. Downing, surveyors, engineers.

Q I know, but I just want to make sure it's on the record.

So Mr. Robertson would have drawn your plats and submitted them to the County; is that correct?

A That is correct.

Q Would Mr. Robertson have taken care of having the proper deed book and page number notations on the plat and that sort of thing?

1           A       I certainly hope so.

2           Q       Did Mr. Robertson take care of any  
3 comments the County had with regard to your  
4 subdivision applications?

5           A       He would always do that. We would always  
6 get some red marks on it that he'd have to address.

7           Q       So you didn't actually redraw the plat or  
8 take care of those comments and corrections?

9           A       Mr. Robertson did that.

10          Q       Okay. So you became involved more  
11 directly when the subdivision had been recorded; is  
12 that correct?

13          A       Yes, because that's when we basically  
14 sold the lots.

15                 MS. BARKER: I don't have any further  
16 questions. Thank you.

17

18                         REDIRECT EXAMINATION

19 BY MR. GANEY:

20          Q       Mr. Gilman, Mr. Robertson would always  
21 discuss with you any change on any project you were  
22 involved in?

23          A       He would.

24                 MR. GANEY: That's all I have, Your  
25 Honor, please.

1 THE COURT: May Mr. Gilman be excused?

2 MR. GANEY: Yes, Your Honor.

3 THE COURT: Thank you for coming,  
4 Mr. Gilman. Always nice to see you.

5 THE WITNESS: Thanks.

6 (Witness excused.)

7 MR. GANEY: Your Honor, that would be, at  
8 this time, the case for the applicant.

9 THE COURT: All right.

10 MR. GANEY: I have Pat -- Mr. Lamberti,  
11 who works for Mr. Bertozzi, but it would be  
12 cumulative to what you've already heard.

13 MS. BARKER: I would call John Hodges,  
14 Your Honor, as my first witness.

15

16 JOHN HOWARD HODGES,

17 was sworn and testified as follows:

18

19 DIRECT EXAMINATION

20 BY MS. BARKER:

21 Q Would you state your name and your  
22 position for the Court, please.

23 A I'm John Hodges, John Howard Hodges,  
24 Deputy County Administrator, Hanover County.

25 Q What is your profession, and what is your

1 prior position?

2 A Your Honor, my professional background is  
3 in planning. I was director of planning at the time  
4 of this plat recording in October of '96.

5 Q When did you first learn of the 25 acre  
6 rule?

7 A Your Honor, in May of 1982 I became  
8 director of planning in Hanover County, and at that  
9 time I was advised that the A1 agricultural district  
10 had two lot sizes, 2 acres and 10 acres.

11 THE COURT: Whose bright idea was that?  
12 Don't answer that question.

13 MR. GANEY: We haven't determined.

14 THE WINTESS: The Board of Supervisors  
15 always does the right thing, as far as I'm aware.

16 But in any case, in 1978 that ordinance  
17 amendment was adopted with a 2 and a 10, I think,  
18 with the idea of cutting 2 acres off around a home  
19 place and having 10 acres thereafter. And as  
20 originally -- if you'll check in the records, that's  
21 how the plats originally -- shall I go on?

22 THE COURT: Yes.

23 BY MS. BARKER:

24 Q Sure.

25 A That's how the plats originally were

1 recorded. They cut off 2 acres around the home  
2 place, and everything else on 181 acres back then was  
3 contemplated to be 10 acres.

4           However, I was advised that in the  
5 subdivision regulations, which is defined to be  
6 division of land into three or more parts, which  
7 means you have a first division, you divide land into  
8 two parts, that doesn't require County review. But  
9 in order to do your subdivision, you have to have  
10 recorded two parts before you're eligible to have the  
11 three or more parts.

12           In that context there were -- or was a  
13 definition that said division of land greater than 25  
14 acres in size was not a subdivision. And I was  
15 advised in May of '82 that if you put the zoning  
16 definition together with the subdivision requirement,  
17 in essence, the County was not reviewing divisions 25  
18 acres or greater.

19           This was the genesis of the 25 acre rule.  
20 And you were allowed to cut large tracts up, as long  
21 as you didn't go below 25. And then, which is the  
22 strange thing from subdivision review, you really --  
23 the County would treat each 25 acre tract as a  
24 separate individual unit, each one entitled to a 2  
25 acre division. Instead of being 2 acres on the home

1 place for the whole 181 acres, in this example it was  
2 2 acres on the 25.

3 So the 2 acre first division became a  
4 very key aspect of the whole interpretation and was  
5 essential before the recordation of the subsequent  
6 divisions, and that is, I think, the essence of this  
7 case, whether or not the applicant complied with the  
8 zoning case when he filed his Title III plats without  
9 having recorded his first divisions. Because you're  
10 really not eligible to further divide the property  
11 until you've at least -- further divide it into three  
12 or more pieces until you've at least divided it into  
13 two pieces, taken your first division. You're not  
14 entitled to get that 2 acres, unless you follow this  
15 prescribed procedure. And it's -- it was convoluted.

16 And that's sort of the thumbnail sketch  
17 of how we got to that.

18 Q Mr. Hodges, the first division was not  
19 considered part of the subdivision, was it?

20 A That's correct. It isn't. And that's  
21 why the engineer was told to take it off the plat.  
22 It is not a subdivision lot. It's not being reviewed  
23 for subdivision approval. It is a lot you had, as  
24 Mr. Gilman said, you had already recorded and were  
25 selling.



1           Q       Property owners, generally, then, got  
2 some benefit from using the 25 acre rule; is that  
3 right?

4           A       That's correct.

5           MS. BARKER: Your Honor, I have diagrams  
6 of division pursuant to the 25 acre rule.

7           THE COURT: You put them in the book, and  
8 I saw it.

9           MS. BARKER: Yes. And if you'd like for  
10 Mr. Hodges to go through that, we can.

11          THE COURT: No, I think the grandfather  
12 clause here is what concerns me the most.

13 BY MS. BARKER:

14          Q       Mr. Hodges, how were staff members  
15 trained in the 25 acre rule?

16          THE COURT: Got out the text and showed  
17 everybody.

18          A       Your Honor, the most interesting thing  
19 about this and the reason why Mr. Wood was struggling  
20 with a definition that had been written down, that  
21 was all-encompassing, was that it was based on a  
22 case-by-case analysis.

23                 And you'll have 50 letters in the  
24 Planning Office or more, generally correspondence  
25 with surveyors or attorneys, describing how the

1 process works. And we acknowledge that there was a  
2 way to accomplish this, and we would work with  
3 applicants.

4 So on a case-by-case basis Mr. Baka was  
5 indoctrinated into the regulations. We almost had  
6 daily meetings. The first part of the day was  
7 describing, Well, how does this apply on the parcels  
8 that we were reviewing? And sometimes we'd have sort  
9 of heated discussions, because each one sort of had  
10 different nuances.

11 Q Mr. Hodges, did staff members advise  
12 applicants of the 25 acre rule?

13 MR. GANEY: Well, Judge, I don't think he  
14 can testify to that, unless he --

15 THE COURT: Yeah, that's kind of hearsay.  
16 BY MS. BARKER:

17 Q Did you advise applicants repeatedly over  
18 the years of the application of the 25 acre rule?

19 A Yes, more times than I would prefer, but  
20 that was the only way you could enforce it.

21 Q When tentative layouts, as Mr. Ganey's  
22 referred to them, were filed prior to October '96,  
23 what was the process for staff review?

24 A The staff, because of the sort of  
25 case-by-case nature of interpretation, would

1 encourage, even work with applicants. There was no  
2 formal review. But, particularly, surveyors that  
3 were not familiar with the process, we would  
4 encourage them to discuss with us -- because you had  
5 to follow a sequence. You had to be sure that you  
6 had recorded your 25 acre tracts.

7 And as in the case of Sugar Maple, if  
8 they relied on the creation of private roads, and on  
9 a large tract like this they did, they required a  
10 stamp of approval. A Title IV stamp is really not  
11 subdivision review. It is a notice requirement.

12 In fact, on the stamp, it's hard to read,  
13 that's on that Sugar Maple 25 acre tract, I'm not  
14 sure if I have that, there is a stamp that says that  
15 these plats are not being reviewed for compliance  
16 with zoning and applicable regulations. It's hard to  
17 read.

18 THE COURT: Any idea where?

19 THE WITNESS: May I approach the bench?

20 THE COURT: You got your laser pointer  
21 with you?

22 THE WITNESS: Yes, sir, I do.

23 It's on the 25. It's the preliminary  
24 Title IV plat.

25 THE COURT: I've got several here.

1 THE WINTESS: Those are the subsequent.  
2 I think it's the next one in --

3 THE COURT: This one's not it, is it?

4 THE WINTESS: No, sir.

5 THE COURT: Anybody know what he's  
6 talking about?

7 MR. GANEY: Judge, he's talking about  
8 Mr. Baird's letter to Mr. Baka of May 7 of 1996  
9 asking Mr. Baka to review the --

10 MS. BARKER: John, here's one.

11 MR. GANEY: -- tentative layouts. It's  
12 the one, Judge, you looked at and said, Is this the  
13 original parcels of land? And then they went from  
14 the original parcels to --

15 THE COURT: It's this one right here.

16 THE WINTESS: This is -- this was -- Your  
17 Honor, this was totally discretionary. This is not a  
18 formal application. This was request for --

19 THE COURT: Yeah, this is let's work  
20 together.

21 THE WINTESS: This, Your Honor, is the  
22 Title IV plat, which is attached to the appeal. And  
23 that bears the stamp, and that was what was actually  
24 recorded. What was sent in May was conceptual. And  
25 I'm not sure. It's got a -- an exhibit --

1 THE COURT: It's a deposition exhibit,  
2 isn't it?

3 MR. GANEY: Right. That's correct,  
4 Judge.

5 THE WITNESS: And that last paragraph,  
6 which is very difficult to read, says --

7 THE COURT: Purchasers and -- tracts are  
8 hereby notified that roadways reserved and shown on  
9 this --

10 THE WITNESS: Are private in nature.

11 THE COURT: -- are private in nature.

12 THE WITNESS: And that's -- that's a  
13 whole paragraph to satisfy the highway department  
14 that you'll not ask public roads -- the last  
15 paragraph reads, This division has not been reviewed  
16 for compliance with and certification of this does  
17 not guarantee any specific lots or buildable -- under  
18 the code of the County.

19 THE COURT: Okay.

20 THE WITNESS: That was the, quote, Title  
21 IV plat that created in the clerk's office the 25  
22 acre parcels.

23 The next step in the process, the step  
24 that Mr. Gilman spoke to, is the recordation of the  
25 first divisions. Each one of those 25 acre tracts,

1 after they'd been recorded in the clerk's office,  
2 created the eligibility for a 2 acre first division.

3 After you recorded your first divisions,  
4 the next step in the process was to record your Title  
5 III subdivision plat. That Title III subdivision  
6 plat did not show the first divisions as lots  
7 because --

8 THE COURT: Because they're already  
9 carved out.

10 THE WITNESS: That's correct. And that's  
11 the intent of the ordinance.

12 We have been permissive, again, Your  
13 Honor, because of the complexity of the code. We  
14 tried always to work with applicants, as we did in  
15 the Pinoak case, to advise them of what they should  
16 have done in the process, surprising that the  
17 engineer would not have recorded the first divisions  
18 having been told that that was going to be a  
19 requirement in the final plat coming in for our  
20 review.

21 But I think the significance with the  
22 grandfathering clause was we were reviewing this  
23 application based on its compliance with the zoning  
24 regulations as of October 9, 1996. And looking at  
25 that plat, and we looked at a whole host of them, it

1 did not comply with the code provision that they have  
2 2 acres prior to the conveyance or subdivision of  
3 10-acre lots. They had not recorded their 2 acre  
4 first division.

5 THE COURT: Ms. Barker, is the  
6 grandfather clause in here somewhere?

7 MS. BARKER: Yes, Your Honor. It's an  
8 exhibit that is kind of a thick one, and both --

9 THE COURT: It's not in the book.

10 MR. GANEY: Your Honor, I think it's on  
11 the table as Exhibit 1, the new ordinance.

12 THE COURT: Can you give that to me?

13 Now, Ms. Barker, where is the grandfather  
14 clause in here?

15 MS. BARKER: It's at the very end of the  
16 ordinances. It's the same in both the subdivision  
17 and zoning ordinance. Let me see if I can quickly  
18 turn to it. It's actually in that black notebook,  
19 and it's on a page that's numbered 31.

20 THE COURT: 30 what?

21 MS. BARKER: 31. It's Exhibit 3. I  
22 think there are tabs for the exhibits. And so if  
23 you'll look at Exhibit 3 in the black notebook and  
24 look at page 31 of that exhibit, then you'll see the  
25 grandfather clause at the bottom.

1 Item 4A, Complete applications.

2 THE COURT: I got you. Okay. Go ahead.

3

4 FURTHER DIRECT EXAMINATION

5 BY MS. BARKER:

6 Q Mr. Hodges, after October 9, 1996, was  
7 there any 2 acre first division allowed by the  
8 ordinance?

9 A No, Your Honor, there were not.

10 THE COURT: That changed and changed  
11 completely.

12 THE WITNESS: Yes, sir.

13 THE COURT: I understand.

14 BY MS. BARKER:

15 Q And how did you interpret the grandfather  
16 clause as it relates to substantive compliance in  
17 relation to the 2 acre first division?

18 MR. GANEY: Judge, I'm not sure he can  
19 testify. That's, ultimately, the ultimate issues in  
20 the case, I believe.

21 MS. BARKER: Your Honor, the issue in the  
22 case is as to whether his interpretation as planning  
23 director was based on the ordinances or arbitrary or  
24 capricious.

25 MR. GANEY: That's fine, Judge. I



1 understand the reasoning. Go ahead.

2 THE COURT: Go ahead.

3 A Your Honor, it was our feeling that after  
4 October 9 the first division, which was not a  
5 subdivision lot, needed to be recorded because it no  
6 longer existed. You would have had to create on  
7 October the 10th a 10-acre tract.

8 So you would not be able to record in the  
9 deed book and put a deed book page number to fill in  
10 the blanks a 2 acre exempt division because it ceased  
11 to exist. And by not recording it on the plat -- or  
12 recording it and referencing it on the plat, you had  
13 lost that opportunity that the code gave you prior to  
14 October 9.

15 THE COURT: The County would lose the  
16 option that they went through with Pinoak where  
17 Mr. Baka sent a letter to Mr. Baird and --

18 THE WITNESS: To help the applicant out.  
19 If they were entitled to it, we would have told them  
20 they were entitled to it. We looked for it in our  
21 review, not only of Mr. Bertozzi's plats, but other  
22 plats, and there was no -- there was no way that  
23 Mr. Bertozzi or any other property owner in the  
24 County could create a 2 acre first division after  
25 October 9. They couldn't do it with a subdivision

1 plat. A subdivision plat does not create the lot.  
2 The lot is created by recording in the clerk's office  
3 prior to October 9, 1996.

4 BY MS. BARKER:

5 Q As far as you know, nobody was allowed to  
6 record a 2 acre first division after October 9, 1996?

7 A That's correct.

8 Q Mr. Hodges, Mike Crascenzo and Keith  
9 Thompson, who were your staff members, were more  
10 involved in subdivision review than you, probably; is  
11 that not right?

12 A Your Honor, yes, sir, that was the case.

13 Q Are you familiar with the subdivisions  
14 that were, quote, sent back by the staff?

15 A Yes. We reviewed -- we recorded in the  
16 neighborhood of about 400 -- or allowed subdivisions  
17 to go through in the neighborhood of about 400 lots.  
18 We turned down a number of lots -- of subdivisions  
19 that had what we considered fatal flaws like this  
20 case.

21 MS. BARKER: I don't have any other  
22 questions, Bruce.

23 THE COURT: Cross?  
24  
25

## CROSS-EXAMINATION

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BY MR. GANEY:

Q Mr. Hodges --

THE COURT: I'm going to have to nail  
your foot to the ground.

MR. GANEY: I can't get by Mr. Bertozzi  
anyway so I'm going to stay right where I am.

BY MR. GANEY:

Q Mr. Hodges, the first division that we've  
been discussing in the 25 acre concept, there's no  
requirement that that first division had to be 2  
acres. It had to be a minimum of 2 acres, but it  
could be much larger than that, could it not?

A That's correct.

Q If you had a hundred acres and you  
decided to divide off 15 acres, that would be a first  
division of that parent hundred acre tract?

A Whatever the -- in the sequence, whatever  
the next lot recorded of any size would be your first  
division.

Q And the reality of it is, through the  
years leading up to October 9, 1996, a lot of rural  
property was developed into 25 acre subdivisions  
based on the Title III and the 25 acre rule where you  
could maximize four lots out of 25 acres?

1           A       Yes, a lot of -- a lot of that  
2 development occurred.

3           Q       And that's what the uproar was about  
4 changing it; they wanted still to have that option.

5           A       That's correct.

6           Q       Now, you agree that there's nothing in  
7 writing that exists in any ordinance or document  
8 that's posted at the County that would advise an  
9 applicant that a first division deed or plat must be  
10 recorded prior to filing a Title III subdivision  
11 application?

12          A       It's my contention, Your Honor --

13          Q       That's not my question. My question  
14 is --

15                   THE COURT: Let him answer the question.  
16                   What's your contention?

17          A       That the zoning ordinance says that 2  
18 acres -- zoning and subdivision ordinance says that a  
19 property owner has an entitlement to 2 acres on the  
20 first conveyance, and it's exempt. And after that,  
21 the lots must be 10 acres and must be shown on  
22 subdivision plats. And that is the basic language of  
23 those regulations.

24                   So it is spelled out in the code, and it  
25 doesn't appear in the subdivision application because

1 that is a subsequent action to the recordation of  
2 that first division -- first conveyance. Excuse me.  
3 BY MR. GANEY:

4 Q In fact, the ordinance that existed prior  
5 to October 9, 1996, doesn't refer to the words first  
6 division at all, does it?

7 A It says conveyance.

8 Q It refers to 2 acres after the first  
9 conveyance all lots must be 10 acres or greater.

10 A That's correct.

11 Q I understand that. But it doesn't say  
12 first division. It doesn't define what a first  
13 division is, does it?

14 A That's where this -- the whole issue of  
15 interpretation -- I think if you take it on its face,  
16 first conveyance, I think that means something. It  
17 doesn't mean subdivision. It means that you've  
18 conveyed a lot.

19 Q Now, in regards to an applicant that  
20 comes in on a Title III subdivision, there's really  
21 no difference, substantial difference, between  
22 recording a first division deed before the  
23 application is filed as opposed to after the  
24 application, as long as it's done prior to the final  
25 subdivision plat; is that not correct?

1           A       I would agree with you up until October  
2       9, 1996.

3           Q       And I agree with you there, when they  
4       changed the ordinance.

5                   Now, in the -- the County's policy in  
6       regards to people like Bertozzi or whoever that came  
7       in and filed Title III subdivision applications, you  
8       received a number of applications that didn't have  
9       first division recorded prior to the submittal of the  
10      application?

11          A       Any applications that we received that  
12      didn't have the first division were not approved.

13          Q       Well, that didn't happen until --

14                   THE COURT: Are you talking about the  
15      one --

16          A       The one after October?

17      BY MR. GANEY:

18          Q       Right. I'm talking prior to October 9,  
19      1996. I'm sorry.

20          A       I'm sorry. Could you ask the question  
21      again?

22          Q       I apologize. Let me restate it.

23                   THE COURT: Let me see if I can restate  
24      it.

25                   Prior to all this stuff happening when

1 the ordinance changed, you'd get an application, and  
2 you-all would work with the people --

3 THE WITNESS: That's correct.

4 THE COURT: -- and allow them to make the  
5 first division, the first conveyance. And then the  
6 process would go on, and you'd get approved.

7 THE WITNESS: Yes, Your Honor, we would  
8 write them a letter. And if they had not done it  
9 already, we would tell them do it before we recorded  
10 it.

11 THE COURT: And that's like the letter  
12 that Baka wrote about Pinoak.

13 THE WITNESS: Yes, sir.

14 THE COURT: And the position you've got  
15 in this one, with respect to Sugar Maple, is that  
16 your authority to do that expired on October 9.

17 THE WITNESS: Yes, sir.

18 BY MR. GANEY:

19 Q Mr. Hodges, to your knowledge, the only  
20 person that appealed in this denial was Mr. Bertozzi  
21 from October 9, 1996?

22 THE COURT: Whether it was him or a  
23 hundred, what difference does it make?

24 MR. GANEY: May not, Judge.

25 THE COURT: I don't think it does. It's

1 still a question of whether it's arbitrary or  
2 capricious.

3 MR. GANEY: That's fine, Judge. I have  
4 no further questions for Mr. Hodges.

5 THE COURT: Any redirect?

6 MS. BARKER: No, sir.

7 THE COURT: Have a seat, Mr. Hodges.  
8 Thank you, sir.

9 (Witness stood aside.)

10 MS. BARKER: I'll call Mike Crascenzo.

11 THE COURT: I'll alert both sides that  
12 Mr. Crascenzo just turned my wife down on something.

13 MS. BARKER: Oh, no. Mike, go away.

14 MR. CRASCENZO: I'm not aware of that,  
15 Your Honor.

16  
17 MICHAEL EUGENE CRASCENZO,  
18 was sworn and testified as follows:

19  
20 DIRECT EXAMINATION

21 BY MS. BARKER:

22 Q Mr. Crascenzo, state your full name,  
23 please, and your position with Hanover County.

24 A Michael Eugene Crascenzo, and I'm  
25 currently the planning director for Hanover County.



1 Q What was your position in October '96?

2 A I was, at the time, the deputy planning  
3 director.

4 Q You've heard Mr. Hodges explain the 25  
5 acre rule earlier. Do you agree with his description  
6 of it?

7 A Absolutely. Absolutely, Your Honor. I  
8 wouldn't change a word.

9 Q Is there -- you wouldn't change anything.  
10 Is there anything you'd like to add?

11 A Not at all. I think he did a masterful  
12 job in explaining the 25 acre rule.

13 Q Before October 1996, was it the common  
14 procedure that the staff would advise applicants of  
15 needed corrections on subdivision plats?

16 A Yes, it was.

17 Q And so you might allow repeated  
18 submissions; is that correct?

19 A Yes, we would, because at that time there  
20 was an opportunity for those corrections to be made.

21 Q After adoption of the October '96  
22 ordinance amendments, did your department send  
23 letters of notification to applicants who had filed  
24 applications prior to October 9, 1996?

25 A Your Honor, I think we sent letters to a

1 little over a dozen applicants with regard to plats  
2 that had been turned down. There were letters sent  
3 to several dozen with regard to applications that  
4 were allowed to continue.

5 Q Describe what corrections were allowed  
6 after October 9, 1996, in those Title III and Title  
7 IV plats that were being submitted.

8 A Your Honor, as Mr. Hodges had testified,  
9 plats that were deemed to have fatal flaws were,  
10 unfortunately, taken out of the system.

11 THE COURT: Okay. What's a fatal flaw,  
12 besides failure to do the first division?

13 THE WITNESS: The failure to record the  
14 Title IV plat would have been a fatal flaw.

15 First division, obviously, was a fatal  
16 flaw.

17 The corrections that were permitted to  
18 proceed were things such as the addition of a road  
19 name onto a plat, the addition of a surveyor's  
20 certificate to the face of the plat, things that  
21 didn't have a substantive -- had no substantive  
22 impact on the process that Mr. Hodges had described.

23 BY MS. BARKER:

24 Q Mr. Crascenzo, this is a document called  
25 Subdivisions Sent Back. I think it's the Court's

1 Exhibit 4. Does that correctly describe the  
2 disposition of those subdivisions that were rejected?

3 A Yes, it does.

4 Q Thank you.

5 THE COURT: Ms. Barker, I want you to  
6 make sure that you come up here and look at this book  
7 and make sure that I've got the same exhibits that  
8 you got, because I don't think they're the same.  
9 Don't do it now.

10 MS. BARKER: Yes, sir.

11 THE COURT: But I do remember seeing that  
12 when I went through here.

13 MS. BARKER: This document was marked by  
14 the court reporter as Exhibit 4 for the Court's  
15 exhibits so --

16 THE COURT: I remember seeing it, but I  
17 don't think it's in the same order.

18 MS. BARKER: It's not. It is not.

19 BY MS. BARKER:

20 Q Were first divisions part of the  
21 subdivisions?

22 A I'm sorry?

23 Q Were first divisions part of a  
24 subdivision?

25 A No.

1 MS. BARKER: I have no further questions.  
2 Mr. Ganey?

3 MR. GANEY: No questions, Your Honor,  
4 please.

5 THE COURT: Let me ask a question.  
6 What's Mr. Bertozzi got available to him  
7 now with this piece of property, these pieces of  
8 property?

9 THE WITNESS: My recollection is that the  
10 25 acre parcels were appropriately created, which  
11 would mean each of those could be divided into  
12 10-acre lots, minimum lot size.

13 THE COURT: Could he recombine them,  
14 recombine the Title IV divisions?

15 THE WITNESS: I believe he could do that  
16 and in doing so would then create additional 10-acre  
17 lots, that's correct.

18 THE COURT: Okay. Just seeing what's  
19 available now.

20 But now the only lot size is 10 acres and  
21 above?

22 THE WITNESS: That's correct. Although,  
23 I would mention. The same night the Board changed  
24 the rules for the A1 and the subdivision ordinance,  
25 they also created a new district that allowed

1 applicants to recover the density by going through  
2 the zoning process. It allowed the same 16 lots per  
3 hundred acres.

4 THE COURT: I'm trying, through the  
5 zoning cases I've had, to remember which one that  
6 was.

7 THE WITNESS: That would be the AR-6  
8 district.

9 THE COURT: That's now abolished?

10 THE WITNESS: No. No.

11 THE COURT: Still there?

12 THE WITNESS: Yes, sir.

13

14 FURTHER DIRECT EXAMINATION

15 BY MS. BARKER:

16 Q And, Mr. Crascenzo, there's the RC  
17 district also?

18 A That is correct, same density, same  
19 opportunity.

20

21 CROSS-EXAMINATION

22 BY MR. GANEY:

23 Q Mr. Crascenzo, under the new ordinance  
24 there's also a cash proffer required for each lot  
25 that's created, is there not?

1           A       Cash proffers are considered in the  
2 application by the Board of Supervisors.

3           Q       In fact, isn't the current cash proffer  
4 around 5000 a lot?

5           A       Current cash proffer, I believe, is about  
6 \$6300 a lot.

7           Q       And that didn't exist prior to October 9,  
8 1996, did it?

9           A       It still does not exist for A1  
10 subdivisions that are being developed under those  
11 regulations.

12          Q       And under the new ordinance is there not  
13 also additional requirements to upgrade the roads to  
14 the state-maintained level or close to the  
15 state-maintained level?

16          A       There are higher standards for A1  
17 subdivisions than existed prior.

18          Q       Which would add additional costs to the  
19 development costs for the developers?

20          A       I don't know what it was before.

21                   MR. GANEY: That's all I have.

22                   THE COURT: Thank you, Mr. Crascenzo.

23                   (Witness excused.)

24                   THE COURT: You don't want to call  
25 anybody else, do you?

1 MS. BARKER: The defense rests.

2 THE COURT: All right. Any rebuttal?

3 MR. GANEY: Your Honor, the only thing --  
4 Mr. Woods, he may have covered it. I would bring him  
5 on for one quick question.

6 THE COURT: Why don't you tell me what  
7 the question is and make a representation.

8 MR. GANEY: That the filing of a first  
9 division on, let's say, a hundred acre tract, if the  
10 County -- well, I've argued in my opening statement  
11 in the filing of the first division of a hundred acre  
12 tract and the County, for whatever reason, denies the  
13 subdivision thereafter, under the old rule, that  
14 property has been damaged, in our eyes, as far as  
15 potential development because you're limited because  
16 you've already given up your first division right.

17 THE COURT: Do you agree with that,  
18 Ms. Barker?

19 MS. BARKER: The property has been  
20 damaged? No.

21 THE COURT: Well, it's been cut up.  
22 You've got a chunk taken out of it. If I own a  
23 hundred acres and sell you 2 acres and intend to  
24 develop the rest of it and the process gets turned  
25 down, I'm out 2 acres that I sold to you.

1 MS. BARKER: Your Honor, if the 2 acre  
2 first divisions had been sold, yes, I suppose the  
3 property would have been adversely affected. But  
4 it's my understanding that Mr. Bertozzi has not yet  
5 recorded any first divisions. I hope he has not,  
6 because that would be illegal.

7 So as far as I know, his property is  
8 intact, and he has all these options that are  
9 available to him from the County.

10 THE COURT: Okay.

11 MR. GANEY: I don't need to call him,  
12 Judge. I can argue in my final.

13 THE COURT: Okay. Let's argue then.

14 MR. GANEY: Your Honor, please. I go  
15 back to my original argument here.

16 THE COURT: Just one second.

17 (Discussion off the record.)

18 THE COURT: Go ahead.

19 MR. GANEY: Your Honor, please. It goes  
20 back to my original argument. Here's someone like  
21 Mr. Bertozzi becomes a property owner in Hanover  
22 County, and he's following what he believes are the  
23 applicable procedures. Certainly, Hanover County had  
24 a written zoning ordinance and subdivision.

25 THE COURT: And certainly everybody knew



1 what the Rule was.

2 MR. GANEY: Well, everybody was aware of  
3 the Rule. I'm not sure if everybody is correct on  
4 the interpretation of it. And I believe the best  
5 comment was made by Mr. Hodges that it's been very  
6 flexible through the years.

7 THE COURT: Sure.

8 MR. GANEY: But, Your Honor, please.  
9 Under this --

10 THE COURT: Don't we have, though, for  
11 Mr. Bertozzi, don't we have the artificial  
12 circumstance that you've got a date, and everything's  
13 got to be done before that? Because after that, the  
14 County can't do the first division.

15 MR. GANEY: Well, to get to the argument,  
16 that's exactly the argument is the grandfather clause  
17 and what effect does that grandfather clause have on  
18 this? Because I think Mr. Hodges is consistent in  
19 that he's saying if Mr. Bertozzi had recorded, you  
20 know, a month before October 9, 1996, and --

21 THE COURT: Everything would have been  
22 fine.

23 MR. GANEY: Right. And I believe the  
24 grandfather clause, as it is stated, gives  
25 Mr. Bertozzi the ability and the right to be treated

1 under the old ordinance that existed prior to that.

2 That's exactly why the grandfather clause  
3 was put in there. That's what Mr. Wood has  
4 testified, that this was considered by a committee,  
5 and all the people like Bertozzi who had  
6 developments, who had purchased property or owned  
7 property in rural areas that had -- and I agree. It  
8 is an advantage, the 25 acres, no question about  
9 that, and that's certainly why he was going to do it  
10 that way.

11 THE COURT: Sure.

12 MR. GANEY: But he starts it up, and he  
13 files his application prior to the change. And I  
14 think he is to be considered just as they would have  
15 done it if they didn't change the ordinance at all.

16 And that's what my understanding and my  
17 interpretation of what that grandfather clause is.  
18 And I think from Mr. Hodges' candid comments here and  
19 Mr. Crascenzo's, no question, the County would have  
20 said, Hey, go ahead and make sure you record your  
21 first deed before we record the final subdivision  
22 plat, just like Pinoak.

23 And that's my argument here. And  
24 Mr. Bertozzi feels that this -- you know, that he has  
25 a right to have that done just as Judge Taylor ruled

1 originally. It is to be considered just as they  
2 would have done if we didn't have the new ordinance  
3 in here.

4 I understand what he's saying. He says  
5 because of what they did that night you can't do the  
6 2 acre thing, so he can't do it. But I believe  
7 that's why the grandfather clause is in there,  
8 because the Board had the authority, obviously. They  
9 could change the ordinance and not put a grandfather  
10 clause in there. And I don't care how many times  
11 he's filed his application, once that law changes,  
12 until it's approved, he doesn't get it. That's what  
13 the case law says.

14 But they didn't do that. They put that  
15 grandfather clause in there.

16 THE COURT: Okay. Now let's focus on the  
17 grandfather clause. Tell me how the County is  
18 empowered with that grandfather clause to allow  
19 Mr. Bertozzi to do the first division, the less than  
20 10 acre first division.

21 MR. GANEY: Because the clause says, and  
22 I'm trying to make sure I read the right one, Judge,  
23 complete applications for final subdivision approval.

24 Well, one, I believe he had completed an  
25 application that he filed on that particular day. It

1 was complete.

2 THE COURT: You agree that a completed  
3 application beforehand was sort of a process?

4 MR. GANEY: Oh, I think you're probably  
5 right, Judge. But you have to have certain criteria,  
6 and that's why we put the exhibits in, to make a  
7 completed application. And it certainly is still  
8 there for review, but it's a completed application.  
9 It had a check. It had all the requirements that the  
10 County had.

11 THE COURT: Yeah.

12 MR. GANEY: Now, if that was the case,  
13 that it had to be absolutely right, then why would  
14 you have it reviewed? You'd just go record it.

15 So I submit that he submitted on that  
16 day, prior to the change of the law, before the  
17 business day was out, he submitted a completed  
18 application for final subdivision approval, not a  
19 tentative approval but final subdivision approval,  
20 which had to be filed before the close of business on  
21 October 9, 1996, which he did, which were in  
22 compliance with all substantive zoning and  
23 subdivision ordinance requirements in effect on that  
24 date.

25 Now, on that particular date prior to the

1 close of business, what was in effect, which is what  
2 has been in effect here since 19- -- in the '70s,  
3 which included the 25 acre rule, which included the  
4 procedures that the County has followed throughout  
5 these years in which, as you've heard, Mr. Gilman nor  
6 Mr. Woods has ever heard of anybody being turned  
7 down, they would have worked with him, and it would  
8 have been done.

9 So they were in -- they met all zoning --  
10 substantive zoning and subdivision requirements, it  
11 is our position, in that application. Now -- and if  
12 that's the case, it shall be reviewed in accordance  
13 with those requirements, which is the old  
14 requirements, not the new ones.

15 So I don't think the new ones apply to  
16 Mr. Bertozzi if he's to be considered under the  
17 grandfather clause. And that is the argument. I  
18 understand what Mr. Hodges says, and I understand  
19 what -- he says, I'm limited because we can't even do  
20 the first division or 2 acre division because it  
21 doesn't exist anymore after October 9.

22 I don't think that's the proper  
23 interpretation and application of the grandfather  
24 clause, because the grandfather clause has to have a  
25 purpose. And the clear intent of what that Board did

1 and the purpose was to allow someone just like  
2 Bertozzi to be considered just like it's October 8,  
3 1996, and it stayed there forever. He's to be  
4 considered that way, and that is the argument.

5 And I submit that's what I believe Judge  
6 Taylor did. Unfortunately, he didn't take any  
7 evidence, but I think he -- that's what his ruling  
8 was. And I think that is a proper ruling in this  
9 particular case, and that's really what it boils down  
10 to.

11 If the Board didn't want the County to  
12 consider anything in the past, they wouldn't have put  
13 the grandfather clause in there. But I believe from  
14 Mr. Wood's testimony that was one of the strongest  
15 objections to the County doing -- changing the  
16 ordinance; what about all of us that have been owning  
17 this land for years? Can't we get the benefit we  
18 should have had all our lives and expected to have?  
19 Well, that's what Mr. Bertozzi expected. And unless  
20 someone can tell me --

21 THE COURT: Except that you concede that  
22 if they hadn't put the grandfather clause in,  
23 Mr. Bertozzi would just be out of luck.

24 MR. GANEY: I agree, because I think  
25 under the case law it says even if you've got a

1 pending zoning change or something to do with a  
2 municipality or county government, the local  
3 government body has the right to change the ordinance  
4 before it's done. In fact, they've done it many  
5 times, and it's been upheld that it's tough luck.  
6 You've got to go with the new law.

7 But that's what was not done here, and I  
8 think that was for a specific reason. And I think  
9 that the County -- and nothing against Mr. Hodges or  
10 their interpretation, but I think they were wrong to  
11 turn down anybody solely because of a first division.  
12 I think all of those applications, and especially my  
13 client --

14 THE COURT: Right.

15 MR. GANEY: -- should be considered just  
16 like we're frozen in time on October 8, 1996. And  
17 that's my argument, Judge.

18 THE COURT: Let's hear from Ms. Barker.

19 MS. BARKER: Your Honor, if we use  
20 Mr. Ganey's reasoning, the grandfather clause would  
21 have said any applications filed by October 9 will be  
22 reviewed under the old rules.

23 The grandfather clause did not say that.  
24 The essence of the Supreme Court's remand of this  
25 case was not that we determine whether Mr. Ganey and

1 I or the Court agree with the interpretation of the  
2 clause, but rather, as you've said, whether it was  
3 arbitrary or capricious or based on the ordinances.  
4 And the testimony has demonstrated that it was based  
5 on the ordinance, and there was a rationale for it.

6 Mr. Bertozzi does have a number of  
7 options, some of which would require --

8 THE COURT: I'm not as much concerned  
9 about that now.

10 MS. BARKER: Okay.

11 THE COURT: You agree that the  
12 application/approval process wasn't a -- a point in  
13 time prior to October 9, it was a process, and there  
14 is give and take back and forth?

15 MS. BARKER: There was a -- what has been  
16 referred to as a tentative approval process.  
17 Tentative layouts were submitted. There was give and  
18 take. There was no official status to that. There  
19 was no stamp of approval or disapproval at that  
20 point.

21 So it was a process. And had the changes  
22 of October 9 not occurred, Mr. Bertozzi could have  
23 continued that process, and the County could have  
24 ultimately reviewed a corrected plat. But as you've  
25 mentioned, the key to all of this is those changes on



1     October 9, and we would contend that certainly our  
2     division of the applications into two different  
3     categories and our treatment of each of those  
4     categories was clearly based on the ordinances and  
5     was quite logical and supported by the rationale that  
6     you've heard about earlier.

7                 THE COURT: I think Mr. Hodges' term is  
8     that it's a fatal flaw.

9                 MS. BARKER: Yes, sir.

10                THE COURT: Mr. Crascenzo gave, I think,  
11     one other example.

12                MS. BARKER: And there were only a few  
13     subdivisions that did have one of those fatal flaws  
14     or substantive problems. One of them was  
15     Mr. Bertozzi's. There were some others for which  
16     first divisions were not recorded.

17                THE COURT: In the beginning of this case  
18     you told me you conceded -- County conceded that the  
19     first division rule was not always followed. That's  
20     what I understood you to say.

21                MS. BARKER: We conceded that the Rule  
22     was not written down.

23                THE COURT: Okay.

24                MS. BARKER: I don't recall conceding it  
25     was not -- certainly applicants did not always follow

1 it. But prior to October '96, if they didn't follow  
2 it, they had more chances. They had another bite at  
3 the apple.

4 THE COURT: Right. Well --

5 MS. BARKER: I apologize for not  
6 recalling everything I've said.

7 THE COURT: That's why we have her here.  
8 We could get her to repeat it to us.

9 MS. BARKER: Yes. So we would ask that  
10 you dismiss this case. Thank you.

11 THE COURT: Well, I'm not done with you  
12 yet.

13 So what happens if I buy Mr. Ganey's  
14 argument? What's the effect? Obviously,  
15 Mr. Bertozzi gets to develop his property. How many  
16 other people are going to be affected at the same  
17 time?

18 MS. BARKER: There were --

19 THE COURT: That's the list you've got,  
20 isn't it?

21 MS. BARKER: Well, that's the list. We  
22 did have one other appeal, I believe, which actually  
23 is still pending in this court, and I think that  
24 involves several hundred acres. I forget the exact  
25 acreage. And so --

1 THE COURT: It's not one of the ones I  
2 know directly about; right?

3 MS. BARKER: The Woods property.

4 So that would be affected and --

5 MR. HODGES: Different issues.

6 MS. BARKER: Yes, yes, different issue  
7 but -- Your Honor, it looks like there are four on  
8 this list for which first divisions were a problem.

9 THE COURT: Is there any basis for me to  
10 get up and walk out of the room and see if anything  
11 happens?

12 MS. BARKER: I wish we could have settled  
13 this earlier, but I don't think that's an option at  
14 this point.

15 MR. GANEY: Judge, if I may comment on  
16 one of the questions.

17 I believe the only person that can be  
18 affected by this ruling is really Bertozzi because  
19 he's the only one availed himself.

20 THE COURT: Yeah, but --

21 MR. GANEY: I understand, Judge. I'm  
22 just saying -- just to answer the question.

23 THE COURT: Do you have any rebuttal  
24 argument?

25 MR. GANEY: No, Judge.

1           The only other thing I'd say is in that  
2 15.1-475, the plat proposal, as I read that statute,  
3 it almost is implied that the County -- well, if it's  
4 something wrong, work with them. Because the statute  
5 says, The reasons for disapproval shall identify  
6 deficiencies in the plat which cause the disapproval  
7 by reference to specific dually adopted ordinances,  
8 regulations or policies and shall generally identify  
9 such modifications or corrections as will permit  
10 approval of the plat.

11           That's in the -- and, Judge, I have a  
12 copy of the ordinance, the old ordinance, which is  
13 the one that I think -- and I've got it highlighted.  
14 It's outlined on the side by the blue what I was  
15 reading, which is the second paragraph.

16           MS. BARKER: Your Honor, I think it's  
17 important to note that the first division of lots are  
18 not subdivision lots that are not created by a  
19 subdivision.

20           THE COURT: Well, I go back to where I  
21 started, and that is that the Supreme Court remanded  
22 this case for an evidentiary hearing regarding  
23 whether the Board's disapproval -- or the Planning  
24 Commissions' disapproval was not properly based on  
25 the ordinance applicable thereto or was arbitrary or

1 capricious.

2 And I start with the latter. I don't  
3 think it was arbitrary or capricious, because I think  
4 there are others that are similarly situated that  
5 were treated exactly the same way.

6 Now, as far as Mr. Bertozzi is concerned,  
7 you know, this really -- I would very much -- very,  
8 very much like to rule in his favor. The difficulty  
9 I've got is that the first division is not a  
10 subdivision. It's something that has to have been  
11 recorded.

12 My reading of the grandfather clause  
13 means that everything has to have been done because  
14 of the artificial barrier that was placed on October  
15 9. After October 9, the Planning Commission, the  
16 County, couldn't do what had been done before, which  
17 was a process of application amendment and,  
18 ultimately, approval. The County was not empowered  
19 to do it after that so the process became, in effect,  
20 a one-day process.

21 With all due respect to Mr. Bertozzi,  
22 who, as I indicate viscerally I want to rule in favor  
23 of, I think I have to say that I find that the  
24 disapproval was not improperly based on the  
25 ordinance, that it was applicable to it because the

1 ordinance disapproved.

2 And with all due respect to Mr. Bertozzi,  
3 I think I have to rule in the County's favor, and I  
4 ask that you prepare an order.

5 MS. BARKER: Your Honor, I have a draft  
6 order.

7 THE COURT: All right. Let's see what  
8 you've got.

9 MR. GANEY: Your Honor, for the record,  
10 we would -- we note our exceptions to the ruling for  
11 the reasons that I argued at the conclusion of the  
12 case.

13 THE COURT: Yes, sir.

14 MR. GANEY: Specifically, that I believe  
15 that the grandfather clause, the legal impact of  
16 that, allows the County and directs the County, in  
17 fact, to treat any application under the old  
18 provision, the ordinance and policies that existed  
19 prior to the change of the ordinance on the night of  
20 October 9, 1996.

21 THE COURT: Well, if you can persuade the  
22 Supreme Court that that's the case, I'll be  
23 viscerally happy, because I -- as I've indicated, I  
24 think Mr. Bertozzi's got a lot of appeal to his  
25 application.

1                   And I thank -- after a little clowning  
2 around, I thank you sincerely for your preparation  
3 and your presentation. You-all did a wonderful job.

4                   MS. BARKER: Judge Alderman, you  
5 mentioned the order of the exhibits, and I would rely  
6 on those exhibits marked by the court reporter as the  
7 official final numbers.

8                   THE COURT: Well, you-all agreed they're  
9 in. They're in.

10                  MS. BARKER: Yes.

11                  THE COURT: And I didn't change the --

12                  MS. BARKER: The ones in the black  
13 notebook are not the same numbers.

14                  THE COURT: And I didn't change any of  
15 the numbers.

16                  MS. BARKER: Yes.

17                  THE COURT: All right. We'll be in  
18 recess.

19  
20                  (The trial in the matter concluded at  
21 12:23 p.m.)  
22  
23  
24

25                                   REPORTER'S CERTIFICATE

CERTIFICATE

I, Richard R. Johnson, County Administrator, certify that I am the person to whom Betty L. Ackerman, Executive Secretary, reports, and I certify that Ordinance No. 96-17, Ordinance No. 96-18, and the Hanover County Code, Appendix, Subdivision Ordinance, Title III and Title IV, both repealed October 9, 1996, are in the custody of Betty L. Ackerman.


  
Richard R. Johnson, County Administrator

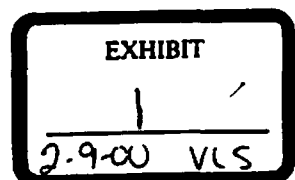
COMMONWEALTH OF VIRGINIA,  
COUNTY OF HANOVER, to-wit:

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of June, 1999, by Richard R. Johnson, County Administrator.

My commission expires:

10/31/2000


  
Notary Public





CERTIFICATE

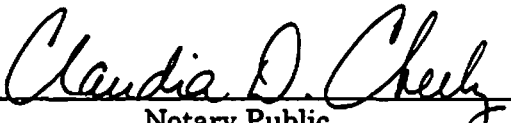
I, Betty L. Ackerman, Executive Secretary, and custodian of the records of the Hanover County Board of Supervisors, and more particularly, custodian of the ordinances of the Hanover County Board of Supervisors, do hereby authenticate the attached copies of Ordinance No. 96-17, Ordinance No. 96-18, and the Hanover County Code, Appendix, Subdivision Ordinance, Title III and Title IV, both repealed October 9, 1996, as true and accurate copies.

  
\_\_\_\_\_  
Betty L. Ackerman, Executive Secretary

COMMONWEALTH OF VIRGINIA,  
COUNTY OF HANOVER, to-wit:

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of June, 1999, by Betty L. Ackerman, Executive Secretary.

My commission expires:  
10/31/2000

  
\_\_\_\_\_  
Notary Public

*Adopted 10/9/96  
mcc 1/28/97*

ORDINANCE 96 - 17  
October 9, 1996

AN ORDINANCE TO REPEAL TITLES III AND IV OF THE HANOVER COUNTY CODE AND TO AMEND THE HANOVER COUNTY CODE, TITLE II.- SUBDIVISION ORDINANCE - LESS THAN TEN ACRES, TO REDEFINE THE TERM "SUBDIVISION"; TO PROVIDE FOR THE REVIEW AND APPROVAL OF SUBDIVISIONS WITH PRIVATE ROADS; TO REVISE THE REQUIREMENTS FOR THE PROVISION OF ROADS; AND TO REVISE THE STANDARDS FOR PREPARATION, SUBMITTAL, AND APPROVAL OF PRELIMINARY AND FINAL PLATS.

BE IT ORDAINED BY THE HANOVER COUNTY BOARD OF SUPERVISORS:

1. That the Hanover County Code, Appendix, Title III: Subdivision Ordinance - Ten to Twenty-five Acres, and Title IV: Subdivision Ordinance - Twenty-five Acres or Greater (Private Road), are hereby REPEALED.
2. That the Hanover County Code, Appendix, Title II: Subdivision Ordinance - Less Than Ten Acres, shall be amended to read in its entirety as follows:

Title II  
SUBDIVISION ORDINANCE

Section 1. Purpose and Title.

1-1 Purpose: The purpose of this Ordinance is to establish certain subdivision standards and procedures for Hanover County, Virginia, and such of its environs as come under the jurisdiction of the Board of Supervisors as provided by the Code of Virginia, 1950, as amended. These are part of a long-range plan to guide and facilitate the orderly beneficial growth of the community, and to promote the public health, safety, convenience, comfort, prosperity, and general welfare. More specifically, the purposes of these standards and procedures are to provide a guide for the change that occurs when lands and acreage become urban in character as a result of development for residential, business, or industrial purposes; to provide assurance that the purchasers of lots are buying a commodity that is suitable for development and use; and to make possible the provision of public services in a safe, adequate, and efficient manner.

1-2 Title: This Ordinance is known and may be cited as the "Subdivision Ordinance" of Hanover County, Virginia.

Section 2. Words and terms.

For the purpose of this Ordinance, certain words and terms used herein shall be interpreted or defined as follows: Words used in the present tense include the future; words in the singular number include the plural, and the plural, the singular, unless the natural construction of the word indicates otherwise; the word "lot" includes the word "parcel"; the word "shall" is mandatory and not directory; the word "approve" shall be considered to be followed by the words "or disapprove"; any reference to this ordinance includes all ordinances amending or supplementing the same; and all distances and areas refer to measurement in a horizontal plane.



- 2-1 Agent:** The Hanover County Planning Commission.
- 2-2 Alley:** A permanent service way providing a secondary means of access to abutting properties.
- 2-3 Building development:** Any erection of any buildings or structures which is required to have a minimum lot size pursuant to the General District Regulations of the Hanover County Zoning Ordinance or which requires the issuance of a building permit by Hanover County.
- 2-4 Building setback:** The minimum distance that a building must be set back from a street or lot line as required by a building setback line so designated on a plat of subdivision. The building setback line may be more but shall not be less than required in the Zoning Ordinance. The building setback line shall not be more than one-half the total lot depth.
- 2-5 Commission:** The Planning Commission of Hanover County, Virginia.
- 2-6 Cul-de-sac:** A street with only one outlet and having an appropriate turnaround for a safe, convenient reverse traffic movement.
- 2-7 Developer:** An owner of property being subdivided.
- 2-7.1 Director:** The Director of Planning for Hanover County.
- 2-8 Engineer:** An engineer licensed by the Commonwealth of Virginia to lay out subdivisions.
- 2-9 Easement:** A grant by a property owner of the use of land for a specific purpose or purposes.
- 2-10 Governing body:** The Board of Supervisors of Hanover County, Virginia.
- 2-11 Health official:** The health director of Hanover County or the sanitarian.
- 2-12 Highway engineer:** The resident engineer employed by the Virginia Department of Transportation.
- 2-13 Jurisdiction:** The area of territory subject to the legislative control of the governing body.
- 2-14 Lot:** A numbered and recorded portion of a subdivision intended for transfer of ownership or for building development for a single building and its accessory buildings.
- 2-15 Lot, corner:** A lot abutting upon two (2) or more streets at their intersection. The shortest side fronting upon a street shall be considered the front of the lot, and the longest side fronting upon a street shall be considered the side of the lot.

- 2-16 Lot, depth of: The mean horizontal distance between the front and rear lot lines.
- 2-17 Lot, double frontage: An interior lot having frontage on two (2) streets.
- 2-18 Reserved.
- 2-19 Lot, interior: A lot other than a corner lot.
- 2-20 Lot of record: A lot which has been recorded in the office of the Clerk of the Circuit Court of Hanover County, Virginia.
- 2-21 Lot, width of: The horizontal distance between the side lot line measured at the front building setback line.
- 2-22 Physical improvements: Any structure such as a drainage structure, central water systems, central sewage disposal systems, bridge, etc., and such other improvements as the agent may designate.
- 2-22.1 Plat: Includes the terms map, plan, plot, replat, or replot; map or plan of a tract or parcel or land which is to be, or which has been, subdivided. When used as a verb "plat" is synonymous with "subdivided."
- 2-23 Property: Any tract, lot, parcel, or several of the same collected together for the purpose of subdividing.
- 2-24 Street or road: A public or private thoroughfare which affords the principal means of access to abutting properties, whether designated as a freeway, expressway, highway, road, avenue, boulevard, lane, place, circle, or however otherwise designated.
- 2-25 Street or alley, public use of: The unrestricted use of a specific area or right-of-way for ingress and egress to two (2) or more abutting properties.
- 2-26 Street, major: A street or highway so designated on the Major Thoroughfare Plan of Hanover County.
- 2-27 Street, minor: A street other than a major street or collector street so designated on the Major Thoroughfare Plan of Hanover County, and intended primarily for providing access to abutting property.
- 2-28 Street, service drive: A public right-of-way generally parallel and contiguous to a major highway, primarily designed to promote safety by eliminating promiscuous ingress and egress to the right-of-way.
- 2-29 Street width: The total width of the strip of land dedicated and served for public travel, including roadway, curbs, gutters, sidewalks, and planting strips.

2-30 Subdivider: An owner of property being subdivided as defined in section 2-31.

2-31 Subdivision: The term "subdivision" shall mean the division of a parcel of land into two (2) or more lots or parcels of land for the purpose of transfer of ownership or building development, including any parcel previously separated by the owner or prior owner of such land for such purpose. The sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building lots or new roads, shall be exempt from the terms of this Ordinance. The division or partitioning of land in an estate by court order or among heirs of the original owner shall also be exempt from the provisions of this Ordinance.

2-32 Surveyor: A surveyor licensed by the Commonwealth of Virginia to lay out subdivisions.

2-33 Urban service area: All lands lying within those portions of Hanover County which are identified on a map entitled "Urban Service Area" which map is made a part of this Ordinance pursuant to the provisions of section 3A.

### Section 3. Administration.

3-1 Administrator: The agent appointed by the Board of Supervisors is hereby delegated to administer this Ordinance. In so acting, the agent shall be considered the agent of the governing body, and approval or disapproval as though it were given by the governing body. In the event the agent is not the Commission, the agent may consult with the Commission on matters contained herein.

3-2 Duties: The agent shall perform its duties as regards to subdivision and subdividing in accordance with this Ordinance and the Virginia Subdivision Act.

3-3 To consult: In the performance of its duties, the agent may call for opinions or decisions, either verbal or written, from other departments in considering details of any submitted plat. This authority by the agent shall have particular reference to the resident highway engineer and the health department.

3-4 Additional authority: In addition to the regulations herein contained for the platting of the subdivision, the agent may, from time to time, establish any reasonable additional requirements deemed necessary for the proper administration of this Ordinance or development of the property.

### Section 3A. Urban Service Area.

3A-1 Purpose and intent: The urban service area designation is intended to provide for certain regulations which are appropriate for development in urban areas but which regulations are not appropriate for development

in rural areas. The purpose of the urban service area is to clearly designate the areas in which urban development regulations shall be applicable and to also designate the areas in which rural development regulations shall be applicable.

3A-2 Establishment of urban service area: The urban service area shall consist of those portions of Hanover County described in Section 3A-2.1 et seq. and further designated as lying within an urban service area as shown on a map entitled "Hanover County, Virginia, Title 11 Subdivision Ordinance, Urban Service Areas." Such map is hereby incorporated into this Ordinance.

3A-2.1 Urban service area: The urban service area shall include all lands lying within an area described as follows: Beginning at a point 500 feet east of the intersection of the centerline of Route 615 and Interstate 295; thence in an easterly direction along the centerline of 1-295 to its intersection with the centerline of the Chickahominy River (the Hanover County/Henrico County line); thence in a northwesterly direction along the centerline of the Chickahominy River to its intersection with the centerline of the CSX Railroad; thence in a northerly direction along the centerline of the CSX Railroad to its intersection with the corporate line of the Town of Ashland; thence in a southerly direction, thence in an easterly direction, thence in a northeasterly direction along the corporate line of the Town of Ashland to its intersection with the right-of-way line of Interstate 95; thence in a southerly direction along the right-of-way line of 1-95 to a point 500 feet north of its intersection with the centerline of Route 657; thence in a southeasterly direction along a line 500 feet north of, and parallel to, the centerline of Route 657 to a point where said line intersects a line 500 feet northeast of, and parallel to, the centerline of Route 656; thence southerly along said line 500 feet east of, and parallel to, the centerline of Route 656 to a point where said line intersects with a line 500 feet north of, and parallel to, the centerline of Route 643; thence southeasterly, along said line 500 feet north of, and parallel to, the centerline of Route 643 to a point where said line intersects a line 500 feet north of, and parallel to, the centerline of Route 627; thence in an easterly direction along said line 500 feet north of, and parallel to, the centerline of Route 627 to a point where said line intersects a line 500 feet northeast of, and parallel to, the centerline of Route 615; thence in a southerly direction along a line 500 feet east of, and parallel to, the centerline of Route 615 to the point of beginning.

3A-3 Official map document; public information copies: The Official Urban Service Area Map shall be an original drawing maintained within the Planning Department offices and available for public inspection at reasonable times. Nothing in this Ordinance shall be interpreted as prohibiting the reproduction and public distribution of copies of said map, provided that such copies are clearly designated as copies and indicate the location of the official map and its availability for inspection. One copy of the map and this Ordinance shall be maintained in the Office of the Clerk of the Hanover County Circuit Court.

3A-4 Interpretations: The detailed descriptions contained in Section 3A-2.1 et seq. shall be inclusive as to the location of urban service area boundaries. The Agent shall provide, upon formal request, an interpretation as to the location of the boundaries of an urban service area.

Section 4. Procedure for making and recording plats.

4-1 Platting required: Any owner or developer of any tract of land situated within Hanover County who subdivides the same shall cause a plat of such subdivision, with reference to known or permanent monuments, to be made and recorded in the office of the Clerk of the Circuit Court of Hanover County, Virginia. No such plat of a subdivision shall be recorded unless and until it shall have been submitted, approved, and certified by the agent in accordance with regulations set forth in this Ordinance. No lot shall be sold in any such subdivision before the plat shall have been recorded.

4-1-1 In the event a plat for a subdivision is disapproved by the agent, the subdivider may appeal to the Board of Supervisors. The Board may then override the recommendation of the agent and approve said plat.

4-2 Draw and certify: Every such plat shall be prepared by a civil engineer or surveyor duly licensed by the State of Virginia, who shall endorse upon each plat a certificate signed by him setting forth the source of the title of the land subdivided, and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat, within an insert block, or by means of dotted boundary line upon the plat.

4-3 Owner's statement: Every such plat, or the deed of dedication to which such plat is attached, shall contain, in addition to the engineer's or surveyor's certificate, a statement to the effect that "the above and foregoing subdivision of (here insert correct description of land subdivided) as appears in this plat is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any" and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds, and when thus executed and approved as herein specified shall be filed and recorded with the office of the Clerk of the Circuit Court of Hanover County, Virginia, and indexed under the name of the landowners signing such statement and under the name of said subdivision.

4-4 No one exempt: No person shall subdivide any tract of land that is located within Hanover County as defined in the Virginia Land Subdivision Act except in conformity with the provisions of this Ordinance.

4-5 Private contracts: This Ordinance bears no relation to any private easement, covenant, agreement, or restriction, nor is the responsibility of enforcing such private easement, covenant, agreement, or restriction

implied herein to any public official. When this Ordinance calls for more restrictive standards than are required by private contract, the provisions of this Ordinance shall control.

**4-6 Necessary changes:** No change, erasure, or revision shall be made on any preliminary or final plat, nor on accompanying data sheets, after approval of the agent has been endorsed in writing on the plat or sheets, unless authorization for such changes has been granted in writing by the agent.

**4-7 Fees:**

1. There shall be a charge in connection with an application for the examination and approval of plat submitted pursuant to the requirements of this Ordinance, in accordance with a schedule of fees as adopted by the Board of Supervisors from time to time.
2. No fee paid pursuant to this section shall be refunded unless a written request for withdrawal of the application is received by the Planning Department within five (5) working days after the date of application.

**Section 5. General regulations.**

**5-1 Mutual responsibility:** There is a mutual responsibility between the subdivider and the county to divide the land so as to improve the general use pattern of the land being subdivided.

**5-2 Repealed.**

**5-3 Flooding:** Land subject to flooding and land deemed to the topographically unsuitable shall not be platted for uses that may increase danger to health, life, or property, or aggravate erosion or flood hazard. Such land within the subdivision shall be set aside on the plat for such uses as allowed by the Hanover Drainage and Floodplain Ordinance. To insure that residents will have sufficient land upon which to build which is flood-free, the agent may require the subdivider to provide elevations and flood profiles sufficient to demonstrate the land to be completely free of the danger of flood waters.

**5-4 Building site:** Grading plans for each lot in the subdivision may be required prior to or at the time that application is made for a building permit. Such grading plan shall be prepared by a certified civil engineer or land surveyor and shall show the location of the proposed building, the existing and proposed elevations at the building corner, lot corners, and the finished floor elevation of the ground floor, and the proposed direction of flow of the drainage on the lot.

**5-5 Improvements:** All required improvements shall be installed by the subdivider at his cost. The subdivider's bond shall not be released until construction, in conformance with the requirements of this Ordinance, has been inspected and approved by the agent or highway



engineer. All improvements in addition to the foregoing shall include the following requirements:

5-5-1A Lot size: The dimension and area of all lots shall comply with the requirements of the zoning district in which they are located. In zoning districts where lot averaging is permitted, the number of lots which may be smaller than the minimum average lot size shall be calculated for the entire property for which preliminary subdivision approval is granted. Individual sections of the subdivision may contain a higher percentage of lots smaller than the minimum average lot size permitted within the zoning district, but at no time shall the number of lots smaller than the minimum average lot size exceed the maximum percentage permitted within the zoning district in which the subdivision is located when calculated as a percentage of all lots having received final approval. Notwithstanding requirements of the zoning regulations, greater lot areas may be required where individual septic tanks or individual wells are used, if the health official determines that there are factors of drainage, soil conditions, or other conditions to cause potential health problems. The agent shall require that data from percolation tests be submitted as a basis for passing upon subdivisions dependent upon septic tanks as a means of sewage disposal.

5-5-1B Flood control and drainage: The subdivider shall provide all necessary information needed to determine what improvements are necessary to properly develop the subject property, including contour intervals, drainage plans, and flood control devices. The subdivider shall also provide plans for all improvements together with an engineer's or survey's statement that such improvements, when properly installed, will be adequate for property development. All improvements shall be in conformance with the Hanover County Floodplain and Drainage Ordinance and approved by the County of Hanover.

5-5-1C Erosion and sediment control: All subdivision plans shall include adequate provisions for control of temporary flooding or erosion and sediment control, both during construction and after completion of construction, in conformance with applicable ordinances.

5-5-2 Easements: The agent may require that easements for drainage through adjoining property be provided by the subdivider. Easements of not less than sixteen (16) feet in width shall be provided for water, sewer, power lines, and other utilities in the subdivision, when required by the agent.

5-5-3 Sanitary sewers: Sanitary sewers shall be required in all subdivisions where sanitary sewer is available. The agent may require the installation and capping of sanitary sewer mains and house connections if public utilities will be available within three (3) years from the date of recordation of the subdivision as prescribed by the Hanover Utility Improvement Plan. Plans for sanitary sewer installation shall be submitted and approved prior to the recordation of the final subdivision plat.

5-5-4 Public water:

- (a) Any subdivision located within an urban service area and located within an AR-2, AR-1, R, B, or M zoning district shall provide a central water system which conforms to the requirements of the design standards and specifications and the water regulations in effect on the date of final subdivision approval. Such central water system, upon completion by the developer and approval by the Director, shall be dedicated to the County of Hanover to be operated as a part of the public utility system.
- (b) Any subdivision not located within an urban service area and located in any R zoning district shall provide a central water system which conforms to the requirements of the design standards and specifications and the water regulations in effect at the time of final subdivision approval. Such central water systems shall be offered for dedication to the county, without cost, and shall be accepted by the county and operated as part of the public utility system, if the Board of Supervisors determines that county ownership and operation of the system would be consistent with the plans for the county's public utility system.
- (c) Any subdivision not located in an urban service area and not located in any R zoning district may provide a central water system. Any such system shall conform to the requirements of the design standards and specifications and the water regulations in effect at the time of final subdivision approval. Such central water systems shall be offered for dedication to the county, without cost, and shall be accepted by the county and operated as part of the public utility system, if the Board of Supervisors determines that county ownership and operation of the system would be consistent with the plans for the county's public utility system.
- (d) When a central water system is provided, the system shall include storage capacity of at least fifteen thousand (15,000) gallons in excess of requirements of the water regulations.
- (e) Where a subdivision located within an urban service area can be served by the extension of an existing privately owned central water system, such extension may be made in satisfaction of this requirement, provided that if such private system is acquired by the county at a later date, no charge may be assessed against the county for the improvements made as part of such extension. Whenever the requirement for provision of a public water system is to be satisfied by this subsection, a contract between the owner of the private central water system and Hanover County shall be executed prior to final approval of the subdivision plan by the agent. Such contract shall assure the future ability of the county to

acquire the improvements made as a part of the extension without cost and shall require that the extension meet the requirements of the design standards and specifications and the water regulations in effect on the date of final approval of the subdivision.

- (f) Neither central nor public water systems shall be required in the RRC, Rural Residential Cluster District nor the AR-6, Agricultural Residential District.

**5-5-5 Fire protection:** The installation of adequate fire hydrants in a subdivision at locations approved by the agent may be required if a central water system is installed in the subdivision. Fire hydrants shall have a six (6) inch or longer inlet and connection, a valve opening of at least four and one-half (4 1/2) inches, a four and one-half (4 1/2) inch pumper connection, and a two and one-half (2 1/2) inch hose connection. All connections must be of a national standard thread. Fire hydrants shall be placed on water mains having a diameter of not less than six (6) inches, and hydrants shall not be located more than one thousand (1,000) feet apart. There shall be maintained a minimum of forty (40) pounds hydrant pressure under normal operating conditions for the system in supplying water for domestic usage. The agent shall consult with the governing body of the county before approving such location.

**5-5-6 Underground utilities:** All utility lines except those in the A-1, Agricultural District, AR-6, Agricultural Residential District, M-2, Light Industrial District, and M-3, Heavy Industrial District, including, but not limited to, electric, CATV, telephone, or other lines, constructed after May 26, 1993, shall be placed underground. This requirement shall apply to lines serving individual sites within the development and to utility lines providing service to the development. Where aerial utility service is extended from lines existing on May 26, 1993, located across a major thoroughfare, such lines may be carried overhead to a terminal pole located along the thoroughfare right-of-way but within the subdivision, where the lines shall be placed underground. This shall not apply to electric transmission lines, the placement of which is regulated by the state corporation commission. Where aerial utility lines, excluding service lines, in existence on May 26, 1993, traverse the property proposed for subdivision, such lines may remain overhead unless the lines are subsequently moved. Relocation of existing poles placed within an easement contiguous to the highway right of-way which adjoins the property being subdivided, when done as part of construction of an entrance to the subdivision shown on an approved subdivision plat, shall be exempt from these requirements.

**5-5-7 Storm drainage requirements:** The subdivider shall submit a plan for handling of storm drainage, in conformance with the design criteria set forth in the Hanover County Storm Drainage and Floodplain Control Ordinance.

5-5-8 Reserved.

5-5-9 Off-site sewage and drainage improvements: Whenever the Board of Supervisors has established a general sewer and drainage improvement program applicable to the land proposed for subdivision or a portion thereof, the subdivider shall pay a pro-rata share of the cost of providing reasonable and necessary sewage and drainage facilities located outside the property limits of the land owned or controlled by him, which facilities are necessitated or required, at least in part, by the construction or improvement of his subdivision or development. Such share shall be the proportion of the total estimated cost which the increased sewage flow and/or increased volume and velocity of storm water runoff to be actually caused by the subdivision or development bears to total estimated volume and velocity of sewage and/or run-off from such area in its fully developed state. Each such payment received shall be expended only for the construction of those facilities for which the payment was required, and until so expended shall be held in an interest-bearing account for the benefit of the subdivider or developer.

5-6 Performance agreements and surety:

1. Required improvement construction or performance agreement required.

- (a) Before final approval and recordation of any subdivision plat, the subdivider shall construct all required improvements in accordance with the approved plans and standards set forth in this chapter and have said improvements accepted for maintenance by the appropriate County or State agency.
- (b) In lieu of said construction and acceptance, a performance agreement shall be executed with the County. The Director shall have authority to execute the agreement on behalf of the County. Such agreement, which shall be made on forms to be supplied by the agent and approved as to form by the County Attorney, shall as a minimum provide that all improvements required or voluntarily agreed to and/or all improvements shown on the final plat of subdivision shall be completed, approved, and accepted within eighteen (18) months from the date of recordation or, in the case of residential subdivision, upon the occupancy of one-third (1/3) of the residences in the subdivision, whichever occurs first. Extensions of such time may be granted by the agent after consideration of the following criteria:
  - (1) The needs of the occupants of residences in the subdivision for safe and convenient access to their residences.
  - (2) Deterioration of the roads, drainage, and other improvements completed or partially completed.

- (3) The season of the year and the type of work which remains to be completed.
- (4) The number of residences occupied and the eligibility of the facilities for acceptance by the appropriate State or local agency.
- (c) Improvement shall include any street, curb, gutter, sidewalk, bicycle trail, drainage or sewer system, water line as part of a public system, or other improvement dedicated for public use and maintained by the County, the Commonwealth, or other public agency, and the provision of other site-related improvements voluntarily agreed to and/or required by local ordinance.

2. Surety required. The performance agreement shall be accompanied by surety in an amount sufficient to provide for the improvements identified in the performance agreement. All surety shall be provided in a form approved by the County Attorney and shall be conditioned on construction of the improvements. Such surety may take one or more of the following forms:

- (a) Certification that the construction costs have been paid to the person constructing such facilities; such certification to be by notarized letter to the County and witnessed by the person constructing such improvements. Any person constructing such improvements shall furnish a letter of credit or performance bond reciting prior payment of construction cost in full; or
- (b) Personal or corporate bond with property, cash or corporate surety licensed to do business in the Commonwealth, in an amount equal to the cost of construction; or
- (c) A contract for the construction of such facilities and the contractor's bond naming the County as obligee, with surety as required above; or
- (d) A letter of credit issued by a bank or savings and loan institution having an office located in the State of Virginia and being regulated by the State of Virginia or the United States Government; or a letter of credit issued by a regulated bank or savings and loan institution with payment of the full amount of the letter of credit being confirmed and guaranteed by a regulated bank or savings and loan institution with an office located in the State of Virginia in the amount of the estimated cost of construction.

The cost of construction shall equal an estimate made by the Director based on unit prices for new public or private sector construction in the County and a twenty-five (25) percent allowance for estimated administrative cost, including

attorneys' fees if applicable, inflation, and potential damage to existing roads or utilities.

3. Maintenance and indemnifying bond required. Where, because of factors other than quality of construction, a road for public use is not accepted into the State System of Highways within the eighteen (18) month period, the subdivider shall furnish the County a maintenance and indemnifying bond, with surety, in an amount sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the System of Highways. Such amount shall be set by the Director of Public Works. The bond shall be effective for one (1) year and if such roads have not been accepted, the bond shall be annually reviewed as to amount by the Director of Public Works and renewed. In lieu of such bond, the County may accept a letter of credit. "Maintenance of such road" shall be deemed to mean maintenance of the streets, curb, gutter, drainage facilities, utilities, or other street improvements, including the correction of defects or damages and the removal of snow, water, or debris, so as to keep such road reasonably open for public usage. Surety required by this section shall conform to the requirements for bonds and letters of credit described in the preceding section and shall be provided in a form approved by the County Attorney.

4. Action when improvements not complete and accepted. Whenever the requirements of this ordinance and any provisions of a performance agreement executed pursuant to this chapter have not been completed or complied with within the time limits established for such completion and/or compliance, the Director shall proceed to enforce the agreement and the requirements of this ordinance and shall call upon any cash, letter of credit, or surety provided to guarantee performance. If any funds remain after all requirements or provisions have been completed and complied with and no defects or deficiencies are found therein, such funds shall be returned to the subdivider.

5. Bond reductions. Periodic partial and/or final complete release of any bond, escrow, letter of credit, or other performance guarantee required by the County under this section shall be made within thirty (30) days after receipt of written notice from the subdivider or developer of completion of part or all of any facilities required to be constructed hereunder unless the County notifies said subdivider or developer in writing by certified mail return receipt of nonreceipt of approval by the applicable State agency, or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the thirty (30) day period.

If no such action is taken by the County within the time specified above, the request shall be deemed approved, and a partial release granted to the subdivider or developer. No final release shall be granted until after expiration of such thirty (30) day period. No final release shall be granted until there is an additional request in writing sent by certified mail return receipt to the Director. The County shall act within ten (10) working days of receipt of the request; then if no

action is taken, the request shall be deemed approved and final release granted to the subdivider or developer.

Upon written request by the subdivider or developer, the County shall make periodic partial releases of such bond, escrow, letter of credit, or other performance guarantee in a cumulative amount equal to no less than eighty (80) percent of the original amount of the bond, escrow, letter of credit, or other performance guarantee, based upon the percentage of facilities completed and approved by the County or State agency having jurisdiction. Periodic partial releases may not occur before the completion of at least thirty (30) percent of the facilities covered by any bond, escrow, letter of credit, or other performance guarantee, or after completion of more than eighty (80) percent of said facilities. The County shall not be required to execute more than three (3) partial releases in any twelve (12) month period. Upon final completion and acceptance of said facilities, the County shall release any remaining bond, escrow, letter of credit, or other performance guarantee to the subdivider or developer. For the purpose of final release the term "acceptance" is deemed to mean: when said public facility is accepted by and taken over for operation and maintenance by the State agency, local government department of agency, or other public authority which is responsible for maintaining and for operating such facility upon acceptance.

5-7 Plans and specifications: Prints of the plans and specifications for all required physical improvements to be installed shall be prepared by an engineer or surveyor and shall be submitted to the agent for approval or disapproval. The required number of copies shall be determined by the agent. If approved, one copy bearing certification of such approval shall be returned to the subdivider. If disapproved, all papers shall be returned to the subdivider with the reasons for disapproval in writing.

5-8 Reserved.

5-8-1 Exceptions or planned unit development. Where the land within the unincorporated territory of Hanover County is proposed for development in accordance with the provisions of the Hanover County Zoning Ordinance pertaining to the establishment of Planned Unit Development Districts, the requirements and conditions for approval as set forth in that Ordinance shall prevail in the case of any conflict with these regulations; provided, however, that nothing in this section shall be construed as permitting any exception from the requirements of these regulations with regard to design, arrangement, or improvement of streets and highways within any proposed planned unit development except as specifically provided herein.

5-9 Part of a tract: Whenever part of a tract is proposed for platting and it is intended to subdivide additional parts in the future, a sketch plan for the entire tract shall be submitted with the preliminary plat.

[LOTS]

5-10 Shape: The lot arrangement, design, and shape shall be such that lots will provide satisfactory and desirable sites for buildings, and be properly related to topography, and conform to requirements set forth herein. Lots shall not contain peculiarly-shaped elongations solely to provide necessary square footage or area which would be unusable for normal purposes.

5-11 Location: Each lot shall abut on a street dedicated by the subdivision plat, or on an existing public dedicated street, or on a street which has become public by right of use unless otherwise specified herein. If the existing streets are not forty (40) feet in width and a greater width is not required by the Major Thoroughfare Plan, the subdivider shall make provisions in the deeds to the lots for all buildings to be constructed as to permit the widening by dedication of said roads or streets to a width of fifty (50) feet.

5-12 Corner lots: Corner lots shall be required to maintain a front yard setback only along the street upon which the majority of the lots in the block fronts. Building setback lines along side yard frontages shall be a minimum of one-half the required front yard setback.

5-13 Side lines: Side lines of lots shall be approximately at right angles or radial to the street line.

5-14 Remnants: There shall be no remnants of parcels after subdivision. All property subdivided shall be included into the lots created or conveyed to adjoining property owners as additions to the existing lots.

5-15 Separate ownership: When the land covered by a subdivision includes two (2) or more parcels in separate ownership, and lot arrangement is such that a property ownership line divides one or more lots, the land in each lot so divided shall be transferred by deed to single ownership, simultaneous with the recording of the final plat. Said deed is to be deposited with the agent and held with the final plat until the subdivider is ready to record same, and they both shall be then recorded together.

5-16 Septic tanks and wells: In subdivisions where septic tanks or individual wells are contemplated the agent may require that the lot areas be greater than those required herein. If the health department determines that there are factors of drainage, soil conditions, or other conditions to cause potential health problems, the agent shall require the data from percolation tests be submitted as a basis for passing upon subdivisions dependent upon septic tanks as a means of sewage disposal. Each septic system and individual well shall be located on the lot served.



(BLOCKS)

5-17 Length: The maximum length of blocks generally shall be twelve hundred (1200) feet and the minimum length of blocks upon which lots have frontage of five hundred (500) feet.

5-18 Width: Blocks shall be wide enough to allow two (2) tiers of lots of minimum depth, except where fronting on major streets or prevented by topographical conditions or size of the property, in which case the agent may approve a single tier of lots of minimum depth.

5-19 Orientation: Where a subdivision adjoins a public road, the agent or commission may require that the greater dimension of the block shall front and/or back upon such public thoroughfare to avoid unnecessary ingress and egress which would cause dangerous traffic conditions or reduce the traffic-carrying capacity of the public road.

5-20 Business or industrial: Blocks intended for business or industrial use shall be designed specifically for such purposes with adequate space set aside for off-street parking and delivery facilities. Individual lots within blocks of subdivisions which have been zoned to a business or industrial classification may be omitted from the final plat allowing the property to be divided in block form only. The subsequent transfer of parcels within the previously recorded business or industrial subdivision shall not be construed as a resubdivision of the property; however, prior to the issuance of any building permit, the subdivider shall have plats for the division of the property approved by the Hanover County Planning Office to insure that all requirements of the Hanover County Subdivision Ordinance have been met.

(STREETS)

5-21-1 Alignment and layout of streets. Existing or proposed streets shall be designed in accordance with the requirements of the Major Thoroughfare Plan, including the minimum widths as specified hereunder. The arrangements of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas. The street arrangement must be such as to cause no unnecessary hardship to owners of adjoining property when they plat their own land; provide for convenient access to adjoining property; and avoid environmentally-sensitive lands. Proposed streets shall be extended by dedication to the boundary of such property and all streets proposed to extend beyond the property boundary shall be designed beyond the boundary to the point where the vertical curvature of the street coincides with the natural topography (figure 3). Half streets along the boundary of land proposed for subdivision may not be permitted. Whenever possible, streets should intersect at right angles. In all hillside areas, streets running with contours shall be required to intersect at angles of not less than sixty (60) degrees, unless approved by the highway engineer. All street intersections shall have a distance of at least two hundred (200) feet between center lines.

#### 5-21-2 Construction of streets.

- (a) Streets which provide lot access. All streets shown within the subdivision on the approved preliminary plan which provide lot access shall be constructed and paved, where required, to the boundary of the property being subdivided unless the slope at the boundary is greater than 3:1. In those cases, the road shall either be constructed and paved to the property line or to the point necessary to provide for access and to allow for all necessary slope, drainage, and other easements to be provided on site (figure 1).
- (b) Streets which do not provide access. Streets which do not provide lot access shall be constructed and paved, where required, for a minimum distance of fifty (50) feet from the edge of pavement of a road providing lot access. The remainder of the road to the property line or to a point where the approved road grade would create a slope no greater than 3:1 between the construction stub and the property line shall be graded and stabilized in accordance with the approved cross-section (figure 2).
- (c) Provision of easements. All necessary slope and other easements necessary for completion of road construction to the property line shall be provided prior to recordation of the final plat (figures 1, 2).
- (d) Completion of road construction. When property adjoining an existing subdivision with streets designed to be extended into the property is proposed for development, the developer shall complete construction of those streets contiguous to the property to be subdivided.

5-22 Service drives: Whenever a proposed subdivision contains or is adjacent to a limited access highway or expressway, provision shall be made for a service drive or marginal street approximately parallel to such right-of-way at a distance suitable for an appropriate use of land between such highway and the proposed subdivision. Such distances shall be determined with due consideration of the minimum distance required for ingress and egress to the main thoroughfare. The right-of-way of any major highway or street projected across any railroad, limited access highway, or expressway shall be of adequate width to provide for the cuts or fills required for any future separation of grades.

5-23 Approach angle: Minor streets shall approach the major or other streets at an angle of not less than eighty (80) degrees, unless the agent, upon recommendation of the highway engineer, shall approve a lesser angle of approach for reasons of contours, terrain, or matching of existing patterns.

5-24 Minimum width: The minimum width of proposed streets, measured from lot line to lot line, shall be shown on the plat, and shall be in accordance with the latest standards of the Virginia Department of

Transportation.

5-24-1 Alleys. If permitted, not less than twenty (20) nor more than twenty-eight (28) feet.

5-25 Alleys: Alleys should be avoided wherever possible.

5-26 Grading and paving: The grading, base, and pavement shall be in accordance with the latest minimum standards and specifications for subdivision streets and roads of the Virginia Department of Transportation.

5-27 Dead end: Dead end alleys shall be avoided wherever possible, but if unavoidable shall be provided with adequate turnaround facilities as determined by the agent.

5-28 Culs-de-sac: Street culs-de-sac shall meet the latest standards of the Virginia Department of Transportation. The maximum length of culs-de-sac may be increased in an acreage subdivision or planned unit development if justified by topography and environmental design considerations.

5-29 Names: Proposed streets, which are obviously in alignment with others already existing and named, shall bear the name of the existing streets. In no case shall the name of proposed streets duplicate existing street names irrespective of the use of the suffix avenue, boulevard, driveway, place, lane, or court. Street names shall be indicated on the preliminary and final plats and shall be approved by the agent.

Names of existing streets shall not be changed except by approval of the governing body.

5-30 Identification signs: Street identification signs shall be installed at all intersections according to the standards of the Virginia Department of Transportation.

5-31 Grades: The grades and sight distances of streets shall be in accordance with specifications established by the Virginia Department of Transportation.

5-31-1 Buyer's affidavit. No deed to a tract of land in a subdivision which contains private streets shall be recorded unless the same carries an affidavit duly signed and acknowledged by the grantee (buyer) in said deed to the effect that he acknowledges that all private roads in the subdivision shall not be maintained or improved by the Virginia Department of Transportation or any other public agency, and that it is the mutual duty and obligation of the abutting landowners or homeowners association (as applicable) to maintain and improve the roads which are private in nature and use.

5-32 Private streets: May be allowed only in subdivisions zoned to an A-1, Agricultural; AR-6, Agricultural Residential; RRC, Rural Residential Cluster; R-4, Residential Cluster; or Residential PUD classification where at no time in the future such streets will carry through traffic. Any subdivision containing private streets shall in the deed to each tract or lot carry a restrictive covenant to the effect that certain roads in the subdivision are private in nature and shall not be maintained by the Virginia Department of Transportation or other public road agency and that the maintenance and improvement thereof shall be the mutual obligation of the landowners in the subdivision and that such private roads shall not be taken into the state secondary system, unless and until the abutting landowners or homeowners' association shall have constructed and dedicated the private roads in accordance with the latest Virginia Department of Transportation specifications, and thereafter the Hanover County Board of Supervisors shall have recommended that said roads be taken into the State Secondary System of Highways.

5-32-1 Standards for private roads in A-1, Agricultural and AR-6, Agricultural Residential Districts: Private roads shall be permitted for all subdivisions in the A-1, Agricultural, and AR-6, Agricultural Residential District, in accordance with the standards set out below. No private road shall serve more than thirty-one (31) lots, including lots existing at the time of subdivision and those lots created through subdivision. Such improvements as required below shall be constructed or construction of the improvements secured in accordance with the requirements stated herein. All private roads shall either be extended and constructed to the property line of the parcel being subdivided or shall be designed and constructed as a cul-de-sac. Each cul-de-sac must terminate in a turnaround of a right-of-way radius of not less than fifty (50) feet or other turnaround design accepted by the Virginia Department of Transportation. No cul-de-sac road which intersects a public road other than one created by subdivision shall be less than two hundred (200) feet in length.

For the purpose of application of the private road standards set out below, the term "lot" shall include any real estate for which a metes and bounds description or a survey has been recorded.

When no more than four (4) lots are being created through subdivision, and the access to such lots serves no other property, a right-of-way fifty (50) feet in width shall be recorded on the plat to serve the lots. No road improvements shall be required. (fig. 4)

In subdivisions of five (5) or more lots, or when five or more lots are served by the same road, the roads in the subdivision for which approval is requested and those roads necessary to provide access to a road improved to these standards or to a public road shall be improved as specified below. (figures 5, 6)

Minimum right-of-way width: Fifty (50) feet

Minimum shoulder (width): Three (3) feet

Minimum travel surface (width): Eighteen (18) feet

Minimum travel surface (depth): Six (6) inches compacted stone (Virginia Department of Transportation standard 21-A or equivalent)

Preparation of subgrade: Subgrade shall be prepared by excavation and removal of all vegetative cover, root mat, and topsoil. Drainage systems must provide relief for surface runoff and groundwater conditions away from finished subgrade elevation. Road fill utilized to cross low areas shall be placed on excavated subgrade as described in this section, and shall consist of suitable backfill material as defined by the Virginia Department of Transportation Road and Bridge Specifications (most recent revision) or other methods as approved by the County Engineer. Inspection and approval of subgrade is required prior to placement of stone. The County Engineer will provide inspection of prepared subgrade with forty-eight (48) hours notice.

Compaction: Final compacted road surface shall be compacted in a manner such that a uniform texture is produced and the aggregates are firmly keyed. Irregularities in the surface shall be corrected by scarifying, remixing, reshaping, and recompacting until a smooth surface is secured. The compacted aggregate will be inspected for depth and surface condition by the County Engineer. Final inspections shall be provided with forty-eight (48) hours notice.

Maximum degree of curvature (radius): One hundred ten (110) feet

Maximum grade (percent): Ten (10) percent

Minimum stopping sight distance<sup>1</sup>: One hundred twenty-five (125) feet

Minimum intersection sight distance<sup>2</sup>: Two hundred (200) feet

Road identification signs shall be installed at all intersections in accordance with the Hanover County Property Numbering and Street Naming Manual and with Virginia Department of Transportation standard stop sign specifications.

<sup>1</sup> Distance based on 3.5' height of eye and 0.5' height of object.

<sup>2</sup> Distance based on 3.5' height of eye and 4.25' height of object.

Prior to approval, a Licensed Professional Engineer or Land Surveyor must certify that these requirements are met. If construction of roads is not completed prior to final approval of the plat, sufficient engineering design information must be submitted to the County Engineer prior to final approval. Sight distance easements and temporary slope easements must be dedicated on the final plat.

5-32-2 Public roads in A-1, Agricultural and AR-6, Agricultural Residential Districts: In subdivisions of thirty-two (32) or more lots, or when thirty-two or more lots are served by the same road, the roads in the subdivision for which approval is requested and those roads necessary to provide access to a public road shall be improved to public road standards and the developer shall take all other actions necessary for acceptance into the State System of Highways. (fig. 7)

5-33 Scenic drives: Where an existing or proposed street or road is designated as a scenic drive on the Comprehensive Plan, of which the Major Thoroughfare Plan is a part, the purpose and standards established for such drives to maintain their scenic qualities shall be observed in design and development of an adjacent subdivision, including, but not limited to, such factors as maintenance of existing alignments and natural vegetation, appropriate pavement design, and due care with respect to location and design of access points and building setback.

5-34 Visible for inspection: Upon completion of subdivision streets, sewers, and other improvements, the subdivider shall make certain that all monuments required by this Ordinance are clearly visible for inspection and use. Such monuments shall be inspected and approved by the engineer or agent before any improvements are accepted by the governing body.

[MONUMENTS]

5-35 Location-Concrete: Concrete monuments four (4) inches in diameter or square, three (3) feet long, with a flat top, containing four (4) numbers, three (3) steel bars, thirty-four (34) inches long and having one-half inch of cover, placed so that they are evenly spaced around the perimeter in the case of round monuments, and one in each corner in the case of square monuments, shall be set at all street corners, at all points where the street line intersects the exterior boundaries of the subdivision, and at angle points and points of curve in each street. The top of the monument shall have an exposed solid steel bar one-half inch in diameter located in the center of the monument so that it can be punched to identify properly the location of all points. The monument shall be set flush with the finished grade line.

5-36 Location-Iron pipe: All other lot corners shall be marked with iron pipes not less than three-fourths inch in diameter and twenty-four (24) inches long and driven so as to be flush with the finished grade. When rock is encountered, drill a hole four (4) inches deep in the rock and cement a steel rod one-half inch in diameter whose top shall be flush with the finished grade line.

5-37 Resubdivision prohibited; procedure for vacations:

- (a) Unless otherwise excepted, none of the lots shown on the approved subdivision plat may be further divided without approval of the Board of Supervisors.

- (b) Notwithstanding the provisions of part (a) above, upon application by the property owner, the Agent may approve a resubdivision which involves the vacation of a lot line for the purpose of adjusting a lot boundary or combining two (2) or more lots, but which does not involve the creation of additional building lots or the vacation of any street, alley, easement for public passage, or other public area. For the purposes of review and approval of a resubdivision made under this part (b), the Director of Planning shall be the agent.
- (c) The vacation of any feature of an approved subdivision, other than a lot line, which may be vacated under the provisions of (b) above, shall be subjected to the provisions of state law governing the vacation of a subdivision.

#### Section 6. Approval of plats.

6-1 Approval of an application: An application shall be approved by the agent unless they find the proposed subdivision detrimental to the public health, safety, or general welfare, including, but not limited to, those items set forth in section 6-3.

6-2 Approval required before sale: Whenever any subdivision of land is proposed, and before any permit for the erection of a structure shall be granted, the subdivider or his agent shall make formal application to the agent for approval of the subdivision plat. No lot shall be sold until a final plat for the subdivision shall have been approved by the agent and recorded with the Clerk of the Circuit Court.

6-3 Elements of the public health, safety, and general welfare: The purpose of this Ordinance being to promote and protect the public health, safety, and general welfare, through the provisions of this Ordinance including the plan of the proposed subdivision, the performance guarantee bond and the design standards, the agent shall also consider the following elements of public health, safety, and general welfare in determining if the proposal conforms to the purpose of this Ordinance. Approval shall be granted only if such proposal promotes the public health, safety, and general welfare with respect to the following:

- a. The proposal will not result in undue water pollution. In making this determination, the agent will consider: The amount of rainfall received in the area; the relation of the land of floodplain; the nature of the soil and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the presence of streams as related to effluent disposal; the applicable health and water resources department regulations.
- b. The proposal will have sufficient water available per lot, both physically and legally, for the foreseeable needs of the subdivision development.

- c. The proposal will not cause an unreasonable depreciation on an existing water supply.
- d. The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
- e. The proposal will not cause undue air pollution.
- f. The proposal will not cause unreasonable highway congestion or unsafe conditions with respect to use of the highways existing or proposed.
- g. The proposal will be in keeping with the character of the existing area and will aid in the orderly development of the county and the efficient use of public funds.
- h. The proposal will not cause an unreasonable burden on the capacity of the school system.
- i. The proposal will not place an unreasonable burden on the ability of the local government to provide water, sewage, fire, police, solid waste disposal, and other services.
- j. The proposal will not have an undue adverse effect on aesthetics, historic sites, or rare or irreplaceable natural areas (or upon wildlife and their habitat).

6-4 Preliminary plat of development for subdivisions of five (5) or more lots with public roads: The applicant shall submit copies of the preliminary plat of development with every application for preliminary approval. The required number of copies shall be determined by the agent. The preliminary plat shall include the following information:

- 1. Name of subdivision.
- 2. Magisterial district.
- 3. County and state.
- 4. Name of owner and developer.
- 5. Name of engineer or surveyor who prepared the plat.
- 6. Vicinity sketch, at a scale of one inch to two thousand (2,000) feet.
- 7. Scale of plat (no larger than one inch to two hundred (200) feet, unless previously approved by the agent).
- 8. North arrow.



9. Date of completion and any subsequent revisions.
10. Number of sheets - match lines.
11. Boundary survey, showing bearings and distances.
12. Zoning boundaries and districts on site.
13. Total acreage of subdivided area.
14. Number of lots in subdivision.
15. Approximate area and frontage of each lot.
16. Names and locations of abutting subdivisions.
17. Names of owners both within and adjoining subdivision.
18. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
19. Location, width, and purpose of other rights-of-way and easements.
20. Location of existing physical features, including buildings, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplain limits of one-hundred-year floods.
21. Proposed location of streets, showing widths and names.
22. Proposed lot layout, lot numbers, block letters, and approximate dimensions of lots (or locations of cluster development or planned unit development).
23. Location of the subdivision as part of some larger subdivision (or a tract of land) and by reference to permanent survey monuments with a tie to a section corner.
24. Estimated total number of gallons per day of water system requirements where a distribution system is proposed.
25. Estimated total number of gallons to be treated where a central sewage facility is proposed; or sewage disposal means and suitability where no central sewage facility is proposed.
26. Topography at vertical intervals of two (2) feet, unless waived or requested at a greater interval by the director.
27. Such other information as may be required from time to time by the agent.

6-4-1 Preliminary plat of development for subdivisions of five (5) or more lots with private roads: The applicant shall submit copies of the preliminary plat of development with every application for preliminary approval. The required number of copies shall be determined by the agent. The preliminary plat shall include the following information:

1. Proposed name of subdivision or name of the owner(s) of the tax parcel to be divided.
2. Magisterial district, County, and state.
3. Name(s) of owner(s) and developer(s) (if applicable).
4. Scale of plan (no greater than 1":400').
5. Tax map parcel number(s) of property to be divided.
6. Existing boundaries of property to be divided, including name and number of adjoining public roads (based on County base maps).
7. Lot layout with approximate dimensions.
8. Layout of proposed roads, including evidence of access which meets Code requirements to the subdivision.
9. Topography, at intervals of 5 feet.
10. North arrow.

6-5 Final plat of development for subdivisions of five (5) or more lots: The applicant shall submit sets of final construction plans for roads, drainage facilities, water and sewage systems, and erosion and sedimentation control for review and approval prior to the submission of a final plat of development. The required number of copies shall be determined by the agent. The final plat of development shall consist of the following:

1. Title block, to be located consistently on all sheets, and to include the following information:
  - a. Name of subdivision.
  - b. Magisterial district, county, state.
  - c. Name(s) of owner(s) and developer.
  - d. Name of surveyor or engineer who prepared the plat.
  - e. Scale of plat (no larger than one inch to two hundred (200) feet, unless previously approved by the agent).
  - f. Date of completion and any subsequent revisions.
  - g. Number of sheets-match lines.

2. Information block, to include the following information:
  - a. Total area in subdivision.
  - b. Total area in lots.
  - c. Total area in road rights-of-way.
  - d. Total area in common areas.
  - e. Total number of lots.
  - f. Parcel numbers (from county tax maps). (Note: if subdivision comprises more than one parcel, the parcel number and area of each should be shown).
  - g. Zoning of parcel(s).
3. Approval block, three (3) inches by five (5) inches.
4. True north arrow.
5. Vicinity sketch, at a scale of one inch equals two thousand (2,000) feet.
6. Boundary survey, showing bearings and distances.
7. Zoning boundaries and districts on site.
8. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten (10) seconds, for the following:
  - a. Lot layout, lot numbers, block letters, and dimensions of lots.
  - b. Area and frontage of lots.
  - c. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
  - d. Location, width, and purpose of other rights-of-way and easements.
  - e. Location of existing physical features, including buildings, and all streams, weirs, or ditches, including direction of flow, water level elevations, and floodplain--
  - f. Location of the subdivision as part of some larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.
9. The data of all curves along the road frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.
10. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the director.

11. Names and locations of abutting subdivisions.
12. Names of owners both within and adjoining subdivision.
13. Owner's statement.
14. Surveyor's/engineer's certificate and buyer's affidavit, if necessary.
15. Source of title certificate.
16. Location(s) of streets, showing widths and names.
17. Estimated total number of gallons per day of water system requirements where a distribution system is proposed.
18. Estimated total number of gallons per day to be treated where a central sewage facility is proposed.
19. Location, size, and types of existing and proposed utilities, including sanitary sewers, storm drains, water mains, manholes, and underground conduits.

6-6 Procedure: The subdivider shall submit his application for preliminary approval, together with all required documents and plats, to the agent according to rules and procedures established by the agent. For private road subdivisions, the Director shall be the agent. The subdivider shall be notified within thirty (30) sixty (60) days of any action taken by the agent. Application for final approval, together with all required documents and plats, shall be made to the director. The subdivider shall be notified within sixty (60) days of any action taken by the director.

6-7 No guarantee: Approval by the agent of the preliminary plat does not constitute a guarantee of approval of the final plat.

6-8 Procedure for review of final plat; recordation:

1. Notwithstanding the existence of an approved preliminary plat, the final plat shall not be approved by the director unless it conforms to all provisions of this chapter; to all other applicable county ordinances in effect as of the date of application for final plat approval; and substantially to the approved preliminary plat and conditions, when applicable.
2. When the plat for final approval is submitted and the director finds that substantial changes in the character of the area, either through development or proposals for development, the comprehensive plan, or development regulations require the review of a new preliminary plan, he may require the submission, review, and approval of a new preliminary plan prior to approval of the final plat.

3. The director shall, within sixty (60) days after the date of submission of a complete final application and plat, approve or disapprove the final plat in writing, giving with the latter specific reasons therefor. Specific reasons for disapproval shall be contained in a letter to the applicant, and shall relate in general terms such modifications or corrections as will permit approval of the plat. The date of submission of such complete application and plat shall constitute official submission as contemplated by section 15.1-475 of the Code of Virginia.
4. If the developer records a final plat which may be a section of a subdivision as shown on an approved preliminary plat and enters into a performance agreement and furnishes to the County surety in accordance with this chapter in the amount of the estimated cost of construction of the facilities to be dedicated within said section for public use and maintained by the County, the Commonwealth, or other public agency, the developer shall have the right to record the remaining sections shown on the preliminary plat for a period of five years from the recordation date of the first section, subject to the terms and conditions of this chapter in effect at the time of final approval and subject to engineering and construction standards and zoning requirements in effect at the time that each remaining section is recorded.
5. Upon final approval, the director shall record the plat in the Office of the Clerk of the Circuit Court of Hanover County.

6-9 Reserved.

6-10 Plat of development for subdivisions of four (4) or less lots: This procedure applies only to subdivisions containing four (4) lots or less where no roads, utility, or drainage construction is necessary. This procedure may only be used one time on any parcel of land. The applicant shall submit copies of the plat of development with every application. The required number of copies shall be determined by the agent. The plat of development shall include the following information:

1. Title block, to be located consistently on all sheets, and to include the following information:
  - a. Name of subdivision.
  - b. Magisterial district, county, state.
  - c. Name(s) of owner(s) and developer.
  - d. Name of surveyor or engineer who prepared the plat.
  - e. Scale of plat (no larger than one inch equals two hundred (200) feet, unless previously approved by the agent).
  - f. Date of completion and any subsequent revisions.
  - g. Number of sheets - match lines.

2. Information block, to include the following information:
  - a. Total area in subdivision.
  - b. Total area in lots.
  - c. Total area in road right&d-way.
  - d. Total area in common areas.
  - e. Total number of lots.
  - f. Parcel numbers (from county tax maps). (Note: if subdivision comprises more than one parcel, the parcel number and area of each should be shown).
  - g. Zoning of parcel(a).
3. Approval block, three (3) inches by five (5) inches.
4. True north arrow.
5. Vicinity sketch, at a scale of one inch equals two thousand (2,000) feet.
6. Boundary survey, showing bearings and distances.
7. Zoning boundaries and districts on site.
8. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten (10) seconds, for the following:
  - a. Lot layout, lot numbers, block letters, and dimensions of lots.
  - b. Area and frontage of lots.
  - c. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
  - d. Location, width, and purpose of other rights-of-way and easements.
  - e. Location of existing physical features, including buildings, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplains.
  - f. Location of the subdivision as part of some larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.
9. The data of all curves along the road frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.
10. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the director.

11. Names and locations of abutting subdivisions.
12. Names of owners both within and adjoining subdivision.
13. Owner's statement.
14. Surveyor's/engineer's certificate.
15. Source of title certificate.

6-11 Procedure: The subdivider shall submit his application and all required documents and plats to the director according to rules and procedures established by the agent. The subdivider shall be notified within sixty (60) days of any action taken by the director.

6-12 Conditions: The plat shall not be finally approved until the subdivider has complied with the requirements of this ordinance. Approval of the plat shall be written by the director on the face thereof.

#### Section 7. Effectual clauses.

##### 7-1 Exceptions:

1. Where the subdivider can show the provision of these standards would cause unnecessary hardship if strictly adhered to, and where, because of topographical or other conditions peculiar to the site, in the opinion of the agent a departure may be made without destroying the intent of such provisions, the agent may authorize an exception. Any exception thus authorized is to be stated in writing in the report of the agent with the reasoning, on which the departure was justified, set forth.
2. An exception to the rules and procedures shall be granted by the director for a single division for homestead purpose of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner. Such an exception, and the division of a lot or parcel thereunder, shall be subject to the following limitations and conditions:
  - (a) Only one such division shall be allowed per family member and shall not be for the purpose of circumventing this subsection. For the purpose of this subsection a member of the immediate family is defined as any person who is a natural or legally defined offspring, spouse, grandchild, grandparent, or parent of the owner.
  - (b) Any lot created hereunder shall conform to the provisions of the Zoning Ordinance prior to issuance of a building permit.

7-2 Penalties: Any owner or proprietor of any tract of land who subdivides that tract of land and who violates any of the provisions of

this Ordinance shall be guilty of a misdemeanor, punishable by fine of not less than ten dollars (\$10.00) nor more than two hundred dollars (\$200.00), and each day after the first during which violation shall continue shall constitute a separate violation.

7.3 Validity: Should any article, section, subsection, or provision of this Subdivision Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the Subdivision Ordinance as a whole or any part other than the part so declared to be invalid or unconstitutional.

7-4 Repeal: All ordinances or portions of ordinance in conflict with this Ordinance are hereby repealed to the extent of their conflict.

7-5 Amendments: This Ordinance may be amended in whole or in part, as provided by law, by the governing body provided that any such amendment may either originate with or be submitted to the commission for recommendation.

7-6 Appeal procedures: Except where the Board of Supervisors is "agent," decisions of the agent may be appealed to the Board of Supervisors. Such appeals may be filed in writing within forty-five (45) days of action by the agent.

7-7 Effective date: This Ordinance was adopted by the Board of Supervisors of Hanover County, Virginia, on October 9, 1996.

#### Section 8. Chesapeake Bay Preservation.

All submittals made pursuant to this title shall include a water quality impact assessment or other documents and information as may be required by the Hanover County Code, Chapter 10. No preliminary or final plat shall be considered complete without the required information. No preliminary or final plat shall be approved unless the proposed development is in compliance with all requirements of Chapter 10.

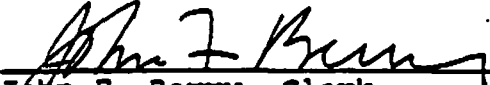
3. If any part, section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, declared to be unconstitutional or invalid, such portion of the ordinance shall be severed from the remainder of this ordinance, and the remainder shall continue in full force and effect.
4. This Ordinance shall be effective upon adoption; provided, however, that:
  - a. Complete applications for final subdivision approval which have been filed before the close of business on October 9, 1996, which were in compliance with all substantive zoning and subdivision ordinance requirements in effect on that date shall be reviewed in accordance with those requirements.



b. All lots or parcels described in deeds or plats recorded in the Hanover County Circuit Court Clerk's Office prior to the close of business on October 9, 1996, which meet all zoning and subdivision requirements for yards, setbacks, and access in effect on the date of building permit application shall be deemed to be in compliance with the lot dimension and area requirements of the Zoning Ordinance and requirements of the Subdivision Ordinance.

Public Hearing: October 9, 1996

Adopted: October 9, 1996

  
\_\_\_\_\_  
John F. Berry, Clerk  
Hanover County Board of Supervisors

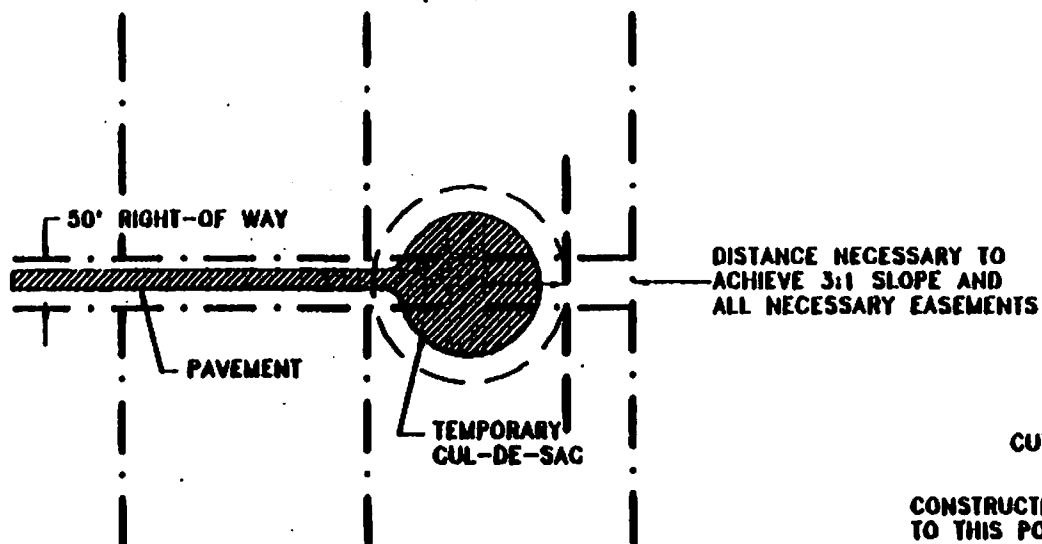


FIGURE 1  
ROADS WHICH PROVIDE LOT ACCESS

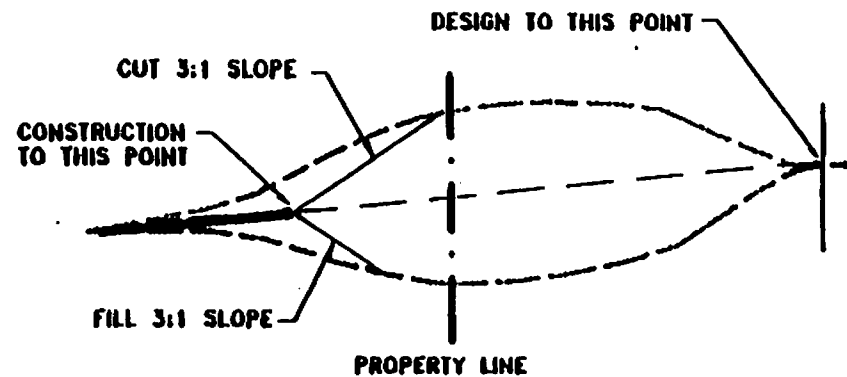


FIGURE 3  
CROSS SECTION

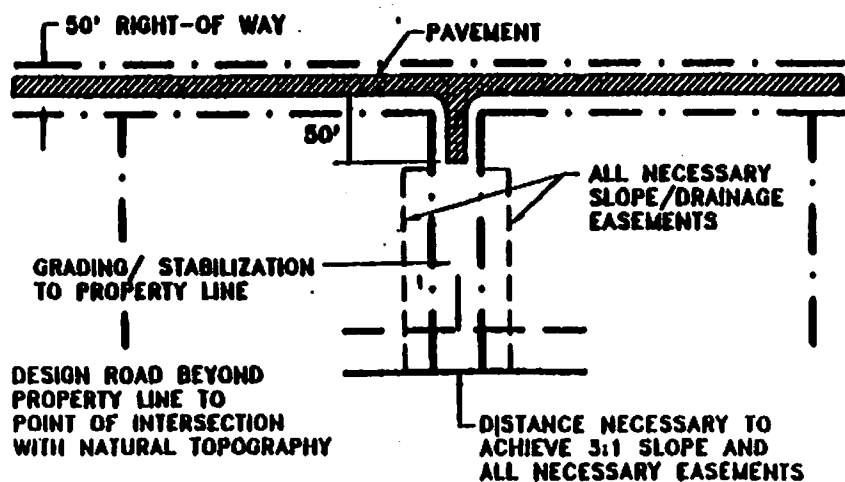
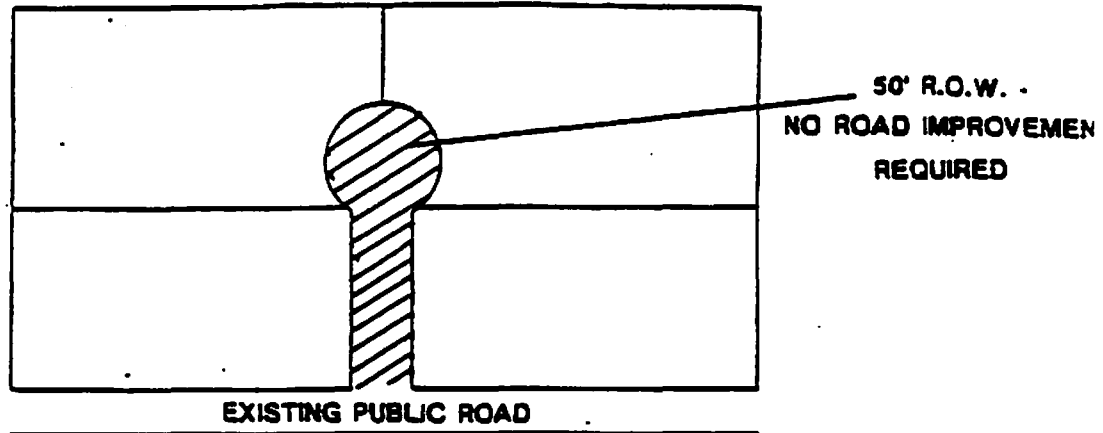
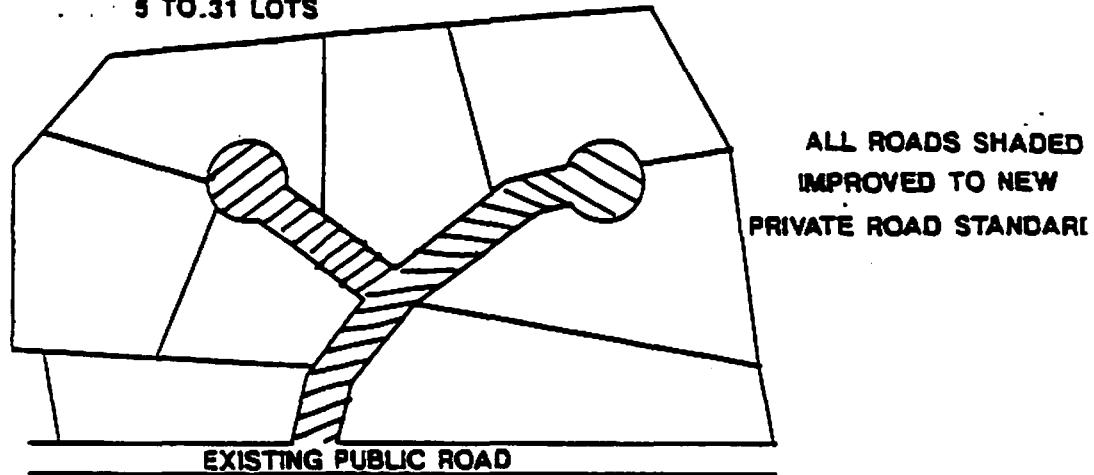


FIGURE 2  
ROADS WHICH DO NOT PROVIDE LOT ACCESS

**FIG. 4 FOUR OR FEWER LOTS**



**FIG. 5  
5 TO 31 LOTS**



**FIG. 6. EXISTING ACCESS ROAD**

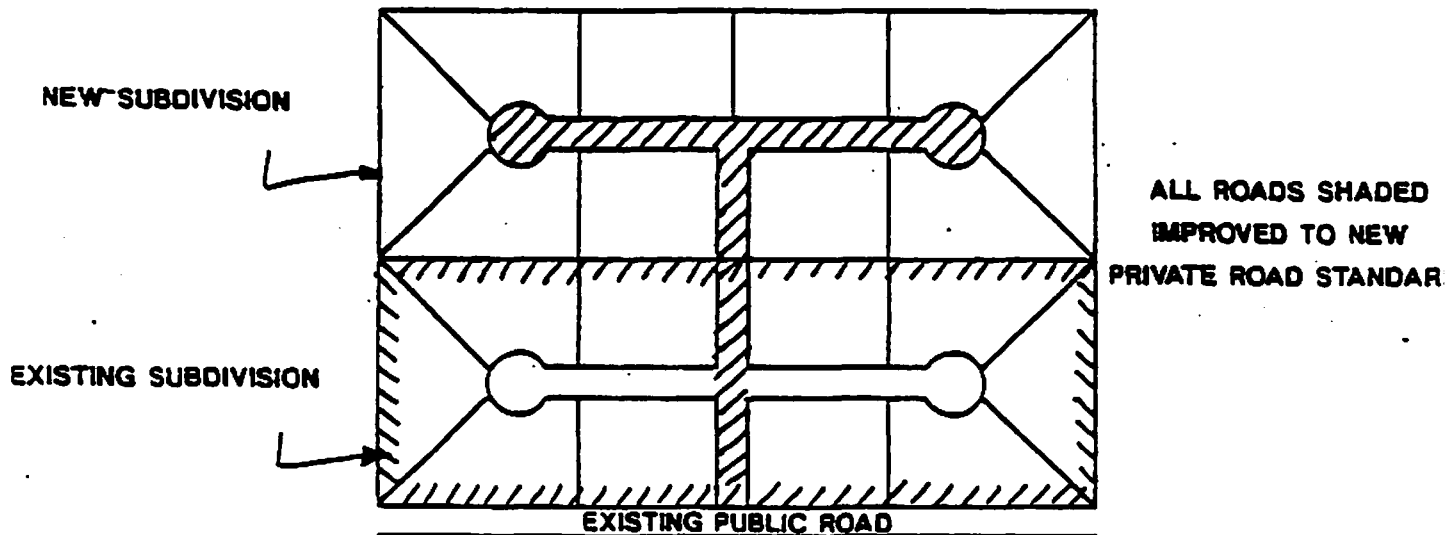
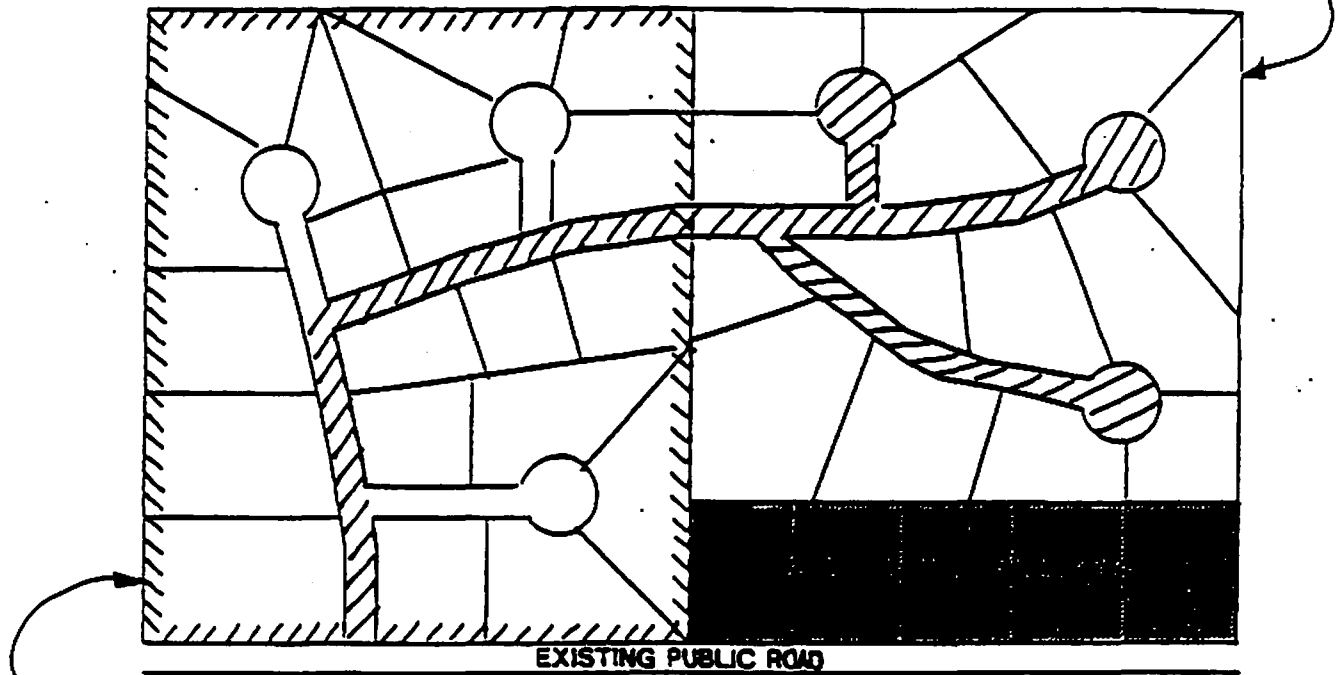


FIG. 27

32+ LOTS - EXISTING ACCESS  
(LOT COUNT IS CUMULATIVE)

NEW SUBDIVISION



EXISTING SUBDIVISION

ALL ROADS SHADED IMPROVED TO PUBLIC ROAD STANDARDS

Adopted 10/9/96  
MCC 11/28/97

ORDINANCE 96-13  
October 9, 1996

AN ORDINANCE TO AMEND THE HANOVER COUNTY CODE, TITLE I.- ZONING, TO DELETE THE AC, AGRICULTURAL CONSERVATION DISTRICT; TO CREATE AN AR-6, AGRICULTURAL RESIDENTIAL DISTRICT; TO REVISE THE A-1, AGRICULTURAL DISTRICT REQUIREMENTS FOR LOT SIZES; AND TO PROVIDE FOR FAMILY PROPERTY CONVEYANCES OF LOTS WITH LESS THAN TEN ACRES OF AREA IN THE A-1, AGRICULTURAL DISTRICT.

BE IT ORDAINED BY THE HANOVER COUNTY BOARD OF SUPERVISORS:

1. That the Hanover County Code, Appendix, Title I, Zoning, Article Section 2, definition of "lot area", shall be adopted, and the definition of "subdivision" shall be amended. The definitions shall read as follows:

Lot area: The gross acreage of the property less the acreage of public and private roads, unless otherwise specified in this Ordinance. In all districts other than A-1, Agricultural, and AR-6, Agricultural Residential, the acreage in floodplains shall not be included in lot area.

Subdivision: The term "subdivision" shall mean the division of a parcel of land into two (2) or more lots or parcels of land for the purpose of transfer of ownership or building development, including any parcels previously separated by the owner or prior owner of such land for such purposes. The sale or exchange of parcels between adjoining lot owners where such sale or exchange does not create additional building lots shall be exempt from the terms of the ordinance. The division or partitioning of land in an estate by court order or among heirs of the original owner shall also be exempt from the provisions of this ordinance.

2. That the Hanover County Code, Appendix, Title I, Zoning, Article Section 1, "A-C, Agricultural Conservation District", shall be deleted in its entirety, and Section 2, "A-1, Agricultural District", shall be redesignated as "Section 1". The section shall read in its entirety as follows:

ARTICLE 5. DISTRICT REGULATIONS

Section 1. A-1, Agricultural District.

1.1 Purpose of the district. The purpose of this district is to provide for a full range of agricultural activities and to protect agricultural land, as one of the county's most valuable natural resources from the depreciating effect of objectionable, hazardous, and unsightly uses. The district is also intended for protection of watersheds, water resources, forest areas, and scenic values, and at the same time to provide for spacious residential development for those who choose this environment and to prevent untimely scattering of more dense urban uses which should be confined to areas planned for efficient extension of public service.



1.2 Permitted uses. A building or land shall be used only for the following purposes:

1. Detached single-family dwellings.
2. Agriculture, including horticultural, chemical, or general farming, truck gardens, cultivation of field crops, orchards, groves, or nurseries for growing or propagation of plants, trees, and shrubs, including temporary sawmills for cutting trees grown on the premises and use of heavy cultivating machinery, spray planes, or irrigating machinery, dairy farming, keeping or raising for sale of large or small animals, reptiles, fish, birds, or poultry, and including structures for processing and sale of products raised on the premises; provided:
  - (a) Any sawmill, grain drier, commercial feed lot or hog raising operation shall be located at least two hundred fifty (250) feet from any dwelling not located on the premises.
  - (b) Structures for commercial poultry raising shall be located at least two hundred (200) feet from any dwelling not located on the premises and at least one hundred (100) feet from any street or road.
  - (c) Commercial slaughtering and processing of large animals, such as horses, cows, pigs, sheep, or goats shall not be conducted on the premises.
3. Reserved.
4. Dog kennels, noncommercial; provided any open pens, runs, cages or kennels or any place for keeping more than five (5) adult dogs shall be located at least two hundred (200) feet from any side or rear lot lines.
5. Golf courses, not lighted for night play and not including miniature golf courses, putting greens, driving ranges, and similar activities operated as a business, but including a building for a golf shop, locker room, and snack bar as an accessory use to a permitted golf course, providing no such building is located closer than one hundred (100) feet from adjoining property lines. Practice greens and tees may accompany a standard nine (9) hole or eighteen (18) hole golf course occupying at least seventy-five (75) acres.
6. Facilities and structures necessary for rendering utility service, including poles, wires, transformers, telephone booths, and the like for normal electrical power distribution or communication service, and pipelines or conduits for electrical, gas, sewer, or water service, but not including buildings, treatment plants, pumping or regulator stations, substations and power transmission lines which are permitted as conditional uses.
7. Grain storage structures.

8. Greenhouse, commercial.
9. Hospital or clinic for large or small animals; provided that all buildings, structures, pens, or open kennels shall be located at least two hundred (200) feet from any lot line.
10. Hospital or clinic for small animals (dogs, cats, birds, and the like); provided such hospital or clinic and any treatment rooms, cages, pens, or kennels be maintained within a completely enclosed, soundproof building, and that such hospital or clinic be operated in such a way as to produce no objectionable odors outside its walls.
11. Military bases and appurtenances and parks operated by the United States Government or agencies of the Commonwealth of Virginia.
12. Public and private forests, wildlife reservations, similar conservation projects.
13. Railroad rights-of-way, including a strip of land with tracks and auxiliary facilities for track operations, but not including passenger stations, freight terminals, switching and classification yards, repair shops, round houses, power houses, interlocking towers, and fueling, sanding and watering stations.
14. Recreational uses such as tennis courts, swimming pools, and other similar activities operated exclusively for the use of private membership and not for commercial purposes; provided that no such use, structure, or accessory use is located closer than fifty (50) feet to any adjoining property line.
15. Stable, public or commercial; provided that any building for keeping of animals shall be located at least two hundred (200) feet from any side or rear lot lines, and that there shall be housed on the premises no more than one horse or pony for each acre of land.
16. Stable, private, or keeping of horses, ponies or other livestock for personal enjoyment and not as a business; provided that any building for keeping of animals shall be located at least one hundred (100) feet from any side or rear lot lines and that there shall be housed or kept on the premises no more than one horse or pony for each acre of land.
17. Raising for sale of birds, bees, fish, rabbits, and other small animals, provided any use shall be located at least two hundred (200) feet from any side or rear lot lines.
18. Frog or fish farms, provided any use shall be located at least two hundred (200) feet from any side or rear lot lines.
19. Medical office, limited to two (2) doctors and their staffs (no more than two (2) staff members per doctor).

1.3 Permitted accessory uses.

1. Accessory uses as follows on a farm of ten (10) acres or more:
  - (a) Accessory structures for sale or processing of farm products raised on the premises.
  - (b) Accessory, open or enclosed storage of farm materials, products, or equipment.
  - (c) Accessory farm buildings, including barns, stables, sheds, tool rooms, shops, bins, tanks and silos.
  - (d) Dwellings for persons permanently employed on the premises.
2. Domestic storage in main building or in accessory building.
3. Garage, private.
4. Guest houses.
5. Home occupations in a main building.
6. Keeping of small animals, insects, reptiles, fish, or birds, but only for personal enjoyment or household use and not for a business, as an accessory to a nonfarm dwelling on a lot of not less than two (2) acres.
7. Servants' quarters.
8. Storage of a boat trailer or camp trailer or a boat, but not in front yard.
9. Swimming pool and game courts, lighted or unlighted, for use of occupants or their guests.
10. Signs as regulated in article 7, section 3.
11. Temporary buildings, the uses of which are incidental to construction operation during development being conducted on the same or adjoining tract or subdivision and which shall be removed upon completion or abandonment of such construction, or upon the expiration of a period of two (2) years of the time of erection of such temporary buildings, whichever is sooner.
12. Accessory off-street parking and loading spaces. Open or enclosed space for parking one commercial vehicle of not more than one ton capacity and used by the occupant of a dwelling shall be permitted as accessory.
13. The location of office or construction trailers for a period not to exceed one year.



14. Noncommercial fuel alcohol distillery.

15. Foster care and adult family care.

1.4 Reserved.

1.5 Conditional Uses. The following uses may be permitted as conditional uses if approved by the Board of Supervisors in accordance with the procedures, guides and standards of articles 7 and 9:

1. Airports and landing fields, provided they shall comply with the recommendations of the Federal Aviation Agency.
2. Camps, day or boarding, private or commercial.
3. Cemetery, including a crematorium.
4. Circus or carnival grounds, amusement park, zoo or midway, permanent or temporary for a specified time period.
5. Exposition center or fairground.
6. Heliport or helistop.
7. Hospitals and sanitariums.
8. Institutions, educational or philanthropic, including museums, art galleries and libraries.
9. Livestock auction market.
10. Private clubs.
11. Public or governmental buildings and uses, including schools, fire stations (volunteer or otherwise), parks, parkways, and playgrounds; and public boat landings.
12. Public utilities or public service uses, buildings, generating or treatment plants, pumping or regulator stations, substations and transmission lines.
13. Race track, any type, including horses, stock cars, or drag strip.
14. Recreation facility, commercially operated, such as fishing or boating lake, camp ground, picnic grounds, or dude ranch, and accessory facilities, including sale of food, beverages, bait, supplies and equipment.
15. Sanitary landfill or trash collection site.
16. (a) Excavation or filling, borrow pits, extraction of stone, sand or gravel, stripping of topsoil (but not including stripping

of sod) and other major excavations other than for construction of swimming pools and foundations for buildings and other than those approved in connection with a street, subdivision or planned residential development.

- (b) Crushing, treating, washing and/or processing of materials resulting from a use permitted in paragraph (a) above when conducted on the same property.
- 17. Sports area or stadium, commercial athletic field or baseball park.
- 18. Swimming or tennis club, commercially operated.
- 19. Reserved.
- 20. Radio or television broadcasting station or tower more than one hundred twenty-five (125) feet in height, provided construction and safety features are approved by the Administrator in accordance with applicable regulations and provided no hazard is created in an Airport Approach Zone.
- 21. Churches, rectories, parish houses, convents and monasteries, temples, and synagogues, or the expansion of any existing church, temple, or synagogue by more than fifty (50) percent of its floor area.
- 22. Agricultural and forestal support center.
- 23. Antique shop.

1.6 Uses permitted as special exceptions. The following uses may be permitted as special exceptions, if approved by the Board of Supervisors in accordance with the procedures, guides, and standards of article 8:

- 1. Temporary and conditional permits for the following uses:
  - (a) Archery ranges.
  - (b) Asphalt batching plants or concrete batching plants.
  - (c) Commercial dog kennels.
  - (d) Miniature golf courses or driving ranges.
  - (e) Nonaccessory tents for special purposes.
  - (f) Outdoor displays or promotional activities.
  - (g) Pony rings.
  - (h) Raising for sale of birds, bees, fish, rabbits and other small animals in an Overlay Urban Development District only.

- (i) Rifle or pistol ranges, trap, or skeet shooting.
- (j) Sawmill for cutting timber not grown on the premises.
- (k) Temporary buildings for use as a sales or rental office for an approved real estate development or subdivision.
- (l) A private garage for more than four (4) automobiles.
- (m) Cemetery for pets.
- (n) Convalescent homes, nursing homes, or homes for the aged.
- (o) Day nurseries or child or adult day care centers.
- (p) Frog or fish farms, in an Overlay Urban Development District only.
- (q) Sale of farm products not raised on the premises. Such sale shall be permitted only in conjunction with sales pursuant to section 2.3(1) above and only on a lot no less than ten (10) acres in area.
- (r) Mobile homes for living quarters as follows:
  - (1) accessory to a farm;
  - (2) in cases of hardship, as defined in section 2.6B.2(b), below;
  - (3) during the actual construction phase of a residential dwelling unit by the occupant of the mobile home;
  - (4) or during the actual repair when the permanent dwelling of the applicant has been rendered uninhabitable by a fire, natural disaster, or sudden accidental event.
- (s) Equipment storage yards accessory to a business office for construction or service contractors, operated as a home occupation, when located outside of the Overlay Urban Development District, provided:
  - i) The maximum number of employees on site shall not exceed ten (10) per establishment.
  - ii) There shall be no more than ten (10) pieces of motor propelled equipment stored per site, related to the designated use.
  - iii) There shall be a minimum lot size of five (5) acres, and no more than two (2) acres shall be devoted to the use permitted pursuant to this section.

- iv) There shall be no associated structure on site larger than five thousand (5,000) square feet in size.
- v) When equipment storage is within one hundred (100) feet of a property zoned for residential use, the equipment shall be screened in accordance with the standards specified in Article 7, Section 2A.
- vi) Applications shall be accompanied by a sketch plan prepared in accordance with the standards specified in Article 7, Section 7.2.
- (t) Home occupations in an accessory building, home craft shops, or retail sales businesses conducted as a home occupation.
- (u) Sale of Christmas trees not raised on the premises.
- (v) Auction sales, on a lot no less than ten (10) acres in area, located outside of the Overlay Urban Development District, with no more than four (4) such sales in any calendar year.
- (w) Open or enclosed space for the storage of one (1) commercial vehicle with greater than one (1) ton capacity on property located outside of the Overlay Urban Development District and outside of an approved subdivision, subject to the following standards:
  - i) the Tax Parcel on which the vehicle is stored shall be a minimum of two (2) acres in area and shall have public road frontage;
  - ii) if the vehicle is stored in an open space, the space shall be located at least one hundred feet (100') from any property zoned for residential use or shall be screened in accordance with the standards specified in Article 7, Section 2A; and
  - iii) a sketch plan shall be submitted for review at the time of application, in accordance with the standards specified in Article 7, Section 7.2.
- (x) Bed and breakfast, in accordance with the specific standards and requirements of Article 7, Section 8.9.

1.6A. Temporary mobile home use. Mobile homes may be used for a period of six (6) months from the date of an event rendering a dwelling uninhabitable, in the event of destruction of the dwelling or damage to the dwelling which renders the dwelling uninhabitable, provided that a permit for such use is obtained from the Zoning Administrator.

1. The Zoning Administrator shall have the authority to issue permits for such use if the applicant meets the following requirements:

- (a) An application shall be filed in the Planning Office on a form provided by the Zoning Administrator. The application shall include a verified statement that use of the mobile home is necessary because of damage or destruction to a dwelling on the site where the mobile home will be located and that the mobile home will be used only as a dwelling for the residents of the original dwelling. The application shall also document the nature and date of the event causing the damage or destruction.
  - (b) The site must comply with all requirements of the Hanover County Code, including the Zoning Ordinance and Subdivision Ordinance.
- 2. The permit shall be valid for a period of six (6) months from the date of the event causing the damage or destruction.
  - 3. The site shall remain in compliance with all requirements of the Hanover County Code, including the Zoning Ordinance and Subdivision Ordinance, during the term of the permit. The permit shall be void upon failure of the applicant to maintain compliance with all requirements.
  - 4. Prior to the expiration date or the voiding of any permit the mobile home shall be removed from the site by the owner or applicant.

1.6B. Standards for Special Exceptions for mobile homes as temporary living quarters.

- 1. For any request to use a mobile home as temporary living quarters during the actual construction phase of a residential dwelling unit by the occupant of the mobile home, or during the actual repair when the permanent dwelling of the applicant has been rendered uninhabitable by a fire, other natural disaster, or sudden accidental event, the following standards shall apply:
  - a. The time period for the initial Special Exception shall not exceed one (1) year from the date of approval. The total time period, including extensions, for the temporary use of the mobile home shall not exceed three (3) years from the date of approval of the Special Exception by the Board of Supervisors, except when permitted by the Board of Supervisors upon demonstration by the applicant of extenuating circumstances. When an extension is denied, or upon expiration of the Special Exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.
  - b. When such a Special Exception is granted, improvements shall be completed in accordance with the following schedule:

- 1) Year One (1): At a minimum, mobile home placement, well installation, septic tank installation, and provision of access shall be completed.
  - 2) Year Two (2): At a minimum, the Building Permit for the permanent dwelling shall be obtained, construction of the footing and the foundation completed, and the dwelling framed and protected from weather.
  - 3) Year Three (3): At a minimum, finish work shall be completed, a Certificate of Occupancy obtained, and the mobile home removed from the site within sixty (60) days of issuance of the Certificate of Occupancy.
- c. Requests for extensions for completion during the three (3) year period following the date of original approval of the Special Exception by the Board of Supervisors may be granted by the Board of Supervisors upon demonstration by the applicant of continuing compliance with the schedule for completion as set forth in Section 2.6B-1(b) above, provided that the application for extension is filed prior to expiration of the Special Exception.
2. For any request to use a mobile home as temporary living quarters in the case of a hardship, the following standards shall apply:
- a. The time period for the initial Special Exception shall not exceed two (2) years from the date of original approval of the Special Exception by the Board of Supervisors. Extensions may be granted in two (2) year increments for the duration of the hardship, in accordance with the procedures and standards specified below.
  - b. "Hardship" shall be defined as being when, for health reasons verified by a medical practitioner, licensed by the State of Virginia, through provision of a signed certificate specifying same, a person requires continuous care by another, and both persons will reside on the same or adjoining Tax Map Parcels.
  - c. Extensions may be granted pursuant to the following procedures:
    - 1) The application for a Special Exception shall not be accepted unless a signed certificate, as described above, verifying the need for living assistance due to age or medical reasons, accompanies the application.
    - 2) Extensions for continued use of the mobile home may be granted upon review and approval by the Board of Supervisors of an application, accompanied by confirmation of the continuation of the hardship, filed prior to the two (2) year anniversary date of original

approval of the Special Exception or of any subsequent extension.

- 3) When an extension is denied, or upon expiration of Special Exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.
- d. The Special Exception shall be issued to specific individual(s) only, and only for the duration of the verified hardship.
- e. The mobile home may be occupied by either the person(s) needing care or the person(s) providing care. However, upon cessation of the hardship, the mobile home shall be removed from the site within sixty (60) days regardless of whether it is occupied by the person(s) needing care or providing care.
3. Consideration by the Board of Supervisors of a Special Exception request for placement of a mobile home for use as living quarters as specified herein shall include the potential for adverse impact of the use on the surrounding properties.

1.7 Lot size requirements.

|   | <u>Minimum, Square Ft.</u> |                         | <u>Minimum, Feet</u> |                  |
|---|----------------------------|-------------------------|----------------------|------------------|
|   | <u>Average Lot Area</u>    | <u>Minimum Lot Area</u> | <u>Lot Width</u>     | <u>Lot Depth</u> |
| 1.a. Single-family dwelling on the following proposed rights-of-way:                    | -                          | 10 acres                |                      |                  |
| (a) 160 ft. rights-of-way   |                            |                         | 450                  | 200              |
| (b) 80 ft. rights-of-way  |                            |                         | 400                  | 200              |
| (c) 60 ft. rights-of-way  |                            |                         | 275                  | 200              |
| (d) 50 ft. rights-of-way  |                            |                         | 250                  | 200              |
| 1.b. Family homesteads, pursuant to provisions specified in Article 10:                 |                            | 2 acres                 | 250                  | 200              |
| 2. Churches, rectories, parish houses, convents and monasteries, temples and synagogues | -                          | 1 acre                  | 200                  | 200              |
| 3. Animal hospital, larger animals  | -                          | 10 acres                | 300                  | 300              |
| 4. Animal hospital, small animals, open pens or kennels                                 | -                          | 5 acres                 | 300                  | 300              |

|    |  |   |         |     |     |
|----|--|---|---------|-----|-----|
|    | Recreation uses clubs, campgrounds                           | - | 5 acres | 200 | 200 |
| 6. | Stable, commercial   |   | 5 acres | 200 | 200 |
| 7. | Stable, private  |   | 2 acres | 200 | 200 |
| 8. | Frog or fish farms, or the raising for sale of small animals | - | 5 acres | 200 | 200 |
| 9. | Medical office   | - | 2 acres | 300 | 200 |

Lot width is measured at the front lot line for any lot located along any public road except those public roads created through the subdivision process; for lots located along a private road or a public road created through the subdivision of a parcel, lot width is measured at a point within the front half of the total depth of the lot. When access to a lot exempt from subdivision requirements is provided by use of a right-of-way with a width of fifty (50) feet or less, the lot shall meet the minimum width requirements for any lot which has frontage on a fifty (50) foot right-of-way.

Minimum frontage for development on private roads or any other road created through subdivision is twenty (20) feet; frontage on any other public road shall be the minimum required lot width.

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

### 1.3 Yard requirements.

|     |   | <u>Minimum in Feet</u> |                          |                            |                  |
|-----|---|------------------------|--------------------------|----------------------------|------------------|
|     |   | <u>Front Yard</u>      | <u>Side Yard Minimum</u> | <u>Side Yard Aggregate</u> | <u>Rear Yard</u> |
| 1.  | Single-family dwelling on the following proposed rights-of-way: |                        |                          |                            |                  |
| (a) | 160 ft. rights-of-way   | 125                    | 25                       | 50                         | 40               |
| (b) | 80 ft. rights-of-way  | 100                    | 25                       | 50                         | 40               |
| (c) | 60 ft. rights-of-way  | 70                     | 25                       | 50                         | 40               |
| (d) | 50 ft. rights-of-way  | 60                     | 25                       | 50                         | 30               |



Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

2. Other structures same or as required in district regulations.

1.9 Height requirements. Single-family dwellings and all other structures not specifically exempted in article 7: Maximum height 2-stories, but not to exceed 35 feet.

1.10 Off-street parking and loading requirements. Off-street parking and loading requirements are contained in article 7.

1.11 Public roads in the agricultural district.

1. The minimum lot area required in the agricultural district may be reduced by the amount of land necessary to be dedicated to improve an adjacent private right of way to public road standards, if the lot is part of a subdivision recorded prior to April 25, 1990. All lots affected by the proposed public road shall meet all other zoning requirements, except that lots containing residential structures existing on April 25, 1990, shall be exempt from yard requirements. The amount of reduction shall be no more than one (1) acre. No such dedication shall create an unusable residual parcel.
  2. The area necessary for the road must meet the requirements of the Virginia Department of Transportation and shall be conveyed to the county by general warranty deed or by dedication on an approved subdivision plat. The County shall be provided with all necessary assurances of title. The road shall be built in accordance with applicable requirements of the Virginia Department of Transportation and the Hanover County Code, and the developer or owner shall be responsible for applying for acceptance of the road by the Virginia Department of Transportation.
  3. Construction of the road or execution of a performance agreement and provision of security, in accordance with procedures set out in the subdivision ordinance, shall be required prior to any issuance of any building permit for any lot affected by this exception.
3. That the Hanover County Code, Appendix, Title I, Zoning, Article 1 shall be amended to include the following language, which shall be designated "Section 2":

Section 2. AR-6, Agricultural Residential District.

2.1 Purpose of the district. The purpose of this district is to provide for spacious residential development for those who choose the rural environment; to provide for a full range of agricultural activities; and to protect agricultural land, as one of the county's most valuable natural resources, from the effect of objectionable, hazardous, and unsightly uses.

The district is also intended to provide for protection of watersheds, water resources, forest areas, and scenic values.

2.2 Permitted uses. A building or land shall be used only for the following purposes:

1. Detached single-family dwellings.
2. Agriculture, including horticultural, chemical, or general farming, truck gardens, cultivation of field crops, orchards, groves, or nurseries for growing or propagation of plants, trees, and shrubs, including temporary sawmills for cutting trees grown on the premises and use of heavy cultivating machinery, spray planes, or irrigating machinery, dairy farming, keeping or raising for sale of large or small animals, reptiles, fish, birds, or poultry, and including structures for processing and sale of products raised on the premises; provided:
  - (a) Any sawmill, grain drier, commercial feed lot or hog raising operation shall be located at least two hundred fifty (250) feet from any dwelling not located on the premises.
  - (b) Structures for commercial poultry raising shall be located at least two hundred (200) feet from any dwelling not located on the premises and at least one hundred (100) feet from any street or road.
  - (c) Commercial slaughtering and processing of large animals, such as horses, cows, pigs, sheep, or goats shall not be conducted on the premises.
3. Reserved.
4. Dog kennels, noncommercial; provided any open pens, runs, cages or kennels or any place for keeping more than five (5) adult dogs shall be located at least two hundred (200) feet from any side or rear lot lines.
5. Golf courses, not lighted for night play and not including miniature golf courses, putting greens, driving ranges, and similar activities operated as a business, but including a building for a golf shop, locker room, and snack bar as an accessory use to a permitted golf course, providing no such building is located closer than one hundred (100) feet from adjoining property lines. Practice greens and tees may accompany a standard nine (9) hole or eighteen (18) hole golf course occupying at least seventy-five (75) acres.
6. Facilities and structures necessary for rendering utility service, including poles, wires, transformers, telephone booths, and the like for normal electrical power distribution or communication

service, and pipelines or conduits for electrical, gas, sewer, water service, but not including buildings, treatment plant pumping or regulator stations, substations and power transmission lines which are permitted as conditional uses.

7. Grain storage structures.
8. Greenhouse, commercial.
9. Hospital or clinic for large or small animals; provided that a buildings, structures, pens, or open kennels shall be located least two hundred (200) feet from any lot line.
10. Hospital or clinic for small animals (dogs, cats, birds, and t like); provided such hospital or clinic and any treatment room cages, pens, or kennels be maintained within a completely enclosed soundproof building, and that such hospital or clinic be operated in such a way as to produce no objectionable odors outside its walls.
11. Military bases and appurtenances and parks operated by the United States Government or agencies of the Commonwealth of Virginia.
12. Public and private forests, wildlife reservations, similar conservation projects.
13. Railroad rights-of-way, including a strip of land with tracks and auxiliary facilities for track operations, but not including passenger stations, freight terminals, switching and classification yards, repair shops, round houses, power houses, interlocking towers, and fueling, sanding and watering stations.
14. Recreational uses such as tennis courts, swimming pools, and other similar activities operated exclusively for the use of private membership and not for commercial purposes; provided that no such use, structure, or accessory use is located closer than fifty (50) feet to any adjoining property line.
15. Stable, public or commercial; provided that any building for keeping of animals shall be located at least two hundred (200) feet from any side or rear lot lines, and that there shall be housed on the premises no more than one horse or pony for each acre of land.
16. Stable, private, or keeping of horses, ponies or other livestock for personal enjoyment and not as a business; provided that a building for keeping of animals shall be located at least one hundred (100) feet from any side or rear lot lines and that there shall be housed or kept on the premises no more than one horse or pony for each acre of land.

17. Raising for sale of birds, bees, fish, rabbits, and other small animals, provided any use shall be located at least two hundred (200) feet from any side or rear lot lines.
18. Frog or fish farms, provided any use shall be located at least two hundred (200) feet from any side or rear lot lines.
19. Medical office, limited to two (2) doctors and their staffs (no more than two (2) staff members per doctor).

### 2.3 Permitted accessory uses.

1. Accessory uses as follows on a farm of ten (10) acres or more:
  - (a) Accessory structures for sale or processing of farm products raised on the premises.
  - (b) Accessory, open or enclosed storage of farm materials, products, or equipment.
  - (c) Accessory farm buildings, including barns, stables, sheds, tool rooms, shops, bins, tanks and silos.
  - (d) Dwellings for persons permanently employed on the premises.
2. Domestic storage in main building or in accessory building.
3. Garage, private.
4. Guest houses.
5. Home occupations in a main building.
6. Keeping of small animals, insects, reptiles, fish, or birds, but only for personal enjoyment or household use and not for a business, as an accessory to a nonfarm dwelling on a lot of not less than two (2) acres.
7. Servants' quarters.
8. Storage of a boat trailer or camp trailer or a boat, but not in front yard.
9. Swimming pool and game courts, lighted or unlighted, for use of occupants or their guests.
10. Signs as regulated in article 7, section 3.
11. Temporary buildings, the uses of which are incidental to construction operation during development being conducted on the same or adjoining tract or subdivision and which shall be removed upon completion or abandonment of such construction, or upon the

expiration of a period of two (2) years of the time of erection of such temporary buildings, whichever is sooner.

12. Accessory off-street parking and loading spaces. Open or enclosed space for parking one commercial vehicle of not more than one ton capacity and used by the occupant of a dwelling shall be permitted as accessory.
13. The location of office or construction trailers for a period not to exceed one year.
14. Noncommercial fuel alcohol distillery.
15. Foster care and adult family care.

2.4 Conditional Uses. The following uses may be permitted as conditional uses if approved by the Board of Supervisors in accordance with the procedures set out in this appendix:

1. Airports and landing fields, provided they shall comply with the recommendations of the Federal Aviation Agency.
2. Camps, day or boarding, private or commercial.
3. Cemetery, including a crematorium.
4. Circus or carnival grounds, amusement park, zoo or midway permanent or temporary for a specified time period.
5. Exposition center or fairground.
6. Heliport or helistop.
7. Hospitals and sanitariums.
8. Institutions, educational or philanthropic, including museums, art galleries and libraries.
9. Livestock auction market.
10. Private clubs.
11. Public or governmental buildings and uses, including schools, fire stations (volunteer or otherwise), parks, parkways, and playgrounds; and public boat landings.
12. Public utilities or public service uses, buildings, generating treatment plants, pumping or regulator stations, substations and transmission lines.
13. Race track, any type, including horses, stock cars, or drag strip.

14. Recreation facility, commercially operated, such as fishing or boating lake, camp ground, picnic grounds, or dude ranch, and accessory facilities, including sale of food, beverages, bait, supplies and equipment.
15. Sanitary landfill or trash collection site.
16. (a) Excavation or filling, borrow pits, extraction of stone, sand or gravel, stripping of topsoil (but not including stripping of sod) and other major excavations other than for construction of swimming pools and foundations for buildings and other than those approved in connection with a street, subdivision or planned residential development.  
  
(b) Crushing, treating, washing and/or processing of materials resulting from a use permitted in paragraph (a) above when conducted on the same property.
17. Sports area or stadium, commercial athletic field or baseball park.
18. Swimming or tennis club, commercially operated.
19. Reserved.
20. Radio or television broadcasting station or tower more than one hundred twenty-five (125) feet in height, provided construction and safety features are approved by the Administrator in accordance with applicable regulations and provided no hazard is created in an Airport Approach Zone.
21. Churches, rectories, parish houses, convents and monasteries, temples, and synagogues, or the expansion of any existing church, temple, or synagogue by more than fifty (50) percent of its floor area.
22. Agricultural and forestal support center.
23. Antique shop.

2.5 Uses permitted as special exceptions. The following uses may be permitted as special exceptions, if approved by the Board of Supervisors in accordance with the procedures set out in this appendix:

1. Temporary and conditional permits for the following uses:
  - (a) Archery ranges.
  - (b) Asphalt batching plants or concrete batching plants.
  - (c) Commercial dog kennels.
  - (d) Miniature golf courses or driving ranges.

- (e) Nonaccessory tents for special purposes.
- (f) Outdoor displays or promotional activities.
- (g) Pony rings.
- (h) Raising for sale of birds, bees, fish, rabbits and other small animals in an Overlay Urban Development District only.
- (i) Rifle or pistol ranges, trap, or skeet shooting.
- (j) Sawmill for cutting timber not grown on the premises.
- (k) Temporary buildings for use as a sales or rental office for approved real estate development or subdivision.
- (l) A private garage for more than four (4) automobiles.
- (m) Cemetery for pets.
- (n) Convalescent homes, nursing homes, or homes for the aged.
- (o) Day nurseries or child or adult day care centers.
- (p) Frog or fish farms, in an Overlay Urban Development District only.
- (q) Sale of farm products not raised on the premises. Such sale shall be permitted only in conjunction with sales pursuant to section 2.3(1) above and only on a lot no less than ten (10) acres in area.
- (r) Mobile homes for living quarters as follows:
  - (1) accessory to a farm;
  - (2) in cases of hardship, as defined in section 2.6B.2(b) below;
  - (3) during the actual construction phase of a residential dwelling unit by the occupant of the mobile home;
  - (4) or during the actual repair when the permanent dwelling of the applicant has been rendered uninhabitable by fire, natural disaster, or sudden accidental event.
- (s) Equipment storage yards accessory to a business office for construction or service contractors, operated as a home occupation, when located outside of the Overlay Urban Development District, provided:

- i) The maximum number of employees on site shall not exceed ten (10) per establishment.
  - ii) There shall be no more than ten (10) pieces of motor propelled equipment stored per site, related to the designated use.
  - iii) There shall be a minimum lot size of five (5) acres, and no more than two (2) acres shall be devoted to the use permitted pursuant to this section.
  - iv) There shall be no associated structure on site larger than five thousand (5,000) square feet in size.
  - v) When equipment storage is within one hundred (100) feet of a property zoned for residential use, the equipment shall be screened in accordance with the standards specified in Article 7, Section 2A.
  - vi) Applications shall be accompanied by a sketch plan prepared in accordance with the standards specified in Article 7, Section 7.2.
- (t) Home occupations in an accessory building, home craft shops, or retail sales businesses conducted as a home occupation.
  - (u) Sale of Christmas trees not raised on the premises.
  - (v) Auction sales, on a lot no less than ten (10) acres in area, located outside of the Overlay Urban Development District, with no more than four (4) such sales in any calendar year.
  - (w) Open or enclosed space for the storage of one (1) commercial vehicle with greater than one (1) ton capacity on property located outside of the Overlay Urban Development District and outside of an approved subdivision, subject to the following standards:
    - i) the Tax Parcel on which the vehicle is stored shall be a minimum of two (2) acres in area and shall have public road frontage;
    - ii) if the vehicle is stored in an open space, the space shall be located at least one hundred feet (100') from any property zoned for residential use or shall be screened in accordance with the standards specified in Article 7, Section 2A; and
    - iii) a sketch plan shall be submitted for review at the time of application, in accordance with the standards specified in Article 7, Section 7.2.



- (x) Bed and breakfast, in accordance with the specific standards and requirements of Article 7, Section 8.9.

2.6 Temporary mobile home use. Mobile homes may be used for a period of six (6) months from the date of an event rendering a dwelling uninhabitable, in the event of destruction of the dwelling or damage to the dwelling which renders the dwelling uninhabitable, provided that a permit for such use is obtained from the Zoning Administrator.

1. The Zoning Administrator shall have the authority to issue permits for such use if the applicant meets the following requirements:
  - (a) An application shall be filed in the Planning Office on a form provided by the Zoning Administrator. The application shall include a verified statement that use of the mobile home is necessary because of damage or destruction to a dwelling on the site where the mobile home will be located and that the mobile home will be used only as a dwelling for the resident of the original dwelling. The application shall also document the nature and date of the event causing the damage or destruction.
  - (b) The site must comply with all requirements of the Hanover County Code, including the Zoning Ordinance and Subdivision Ordinance.
2. The permit shall be valid for a period of six (6) months from the date of the event causing the damage or destruction.
3. The site shall remain in compliance with all requirements of the Hanover County Code, including the Zoning Ordinance and Subdivision Ordinance, during the term of the permit. The permit shall be void upon failure of the applicant to maintain compliance with all requirements.
4. Prior to the expiration date or the voiding of any permit the mobile home shall be removed from the site by the owner or applicant.

2.7 Standards for Special Exceptions for mobile homes as temporary living quarters.

1. For any request to use a mobile home as temporary living quarters during the actual construction phase of a residential dwelling unit by the occupant of the mobile home, or during the actual repair when the permanent dwelling of the applicant has been rendered uninhabitable by a fire, other natural disaster, or sudden accidental event, the following standards shall apply:
  - a. The time period for the initial Special Exception shall not exceed one (1) year from the date of approval. The total time period, including extensions, for the temporary use of the

mobile home shall not exceed three (3) years from the date of approval of the Special Exception by the Board of Supervisors, except when permitted by the Board of Supervisors upon demonstration by the applicant of extenuating circumstances. When an extension is denied, or upon expiration of the Special Exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.

b. When such a Special Exception is granted, improvements shall be completed in accordance with the following schedule:

- 1) Year One (1): At a minimum, mobile home placement, well installation, septic tank installation, and provision of access shall be completed.
- 2) Year Two (2): At a minimum, the Building Permit for the permanent dwelling shall be obtained, construction of the footing and the foundation completed, and the dwelling framed and protected from weather.
- 3) Year Three (3): At a minimum, finish work shall be completed, a Certificate of Occupancy obtained, and the mobile home removed from the site within sixty (60) days of issuance of the Certificate of Occupancy.

c. Requests for extensions for completion during the three (3) year period following the date of original approval of the Special Exception by the Board of Supervisors may be granted by the Board of Supervisors upon demonstration by the applicant of continuing compliance with the schedule for completion as set forth in Section 2.6B-1(b) above, provided that the application for extension is filed prior to expiration of the Special Exception.

2. For any request to use a mobile home as temporary living quarters in the case of a hardship, the following standards shall apply:

- a. The time period for the initial Special Exception shall not exceed two (2) years from the date of original approval of the Special Exception by the Board of Supervisors. Extensions may be granted in two (2) year increments for the duration of the hardship, in accordance with the procedures and standards specified below.
- b. "Hardship" shall be defined as being when, for health reasons verified by a medical practitioner, licensed by the State of Virginia, through provision of a signed certificate specifying same, a person requires continuous care by another, and both persons will reside on the same or adjoining Tax Map Parcels.

c. Extensions may be granted pursuant to the following procedures:

- 1) The application for a Special Exception shall not be accepted unless a signed certificate, as described above verifying the need for living assistance due to age or medical reasons, accompanies the application.
- 2) Extensions for continued use of the mobile home may be granted upon review and approval by the Board of Supervisors of an application, accompanied by confirmation of the continuation of the hardship, filed prior to the two (2) year anniversary date of original approval of the Special Exception or of any subsequent extension.
- 3) When an extension is denied, or upon expiration of Special Exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.

d. The Special Exception shall be issued to specific individual(s) only, and only for the duration of the verified hardship.

e. The mobile home may be occupied by either the person(s) needing care or the person(s) providing care. However, upon cessation of the hardship, the mobile home shall be removed from the site within sixty (60) days regardless of whether it is occupied by the person(s) needing care or providing care.

3. Consideration by the Board of Supervisors of a Special Exception request for placement of a mobile home for use as living quarters as specified herein shall include the potential for adverse impact of the use on the surrounding properties.

2.8 Minimum area for application; density. The minimum parcel size for consideration of AR-6, Agricultural Residential District zoning shall be four (4) acres. The zoning request shall apply to the subject parcel in its entirety. Permissible density shall be calculated as follows:

- (1) For parcels four (4) to thirteen and 99/100 (13.99) acres in area: two (2) lots, with a minimum lot size of two (2) acres
- (2) For parcels fourteen (14) to twenty-four and 99/100 (24.99) acres in area: three (3) lots, with a minimum lot size of two (2) acres
- (3) For parcels twenty-five (25) acres or greater in area: one (1) lot per six and 1/4 (6.25) acres

Fractions resulting from the calculation shall be rounded down to the next whole number.

2.9 Subdivision lots prohibited. No lot less than twenty (20) acres in area which is part of a recorded subdivision shall be eligible for consideration for AR-6, Agricultural Residential District zoning.

2.10 Lot size requirements.

|    |  | <u>Minimum, Acres</u>                 | <u>Minimum, Feet</u> |                  |
|----|--|---------------------------------------|----------------------|------------------|
|    |  | <u>Lot Area</u>                       | <u>Lot Width</u>     | <u>Lot Depth</u> |
| 1. | Single-family dwelling on the following proposed rights-of-way:                      | 5 acres<br>(except as provided above) |                      |                  |
|    | (a) 160 ft. rights-of-way  |                                       | 450                  | 200              |
|    | (b) 80 ft. rights-of-way   |                                       | 400                  | 200              |
|    | (c) 60 ft. rights-of-way   |                                       | 275                  | 200              |
|    | (d) 50 ft. rights-of-way   |                                       | 250                  | 200              |
| 2. | Churches, rectories, parish houses, convents and monasteries, temples and synagogues | 1 acre                                | 200                  | 200              |
| 3. | Animal hospital, larger animals  | 10 acres                              | 300                  | 300              |
| 4. | Animal hospital, small animals, open pens or kennels                                 | 5 acres                               | 300                  | 300              |
| 5. | Recreation uses clubs, campgrounds   | 5 acres                               | 200                  | 200              |
| 6. | Stable, commercial   | 5 acres                               | 200                  | 200              |
| 7. | Stable, private  | 2 acres                               | 200                  | 200              |
| 8. | Frog or fish farms, or the raising for sale of small animals                         | 5 acres                               | 200                  | 200              |
| 9. | Medical office   | 2 acres                               | 300                  | 200              |

Lot width is measured at the front lot line for any lot located along any public road except those public roads created through the subdivision process; for lots located along a private road or a public road created through the subdivision of a parcel, lot width is measured at a point within the front half of the total depth of the lot. When access to a lot exempt from subdivision requirements is provided by use of a right-of-way with a width of fifty (50) feet or less, the lot shall meet the minimum width requirements for any lot which has frontage on a fifty (50) foot right-of-way.

Minimum frontage for development on private roads or any other road created through subdivision is twenty (20) feet; frontage on any other public road shall be the minimum required lot width.

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

## 2.11 Yard requirements.

| <u>Minimum in Feet</u>   |                       |                              |                                |                      |
|--|-----------------------|------------------------------|--------------------------------|----------------------|
|  | <u>Front<br/>Yard</u> | <u>Side Yard<br/>Minimum</u> | <u>Side Yard<br/>Aggregate</u> | <u>Rear<br/>Yard</u> |
| 1. Single-family dwelling on the following proposed rights-of-way: |                       |                              |                                |                      |
| (a) 160 ft.<br>rights-of-way                                       | 125                   | 25                           | 50                             | 40                   |
| (b) 80 ft.<br>rights-of-way  | 100                   | 25                           | 50                             | 40                   |
| (c) 60 ft.<br>rights-of-way  | 70                    | 25                           | 50                             | 40                   |
| (d) 50 ft.<br>rights-of-way  | 60                    | 25                           | 50                             | 30                   |

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

2. Other structures same or as required in district regulations.

2.12 Height requirements. Single-family dwellings and all other structures not specifically exempted in article 7: Maximum height 2-2 1/2 stories, but not to exceed 35 feet.

2.13 Off-street parking and loading requirements. Off-street parking and loading requirements are contained in article 7.

4. That the Hanover County Code, Appendix, Title I, Zoning, Article 10, Section 3, shall be amended to read in its entirety as follows:

### Section 3A. Permits.

3A.1 No building shall be erected, constructed, altered, moved, converted, extended, or enlarged, without the owner or owners first having obtained a building permit. Such permit shall require conformity with the provisions of this Ordinance. When issued, such permit shall be valid for a period of six (6) months.

1A.2 No building permit by the Administrator, lawfully issued prior to the effective date of this Ordinance, or of any amendment hereto, and which permit, by its own terms and provisions, is in force and effect at said date, shall be invalidated by the passage of this Ordinance, or any such amendment, but shall remain a valid and subsisting permit, subject only to its own terms and provisions and ordinances, rules, and regulations pertaining thereto, and in effect at the time of the issuance of such permit; provided, that all such permits shall expire not later than sixty (60) days from the effective date of this Ordinance, unless actual construction shall have theretofore begun and continued pursuant to the terms of said permit.

Section 3B. Family homesteads. A lot or parcel with a minimum area of two (2) acres is permitted for the purpose of constructing a home to be occupied by the natural or legally defined offspring, spouse, grandchild, grandparent, or parent of the owner of the tract from which the homestead lot is divided. The creation and use of a homestead lot shall be subject to the following provisions:

- i. (a) Only one homestead lot may be created for any one family member, and such lot shall not be created for the purpose of circumventing this Ordinance. No homestead lot shall be created prior to compliance with the requirements of this Section. Any homestead lot created under this Section shall be titled in the name of the family member for whom the home is built for a period of no less than three (3) years following issuance of the Certificate of Occupancy unless the lot is the subject of an involuntary transfer such as foreclosure, death, judicial sale, condemnation, or bankruptcy. The requirements of this Section shall be set forth in an agreement to be executed by the grantor and grantee of the lot in a form prescribed by the Director. This agreement shall be recorded in the Hanover County Circuit Court Clerk's Office prior to the creation of the lot.
- (b) Prior to the creation of a homestead lot, the grantor and grantee shall submit to the Director documentation as to compliance with these requirements, as required by the Director, along with an affidavit describing the purpose of the conveyance and identifying the members of the immediate family receiving the lot created.
- (c) An application for a building permit shall be submitted within two (2) years of creation of any homestead lot and shall include confirmation of previously submitted documentation. A Certificate of Occupancy for the residence must be obtained within three (3) years after creation of any homestead lot, unless this time period is extended by the Planning Director, for good cause, consistent with the purpose of this Section, demonstrated by the applicant.
- ii. The minimum width, yard, and area requirements of all such lots, including the remaining property from which the lot is divided, shall be in accordance with the Zoning Ordinance.

- iii. For property not served with public water and public sewer, each lot shall have its septic tank system and water source approved by the Health Department, and those facilities shall be located on the lot served.
- iv. Each lot or parcel of property shall front a road which is part of the Virginia System of Highways or shall front upon a private drive or road which is in a right-of-way no less than twenty (20) feet in width. Such right-of-way shall remain private and shall include a driveway within it consisting of, at a minimum, an all-weather surface of rock, stone, or gravel, with a minimum depth of one (1) inch and a width of ten (10) feet. An erosion and sediment control plan with appropriate surety shall be submitted for approval if the proposed right-of-way and drive construction disturbs more than two thousand five hundred ((2,500) square feet of the property.
6. If any part, section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, declared to be unconstitutional or invalid, such portion of the ordinance shall be severed from the remainder of this ordinance, and the remainder shall continue in full force and effect.
7. This Ordinance shall be effective upon adoption; provided, however, that:
- a. Complete applications for final subdivision approval which have been filed before the close of business on October 9, 1996, which were in compliance with all substantive zoning and subdivision ordinance requirements in effect on that date shall be reviewed in accordance with those requirements.
- b. All lots or parcels described in deeds or plats recorded in the Hanover County Circuit Court Clerk's Office prior to the close of business on October 9, 1996, which meet all zoning and subdivision requirements for yards, setbacks, and access in effect on the date of building permit application shall be deemed to be in compliance with the lot dimension and area requirements of the Zoning Ordinance and requirements of the Subdivision Ordinance.

Public Hearing: October 9, 1996

Adopted: October 9, 1996

  
\_\_\_\_\_  
John F. Berry, Clerk  
Hanover County Board of Supervisors

### **Title III**

## **SUBDIVISION ORDINANCE TEN TO TWENTY-FIVE ACRES\***

**AN ORDINANCE to regulate the subdivision of property into lots of from ten to twenty-five acres in size with private roads to provide for the making and recording of plat of such subdivision and the certification of same, and to provide for the approval of plats.**

**WHEREAS, under Section 15.1-465 et seq.; of the Code of Virginia, 1950, as amended, the Board of Supervisors of Hanover County, Virginia, is authorized to adopt regulations to assure the orderly subdivision of land and its development in the county, and for distribution of population which will tend to create conditions favorable to health, safety, convenience, and prosperity, and**

**WHEREAS, the County of Hanover has heretofore adopted a county subdivision ordinance designated as Title II of the [Appendix to the] Hanover County Code which ordinance regulates the development of lots up to five acres in size, and**

**WHEREAS, it is deemed necessary to regulate the development of lots of from ten to twenty-five acres in size.**

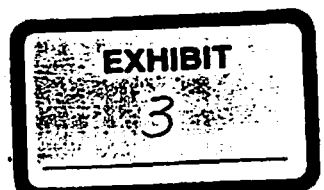
**THEREFORE, BE IT ORDAINED, by the Board of Supervisors of Hanover County, that the following regulations are hereby adopted for the subdivision of land into lots of from ten to twenty-five acres in size with private roads within Hanover County and from and after the effective date of this ordinance, every owner who subdivides such tract as provided in such regulations shall cause a plat of such private road subdivision, developed and prepared in accordance with such regulations, with reference to known or permanent monuments, to be made and recorded in the Office of the Clerk of the Circuit Court, wherein deeds conveying such land are required by law to be recorded.**

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**\*Editor's note—**The subdivision ordinance was adopted by the board of supervisors on September 27, 1972. It is included herein, with amendments through August, 1979, as compiled by county personnel. Amendments subsequent to August, 1979, have been added by the editor and are indicated by history notes appearing in parentheses ( ) at the end of the amended section or subsection. Any words or figures appearing in brackets [ ] were added by the editor for clarity.

**Cross references—**Subdivision ordinances not affected by Code or ordinance adopting Code, § 1-6(5); buildings and construction regulations, Ch. 6; erosion and sediment control, Ch. 10; fire prevention and protection, Ch. 11; floodplain and drainage control, Ch. 12; traffic, Ch. 15; sewers and sewage control, Ch. 20; water code, Ch. 23; zoning ordinance, Title I of this Appendix; less than ten acre tract subdivision ordinance, Title II of this Appendix.

**State law reference—**Land subdivision and development, Code of Virginia, § 15.1-465 et seq.





**Section 1. Purpose and title.**

*1-1 Purpose:* The purpose of this ordinance is to establish certain private road subdivision standards and procedures for Hanover County, Virginia, and such of its environs as come under the jurisdiction of the Board of Supervisors as provided by the 1950 Code of Virginia, as amended. These are part of a long-range county plan to guide and facilitate the orderly beneficial growth of the community, and to promote the public health, safety, convenience, comfort, prosperity and general welfare. More specifically, the purposes of these standards and procedures are to provide orderly growth with a reasonable density of population; to provide a guide for the change that occurs when land and acreage is reduced in area as a result of development for residential, business or industrial purposes, to provide assurance that the purchasers of lots are buying a commodity that is suitable for development and use; and to make possible the provision of public services in a safe, adequate and efficient manner.

*1-2 Title:* This ordinance is known and may be cited as the Ten Acre to Twenty-Five Acre Tract Private Road Subdivision Ordinance of Hanover County, Virginia.

**Section 2. Definitions.**

*Words and terms:* For the purpose of this ordinance, certain words and terms used herein shall be interpreted or defined as follows: Words used in the present tense include the future, words in the singular number include the plural, and the plural the singular, unless the natural construction of the word indicates otherwise; the word "lot" includes the word "tract," the word "shall" is mandatory and not directory; the word "approve" shall be considered to be followed by the words "or disapprove;" any reference to this ordinance includes all ordinances amending or supplementing the same; all distances and areas refer to measurement in a horizontal plane.

*2-1 Definitions adopted by reference:* Such of those definitions which are set forth in Title II [of this Appendix] that are applicable to and used in this ordinance are hereby adopted by reference.

*2-2 Private road:* The restricted use of a specific area of right-of-way as a means of private access to two (2) or more abutting properties which have been cut into parcels or tracts under this ordinance.

*2-3 Restrictive covenants:* Those easements, restrictions, and conditions which are made of record upon the title to a subdivision or one or more of its tracts, which are subject to this ordinance.

*2-4 Affidavit:* A written statement duly signed, acknowledged and recorded by a buyer of a tract which is subject to this ordinance, whereby the buyer recognizes the private nature of the road or roads in a subdivision.

*2-5 Road width:* The total width of the strip of land reserved for private travel, including roadway.

**2-6 Subdivision:** The division of a tract or parcel of land into three (3) or more parts, any of which contain an area of ten (10) or more acres, but less than twenty-five (25) acres, for the purpose, whether immediate or at some future time, of transfer of ownership of any such parcels. The sale or exchange of parcels between adjoining lot owners where such sale or exchange does not create additional building lots shall be exempt from the provisions of this ordinance. The division or partitioning of land in an estate by court order or by the heirs of the original owner shall also be exempted from the provisions of this ordinance.

**2-7 Tract:** A parcel of land with an area of between ten (10) and twenty-five (25) acres.

### **Section 3. Administration.**

**3-1 Administrator:** The agent appointed by the board of supervisors is hereby delegated to administer this ordinance. In so acting, the agent shall be considered the agent of the governing body and approval or disapproval as though it were given by the governing body. In the event the agent is not the commission, the agent may consult with the commission on matters contained herein.

**3-2 Duties:** The agent shall perform its duties, as regards subdivision and subdividing in accordance with this ordinance.

**3-3 To consult:** In the performance of its duties, the agent may call for opinions or decisions, either verbal or written, from other departments in considering details of any submitted plat.

**3-4 Additional authority:** In addition to the regulations herein contained for the platting of the private road subdivision, the agent may, from time to time, establish any reasonable additional administrative procedures deemed necessary for the proper administration of this ordinance.

### **Section 4. Procedure for making and recording plats.**

**4-1 Platting required:** The owner or developer of any tract of land situated within Hanover County who subdivides the same into a private road subdivision shall cause a plat of such subdivision, with reference to known or permanent monuments, to be made and recorded in the office of the clerk of the Circuit Court of Hanover County, Virginia. No such plat of subdivision shall be recorded unless and until it shall have been submitted, approved and certified by the agent in accordance with the regulations set forth in this ordinance. No tract shall be sold in any such subdivision before the plat shall have been recorded.

**4-1.1** In the event a plan for subdivision is disapproved by the agent, the subdivider may appeal to the circuit court as provided in section 15.1-475 of the Code of Virginia.

**4-2 Draw and certify:** Every such plat shall be prepared by an engineer or surveyor duly licensed by the State of Virginia, who shall endorse upon each plat a  
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certificate signed by him setting forth the source of title of the land subdivided, and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat, within an insert block, or by means of a dotted boundary line upon the plat.

**4-3 Owner's statement:** Every such plat, or deed of dedication to which such plat is attached, shall contain, in addition to the engineer's or surveyor's certificate, a statement to the effect, "the above and foregoing private road subdivision as appears in this plat is with the free consent and in accordance with the desires of the undersigned owners, proprietors, and trustees, if any, and the purchasers of tracts in this subdivision are hereby notified that the roadways reserved and shown on this plat are private in nature and will not be maintained as a public road by the State Highway Department or any public road or highway agency." The plat shall be signed by the owners, proprietors, and trustees, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds, and when thus executed and approved as herein specified shall be filed and recorded in the office of the clerk of the Circuit Court of Hanover County, Virginia, and indexed under the name of the landowners signing such statement and under the name of the private road subdivision, if such subdivision be named upon the plat.

**4-4 No one exempt:** No person shall subdivide any tract of land with an area between ten (10) and twenty-five (25) acres that is located within Hanover County except in conformity with the provisions of this ordinance.

**4-5 Necessary changes:** No change, erasure or revision shall be made on any preliminary or final plat, nor on accompanying data sheets, after approval of the agent has been endorsed in writing on the plat or sheets, unless authorization for such changes has been granted in writing by the agent.

**4-6 Fees:**

1. There shall be a charge in connection with an application for the examination and approval of plat submitted pursuant to the requirements of this Ordinance, in accordance with a schedule of fees as adopted by the board of supervisors from time to time:
2. No fee paid pursuant to this section shall be refunded unless a written request for withdrawal of the application is received by the Planning Department within five (5) working days after the date of application. (Ord. No. 81-13, § 2, 8-26-81; Ord. No. 84-30, § 1(a), (b), 10-24-84)

**Section 5. General regulations.**

**5-1 Mutual responsibility:** There is a mutual responsibility between the subdivider and the county to divide the land so as to improve the general use pattern of the land being subdivided.

**5-2 [Repealed]**

**5-3 Flooding:** Land subject to flooding and land deemed to be topographically unsuitable shall not be platted for residential occupancy, nor for such other uses as may increase danger of [to] health, life or property, or aggravate erosion or flood hazard.

**5-4 Restrictive covenant:** The deed to each tract in a private road subdivision shall carry a restrictive covenant to the effect that the roads in the subdivision are private in nature and shall not be maintained by the state highway department or other public road agency and that the maintenance and improvement thereof shall be the mutual obligation of the landowners in the subdivision abutting said roads; that such private roads shall not be taken into the state secondary system unless and until the abutting landowners shall have constructed and dedicated the private roads in accordance with the latest Virginia Department of Highway road and bridge specifications, and thereafter the Board of Supervisors of Hanover County shall have recommended that said road be taken into the state secondary system of highways.

**5-5 Affidavit of buyer:** No deed to a tract of land in a private road subdivision shall be recorded unless the same carries an affidavit duly signed and acknowledged by the grantee in said deed to the effect that he acknowledges that the roads in said subdivision are private roads and shall not be maintained or improved by the state highway department or other public road agency, and that it is the mutual duty and obligation of the abutting landowners to maintain and improve the roads in said subdivision.

**5-5-1 Off-site sewage and drainage improvements:** Whenever the board of supervisors has established a general sewer and drainage improvement program applicable to the land proposed for subdivision or a portion thereof, the subdivider shall pay a pro-rata share of the cost of providing reasonable and necessary sewage and drainage facilities located outside the property limits of the land owned or controlled by him which facilities are necessitated or required, at least in part, by the construction or improvement of his subdivision or development. Such share shall be the proportion of the total estimated cost which the increased sewage flow and/or increased volume and velocity of storm water run-off to be actually caused by the subdivision or development bears to total estimated volume and velocity of such sewage and/or run-off from such area in its fully developed state. Each such payment received shall be expended only for the construction of those facilities for which the payment was required, and until so expended shall be held in an interest bearing account for the benefit of the subdivider or developer.

### ADDITIONAL REGULATIONS

**5-6 Resubdivision prohibited; procedures for vacations:**

- (a) None of the tracts shown on the approved private road subdivision plat may be further divided without the approval of the Hanover County Board of Supervisors.
- (b) Notwithstanding the provisions of part (a) above, upon application by the property owner, the Agent may approve a resubdivision which involves the vacation of a lot

line for the purpose of adjusting a lot boundary or combining two (2) or more lots, but which does not involve the creation of additional building lots or the vacation of any street, alley, easement for public passage, or other public area. For the purposes of review and approval of a resubdivision made under this part (b), the Director of Planning shall be the Agent.

- (c) The vacation of any feature of any approved subdivision, other than a lot line, which may be vacated under the provisions of (b) above, shall be subjected to the provisions of state law governing the vacation of a subdivision. (Ord. No. 82-10, § 1, 6-23-82)

### LOTS

**5-7 Shape:** The lot arrangement, design, and shape shall be such that lots will provide satisfactory and desirable sites for buildings, and be properly related to topography and conform to requirements set forth herein.

**5-8 Location:** Each lot shall abut upon a private road reserved by the subdivision plat.

**5-9 Remnants:** All remnants of lots below minimum size left over after subdividing a tract may be added to adjacent lots, or otherwise disposed of and are allowed to remain as unusable parcels. (Ord. No. 84-27, § 12, 9-26-84)

**5-10 Septic tanks:** In private road subdivisions where septic tanks or individual wells are contemplated and the health department determines that there are factors of drainage, soil conditions, or other conditions to cause potential health problems, the agent shall require the data from percolation tests be submitted as a basis for passing upon subdivisions depending upon septic tanks as a means of sewage disposal.

### PRIVATE ROADS

**5-11 Alignment and layout:** The arrangement of private roads in new subdivisions shall make provision for the continuation of existing private roads in adjoining areas. The road arrangement must be such as to cause no unnecessary hardship to owners of adjoining property when they plat their land and seek to provide for convenient access to it. Where in the opinion of the agent, it is desirable to provide for road access to adjoining property, proposed roads shall be extended by reservation to the boundary of such property. Half roads along the boundary of land proposed for subdivision may not be permitted. Whenever possible, roads should intersect at right angles. In all hillside areas, roads running with contours shall be required to intersect at angles of not less than sixty (60) degrees, unless approved by the agent. All road intersections shall have a distance of at least two hundred (200) feet between center lines.

**5-12. Approach angle:** Roads shall approach each other at angles of not less than eighty (80) degrees, unless the agent shall approve a lesser angle of approach for reasons of contour, terrain or matching of existing patterns. The minimum width of all private road rights-of-way shall in no case be less than fifty (50) feet in width.

5-13 Each cul-de-sac must terminate in a turn-around of a right-of-way radius of not less than fifty (50) feet.

5-13.1. *Standards for improvement.* Private roads shall include no less than eighteen (18) feet of usable road surface covered with gravel of a minimum depth of one inch at the time of inspection, exclusive of drainage facilities, cleared of obstructions, with positive drainage. (Ord. No. 91-32, § 1, 11-27-91)

5-13.2. *Administration of requirements.*

- (1) Prior to issuance of any building permit in the subdivision a plan shall be provided describing the road improvements required by this Subdivision Ordinance and meeting the requirements of the Hanover County Code and appendix relating to environmental management, drainage and zoning. The plan shall include a typical cross-section of the required fifty-foot right-of-way with proposed improvements.
- (2) Prior to issuance of any building permit for a lot in a subdivision, all roads in the section of the subdivision in which the lot is located and those roads necessary to provide access to a road improved to these standards or to a public road shall be improved to these standards. In lieu of completion of improvements the owner of the subject lot or the subdivider shall have entered into a performance agreement requiring the owner, successors, personal representatives or assigns to complete the required improvements within eighteen (18) months from the date of issuance of the building permit. The performance agreement shall be accompanied by surety in an amount sufficient to provide for the improvements identified in the performance agreement. All surety shall be provided in a form approved by the County Attorney and in an amount approved by the Planning Director and shall be conditioned on the completion of the improvements. Such surety shall be in one or more of the following forms:
  - (a) Personal or corporate bond with cash or corporate surety provided by a firm licensed to do business in the Commonwealth, in an amount equal to the cost of construction; or
  - (b) A letter of credit issued by a bank or savings and loan institution having an office located in the State of Virginia and being regulated by the State of Virginia or the United States Government, or a letter of credit issued by a regulated bank or savings and loan institution with payment of the full amount of the letter of credit being confirmed and guaranteed by a regulated bank or savings and loan institution with an office located in the State of Virginia in the amount of the estimated cost of construction.
  - (c) The cost of improvements shall equal an estimate made by the Director of Public Works based on unit prices for the improvements. A twenty-five (25) percent allowance for estimated administrative cost, including attorneys' fees if applicable, inflation, and potential damage to existing roads or utilities, shall be included in the estimate and shall be paid by the owner, surety or financial institution in the event of default.

- (d) Periodic partial releases of surety shall be provided in accordance with Title II, Subdivision Ordinance.
- (3) No improvements shall be considered complete until the Director of Public Works has inspected and approved the improvements. The Director of Public Works shall inspect improvements upon written request. (Ord. No. 91-32, § 1, 11-27-91; Ord. No. 92-24, § 1, 11-24-92)

### MONUMENTS

**5-14. Location—Iron pipe:** The corners of all tracts shall be marked with iron pipe not less than three-quarter inch in diameter and twenty-four (24) inches long and driven so as to be flush with the finished grade. When rock is encountered, drill a hole four (4) inches deep in the rock and cement a steel rod one-half inch in diameter whose top shall be flush with the finished grade line.

### Section 6. Approval of plats for subdivisions of five (5) or more lots.

**6-1 Application for approval:** The private road subdivision plat, together with a copy of the restrictive covenants required under section 5, and a copy of the affidavit to be signed by the buyer provided for under section 5, shall be submitted to the agent, or the appointed representative of the agent, with written application for approval by the subdivider. The required number of copies shall be determined by the agent. Such application shall be submitted in order to allow the agent at least thirty (30) days from the date of the submission for review and investigation. The agent shall, within thirty (30) days from the date of submission, act thereon as submitted or modified. If approved, the agent shall express its approval, as conditional approval, if any, or if disapproved, shall express its approval and its reasons therefor. (Ord. No. 84-7, § 1, 3-28-84; Ord. No. 84-30, § 1(a), (b), 10-24-84)

**6-2 Plat information:** The plat shall include the following information:

1. Title block, to be located consistently on all sheets, and to include the following information:
  - a. Name of subdivision.
  - b. Magisterial district, county, state.
  - c. Name(s) of owner(s) and developer.
  - d. Name of surveyor or engineer who prepared the plat.
  - e. Scale of plat (no larger than one inch equals two hundred (200) feet, unless previously approved by the agent).
  - f. Date of completion and any subsequent revisions.
  - g. Number of sheets—match lines.
2. Information block, to include the following information:
  - a. Total area in subdivision.
  - b. Total area in lots.
  - c. Total area in road rights-of-way.
  - d. Total area in common areas.
  - e. Total number of lots.

- f. Parcel numbers (from county tax maps). (Note: if subdivision comprises more than one parcel, the parcel number and area of each should be shown).
  - g. Zoning of parcel(s).
- 3. Approval block, three (3) inches by five (5) inches.
  - 4. True north arrow.
  - 5. Vicinity sketch, at a scale of one inch equals two thousand (2,000) feet.
  - 6. Boundary survey, showing bearings and distances.
  - 7. Zoning boundaries and districts on site.
  - 8. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten (10) seconds, for the following:
    - a. Lot layout, lot numbers, block letters, and dimensions of lots.
    - b. Area and frontage of lots.
    - c. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
    - d. Location, width, and purpose of other rights-of-way and easements.
    - e. Location of existing physical features, including buildings, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplains.
    - f. Location of the subdivision as part of some larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.
  - 9. The data of all curves along the road frontage shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.
  - 10. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the director.
  - 11. Names and locations of abutting subdivisions.
  - 12. Names of owners both within and adjoining subdivision.
  - 13. Owner's statement.
  - 14. Surveyor's/engineer's certificate.
  - 15. Source of title certificate.
- (Ord. No. 84-30, § 1(a), (b), 10-24-84)

**6-3 Conditions:** The plat shall not be approved until the subdivider has complied with the general requirements of this ordinance.

**6-4 Approval of plats for subdivisions of four (4) or less lots:** This procedure applies only to subdivisions containing four (4) lots or less where no roads, utility, or drainage construction

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is necessary. This procedure may only be used one time on any parcel of land. The applicant shall submit copies of the plan of development with every application. The required number of copies shall be determined by the agent. The plan of development shall include the following information:

1. Title block, to be located consistently on all sheets, and to include the following information:
  - a. Name of subdivision.
  - b. Magisterial district, county, state.
  - c. Name(s) of owner(s) and developer.
  - d. Name of surveyor or engineer who prepared the plat.
  - e. Scale of plat (no larger than one inch equals two hundred (200) feet, unless previously approved by the agent).
  - f. Date of completion and any subsequent revisions.
  - g. Number of sheets—match lines.
2. Information block, to include the following information:
  - a. Total area in subdivision.
  - b. Total area in lots.
  - c. Total area in road rights-of-way.
  - d. Total area in common areas.
  - e. Total number of lots.
  - f. Parcel numbers (from county tax maps). (Note: if subdivision comprises more than one parcel, the parcel number and area of each should be shown).
  - g. Zoning of parcel(s).
3. Approval block, three (3) inches by five (5) inches.
4. True north arrow.
5. Vicinity sketch, at a scale of one inch equals two thousand (2,000) feet.
6. Boundary survey, showing bearings and distances.
7. Zoning boundaries and districts on site.
8. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten (10) seconds, for the following:
  - a. Lot layout, lot numbers, block letters, and dimension of lots.
  - b. Area and frontage of lots.
  - c. Location, width, and names (numbers) of all existing or platted streets and public ways adjoining the subdivision.
  - d. Location, width, and purpose of other rights-of-way and easements.

- e. Location of existing physical features, including buildings, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplains.
  - f. Location of the subdivision as part of some larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.
- 9. The data of all curves along the road frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.
  - 10. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the director.
  - 11. Names and locations of abutting subdivisions.
  - 12. Names of owners both within and adjoining subdivision.
  - 13. Owner's statement.
  - 14. Surveyor's/engineer's certificate.
  - 15. Source of title certificate.
- (Ord. No. 84-30, § 1(a), (b), 10-24-84)

**6-5 Procedure:** The subdivider shall submit his application and all required documents and plats to the director according to rules and procedures established by the agent. The subdivider shall be notified within thirty (30) days of any action taken by the director. (Ord. No. 80-3, § 1, 2-29-80; Ord. No. 84-7, § 1, 3-28-84)

**6-6 Conditions:** The plat shall not be finally approved until the subdivider has complied with the requirements of this ordinance. Approval of the plat shall be written by the director on the face thereof. (Ord. No. 84-7, § 1, 3-28-84)

## **Section 7. Effectual clauses.**

### **7-1 Exceptions:**

- 1. Where the subdivider can show the provision of these standards would cause unnecessary hardship if strictly adhered to, and where, because of topographical or other conditions peculiar to the site, in the opinion of the agent, a departure may be made without destroying the intent of such provisions, the agent may authorize an exception. Any exception thus authorized is to be stated in writing in the report of the agent with the reasoning, on which the departure was justified, set forth.
- 2. An exception to the rules and procedures shall be granted by the director for a single division for homestead purpose of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner. Such an exception, and the division of a lot or parcel thereunder, shall be subject to the following limitations and conditions: (Ord. No. 84-7, § 1, 3-28-84)

- (a) Only one such division shall be allowed per family member and shall not be for the purpose of circumventing this subsection. For the purpose of this subsection a member of the immediate family is defined as any person who is a natural or legally defined offspring, spouse, or parent of the owner.
- (b) Any lot created hereunder shall conform to the provisions of the Zoning Ordinance prior to issuance of a building permit.

**7-2 Penalties:** Any owner or proprietor of any tract of land who subdivides the tract of land and who violates any of the provisions of this ordinance shall be guilty of a misdemeanor, punishable by a fine of not less than ten dollars (\$10.00) nor more than two hundred and fifty dollars (\$250.00), and each day after the first during which violation shall continue shall constitute a separate violation.

**7-3 Validity:** Should any article, section, subsection or provision of this Subdivision Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the Subdivision Ordinance as a whole or any part other than the part so declared to be invalid or unconstitutional.

**7-4 Repeal:** The provisions of this ordinance shall not be construed to repeal the provisions of Title II or Title III of the Subdivision Ordinances of Hanover County, Virginia.

**7-5 Amendments:** This ordinance may be amended in whole or in part as provided by law, by the governing body, provided that any such amendment may either originate with or be submitted to the commission for recommendation.

**7-6 Effective date:** This ordinance was duly considered following a required public hearing on July 26, 1972, and was adopted by the Board of Supervisors of Hanover County, Virginia, at its regular meeting held on September 27, 1972.

#### **Section 8. Chesapeake Bay Preservation.**

All submittals made pursuant to this title shall include a water quality impact assessment or other documents and information as may be required by the Hanover County Code, Chapter 10. No preliminary or final plat shall be considered complete without the required information. No preliminary or final plat shall be approved unless the proposed development is in compliance with all requirements of Chapter 10. (Ord. No. 90-27, § 6, 10-24-90)

#### **Section 9. Additional requirements.**

**9-1.** All buildable lots including residual lots created by the subdivision shall be shown on the subdivision plat. (Ord. No. 91-32, § 2, 11-27-91)

**9-2.** Prior to approval of the subdivision, the subdivider shall have conveyed an easement to the County providing for access to the private roads within the subdivision, in the event of default by the developer. The content of the deed of conveyance shall be approved by the Director of Public Works and the deed shall be in a form approved by the County Attorney. (Ord. No. 91-32, § 2, 11-27-91)

**9-3. The following statement shall be prominently printed on the subdivision plat:**

**Before issuance of any building permit in this subdivision all roads shall be improved to the standards required by the Hanover County Subdivision Ordinance or the applicant for a permit shall enter into a performance agreement and provide security for completion of the improvements. (Ord. No. 91-32, § 2, 11-27-91)**

**[The next page is 2209]**

## Title IV

### SUBDIVISION ORDINANCE

#### TWENTY-FIVE ACRES OR GREATER (PRIVATE ROAD)\*

##### Section 1. Purpose and title.

*1-1 Purpose:* The purpose of this ordinance is to establish certain standards and procedures regarding the division of tracts of land which are twenty-five (25) acres or greater in size and are located on private roads for Hanover County, Virginia, and such of its environs as come under the jurisdiction of the board of supervisors as provided by the 1950 Code of Virginia, as amended. These are part of a long range county plan to guide and facilitate the orderly beneficial growth of the community, and to promote the public health, safety, convenience, comfort, prosperity, and general welfare.

*1-2 Title:* This ordinance is known and may be cited as the Twenty-Five Acre or Greater Tract Private Road Subdivision Ordinance of Hanover County, Virginia.

##### Section 2. Definitions.

*Words and terms:* For the purpose of this ordinance, certain words and terms used herein shall be interpreted or defined as follows: Words used in the present tense include the future; words in the singular number include the plural, and the plural the singular, unless the natural construction of the word indicates otherwise; the word "lot" includes the word "tract"; and the word "shall" is mandatory and not directory; the word "approve" shall be considered to be followed by the words "or disapprove"; any reference to this ordinance includes all ordinances amending or supplementing the same; all distances and areas refer to measurement in a horizontal plane.

*2-1 Definitions adopted by reference:* Such of those definitions which are set forth in titles II and III of this appendix that are applicable to and used in this ordinance are hereby adopted by reference.

*2-2 Tract:* A parcel of land with an area of twenty-five (25) acres or greater.

*2-3 Agent:* The Hanover County Director of Planning or his designee.

*2-4 Private road:* Any roadway not dedicated or accepted for maintenance by the Virginia Department of Highways and Transportation (VDH & T).

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\*Editor's note—Ord. No. 85-1, § 1, adopted March 27, 1985, added Title IV, §§ 1—5 to the Appendix. Any amendments will be indicated by history notes appearing in parentheses at the end of the amended section.

Cross references—Subdivision ordinance not affected by Code or ordinance adopting Code, § 1-6(5); buildings and construction, Ch. 6; erosion and sediment control, Ch. 10; fire prevention, Ch. 11; floodplain and drainage control, Ch. 12; traffic, Ch. 15; sewers, Ch. 20; water, Ch. 23; zoning, Title I of this Appendix.

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**Section 3. Administration.**

**3-1 Administrator:** The agent appointed by the board of supervisors is hereby delegated to administer this ordinance.

**3-2 Duties:** The agent shall perform its duties as specified in, and in accordance with, this ordinance.

**3-3 To consult:** In the performance of its duties, the agent may call for opinions or decisions, either oral or written, from other departments regarding the administration of this ordinance.

**3-4 Additional authority:** In addition to the regulations herein contained, the agent may, from time to time, establish any reasonable additional administrative procedures deemed necessary for the proper administration of this ordinance.

**Section 4. Procedure.**

**4-1 Certification required:** The owner or developer of any tract of land situated within Hanover County who divides the same into tracts, all of which are twenty-five (25) acres or greater, without frontage on a state-maintained roadway, shall cause a plat of such parcel or parcels, with reference to known or permanent monuments, prepared by a certified or professional engineer or land surveyor, in a form acceptable to the clerk of the circuit court of Hanover County, to be made and recorded in the office of the clerk of the circuit court of Hanover County, Virginia. No such plat of division shall be recorded unless and until it shall have been submitted and certified by the agent in accordance with the regulations set forth in this ordinance. No such tract shall be sold before the plat shall have been recorded.

**4-2 Owner's statement:** Every such plat shall be affixed by the agent with a statement to the effect, "the purchasers of these tracts are hereby notified that the roadways reserved and shown on this plat or deed are private in nature and will not be maintained as a public road by the state highway department or any other public road or highway agency, and that the maintenance and improvement thereof shall be the mutual obligation of the landowners in the subdivision and that such private roads shall not be taken into the state secondary system, unless and until the abutting landowners' or homeowners' association shall have constructed and dedicated the private roads in accordance with the latest Virginia Department of Highways and Transportation specifications, and until the Hanover County Board of Supervisors shall have recommended that said roads be taken into the state secondary system of highways." When thus executed as herein specified, such plat shall be filed and recorded in the office of the clerk of the circuit court of Hanover County, Virginia, and indexed under the name of the landowners signing such statement.

**4-3 Disclaimer:** The agent shall also affix to said plat a certification to the effect, "this division has not been reviewed for compliance with, and certification of this plat does not guarantee any lot specified therein is buildable under, the provisions of the Code of Hanover County, Virginia."

**4-4 Fees:**

1. There shall be a charge in connection with an application for the certification of plats submitted pursuant to the requirements of this ordinance, as follows:
  - (a) Application for certification of plat: \$5.00.
2. No fee paid pursuant to this section shall be refunded.

**Section 5. Effectual clauses.**

**5-1 Validity:** Should any article, section, subsection or provision of this subdivision ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the subdivision ordinance as a whole or any part other than the part so declared to be invalid or unconstitutional.

**5-2 Repeal:** The provisions of this ordinance shall not be construed to repeal the provisions of Title II or Title III of the subdivision ordinances of Hanover County, Virginia.

**5-3 Amendments:** This ordinance may be amended in whole or in part as provided by law, by the governing body, provided that any such amendment may either originate with or be submitted to the commission for recommendation.

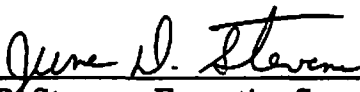
**5-4 Effective date:** This ordinance was duly considered following a required public hearing on March 27, 1985, and was adopted by the board of supervisors of Hanover County, Virginia, at its regular meeting held on March 27, 1985.

**Section 6. Chesapeake Bay Preservation.**

All submittals made pursuant to this title shall include a water quality impact assessment or other documents and information as may be required by the Hanover County Code, Chapter 10. No preliminary or final plat shall be considered complete without the required information. No preliminary or final plat shall be approved unless the proposed development is in compliance with all requirements of Chapter 10. (Ord. No. 90-27, § 6, 10-24-90)

CERTIFICATE

I, June D. Stevens, Executive Secretary, and custodian of the records of the Hanover County Planning Department, and more particularly, custodian of Planning Department files, do hereby authenticate the attached copy of the "List of subdivisions sent back", as a true and accurate copy.

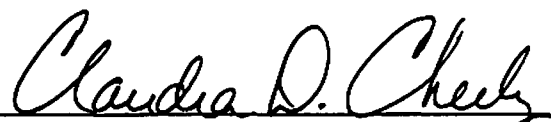
  
\_\_\_\_\_  
June D. Stevens, Executive Secretary

COMMONWEALTH OF VIRGINIA,  
COUNTY OF HANOVER, to-wit:

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of June, 1999, by June D. Stevens, Executive Secretary.

My commission expires:

10/31/2000

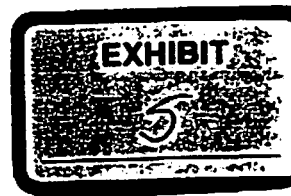
  
\_\_\_\_\_  
Notary Public



## Subdivisions Sent Back

(Filed Prior to Oct. 10)

| Subdivision            | Section | Date Filed | Date Returned | Reason  |
|------------------------|---------|------------|---------------|---|
| Cochrane Place         | A - C   | 8/30/96    | 10/25/96      | 1st Div. not recorded properly                  |
| Ingalls                |         | 9/3/96     | 10/29/96      | No 1st Div. recorded                            |
| Farston                | A & B   | 9/10/96    | 10/4/96       | Title IV plat not recorded correctly            |
| Rose Cottage           | 1 & 2   | 9/25/96    | 10/31/96      | Title IV plat not recorded correctly            |
| Kelley Grove Estates   | A - C   | 10/3/96    | 10/29/96      | No metes and bounds                             |
| Eagles Trace           |         | 10/3/96    | 10/29/96      | Ineligible for lots < 10 acres                  |
| Landora Bridge Estates |         | 10/7/96    | 10/29/96      | No 1st Div. recorded                            |
| Bourne Acres West      | B       | 10/8/96    | 10/29/96      | Incomplete metes and bounds                     |
| Rocky Mills            | B       | 10/8/96    | 10/29/96      | No metes and bounds                             |
| Sugar Maple            | A - E   | 10/9/96    | 10/31/96      | No 1st Div. recorded                            |
| Poplar Gate            | A - I   | 10/9/96    | 10/29/96      | 25-acre and 1st divisions recorded on same plat |
| Furlong                | J - S   | 10/9/96    | 10/29/96      | 25-acre and 1st divisions recorded on same plat |



- c. Extensions may be granted pursuant to the following procedures:
- (1) The application for a special exception shall not be accepted unless a signed certificate, as described above, verifying the need for living assistance due to age or medical reasons, accompanies the application.
  - (2) Extensions for continued use of the mobile home may be granted upon review and approval by the Board of Supervisors of an application, accompanied by confirmation of the continuation of the hardship, filed prior to the two (2) year anniversary date of original approval of the special exception or of any subsequent extension.
  - (3) When an extension is denied, or upon expiration of a special exception, the applicant shall remove the mobile home from the site within sixty (60) days of the date of denial or expiration.
- d. The special exception shall be issued to specific individual(s) only, and only for the duration of the verified hardship.
- e. The mobile home may be occupied by either the person(s) needing care or the person(s) providing care. However, upon cessation of the hardship, the mobile home shall be removed from the site within sixty (60) days regardless of whether it is occupied by the person(s) needing care or providing care.
3. Consideration by the Board of Supervisors of a special exception request for placement of a mobile home for use as living quarters as specified herein shall include the potential for adverse impact of the use on the surrounding properties. (Ord. No. 93-29, § 3, 2-23-94; Ord. No. 94-17, § 2, 8-23-94)

2.7. Lot size requirements.

|   | <i>Minimum,<br/>Average<br/>Lot Area</i> | <i>Square Feet<br/>Minimum<br/>Lot Area</i>                              | <i>Min-<br/>imum,<br/>Lot<br/>Width</i> | <i>Feet<br/>Lot<br/>Depth</i> |
|---|--|--|---|-------------------------------|
| 1. Single-family dwelling on the following proposed rights-of-way:                      | —  | 2 acres, after the first conveyance all lots must be 10 acres or greater |   |                               |
| (a) 160 ft. rights-of-way   |  |  | 450                                     | 200                           |
| (b) 80 ft. rights-of-way  |  |  | 400                                     | 200                           |
| (c) 60 ft. rights-of-way  |  |  | 275                                     | 200                           |
| (d) 50 ft. rights-of-way  |  |  | 250                                     | 200                           |
| 2. Churches, rectories, parish houses, convents and monasteries, temples and synagogues | —  | 1 acre   | 200                                     | 200                           |
| 3. Animal hospital, larger animals  |  | 10 acres   | 300                                     | 300                           |



# TITLE I—ZONING

Art. 5, § 2

|  | <i>Minimum,<br/>Average<br/>Lot Area</i> | <i>Square Feet<br/>Minimum<br/>Lot Area</i> | <i>Min-<br/>imum,<br/>Lot<br/>Width</i> | <i>Feet<br/>Lot<br/>Depth</i> |
|--|--|---|---|-------------------------------|
| 4. Animal hospital, small animals, open pens or kennels                                  |  | 5 acres                                     | 300                                     | 300                           |
| 5. Recreation uses clubs, camp-grounds   |  | 5 acres                                     | 200                                     | 200                           |
| 6. Stable, commercial  |  | 5 acres                                     | 200                                     | 200                           |
| 7. Stable, private   |  | 2 acres                                     | 200                                     | 200                           |
| 8. Frog or fish farms, or the raising for sale of small animals                          | —  | 5 acres                                     | 200                                     | 200                           |
| 9. Medical office  |  | 2 acres                                     | 300                                     | 200                           |
| 10. Business office and equipment storage yards for construction and service contractors |  | 2 acres                                     | 300                                     | 200                           |

Lot width is measured at the building line.

Minimum street frontage is twenty (20) feet.

Proposed rights-of-way are those designated by the Major Thoroughfare Plan. (Ord. No. 85-13, § 2, 10-23-85; Ord. No. 90-11, § 2, 7-18-90; Ord. No. 90-15, § 1, 7-18-90; Ord. No. 91-02, § 1, 4-24-91)

## 2.8 Yard requirements.

|  | <i>Front<br/>Yard</i> | <i>Minimum in Feet<br/>Side Yard,<br/>Minimum</i> | <i>Side Yard,<br/>Aggregate</i> | <i>Rear<br/>Yard</i> |
|--|-----------------------|---|---------------------------------|----------------------|
| 1. Single-family dwelling on the following proposed rights-of-way: |                       |   |                                 |                      |
| (a) 160 ft. rights-of-way  | 125                   | 25  | 50                              | 40                   |
| (b) 80 ft. rights-of-way   | 100                   | 25  | 50                              | 40                   |
| (c) 60 ft. rights-of-way   | 70                    | 25  | 50                              | 40                   |
| (d) 50 ft. rights-of-way   | 60                    | 25  | 50                              | 30                   |

Proposed rights-of-way are those designated by the Major Thoroughfare Plan.

2. Other structures same or as required in district regulations.

2.9 Height requirements. Single-family dwellings and all other structures not specifically exempted in article 7: Maximum height 2—2½ stories, but not to exceed 35 feet.

2.10 Off-street parking and loading requirements. Off-street parking and loading requirements are contained in article 7.

BOARD OF SUPERVISORS

R.J. KLOTZ, JR., CHAIRMAN  
HENRY DISTRICT

J.T. "JACK" WARD, VICE-CHAIRMAN  
MECHANICSVILLE DISTRICT

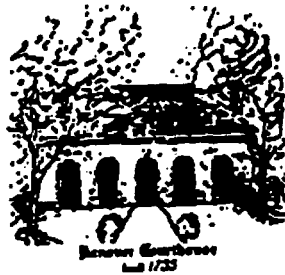
TIMOTHY E. ERNST  
ASHLAND DISTRICT

TOM GILES  
CHICKAHOMINY DISTRICT

JOHN E. GORDON, JR.  
SOUTH ANNA DISTRICT

AUBREY M. STANLEY, JR.  
BEAVERDAM DISTRICT

ELTON J. WADE, SR.  
COLD HARBOR DISTRICT



HANOVER COUNTY

P. O. BOX 470

HANOVER, VIRGINIA 23069-0470

JACK BERRY  
COUNTY ADMINISTRATOR

RICHARD R. JOHNSON  
DEPUTY COUNTY ADMINISTRATOR

STERLING E. RIVES, III  
COUNTY ATTORNEY

October 29, 1996

Richard L. Baird, Jr.  
1910 Byrd Avenue, Suite 210  
Richmond, VA 23230

**CERTIFIED MAIL - RETURN  
RECEIPT REQUESTED**

Re: Subdivision Application - Sugar Maple, Sect. A - E

Dear Mr. Baird:

On October 9, 1996, the Hanover County Board of Supervisors adopted zoning and subdivision ordinances which significantly change rural subdivision development requirements. The new ordinance eliminated the distinction among Title II, Title III, and Title IV subdivisions, as well as both "first divisions" and "the 25 acre rule" as interpretations of the zoning and subdivision ordinances.

However, the Board also approved a provision which permits the review of "complete applications for final subdivision approval which...were in compliance with all substantive zoning and subdivision ordinance requirements in effect on [the date of submittal]". Because your application was received prior to adoption of the new ordinance, this provision applies to your subdivision.

The staff has completed its review of your application and is notifying you that your subdivision plat and application, filed on October 9, 1996, titled "Sugar Maple", prepared by Charles G. Patterson, Jr., and dated October 8, 1996, is **DISAPPROVED** because of failure to record first division lots (Title I, Art. 5, Sect. 2.7-1).

Your application, plats, and fees are being returned to you. Attached are copies of Ordinance 96-17 and 96-18 (the revised zoning and subdivision ordinances) for your use. Should you wish to reapply for subdivision approval, the standards specified in these ordinances will apply.



Richard L. Baird  
October 29, 1996  
page 2

Should you have any questions regarding this action, or if we can assist you in your reapplication, please contact J. Keith Thompson, Principal Planner; Jenifer Reiner, Applicant Liaison; or me.

Sincerely,

  
Michael E. Crescenzo  
Deputy Director of Planning

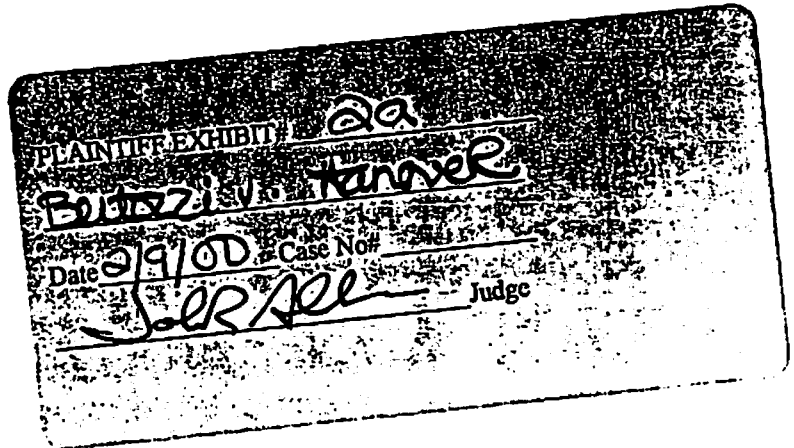
copies:       A. G. Bertozzi (Owner)  
              file: Sugar Maple

**RICHARD L. BAIRD, P.E.** CONSULTING ENGINEER

1910 Byrd Avenue • Suite 210 • Richmond, Virginia 23230 • Tel. (804) 673-8821 • Fax (804) 673-5243

May 7, 1996

Mr. Greg Baka  
Planner  
Hanover Courthouse  
Hanover, VA 23069



Dear Greg:

Enclosed are three drawings showing tracts of land that Mr. Bertozzi is interested in developing as a Title III private road subdivision. The drawings are being submitted for review and comment regarding general conformance with the Hanover County Subdivision Ordinance.

List of drawing:

- MAP SHOWING EXISTING TAX PARCELS
- TITLE IV TENTATIVE LAYOUT
- TITLE III TENTATIVE LAYOUT

There is an existing dwelling and garage on the property which would be sold with lot 1, Section A.

The private road serving Sections 'B', 'C', 'D', 'E' and 'F' has been located so that it aligns with the intersection of Rt. 54 and Rt. 658. Section "G" would be served by a private road continuing from the end of Rt. 775.

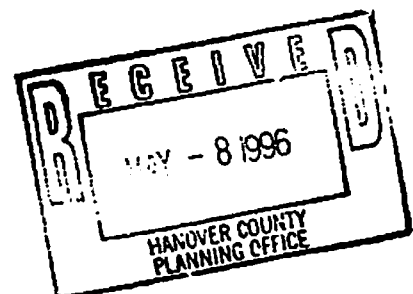
If you have any questions regarding this submittal please give me a call.

Sincerely,



Richard Baird

copy: Mr. A.G. Bertozzi



**PRINTER'S NOTE: PLAT MAP ATTACHED TO  
EXHIBIT 2a IS TOO LARGE TO BE REASONABLY  
REPRODUCED.**

**RICHARD L. BAIRD, P.E. CONSULTING ENGINEER**

1910 Byrd Avenue • Suite 210 • Richmond, Virginia 23230 • Tel. (804) 673-8821 • Fax (804) 673-5243

October 9, 1996

Mr. Greg Baka  
Planner  
Hanover Courthouse  
Hanover, VA 23069

**RE: SUGAR MAPLE - SECTION "A" through SECTION "E"**

Dear Greg:

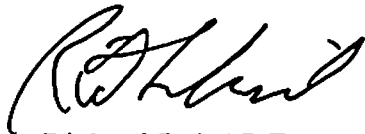
Enclosed for final subdivision plat review are the following:

- 1) Application for final approval with checklist and filing fee of \$230 for each Section.
- 2) Hanover County health Department Application for each Section.
- 3) Water Quality Impact Assessment with filing fee of \$100 for each section.
- 4) Fifteen prints of subdivision plat of each section.

Filing for review of Sections "F" and "G" will be forthcoming.

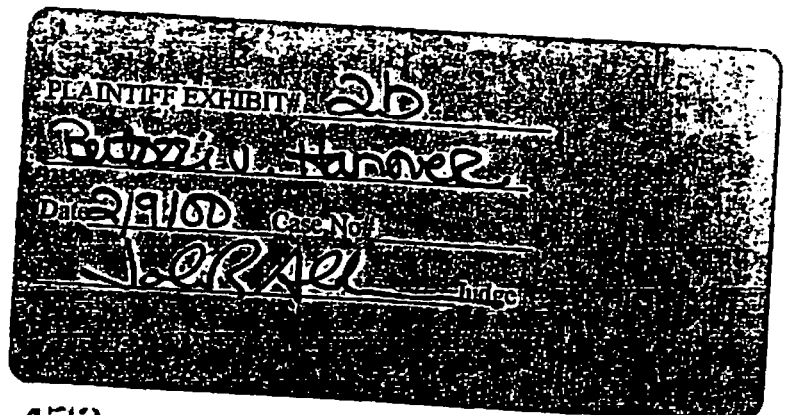
If there are any questions regarding the plat please give me a call.

Sincerely,



Richard Baird P.E.

copy: Mr. A.G. Bertozzi





HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE [ ] TITLE [ ] ADMINISTRATIVE [✓]

HCP 84-6  
REVISED 4/2/92 PC

Please type or print in black ink

Name of Subdivision SUGAR MAPLE  
Section A Area 23.12 Ac Zoning Class A-1  
No. of Lots 3 Tax Parcel No(s). —  
Owner A. G. Bertozzi Telephone 266-9656  
Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226  
Developer (SAME AS OWNER) Telephone —  
Address —

\* Engineer (Survey) Charles G. Patterson Telephone 262-8878  
Address 1007 ETHELWOOD ROAD, Glen Allen, VA 23060

Water: Public [ ] Private [✓] Sewer: Public [ ] Private [✓]

Is the property within an Agricultural/Forestal District? Yes [ ] No [✓]

Has sludge ever been deposited on the property? Yes [ ] No [✓] Date —

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES [ ] NO [ ] If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

As owner of this property or the authorized agent therefore, I hereby certify this application is complete and accurate to the best of my knowledge.

Respectfully submitted this 9 day of Sept, 19 96

SIGNED A. G. Bertozzi

Print Name A. G. Bertozzi

Correspondence and/or questions should be directed to:

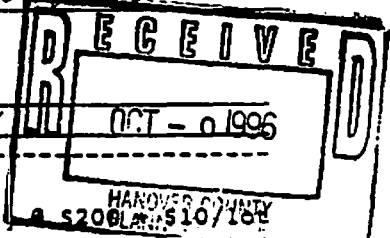
Name A. G. Bertozzi Telephone —  
Address 3006 IMPALA PLACE, RICHMOND VA 23228-4226

FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) [ ] @ \$500 (With lots) [ ] @ \$200 + \$10/lot  
Residential [✓] @ \$200 + \$10/lot  $\times 3 = 30$  Resubdivision [ ] \$100 + \$10/lot  
Preliminary Approved No [ ] Yes [ ] Date —

NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

\* Engineer Richard L. Baird Jr. 673-8821  
1910 Byrd Ave, Suite 200, Richmond VA 23230  
\$230 GB pd 10/9/96



HCP 84-7

# CHECKLIST FOR FINAL SUBDIVISION PLATS

TITLE II ☐ TITLE III ☐ ADMINISTRATIVE ☒

## GENERAL REQUIREMENTS:

### 1. Required copies of subdivision plats (see note):

- ☐ a. Two (2) 16" x 24" mylars - 1½" margin at top and left side, ½" margin at bottom and right side. (One linen copy may be substituted for one mylar). Only the original or a first generation unreduced black line copy of the original shall be accepted for recordation.
- ☒ b. Fifteen (15) 16" x 24" paper prints - 1½" margin at top and left side, ½" margin at bottom and right side, folded no larger than 9" x 14".
- ☐ c. One mylar plat reduction @ 1":200' scale (if necessary).
- ☐ d. Two mylar plat reductions @ 1":600' scale.

NOTE: These mylars are not required until the final plat has been tentatively approved and the plat is ready for recordation. One mylar reduction @ 1":600' is always required; the remaining 1":600' reduction and the 1":200' reduction are only required with subdivisions involving more than one (1) lot, or single lots of less than one (1) acre.

### 2. Title Block, to be located consistently on all streets, and to include the following information:

- ☒ a. Name of subdivision.
- ☒ b. Magisterial district, county, state.
- ☒ c. Name(s) of owner(s) and developer.
- ☒ d. Name of surveyor or engineer who prepared the plat.
- ☒ e. Scale of plat (1":200').
- ☒ f. Date of completion and any subsequent revisions.
- ☒ g. Number of sheets - match lines.

### 3. Information Block, to include the following information:

- ☒ a. Total area in subdivision.
- ☒ b. Total area in lots.
- ☒ c. Total area in road rights-of-way.
- ☒ d. Total area in common areas.
- ☒ e. Total number of lots.
- ☒ f. Parcel numbers (from County tax maps) (NOTE: if subdivision comprises more than one (1) parcel, the parcel number and area of each should be shown).
- ☒ g. Zoning of parcel(s). 475
- ☒ h. Traffic zone

- ☒ 4. Approval Block, 3" x 5".  
☒ 5. True north arrow.  
☒ 6. Vicinity sketch, at a scale of 1":2000'.  
☒ 7. Boundary survey, showing bearings and distances.  
☒ 8. Zoning boundaries and districts on site and all proffers accepted as part of any rezoning which affects the subject parcel.  
 9. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten seconds, for the following:  
☒ a. Lot layout, lot numbers, block letters, and dimensions of lots.  
☒ b. Area and frontage of lots.  
☒ c. Location, width, and names (numbers of all existing or platted streets and public ways adjoining the subdivision).  
☒ d. Location, width, and purpose of other rights-of-way and easements.  
☒ e. Location of existing physical features, including buildings, cemeteries and burial sites, overhead power poles and lines, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplains.  
☒ f. Location of the subdivision as part of some larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.  
☒ 10. The data of all curves along the road frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.  
☒ 11. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the Director.  
☒ 12. Names and locations of abutting subdivisions.  
☒ 13. Names of owners, tax parcel numbers, and zoning of parcels, both within and adjoining subdivision.  
☒ 14. Owners Statement (Form HCP 84-18).

- ☒ 15. Surveyor's/Engineers Certificate.
- ☒ 16. All information required for compliance with Chapter 10, Article II, Hanover County Code: Chesapeake Bay Preservation (Certification or Water Quality Impact Assessment).
- 17. A notation that all utilities shall be installed underground (except in subdivisions of industrially zoned property M-1, M-2, M-3).
- ☒ 18. A notation that a plat showing the approved locations for primary and secondary drainfields for each lot (where required) is on file with the Hanover County Health Department.
- ☒ 19. Source of Title Certificate.
- 20. Copies of documents establishing restrictive covenants, buyers' affidavits, and homeowners association (where applicable).
- ☒ 21. Complete application form.
- ☒ 22. Review fee.
- 23. Recordation fee, at \$10 per sheet for the record set, payable to the Clerk of the Circuit Court.

Information numbered 1-22 are required for Title III Subdivisions and Administrative Subdivisions, both Title II and Title III. Title II Subdivisions require items 1-25 plus the following:

- 23. Location(s) of streets, showing widths and names.
- 24. Estimated total number of gallons per day of water system requirements where a distribution system is proposed.
- 25. Estimated total number of gallons per day to be treated where a central sewage facility is proposed.
- 26. Location, size, and types of existing and proposed utilities, including sanitary sewers, storm drains, water mains, manholes, and underground conduits.

Title III Subdivisions require items 1-26 plus the following:

- 27. Administration of requirements statement for road improvements in Title III Subdivisions (Form HCP 84-18).
- 28. Provide copies of the "first division" deeds (if applicable).



# COMMONWEALTH of VIRGINIA

IN COOPERATION WITH THE  
STATE DEPARTMENT OF HEALTH

## HANOVER COUNTY HEALTH DEPARTMENT

BOX 67, HANOVER, VIRGINIA 23069

Name of Proposed Subdivision SULAR MAPLE Sec. "A"

Number of Acres in Proposed Subdivision                     

Location ON RT. 54 NEAR MONTAGUE

Section                      Parcel                     

Land Owner and/or Developer's Name A.B. Bertozzi

Address 3006 IMPALA PLACE

Phone No. 266-9656

Name of Engineering Firm Richard L. Baird, Jr. P.E.

Address 1910 Byrd Ave Suite 200

Phone No. 673-2821

Public Water: Yes ☐ No ☒ If Answer Is No, State Reason                     

water lines do not extend to this area

Public Sewer: Yes ☐ No ☒ If Answer Is No, State Reason                     

Public Sewer not serving this area

Number of Proposed Lots 3

Minimum Size of Lots: Length 2350 Width 250

Proposed Setback 60 Front 25 Side 50 Aggregate side, 30 rear

Maximum Number Bedrooms Per House                     

Signature A.B. Bertozzi  
Owner and/or Developer

HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE ☐ TITLE ☐ ADMINISTRATIVE ☒

HCP 84-6  
REVISED 4:2.92 PC

Please type or print in black ink

Name of Subdivision SUGAR MAPLE  
Section B Area 22.72 Ac Zoning Class A-1  
No. of Lots 3 Tax Parcel No(s). —  
Owner A. G. Bertozzi Telephone 266-9656  
Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226  
Developer (SAME AS OWNER) Telephone —  
Address —

★ Engineer (Survey) Charles G. Patterson Telephone 262-8878  
Address 1007 ETHELWOOD ROAD, GLEN ALLEN, VA 23060

Water: Public ☐ Private ☒ Sewer: Public ☐ Private ☒

Is the property within an Agricultural/Forestral District? Yes ☐ No ☐

Has sludge ever been deposited on the property? Yes ☐ No ☒ Date —

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES ☐ NO ☐ If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

As owner of this property or the authorized agent therefore, I hereby certify this application is complete and accurate to the best of my knowledge.

Respectfully submitted this 9 day of Sept 1996

SIGNED A. G. Bertozzi

Print Name A. G. Bertozzi

Correspondence and/or questions should be directed to:

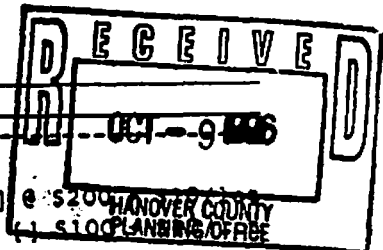
Name A. G. Bertozzi Telephone —  
Address 3006 Impala place, Richmond VA 23228-4226

FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) ☐ @ \$500 (With lots) ☐ @ \$200  
Residential ☒ @ \$200 + \$10/lot X 3030 Resubdivision ☐ @ \$100  
Preliminary Approved No ☐ Yes ☐ Date —

NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

★ Engineer Richard L. Baird Jr. 673-8821  
1910 Byrd Ave Suite 200, Richmond VA 23230  
\$230.75 Pd 10/9/96.



HCP 84-7

## CHECKLIST FOR FINAL SUBDIVISION PLATS

TITLE II ☐TITLE III ☐ADMINISTRATIVE ☒GENERAL REQUIREMENTS:

## 1. Required copies of subdivision plats (see note):

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☒ ☐ b. Fifteen (15) 16" x 24" paper prints - 1½" margin at top and left side, ½" margin at bottom and right side, folded no larger than 9" x 14".  
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☒ ☐ b. Magisterial district, county, state.  
☒ ☐ c. Name(s) of owner(s) and developer.  
☒ ☐ d. Name of surveyor or engineer who prepared the plat.  
☒ ☐ e. Scale of plat (1":200').  
☒ ☐ f. Date of completion and any subsequent revisions.  
☒ ☐ g. Number of sheets - match lines.

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- ☒ ☐ a. Total area in subdivision.  
☒ ☐ b. Total area in lots.  
☒ ☐ c. Total area in road rights-of-way.  
☒ ☐ d. Total area in common areas.  
☒ ☐ e. Total number of lots.  
☒ ☐ f. Parcel numbers (from County tax maps) (NOTE: if subdivision comprises more than one (1) parcel, the parcel number and area of each should be shown).  
☒ ☐ g. Zoning of parcel(s). 480

- ☒ 4. Approval Block, 3" x 5".
- ☒ 5. True north arrow.
- ☒ 6. Vicinity sketch, at a scale of 1":2000'.
- ☒ 7. Boundary survey, showing bearings and distances.
- ☒ 8. Zoning boundaries and districts on site and all proffers accepted as part of any rezoning which affects the subject parcel.
- 9. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten seconds, for the following:
  - ☒ a. Lot layout, lot numbers, block letters, and dimensions of lots.
  - ☒ b. Area and frontage of lots.
  - ☒ c. Location, width, and names (numbers of all existing or platted streets and public ways adjoining the subdivision.
  - ☒ d. Location, width, and purpose of other rights-of-way and easements.
  - ☒ e. Location of existing physical features, including buildings, cemeteries and burial sites, overhead power poles and lines, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplains.
  - ☒ f. Location of the subdivision as part of some larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.
- ☒ 10. The data of all curves along the road frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.
- ☒ 11. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the Director.
- ☒ 12. Names and locations of abutting subdivisions.
- ☒ 13. Names of owners, tax parcel numbers, and zoning of parcels, both within and adjoining subdivision.
- ☒ 14. Owners Statement (Form HCP 84-18).



- ☒ 15. Surveyor's/Engineers Certificate.
- ☒ 16. All information required for compliance with Chapter 10, Article II, Hanover County Code: Chesapeake Bay Preservation (Certification or Water Quality Impact Assessment).
- 17. A notation that all utilities shall be installed underground (except in subdivisions of industrially zoned property M-1, M-2, M-3).
- ☒ 18. A notation that a plat showing the approved locations for primary and secondary drainfields for each lot (where required) is on file with the Hanover County Health Department.
- ☒ 19. Source of Title Certificate.
- 20. Copies of documents establishing restrictive covenants, buyers' affidavits, and homeowners association (where applicable).
- ☒ 21. Complete application form.
- ☒ 22. Review fee.
- 23. Recordation fee, at \$10 per sheet for the record set, payable to the Clerk of the Circuit Court.

Information numbered 1-22 are required for Title III Subdivisions and Administrative Subdivisions, both Title II and Title III. Title II Subdivisions require items 1-25 plus the following:

- 23. Location(s) of streets, showing widths and names.
- 24. Estimated total number of gallons per day of water system requirements where a distribution system is proposed.
- 25. Estimated total number of gallons per day to be treated where a central sewage facility is proposed.
- 26. Location, size, and types of existing and proposed utilities, including sanitary sewers, storm drains, water mains, manholes, and underground conduits.

Title III Subdivisions require items 1-26 plus the following:

- 27. Administration of requirements statement for road improvements in Title III Subdivisions (Form HCP 84-18).
- 28. Provide copies of the "first division" deeds (if applicable).



# COMMONWEALTH of VIRGINIA

IN COOPERATION WITH THE  
STATE DEPARTMENT OF HEALTH

## HANOVER COUNTY HEALTH DEPARTMENT

BOX 67, HANOVER, VIRGINIA 23069

Name of Proposed Subdivision SUGAR MAPLE Sec. B

Number of Acres in Proposed Subdivision \_\_\_\_\_

Location ON RT. 54 near Montpelier

Section \_\_\_\_\_ Parcel \_\_\_\_\_

Land Owner and/or Developer's Name A.B. Bertozzi

Address 3006 IMPALA PLACE

Phone No. 266-9656

Name of Engineering Firm Richard L. Baird, Jr. P.E.

Address 1910 Byrd Ave Suite 200

Phone No. 673-8821

Public Water: Yes ☐ No ☒ If Answer Is No, State Reason \_\_\_\_\_

water lines do not extend to this area

Public Sewer: Yes ☐ No ☒ If Answer Is No, State Reason \_\_\_\_\_

Public Sewer not serving this area

Number of Proposed Lots 3

Minimum Size of Lots: Length ±350 Width 250

Proposed Setback 60 Front 25 side 50 Aggregate side, 30 rear

Maximum Number Bedrooms Per House \_\_\_\_\_

Signature A.B. Bertozzi  
Owner and/or Developer

483



HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE ☐ TITLE ☐ ADMINISTRATIVE ☒

HCP 84-6  
REVISED 4/2/92

Please type or print in black ink

Name of Subdivision SUGAR MAPLE  
Section C Area 24.31 Zoning Class A-1  
No. of Lots 3 Tax Parcel No(s). —  
Owner A. G. Beetzzi Telephone 266-9656  
Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226  
Developer (SAME AS OWNER) Telephone —  
Address —

\* Engineer (Survey) Charles G. Patterson Telephone 262-8878

Address 1007 ETHELWOOD ROAD, Glen Allen, VA 23060

Water: Public ☐ Private ☒ Sewer: Public ☐ Private ☒

Is the property within an Agricultural/Forestral District? Yes ☐ No ☐

Has sludge ever been deposited on the property? Yes ☐ No ☒ Date —

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES ☐ NO ☐ If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

As owner of this property or the authorized agent therefore, I hereby certify this application is complete and accurate to the best of my knowledge.

Respectfully submitted this 9 day of Sept October, 19 96

SIGNED A. G. Beetzzi

Print Name A. G. Beetzzi

Correspondence and/or questions should be directed to:

Name A. G. Beetzzi Telephone —  
Address 3006 IMPALA PLACE, RICHMOND VA 23228-4226

FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) ☐ @ \$500 (With lots) ☐ @ \$200 + \$10/lot  
Residential ☒ @ \$200 + \$10/lot 3 = 90 Resubdivision ☐ \$100 + \$10/lot  
Preliminary Approved No ☐ Yes ☐ Date —

NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

\* Engineer Richard L. Baird Jr. 673-8821  
1910 Byrd Ave Suite 200, Richmond VA 23230  
484  
220 PM 6/19/96

HCP 84-7

## CHECKLIST FOR FINAL SUBDIVISION PLATS

TITLE II ☐ TITLE III ☐ ADMINISTRATIVE ☒GENERAL REQUIREMENTS:

## 1. Required copies of subdivision plats (see note):

- \_\_\_\_\_ a. Two (2) 16" x 24" mylars - 1½" margin at top and left side, ½" margin at bottom and right side. (One linen copy may be substituted for one mylar). Only the original or a first generation unreduced black line copy of the original shall be accepted for recordation.
- ✓ \_\_\_\_\_ b. Fifteen (15) 16" x 24" paper prints - 1½" margin at top and left side, ½" margin at bottom and right side, folded no larger than 9" x 14".
- \_\_\_\_\_ c. One mylar plat reduction @ 1":200' scale (if necessary).
- \_\_\_\_\_ d. Two mylar plat reductions @ 1":600' scale.

NOTE: These mylars are not required until the final plat has been tentatively approved and the plat is ready for recordation. One mylar reduction @ 1":600' is always required; the remaining 1":600' reduction and the 1":200' reduction are only required with subdivisions involving more than one (1) lot, or single lots of less than one (1) acre.

## 2. Title Block, to be located consistently on all streets, and to include the following information:

- ✓ \_\_\_\_\_ a. Name of subdivision.
- ✓ \_\_\_\_\_ b. Magisterial district, county, state.
- ✓ \_\_\_\_\_ c. Name(s) of owner(s) and developer.
- ✓ \_\_\_\_\_ d. Name of surveyor or engineer who prepared the plat.
- ✓ \_\_\_\_\_ e. Scale of plat (1":200').
- ✓ \_\_\_\_\_ f. Date of completion and any subsequent revisions.
- ✓ \_\_\_\_\_ g. Number of sheets - match lines.

## 3. Information Block, to include the following information:

- ✓ \_\_\_\_\_ a. Total area in subdivision.
- ✓ \_\_\_\_\_ b. Total area in lots.
- ✓ \_\_\_\_\_ c. Total area in road rights-of-way.
- N/A \_\_\_\_\_ d. Total area in common areas.
- \_\_\_\_\_ e. Total number of lots.
- \_\_\_\_\_ f. Parcel numbers (from County tax maps) (NOTE: if subdivision comprises more than one (1) parcel, the parcel number and area of each should be shown).
- ✓ \_\_\_\_\_ g. Zoning of parcel(s). 485

- ☒ 4. Approval Block, 3" x 5".  
☒ 5. True north arrow.  
☒ 6. Vicinity sketch, at a scale of 1":2000'.  
☒ 7. Boundary survey, showing bearings and distances.  
☒ 8. Zoning boundaries and districts on site and all proffers accepted as part of any rezoning which affects the subject parcel.  
 9. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten seconds, for the following:  
☒ a. Lot layout, lot numbers, block letters, and dimensions of lots.  
☒ b. Area and frontage of lots.  
☒ c. Location, width, and names (numbers of all existing or platted streets and public ways adjoining the subdivision).  
☒ d. Location, width, and purpose of other rights-of-way and easements.  
☒ e. Location of existing physical features, including buildings, cemeteries and burial sites, overhead power poles and lines, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplains.  
☒ f. Location of the subdivision as part of some larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.  
☒ 10. The data of all curves along the road frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.  
☒ 11. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the Director.  
☒ 12. Names and locations of abutting subdivisions.  
☒ 13. Names of owners, tax parcel numbers, and zoning of parcels, both within and adjoining subdivision.  
☒ 14. Owners Statement (Form HCP 84-18).

- ☒ 15. Surveyor's/Engineers Certificate.
- ☒ 16. All information required for compliance with Chapter 10, Article II, Hanover County Code: Chesapeake Bay Preservation (Certification or Water Quality Impact Assessment).
- 17. A notation that all utilities shall be installed underground (except in subdivisions of industrially zoned property M-1, M-2, M-3).
- ☒ 18. A notation that a plat showing the approved locations for primary and secondary drainfields for each lot (where required) is on file with the Hanover County Health Department.
- ☒ 19. Source of Title Certificate.
- 20. Copies of documents establishing restrictive covenants, buyers' affidavits, and homeowners association (where applicable).
- ☒ 21. Complete application form.
- ☒ 22. Review fee.
- 23. Recordation fee, at \$10 per sheet for the record set, payable to the Clerk of the Circuit Court.

Information numbered 1-22 are required for Title III Subdivisions and Administrative Subdivisions, both Title II and Title III. Title II Subdivisions require items 1-25 plus the following:

- 23. Location(s) of streets, showing widths and names.
- 24. Estimated total number of gallons per day of water system requirements where a distribution system is proposed.
- 25. Estimated total number of gallons per day to be treated where a central sewage facility is proposed.
- 26. Location, size, and types of existing and proposed utilities, including sanitary sewers, storm drains, water mains, manholes, and underground conduits.

Title III Subdivisions require items 1-26 plus the following:

- 27. Administration of requirements statement for road improvements in Title III Subdivisions (Form HCP 84-18).
- 28. Provide copies of the "first division" deeds (if applicable).



IN COOPERATION WITH THE  
STATE DEPARTMENT OF HEALTH

# COMMONWEALTH of VIRGINIA

## HANOVER COUNTY HEALTH DEPARTMENT

BOX 67, HANOVER, VIRGINIA 23068

Name of Proposed Subdivision SUGAR MAPLE Sec "C"

Number of Acres in Proposed Subdivision \_\_\_\_\_

Location ON RT. 54 NEAR MONTAGUE

Section \_\_\_\_\_ Parcel \_\_\_\_\_

Land Owner and/or Developer's Name A. B. Bertozzi

Address 3006 IMPALA PLACE

Phone No. 266-9656

Name of Engineering Firm Richard L. Baird Jr. P.E.

Address 1910 BYRD AVE SUITE 200

Phone No. 673-8821

Public Water: Yes ☐ No ☒ If Answer is No, State Reason \_\_\_\_\_

water lines do not extend to this area

Public Sewer: Yes ☐ No ☒ If Answer is No, State Reason \_\_\_\_\_

Public Sewer not serving this area

Number of Proposed Lots 3

Minimum Size of Lots: Length ±350 Width 250

Proposed Setback 60 Front 25 Side 50 Assesgate side, 30 rear

Maximum Number Bedrooms Per House \_\_\_\_\_

Signature A. B. Bertozzi  
Owner and/or Developer

488



HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE [] TITLE [] ADMINISTRATIVE ☒

HCP 84-6  
REVISED 4/2/92 PC

Please type or print in black ink

Name of Subdivision SUGAR MAPLE  
Section D Area ± 24.08 Ac Zoning Class A-1  
No. of Lots 3 Tax Parcel No(s) —  
Owner A. G. Bertozzi Telephone 266-9656  
Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226  
Developer (SAME AS OWNER) Telephone —  
Address —

★ Engineer (Survey) Charles G. Patterson Telephone 262-8878  
Address 1007 ETTHELWOOD ROAD, Glen Allen, VA 23060

Water: Public ☐ Private ☒ Sewer: Public ☐ Private ☒

Is the property within an Agricultural/Forestral District? Yes ☐ No ☐

Has sludge ever been deposited on the property? Yes ☐ No ☒ Date —

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES ☐ NO ☐ If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

As owner of this property or the authorized agent therefore, I hereby certify this application is complete and accurate to the best of my knowledge.

Respectfully submitted this 9 day of Sept October, 19 96

SIGNED A. G. Bertozzi

Print Name A. G. Bertozzi

Correspondence and/or questions should be directed to:

Name A. G. Bertozzi Telephone —  
Address 3006 Impala place, Richmond VA 23228-4226

FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) ☐ @ \$500

(With lots) ☐ @ \$500

Residential ☒ @ \$200 + \$10/lot 3 = 30

Resubdivision ☐ \$100

Preliminary Approved

No ☐

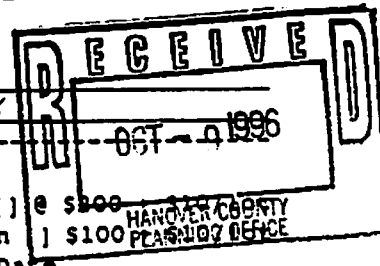
Yes ☐

Date —

NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

★ Engineer Richard L. Baird Jr. 673-8821  
1910 Byrd Ave, Suite 200, Richmond VA 23230

\$234.85 6B 10/9/96





HCP 84-7

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- ✓ \_\_\_\_\_ d. Name of surveyor or engineer who prepared the plat.
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- \_\_\_\_\_ e. Total number of lots.
- \_\_\_\_\_ f. Parcel numbers (from County tax maps) (NOTE: if subdivision comprises more than one (1) parcel, the parcel number and area of each should be shown).
- ✓ \_\_\_\_\_ g. Zoning of parcel(s). 490

- ✓ — 4. Approval Block, 3" x 5".
- ✓ — 5. True north arrow.
- ✓ — 6. Vicinity sketch, at a scale of 1":2000'.
- ✓ — 7. Boundary survey, showing bearings and distances.
- ✓ — 8. Zoning boundaries and districts on site and all proffers accepted as part of any rezoning which affects the subject parcel.
9. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten seconds, for the following:
- ✓ — a. Lot layout, lot numbers, block letters, and dimensions of lots.
- ✓ — b. Area and frontage of lots.
- ✓ — c. Location, width, and names (numbers of all existing or platted streets and public ways adjoining the subdivision.
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- ✓ — 11. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the Director.
- N/A — 12. Names and locations of abutting subdivisions.
- ✓ — 13. Names of owners, tax parcel numbers, and zoning of parcels, both within and adjoining subdivision.
- ✓ — 14. Owners Statement (Form HCP 84-18).

- ☒ 15. Surveyor's/Engineers Certificate.
- ☒ 16. All information required for compliance with Chapter 10, Article II, Hanover County Code: Chesapeake Bay Preservation (Certification or Water Quality Impact Assessment).
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# COMMONWEALTH of VIRGINIA

IN COOPERATION WITH THE  
STATE DEPARTMENT OF HEALTH

## HANOVER COUNTY HEALTH DEPARTMENT

BOX 67, HANOVER, VIRGINIA 23069

Name of Proposed Subdivision SUGAR MAPLE Sec. D

Number of Acres in Proposed Subdivision \_\_\_\_\_

Location ON RT. 54 near Montpelier

Section \_\_\_\_\_ Parcel \_\_\_\_\_

Land Owner and/or Developer's Name A. B. Bertozzi

Address 3006 IMPALA PLACE

Phone No. 266-9656

Name of Engineering Firm Richard L. Baird Jr. P.E.

Address 1910 Byrd Ave Suite 210

Phone No. 673-8821

Public Water: Yes ☐ No ☒ If Answer Is No, State Reason \_\_\_\_\_

Water lines do not extend to this area

Public Sewer: Yes ☐ No ☒ If Answer Is No, State Reason \_\_\_\_\_

Public Sewer not serving this area

Number of Proposed Lots 3

Minimum Size of Lots: Length ±350 Width 250

Proposed Setback 60 Front 25 Side 50 Aggregate side, 30 rear

Maximum Number Bedrooms Per House \_\_\_\_\_

Signature A. B. Bertozzi  
Owner and/or Developer

HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE ☐ TITLE ☐ ADMINISTRATIVE ☒

Please type or print in black ink

Name of Subdivision SUGAR MAPLE  
Section E Area 22.71 A Zoning Class A-1  
No. of Lots 3 Tax Parcel No(s). —  
Owner A. G. Bertozzi Telephone 266-9656  
Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226  
Developer (SAME AS OWNER) Telephone —  
Address —

\* Engineer (Survey) Charles G. Patterson Telephone 262-8878  
Address 1007 ETHELWOOD ROAD, Glen Allen, VA 23066

Water: Public ☐ Private ☒ Sewer: Public ☐ Private ☒

Is the property within an Agricultural/Forestral District? Yes ☐ No ☐

Has sludge ever been deposited on the property? Yes ☐ No ☒ Date —

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES ☐ NO ☐ If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

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Respectfully submitted this 9 day of Sept October, 19 96

SIGNED A. G. Bertozzi

Print Name A. G. Bertozzi

Correspondence and/or questions should be directed to:

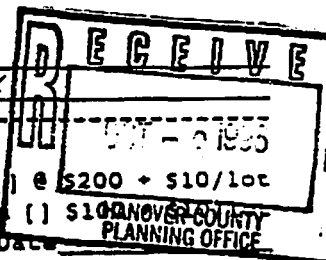
Name A. G. Bertozzi Telephone —  
Address 3006 Impala place, Richmond VA 23228-4226

FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) ☐ @ \$500 (With lots) ☐ @ \$200 + \$10/lot  
Residential ☒ @ \$200 + \$10/lot XS Resubdivision ☐ \$100  
Preliminary Approved No ☐ Yes ☐ Date —

NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

\* Engineer Richard L. Baird Jr. 673-8821  
1910 Byrd Ave, Suite 200, Richmond VA 23230  
\$230 pd GB 10/9/96



HCP 84-7

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- ✓ \_\_\_\_\_ g. Zoning of parcel(s). 495

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# COMMONWEALTH of VIRGINIA

IN COOPERATION WITH THE  
STATE DEPARTMENT OF HEALTH

## HANOVER COUNTY HEALTH DEPARTMENT

BOX 67, HANOVER, VIRGINIA 23069

Name of Proposed Subdivision SULAR MAPLE Sec. "E"

Number of Acres in Proposed Subdivision \_\_\_\_\_

Location ON RT. 54 NEAR MONTAHER

Section \_\_\_\_\_ Parcel \_\_\_\_\_

Land Owner and/or Developer's Name A.B. Bertozzi

Address 3006 IMPALA PLACE

Phone No. 266-9656

Name of Engineering Firm Richard L. Baird, Jr. P.E.

Address 1910 BYRD AVE Suite 210

Phone No. 673-8821

Public Water: Yes ☐ No ☒ If Answer Is No, State Reason \_\_\_\_\_

water lines do not extend to this area

Public Sewer: Yes ☐ No ☒ If Answer is No, State Reason \_\_\_\_\_

Public Sewer not serving this area

Number of Proposed Lots 3

Minimum Size of Lots: Length ±350 Width 250

Proposed Setback 60 Feet 25 side 50 aggregate side, 30 rear

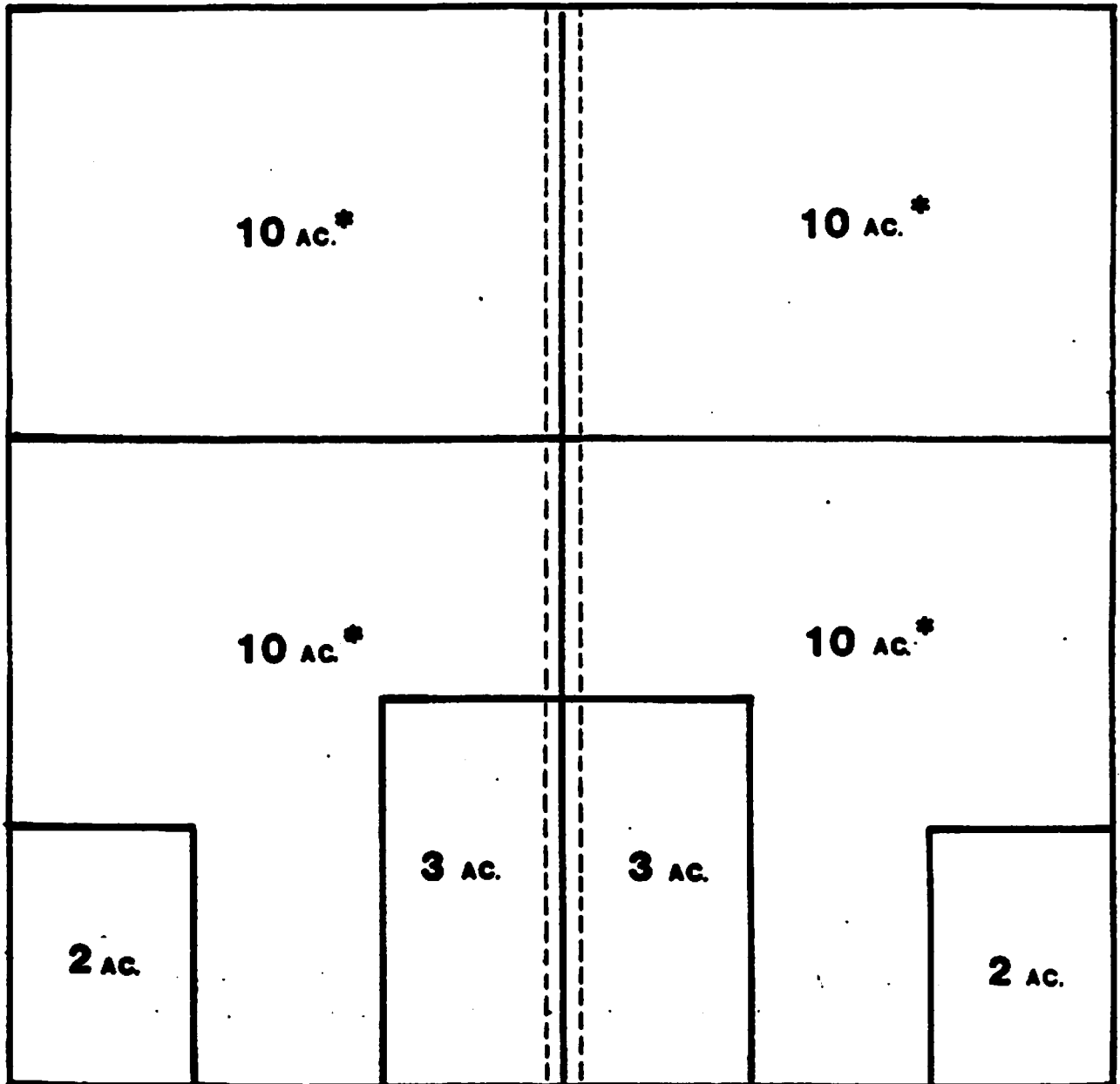
Maximum Number Bedrooms Per House \_\_\_\_\_

Signature A. Bertozzi  
Owner and/or Developer

Diagrams  
25 acre  
rule

**50 ACRE PARCEL**

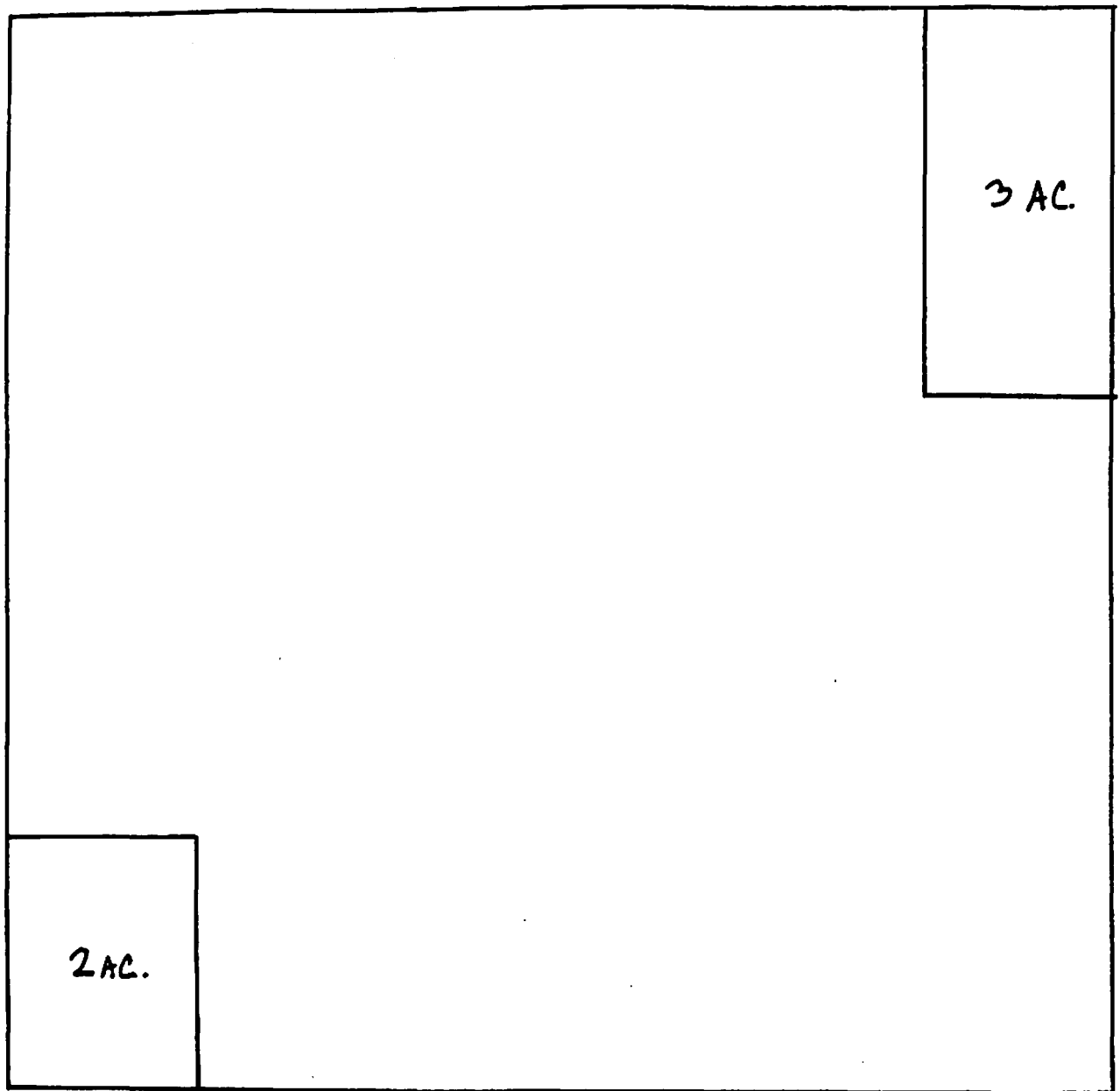
**TOTAL LOTS: 8 LOTS/4 LESS THAN 10 ACRES**



**STATE ROAD (50' R/W)**

**\* SUBDIVISION LOTS**

"25-Acre Rule" Division



Division Without  
Use of "25-Acre Rule"

Subdivisions  
Sent  
Back

CERTIFICATE

I, June D. Stevens, Office Manager, and custodian of the records for the Hanover County Planning Department, and more particularly, custodian of "Subdivisions Sent Back (Filed Prior to Oct. 10)", do hereby authenticate the attached copy of the previously listed document as a true and accurate copy.

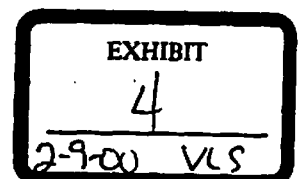
June D. Stevens  
June D. Stevens, Office Manager

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF Hanover, to-wit:

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of February, 2000, by June D. Stevens, Office Manager.

My commission expires: 4/30/2003

Charles E. D. McD  
Notary Public



CERTIFICATE

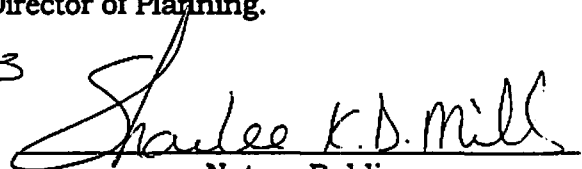
I, Michael E. Crescenzo, Director of Planning, certify that I am the person to whom June D. Stevens, Office Manager, reports, and I certify that the original "Subdivisions Sent Back (Filed Prior to Oct. 10)" is in the custody of June D. Stevens.

  
Michael E. Crescenzo, Director of Planning

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF Hanover, to-wit:

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of February, 2000, by Michael E. Crescenzo, Director of Planning.

My commission expires: 4/30/2003

  
Notary Public

## Subdivisions Sent Back

(Filed Prior to Oct. 10)

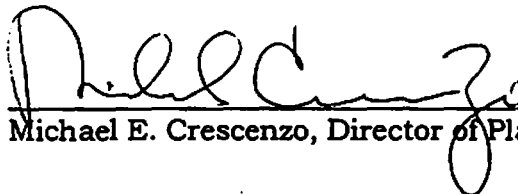
| Subdivision            | Section | Date Filed | Date Returned | Reason  |
|------------------------|---------|------------|---------------|---|
| Cochrane Place         | A - C   | 8/30/96    | 10/25/96      | 1st Div. not recorded properly                  |
| Ingalls                |         | 9/3/96     | 10/29/96      | No 1st Div. recorded                            |
| Farston                | A & B   | 9/10/96    | 10/4/96       | Title IV plat not recorded correctly            |
| Rose Cottage           | 1 & 2   | 9/25/96    | 10/31/96      | Title IV plat not recorded correctly            |
| Kelley Grove Estates   | A - C   | 10/3/96    | 10/29/96      | No metes and bounds                             |
| Eagles Trace           |         | 10/3/96    | 10/29/96      | Ineligible for lots < 10 acres                  |
| Landora Bridge Estates |         | 10/7/96    | 10/29/96      | No 1st Div. recorded                            |
| Bourne Acres West      | B       | 10/8/96    | 10/29/96      | Incomplete metes and bounds                     |
| Rocky Mills            | B       | 10/8/96    | 10/29/96      | No metes and bounds                             |
| Sugar Maple            | A - E   | 10/9/96    | 10/31/96      | No 1st Div. recorded                            |
| Poplar Gate            | A - I   | 10/9/96    | 10/29/96      | 25-acre and 1st divisions recorded on same plat |
| Furlong                | J - S   | 10/9/96    | 10/29/96      | 25-acre and 1st divisions recorded on same plat |

Pin Oak

CERTIFICATE

I, Michael E. Crescenzo, Director of Planning, certify that whom June D. Stevens, Office Manager, reports, and I certify that the originals of the following documents are in the custody of June D. Stevens:

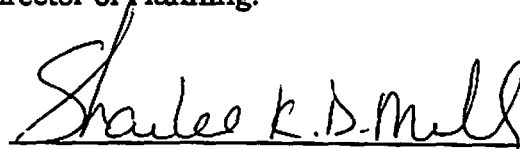
1. Letter dated October 10, 1995, to A. G. Bertozzi from Greg Baka regarding "Pin Oak Place, Sections A and B";
2. Plat by Charles G. Patterson, Jr., titled "Plat Showing First Division of Parcel 'A' of a Tract of Land Owned by Dogwood Knoll Farm Partnership and Recorded in Plat Book 35 Page 258, South Anna Magisterial District, Hanover County, Virginia" dated October 24, 1995;
3. Plat by Charles G. Patterson, Jr., titled "Pin Oak Place, Section 'A', South Anna Magisterial District, Hanover County, Virginia" dated October 25, 1995;
4. Plat by Charles G. Patterson, Jr., titled "Plat Showing First Division of Parcel 'B' of a Tract of Land Owned by Dogwood Knoll Farm Partnership and Recorded in Plat Book 35 Page 258, South Anna Magisterial District, Hanover County, Virginia" dated October 24, 1995; and
5. Plat by Charles G. Patterson, Jr., titled "Pin Oak Place, Section 'B', South Anna Magisterial District, Hanover County, Virginia" dated October 25, 1995.

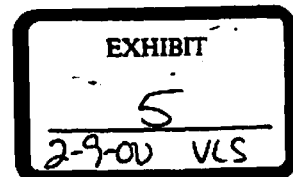
  
Michael E. Crescenzo, Director of Planning

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF HANOVER, to-wit:

The foregoing instrument was acknowledged before me this 9th day of February, 2000, by Michael E. Crescenzo, Director of Planning.

My commission expires: 4/30/2003

  
Notary Public

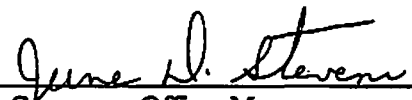


CERTIFICATE

I, June D. Stevens, Office Manager, and custodian of the records for the Hanover County Planning Department, and more particularly, custodian of the:

1. Letter dated October 10, 1995, to A. G. Bertozzi from Greg Baka regarding "Pin Oak Place, Sections A and B";
2. Plat by Charles G. Patterson, Jr., titled "Plat Showing First Division of Parcel 'A' of a Tract of Land Owned by Dogwood Knoll Farm Partnership and Recorded in Plat Book 35 Page 258, South Anna Magisterial District, Hanover County, Virginia" dated October 24, 1995;
3. Plat by Charles G. Patterson, Jr., titled "Pin Oak Place, Section 'A', South Anna Magisterial District, Hanover County, Virginia" dated October 25, 1995; and
4. Plat by Charles G. Patterson, Jr., titled "Plat Showing First Division of Parcel 'B' of a Tract of Land Owned by Dogwood Knoll Farm Partnership and Recorded in Plat Book 35 Page 258, South Anna Magisterial District, Hanover County, Virginia" dated October 24, 1995; and
5. Plat by Charles G. Patterson, Jr., titled "Pin Oak Place, Section 'B', South Anna Magisterial District, Hanover County, Virginia" dated October 25, 1995;

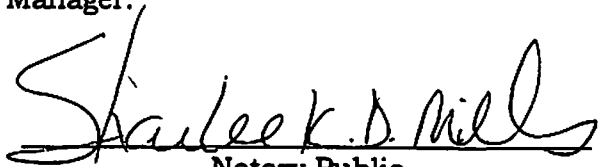
do hereby authenticate the attached copy of the previously listed documents as a true and accurate copy.

  
June D. Stevens, Office Manager

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF Hanover, to-wit:

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of February, 2000, by June D. Stevens, Office Manager.

My commission expires: 4/30/2000

  
Notary Public



BOARD OF SUPERVISORS

WILLIAM T. BOLLING, CHAIRMAN  
CHICKAHOMINY DISTRICT

R. J. KLOTZ, JR., VICE CHAIRMAN  
HENRY DISTRICT

WILLIAM C. FRAZIER  
SOUTH ANNA DISTRICT

RICHARD S. GILLIS, JR.  
ASHLAND DISTRICT

AUBREY M. STANLEY, JR.  
BEAVERDAM DISTRICT

ELTON J. WADE, SR.  
COLD HARBOR DISTRICT

J. T. "JACK" WARD  
MECHANICSVILLE DISTRICT



JOHN F. BERRY  
COUNTY ADMINISTRATOR

RICHARD R. JOHNSON  
DEPUTY COUNTY ADMINISTRATOR

STERLING E. RIVES, III  
COUNTY ATTORNEY

HANOVER COUNTY

P. O. BOX 470

HANOVER, VIRGINIA 23069-0470

October 10, 1995

A.G. Bertozzi  
3006 Impala Place  
Richmond, VA 23228-4226

RE: Pin Oak Place, Sections A and B

Dear Mr. Bertozzi:

Staff has reviewed your submission of plats for the above-captioned subdivisions and found that the following matters need to be addressed. Please revise the plats as follows:

1. Has a Title IV plat been recorded at the Clerk's Office for the large 29.15 acre and 36.38 acre parcels?
2. The private road must be built to the following standards before issuance of any building permits:

*"Private roads shall include no less than eighteen (18) feet of usable road surface covered with gravel of a minimum depth of one inch at the time of inspection, exclusive of drainage facilities, cleared of obstructions, with positive drainage."*

3. Prior to recordation, a street sign will need to be posted at the intersection of Woodstock Road and Forrest Oak Lane. Also, the first 25 feet of the private road (i.e. - the apron) will need to be paved with asphalt.

4. The following notation must be shown on the plat:

*"Before issuance of any building permit in this subdivision all roads shall be improved to the standards required by the Hanover County Subdivision Ordinance or the applicant for a permit shall enter into a performance agreement and provide security for completion of the improvements."*

5. If subdivision is to be recorded prior to the completion of the road, a Deed of Easement must be executed. This would be done when final mylars are submitted.
6. Please submit a copy of the restrictive deed covenants for maintenance of the private road.
7. Final approval from the Health Department has been received, <sup>for</sup> recordation.
8. Please separate the amount of acreage in the private road right-of-way by each Section - A & B.
9. Please provide Corps of Engineers verification for the wetlands adjacent to the South Anna River. If they are contiguous, the limits of the R.P.A. will need to be shifted.
10. Final approval will be subject to the assignment of E-911 addresses.
11. Please submit a copy of the RRPDC road name approval form.
12. Remove the first divisions from these plats by removing the bold lines from their perimeter, adding their proper deed book and page number, and half-toning this information.
13. Please add the names of the owners, tax map numbers, and zoning of the adjacent parcels in Stone Horse Farms Subdivision.

14. Some concerns regarding the access of Lots 2A, 3A and the First Division (of Section A) were raised by the Zoning Administrator:
  - a. Will all three of these lots access Route 778?
  - b. Will Lot 2A be able to use Forrest Oak Lane as its access?
  - c. What is the distance of frontage for the First Division (of Section A)?
15. For recordation please remove the contours and all of the existing physical structures from the plat and submit the following:
  - a. Two (2) 16" x 24" mylars. Only the original or a first generation unreduced black line copy of the original shall be accepted for recordation. Original signatures required.
  - b. Five (5) 16" x 24" paper prints with signatures.
  - c. Two (2) mylar plat reductions at 1":600'.
  - d. Recordation fee, at \$13.00 per sheet for the record set, payable to R. L. Shelton, Clerk.

If you have any questions please contact the Planning Department at 537-6171.

Sincerely,



Greg Baka  
Planner

GB/sm/SUB

**PRINTER'S NOTE: PLAT MAPS ATTACHED TO  
EXHIBIT 5 ARE TOO LARGE TO BE REASONABLY  
REPRODUCED.**

**RICHARD L. BAIRD, P.E. CONSULTING ENGINEER**

1910 Byrd Avenue • Suite 210 • Richmond, Virginia 23230 • Tel. (804) 673-8821 • Fax (804) 673-5243

Sept. 14, 1995

Mr. Greg Baka  
Planner  
Hanover County Planning Department  
P.O.B. 470  
Hanover, VA 23069

RE: PIN OAK PLACE - SECTION "A"

Dear Mr. Baka:

Enclosed for final subdivision plat review are the following:

- 1) Application for Final Approval with checklist and filing fee of \$230.
- 2) Hanover County Health Department Application.
- 3) Water Quality Impact Assessment with filing fee of \$100.
- 4) Copy of subdivision restrictive covenants.
- 5) 15 prints of subdivision plat.

If there are any questions regarding this submittal please contact me at 673-8821.

Sincerely,



Richard Baird PE

**RICHARD L. BAIRD, P.E.** CONSULTING ENGINEER

---

1910 Byrd Avenue • Suite 210 • Richmond, Virginia 23230 • Tel. (804) 673-8821 • Fax (804) 673-5243

Sept. 14, 1995

Mr. Greg Baka  
Planner  
Hanover County Planning Department  
P.O.B. 470  
Hanover, VA 23069

RE: PIN OAK PLACE - SECTION "B"

Dear Mr. Baka:

Enclosed for final subdivision plat review are the following:

- 1) Application for Final Approval with checklist and filing fee of \$240.
- 2) Hanover County Health Department Application.
- 3) Water Quality Impact Assessment with filing fee of \$100.
- 4) Copy of subdivision restrictive covenants.
- 5) 15 prints of subdivision plat.

If there are any questions regarding this submittal please contact me at 673-8821.

Sincerely,



Richard Baird PE

checklist sign for both

HCP 84-6

REVISED 4/2/92 PC

HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE [ ] TITLE [ ] ADMINISTRATIVE [4]

Please type or print in black ink

Name of Subdivision PIN OAK PLACE

Section "A" Area 29.15 Ac. Zoning Class A-1

No. of Lots 3 Tax Parcel No(s). 42-99

Owner Dogwood Knoll Farm Partnership Telephone 266-9656

Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226

Developer A. G. Bertozzi Telephone 266-9656

Address 3006 IMPALA PLACE, RICHMOND, VA 23228-4226

\* Engineer (Survey) Charles G. Patterson, Jr. Telephone 262-8878

Address 1007 Ethelwood Road Glen Allen, VA 23060

Water: Public [ ] Private [☒] Sewer: Public [ ] Private [☒]

Is the property within an Agricultural/Forestral District? Yes [ ] No [☒]

Has sludge ever been deposited on the property? Yes [ ] No [☒] Date \_\_\_\_\_

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES [ ] NO [ ] If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

As owner of this property or the authorized agent therefore, I hereby certify this application is complete and accurate to the best of my knowledge.

Respectfully submitted this \_\_\_\_\_ day of September, 1995

SIGNED \_\_\_\_\_

Print Name A. G. Bertozzi

Correspondence and/or questions should be directed to:

Name A. G. Bertozzi Telephone 266-9656

Address 3006 Impala Place, Richmond, VA 23228-4226

FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) [ ] @ \$500 (With lots) [ ] @ \$200 + \$10/lot

Residential [ ] @ \$200 + \$10/lot Resubdivision [ ] \$100 + \$10/lot

Preliminary Approved No [ ] Yes [ ] Date \_\_\_\_\_

NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

\* Engineer Richard L. Baird (804) 673-8821  
1910 Byrd Ave, Suite 210, Richmond VA 23230

HANOVER COUNTY, VIRGINIA  
APPLICATION FOR FINAL APPROVAL  
TITLE [ ] TITLE [ ] ADMINISTRATIVE [4]

HCP 84-6  
REVISED 4:29:92 F

Please type or print in black ink

Name of Subdivision PIN OAK PLACE

Section "B" Area 29.15 Ac. zoning class A-1

No. of Lots 4 Tax Parcel No(s). 42-99

Owner Dogwood Knoll Farm Partnership Telephone 266-9656

Address 3006 IMPALA PLACE, RICHMOND, VA. 23228-4226

Developer A. G. Bertozzi Telephone 266-9656

Address 3006 IMPALA PLACE, RICHMOND VA 23228-4226

\* Engineer (Survey) Charles G. Patterson, Jr. Telephone 262-8878

Address 1007 Ethelwood Road Glen Allen, VA 23060

Water: Public [ ] Private [X] Sewer: Public [ ] Private [X]

Is the property within an Agricultural/Forestal District? Yes [ ] No [X]

Has sludge ever been deposited on the property? Yes [ ] No [X] Date \_\_\_\_\_

Have any twenty-five acre or greater parcels been divided and recorded within the past two (2) years? YES [ ] NO [ ] If yes, provide a copy of the deed(s).

Accompanying this application are fifteen (15) prints, folded no larger than 9" x 14", of the final plat of the proposed subdivision which conforms to the requirements and specifications of the Zoning and Subdivision Ordinances.

As owner of this property or the authorized agent therefore, I hereby certify this application is complete and accurate to the best of my knowledge.

Respectfully submitted this \_\_\_\_\_ day of September, 19 85

SIGNED \_\_\_\_\_

Print Name A. G. Bertozzi

Correspondence and/or questions should be directed to:

Name A. G. Bertozzi Telephone 266-9656  
Address 3006 Impala Place, Richmond, VA 23228-4226

FOR USE OF THE PLANNING DEPARTMENT

FEE: Commercial (without lots) [ ] @ \$500 (With lots) [ ] @ \$200 + \$10/lot  
Residential [ ] @ \$200 + \$10/lot Resubdivision [ ] \$100 + \$10/lot  
Preliminary Approved No [ ] Yes [ ] Date \_\_\_\_\_

NOTE: NO FEE SHALL BE REFUNDED UNLESS A WRITTEN REQUEST FOR WITHDRAWAL OF THE APPLICATION IS RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE (5) WORKING DAYS AFTER THE DATE OF APPLICATION.

\* Engineer Richard L. Baird (804) 673-8821  
1910 Byrd Ave, Suite 210, Richmond VA 23230



HCP 84-7

## CHECKLIST FOR FINAL SUBDIVISION PLATS

TITLE II ☐ TITLE III ☐ ADMINISTRATIVE ☒GENERAL REQUIREMENTS:

## 1. Required copies of subdivision plats (see note):

- \_\_\_\_\_ a. Two (2) 16" x 24" mylars - 1½" margin at top and left side, ½' margin at bottom and right side. (One linen copy may be substituted for one mylar). Only the original or a first generation unreduced black line copy of the original shall be accepted for recordation.
- ✓ \_\_\_\_\_ b. Fifteen (15) 16" x 24" paper prints - 1½" margin at top and left side, ½" margin at bottom and right side, folded no larger than 9" x 14".
- \_\_\_\_\_ c. One mylar plat reduction @ 1":200' scale (if necessary).
- \_\_\_\_\_ d. Two mylar plat reductions @ 1":600' scale.

NOTE: These mylars are not required until the final plat has been tentatively approved and the plat is ready for recordation. One mylar reduction @ 1":600' is always required; the remaining 1":600' reduction and the 1":200' reduction are only required with subdivisions involving more than one (1) lot, or single lots of less than one (1) acre.

## 2. Title Block, to be located consistently on all streets, and to include the following information:

- ✓ \_\_\_\_\_ a. Name of subdivision.
- ✓ \_\_\_\_\_ b. Magisterial district, county, state.
- ✓ \_\_\_\_\_ c. Name(s) of owner(s) and developer.
- ✓ \_\_\_\_\_ d. Name of surveyor or engineer who prepared the plat.
- ✓ \_\_\_\_\_ e. Scale of plat (1":200').
- ✓ \_\_\_\_\_ f. Date of completion and any subsequent revisions.
- ✓ \_\_\_\_\_ g. Number of sheets - match lines.

## 3. Information Block, to include the following information:

- ✓ \_\_\_\_\_ a. Total area in subdivision.
- ✓ \_\_\_\_\_ b. Total area in lots.
- ✓ \_\_\_\_\_ c. Total area in road rights-of-way.
- N/A \_\_\_\_\_ d. Total area in common areas.
- ✓ \_\_\_\_\_ e. Total number of lots.
- ✓ \_\_\_\_\_ f. Parcel numbers (from County tax maps) (NOTE: if subdivision comprises more than one (1) parcel, the parcel number and area of each should be shown).
- ✓ \_\_\_\_\_ g. Zoning of parcel(s). 514
- ✓ \_\_\_\_\_ h. Traffic zone.

- ☒ 4. Approval Block, 3" x 5".  
☒ 5. True north arrow.  
☒ 6. Vicinity sketch, at a scale of 1":2000'.  
☒ 7. Boundary survey, showing bearings and distances.  
☒ 8. Zoning boundaries and districts on site and all proffers accepted as part of any rezoning which affects the subject parcel.  
 9. The accurate location and dimensions, in feet and decimals of a foot to the nearest one-hundredth of a foot, and all bearings in degrees, minutes, and seconds to the nearest ten seconds, for the following:  
☒ a. Lot layout, lot numbers, block letters, and dimensions of lots.  
☒ b. Area and frontage of lots.  
☒ c. Location, width, and names (numbers of all existing or platted streets and public ways adjoining the subdivision.  
☒ d. Location, width, and purpose of other rights-of-way and easements.  
☒ e. Location of existing physical features, including buildings, cemeteries and burial sites, overhead power poles and lines, and all streams, washes, or ditches, including direction of flood, water level elevations, and floodplains.  
☒ f. Location of the subdivision as part of some larger subdivision (or tract of land) and by reference to permanent survey monuments with a tie to a section corner.  
☒ 10. N/A The data of all curves along the road frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, degree, arc length, tangent length, chord length, and chord bearings.  
☒ 11. Topography, at intervals of two (2) feet, unless waived or requested at a greater interval by the Director.  
☒ 12. Names and locations of abutting subdivisions.  
☒ 13. Names of owners, tax parcel numbers, and zoning of parcels, both within and adjoining subdivision.  
☒ 14. Owners Statement (Form HCP 84-18).

- ☒ 15. Surveyor's/Engineers Certificate.
- ☒ 16. All information required for compliance with Chapter 10, Article II, Hanover County Code: Chesapeake Bay Preservation (Certification or Water Quality Impact Assessment).
- 17. A notation that all utilities shall be installed underground (except in subdivisions of industrially zoned property M-1, M-2, M-3).
- ☒ 18. A notation that a plat showing the approved locations for primary and secondary drainfields for each lot (where required) is on file with the Hanover County Health Department.
- ☒ 19. Source of Title Certificate.
- ☒ 20. Copies of documents establishing restrictive covenants, buyers' affidavits, and homeowners association (where applicable).
- ☒ 21. Complete application form.
- ☒ 22. Review fee.
- 23. Recordation fee, at \$10 per sheet for the record set, payable to the Clerk of the Circuit Court.

Information numbered 1-22 are required for Title III Subdivisions and Administrative Subdivisions, both Title II and Title III. Title II Subdivisions require items 1-25 plus the following:

- 23. Location(s) of streets, showing widths and names.
- 24. Estimated total number of gallons per day of water system requirements where a distribution system is proposed.
- 25. Estimated total number of gallons per day to be treated where a central sewage facility is proposed.
- 26. Location, size, and types of existing and proposed utilities, including sanitary sewers, storm drains, water mains, manholes, and underground conduits.

Title III Subdivisions require items 1-26 plus the following:

- 27. Administration of requirements statement for road improvements in Title III Subdivisions (Form HCP 84-18).
- 28. Provide copies of the "first division" deeds (if applicable).

HANOVER COUNTY, VIRGINIA  
CHESAPEAKE BAY PRESERVATION

Water Quality Impact Assessment  
For Site Plans and Subdivision Plans

Date: Sept. 14, 1995 Project Title: PIN OAK PLACE - SECTION "A"  
Tax Map Parcel Number: 42-99 Owner's Name: DORWOOD KNOLL FARM PARTNER 5111  
Address: 3006 IMPALA PLACE, RICHMOND, VA 23228-4226  
Business Phone: 266-9656 Home Phone: \_\_\_\_\_

Part I:

Have you reviewed the Chesapeake Bay Preservation Area Maps? YES

Have you field inspected the property proposed for development? YES

Have you reviewed the Hanover County Soil Survey? YES

Resource Protection Area:

Does the site contain any of the following - NO Tidal Wetlands NO Tidal Shores  
NO Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or  
tributary streams. YES A 100-foot buffer adjacent to any RPA component.

Resource Management Area:

Does the site contain any of the following - YES Highly erodible soils YES Highly  
permeable soils YES Floodplain YES Nontidal wetlands YES Within 150-feet of an RPA  
Buffer. Site specific information and supporting calculations may be provided to show  
development is not in an RMA as indicated on County mapping resources.

Locations of any RPA features, 100-year floodplains, and wetlands must be field surveyed  
and shown on the site plan, construction plan or final plan.

Will there be land disturbance of any nature within a Chesapeake Bay Preservation  
Area? YES If so, state the square footage and describe: HOUSE CONSTRUCTION

Will the proposed development result in greater than 16% impervious cover? NO

If yes, submit calculations and worksheets from the Chesapeake Bay Local Assistance  
Department Manual for phosphorous loading. Development within an RPA also requires  
buffer equivalency calculations and a BMP. Attach BMP design and calculations. If a  
structural BMP is required, the property owner must also sign and notarize Part II of this  
form.

I certify that I have determined through review of mapping resources and site analysis that  
the proposed development meets the requirements of Chapter 10 of the Hanover County  
Code.

Signature: Richard Lee Bant  
Name (Please print or type): \_\_\_\_\_  
FEE: \$100.00 THIS FEE IS NOT REFUNDABLE

Professional License Engineer  
Virginia License Number 20724

HANOVER COUNTY, VIRGINIA  
CHESAPEAKE BAY PRESERVATION

Water Quality Impact Assessment  
For Site Plans and Subdivision Plans

Date: Sept. 14, 1995 Project Title: PIN OAK PLACE - SECTION "B"  
Tax Map Parcel Number: 42-99 Owner's Name: DOGWOOD KNOLL FARM PARTNERSHIP  
Address: 3006 IMPALA PLACE, RICHMOND, VA 23228-4226  
Business Phone: 266-9656 Home Phone: \_\_\_\_\_

Part I:

Have you reviewed the Chesapeake Bay Preservation Area Maps? YES

Have you field inspected the property proposed for development? YES

Have you reviewed the Hanover County Soil Survey? YES

Resource Protection Area:

Does the site contain any of the following - NO Tidal Wetlands NO Tidal Shores  
NO Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or  
tributary streams. NO A 100-foot buffer adjacent to any RPA component.

Resource Management Area:

Does the site contain any of the following - YES Highly erodible soils NO Highly  
permeable soils NO Floodplain NO Nontidal wetlands NO Within 150-feet of an RPA  
Buffer. Site specific information and supporting calculations may be provided to show  
development is not in an RMA as indicated on County mapping resources.

Locations of any RPA features, 100-year floodplains, and wetlands must be field surveyed  
and shown on the site plan, construction plan or final plan.

Will there be land disturbance of any nature within a Chesapeake Bay Preservation  
Area? YES If so, state the square footage and describe: HOUSE CONSTRUCTION

Will the proposed development result in greater than 16% impervious cover? NO

If yes, submit calculations and worksheets from the Chesapeake Bay Local Assistance  
Department Manual for phosphorous loading. Development within an RPA also requires  
buffer equivalency calculations and a BMP. Attach BMP design and calculations. If a  
structural BMP is required, the property owner must also sign and notarize Part II of this  
form.

I certify that I have determined through review of mapping resources and site analysis that  
the proposed development meets the requirements of Chapter 10 of the Hanover County  
Code.

Signature: Richard L. Bagley

Name (Please print or type): \_\_\_\_\_

Professional License Engineer  
Virginia License Number 20724

FEE: \$100.00 THIS FEE IS NOT REFUNDABLE



# COMMONWEALTH of VIRGINIA

## HANOVER COUNTY HEALTH DEPARTMENT

BOX 67, HANOVER, VIRGINIA 23069

IN COOPERATION WITH THE  
STATE DEPARTMENT OF HEALTH

Name of Proposed Subdivision PIN OAK PLACE SECTION "A"  
Number of Acres in Proposed Subdivision 29.15  
Location END OF RT. 778, South Anna Dist.  
Section 42 Parcel 99  
Land Owner and/or Developer's Name DOGWOOD KNOLL FARM PARTNERSHIP  
Address 3006 IMPALA PLACE  
Phone No. 266-9656  
Name of Engineering Firm Richard L. Baird, P.E.  
Address 1910 Byrd Ave., Suite 210, Richmond VA. 23230  
Phone No. 673-8821  
Public Water: Yes ☐ No ☒ If Answer Is No, State Reason WATER LINES DO NOT EXTEND TO THIS AREA  
Public Sewer: Yes ☐ No ☒ If Answer Is No, State Reason PUBLIC SEWER NOT SERVING THIS AREA  
Number of Proposed Lots 3  
Minimum Size of Lots: Length 600' Width 250'  
Proposed Setback 60' Front, 25' Side, 50' Adj. Side, 30' Rear  
Maximum Number Bedrooms Per House \_\_\_\_\_

Signature \_\_\_\_\_  
Owner and/or Developer

2:



# COMMONWEALTH of VIRGINIA

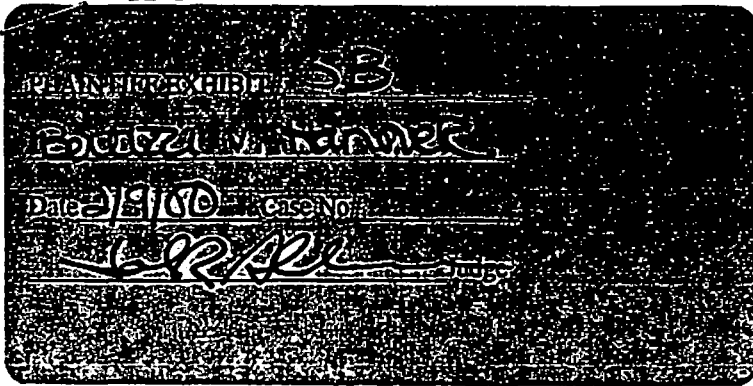
IN COOPERATION WITH THE  
STATE DEPARTMENT OF HEALTH

## HANOVER COUNTY HEALTH DEPARTMENT

BOX 67, HANOVER, VIRGINIA 23069

Name of Proposed Subdivision PIN OAK PLACE SECTION 'B'  
Number of Acres in Proposed Subdivision 29.15  
Location END OF RT. 778, South Anna Dist.  
Section 42 Parcel 99  
Land Owner and/or Developer's Name DOGWOOD KNOLL FARM PARTNERSHIP  
Address 3006 IMPALA PLACE  
Phone No. 266-9656  
Name of Engineering Firm Richard L. Baird, P.E.  
Address 1910 Byrd Ave., Suite 210, Richmond VA. 23230  
Phone No. 673-8821  
Public Water: Yes ☐ No ☒ If Answer Is No, State Reason WATER LINES DO NOT EXTEND TO THIS AREA  
Public Sewer: Yes ☐ No ☒ If Answer is No, State Reason PUBLIC SEWER NOT SERVING THIS AREA  
Number of Proposed Lots 4  
Minimum Size of Lots: Length 250 Width 250  
Proposed Setback 60' FRONT, 25' SIDE, 50' AGG. SIDE, 30' REAR  
Maximum Number Bedrooms Per House \_\_\_\_\_

Signature \_\_\_\_\_  
Owner and/or Developer



Oct. 18, 1995

Mr. Greg Baka  
Planner  
Hanover County Planning Department  
P.O.B. 470  
Hanover, VA 23069

RE: PIN OAK PLACE - SECTIONS "A" & "B"

Dear Greg:

Enclosed are four prints each of subdivisions plats. Plats have been revised per your comments of 10/10/95. Specific items have been addressed as follows:

1. Plat not yet recorded, will furnish Plat Book and Page reference when recorded.
2. Owner is applying for S.O.E. regarding private road.
3. Owner is having sign posted. Private road previously paved.
4. Note was on plat as previously submitted (see plat note 13).
5. Existing asphalt drive to be private road. S.O.E. being applied for regarding pavement width.
6. Draft of agreement included with this submittal.
7. OK
8. Comply
9. This item has been cleared with Lee Garrison (D.P.W.). I informed him that wetlands were field delineated by Larry W. Madison & Associates, Chester, VA. It was determined that a beach ridge line runs along river bank, thus wetlands are not contiguous.



10. To be done by Hanover County.
11. Included with this submittal.
12. Comply
13. Comply
14. a. Yes, all 3 lots will access Rt. 778  
b. No  
c. Road frontage for first division is 115'. See enclosed Right-of-way information.
15. Will Comply

If there are any questions regarding this submittal please contact me at 673-8821.

Sincerely,

Richard Baird PE

PLAINTIFF EXHIBIT#

5C

Bach v. Hanover

Date 2/9/60

Case No#

W.P. Allen

Judge

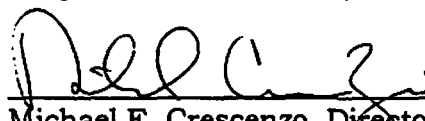
**PRINTER'S NOTE: PLAT MAPS ATTACHED TO  
EXHIBIT 5c ARE TOO LARGE TO BE REASONABLY  
REPRODUCED.**

Stagg  
Creek

CERTIFICATE

I, Michael E. Crescenzo, Director of Planning, certify that  
whom June D. Stevens, Office Manager, reports, and I certify that the originals of the  
following documents are in the custody of June D. Stevens:

1. Letter dated December 6, 1996, to Paul Jalbert from Michael E. Crescenzo regarding "Stagg Creek Subdivision, Secs. A-C";
2. Plat by Paul A. Jalbert titled "Plat of Three (3) Parcels of Land Located on the Southern Line of State Route 696 and on the West Side of Stagg Creek Being in the South Anna District, Hanover County, Virginia", dated October 7, 1996;
3. Plat by Paul A. Jalbert titled "Stagg Creek Subdivision, Section 'A', South Anna District - Hanover County, Virginia" dated February 7, 1997;
4. Plat by Paul A. Jalbert titled "Stagg Creek Subdivision, Section 'B', South Anna District - Hanover County, Virginia" dated February 7, 1997; and
5. Plat by Paul A. Jalbert titled "Stagg Creek Subdivision, Section 'C', South Anna District - Hanover County, Virginia" dated February 7, 1997.

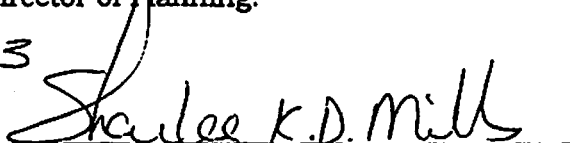


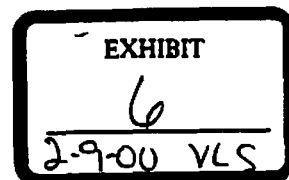
Michael E. Crescenzo, Director of Planning

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF Hanover to-wit:

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of  
February, 2000, by Michael E. Crescenzo, Director of Planning.

My commission expires: 4/30/2003

  
Notary Public

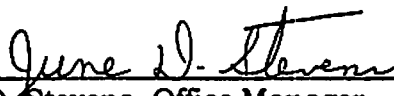


CERTIFICATE

I, June D. Stevens, Office Manager, and custodian of the records for the Hanover County Planning Department, and more particularly, custodian of the:

1. Letter dated December 6, 1996, to Paul Jalbert from Michael E. Crescenzo regarding "Stagg Creek Subdivision, Secs. A-C";
2. Plat by Paul A. Jalbert titled "Plat of Three (3) Parcels of Land Located on the Southern Line of State Route 696 and on the West Side of Stagg Creek Being in the South Anna District, Hanover County, Virginia", dated October 7, 1996;
3. Plat by Paul A. Jalbert titled "Stagg Creek Subdivision, Section 'A', South Anna District - Hanover County, Virginia" dated February 7, 1997;
4. Plat by Paul A. Jalbert titled "Stagg Creek Subdivision, Section 'B', South Anna District - Hanover County, Virginia" dated February 7, 1997; and
5. Plat by Paul A. Jalbert titled "Stagg Creek Subdivision, Section 'C', South Anna District - Hanover County, Virginia" dated February 7, 1997;

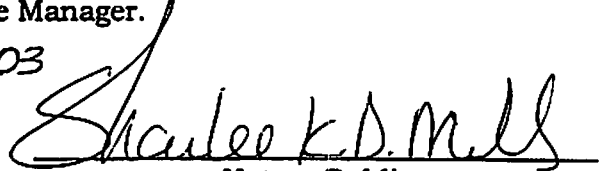
do hereby authenticate the attached copy of the previously listed documents as a true and accurate copy.

  
June D. Stevens, Office Manager

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF Hanover, to-wit:

The foregoing instrument was acknowledged before me this 9th day of February, 2000, by June D. Stevens, Office Manager.

My commission expires: 4/30/2003

  
Notary Public

**BOARD OF SUPERVISORS**

R.J. KLOTZ, JR., CHAIRMAN  
HENRY DISTRICT

J.T. "JACK" WARD, VICE-CHAIRMAN  
MECHANICSVILLE DISTRICT

TIMOTHY E. ERNST  
ASHLAND DISTRICT

TOM GILES  
CHICKAHOMINY DISTRICT

JOHN E. GORDON, JR.  
SOUTH ANNA DISTRICT

AUBREY M. STANLEY, JR.  
BEAVERDAM DISTRICT

ELTON J. WADE, SR.  
COLD HARBOR DISTRICT



**HANOVER COUNTY**

P. O. BOX 470  
HANOVER, VIRGINIA 23069-0470

JACK BERRY  
COUNTY ATTORNEY

RICHARD P. BERRY  
DEPUTY COUNTY ATTORNEY

STERLING E. RIVES, III  
COUNTY ATTORNEY

December 6, 1996

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Paul Jalbert  
Goodfellow, Jalbert, & Beard, Inc.  
P.O. Box 539  
Mechanicsville, VA 23111

RE: Stagg Creek Subdivision, Secs. A-C

Dear Mr. Jalbert:

On October 9, 1996, the Hanover County Board of Supervisors adopted zoning and subdivision ordinances which significantly change rural subdivision development requirements. The new ordinance eliminated the distinction among Title II, Title III, and Title IV subdivisions, as well as both "first divisions" and "the 25 acre rule" as interpretations of the zoning and subdivision ordinances.

However, the Board also approved a provision which permits the review of "complete applications for final subdivision approval which...were in compliance with all substantive zoning and subdivision ordinance requirements in effect on [the date of submittal]". Because your application was received prior to adoption of the new ordinance, this provision applies to your subdivision.

The staff has completed its review of your application and is notifying you that your subdivision plat and application, filed on October 9, 1996, entitled Stagg Creek Subdivision -- Sections A-C, prepared by Paul Jalbert, and dated September 27, 1996, is **DISAPPROVED** because of the following:

1. The location of the road as drawn splits Lot 2 of Section A into two pieces which is not permitted by ordinance. It is necessary that the road be reconfigured so that it follows the edge of a property line and does not split any lot lines (HCP 84-7, Checklist for Final Subdivision Plats", Item #20-A).

Mr. Paul Jalbert  
Page 2  
December 6, 1996

2. Add the approximate number of acres of floodplain area in each lot to the plat (HCP 84-7, Checklist for Final Subdivision Plats", Item #6-I).
3. Add the word "Residual" to the residual lots in each section (HCP 84-7, Checklist for Final Subdivision Plats", Item #20-A).
4. Please label the proposed lot number and section for all adjacent lots of Stagg Creek Subdivision (HCP 84-7, Checklist for Final Subdivision Plats", Item #17).
5. Please submit a copy of all three First Division deeds (HCP 84-7, Checklist for Final Subdivision Plats", Item #40).

You may correct your plats and submit the revised application to this office for review. Revisions must be submitted within sixty (60) days of the date of receipt of this letter. Failure to do so will result in application of the new standards adopted October 9, 1996, to your request.

In addition, staff has the following comments:

1. If the subdivision plats are to be recorded prior to the completion of the road, a Deed of Easement must be executed. This would be done when final mylars are submitted.
2. The private road must be built to or exceed the following minimum standards before issuance of any building permits:  
  
*"Private roads shall include no less than eighteen (18) feet of usable road surface covered with gravel of a minimum depth of one inch at the time of inspection, exclusive of drainage facilities, cleared of obstructions, with positive drainage."*
3. Private road street signs must also be installed at all intersections in the subdivision before the road is approved.

Mr. Paul Jalbert  
Page 3  
December 6, 1996

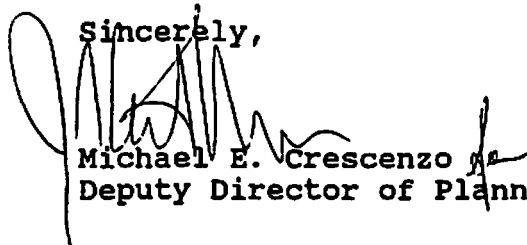
4. The Department of Public Works has commented that the wetland delineation must be confirmed by the Army Corps of Engineers and an Erosion and Sediment Control Plan will be required for the road prior to recordation.
5. VDOT offers the following comments: Entrance location must meet VDOT sight distance requirements. A subdivision street tie-in permit will be required.

For recordation please add a revision date, remove the topography, and submit the following:

1. Two (2) 16" x 24" mylars. Only the original or a first generation unreduced black line copy of the original shall be accepted for recordation. Original signatures area required.
2. Five (5) 16" x 24" paper prints with original signatures.
3. One (1) paper print reduction at 1" = 400' scale.
4. Recordation fee, at \$16.00 per sheet, payable to R.L. Shelton, Clerk.

Should you have any questions regarding this action, or if we can assist you in your reapplication, please contact J. Keith Thompson, Principal Planner or Greg Baka, Planner.

Sincerely,



Michael E. Crescenzo  
Deputy Director of Planning

GB/

cc: Emma Lee Davenport



**PRINTER'S NOTE: PLAT MAPS ATTACHED TO  
EXHIBIT 6 ARE TOO LARGE TO BE REASONABLY  
REPRODUCED.**

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

A. G. BERTOZZI,

Appellant,

v.

HANOVER COUNTY, VIRGINIA

Appellee.

In Chancery No. 594-96

**FINAL ORDER**

Pursuant to the Opinion of the Virginia Supreme Court dated September 18, 1998, this matter of appeal of disapproval by officials of Hanover County of a subdivision titled "Sugar Maple", Sections A through E, having been remanded by the Supreme Court to this Court for a determination as to whether the disapproval was based on the applicable ordinances, or was arbitrary or capricious, after trial of this matter and argument of counsel, in consideration of the Memorandum of Hanover County filed June 7, 1999, and the evidence in the trial of this matter on February 9, 2000, the Court having found that the disapproval was properly based on the applicable ordinances and was not arbitrary or capricious, and it appearing proper to the Court,

It is ADJUDGED, ORDERED and DECREED that the disapproval by officials of Hanover County of a subdivision titled "Sugar Maple", Sections A through E, was proper; and this appeal shall be dismissed with prejudice and stricken from the docket of this Court.

Enter:


219.100 ✓

  
John R. Alderman, Judge

I ask for this:



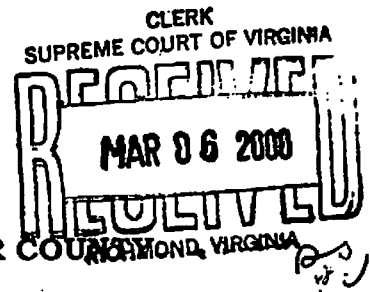
A. Lisa Barker  
Senior Assistant County Attorney  
P. O. Box 470  
Hanover, Virginia 23069  
(804) 537-6035

Seen: and objected to on the basis that Mr. Bertore,  
was in substantial compliance with all substantive zoning  
and subdivision Ordinance of the County as of the close  
of business on Oct 9, 1996, with Bertoreni objects to to  
B. 

Bruce P. Ganey, Esq.  
Ganey & Laibstain, P.C.  
P. O. Box 646  
Ashland, VA 23005

County's Ruling that the County  
was not arbitrary and capricious  
in its action against Bertore  
Mr. further the the court  
did not correctly apply the  
grandfather clause to the case

001072



VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY, VIRGINIA

A. G. BERTOZZI,

Appellant,

v.

In Chancery No. 594-96

HANOVER COUNTY, VIRGINIA,

Appellee.


**NOTICE OF APPEAL**

The plaintiff, A. G. Bertozzi, by counsel, hereby appeals to the **Supreme Court of Virginia** the Final Order of this Court entered February 9, 2000.

A transcript of the case, along with all other incidents of the case, will be filed with the Court.

A copy of the transcript has been ordered from the court reporter who reported the case.


**A. G. BERTOZZI**  
By Counsel

  
\_\_\_\_\_  
Bruce P. Ganey, Esquire  
GANEY & LAIBSTAIN, P.C.  
P.O. Box 646  
Ashland, Virginia 23005  
(804) 798-2579

**CERTIFICATE**

The undersigned certifies as follows:

1. The name and address of the appellant is: A. G. Bertozzi, 3006 Impala Place, Richmond, Virginia, 23228.
2. The name, address and telephone number of counsel for the appellant is: Bruce P. Ganey, Esquire, GANEY & LAIBSTAIN, P.C., 210 S. Railroad Avenue, Suite 1, P. O. Box 646, Ashland, Virginia, 23005; telephone (804) 798-2579.
3. The name and address of the appellee is: Hanover County, Virginia, P. O. Box 470, Hanover, Virginia, 23069.
4. The name, address and telephone number of counsel for the appellee is: A. Lisa Barker, Esquire, Senior Assistant County Attorney, P. O. Box 470, Hanover, Virginia, 23069; telephone (804) 537-6035.
5. Counsel for appellant has been privately retained.
6. A copy of this Notice of Appeal has been mailed or delivered to opposing counsel and to the Clerk of the Supreme Court of Virginia this 3rd day of March, 2000.

  
\_\_\_\_\_  
Bruce P. Ganey

### **ASSIGNMENTS OF ERROR**

- I. THE TRIAL COURT ERRED IN NOT CORRECTLY INTERPRETING THE APPLICABLE ORDINANCE TO THIS CASE.**
- II. THE TRIAL COURT ERRED IN NOT FINDING THAT THE COUNTY'S ACTION OF DISAPPROVAL WAS ARBITRARY AND CAPRICIOUS.**