



BOARD OF ZONING APPEALS MEETING

Tuesday, September 03, 2024 at 5:00 PM

AGENDA

CALL TO ORDER.

DETERMINATION OF A QUORUM.

APPROVAL OF THE AGENDA

APPROVAL OF MINUTES.

- [1.](#) Draft Minutes- August 6, 2024

PUBLIC HEARING.

- [2.](#) BZA-24-2: 130-134 Haiti Street

WORK SESSION.

- [3.](#) Board of Zoning Appeals Legal Representation Discussion

Closed Session

UPDATES FROM STAFF.

ADJOURN.



**BOARD OF ZONING APPEALS OF THE TOWN OF WARRENTON
TOWN HALL
21 MAIN STREET
WARRENTON, VIRGINIA 20186**

MINUTES

A REGULAR MEETING OF THE BOARD OF ZONING APPEALS WAS HELD ON AUGUST 6, 2024, AT 5:00 P.M. IN WARRENTON, VIRGINIA

PRESENT Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair; Ms. Susan Helander; Mr. Van Baggett; Ms. Heather Jenkins, Zoning Administrator; Ms. Amber Heflin, Zoning Official; Ms. Ruth Griggs, Town Attorney

ABSENT Mr. Geoffrey Fiutak

CALL TO ORDER AND DETERMINATION OF A QUORUM

The meeting was called to order at 5:00pm. There was a quorum of members present.

APPROVAL OF MINUTES

Draft Minutes – July 2, 2024, Meeting

Ms. Maybach motioned to approve the minutes, and Mr. Baggett seconded.

Mr. Kovalik requested two revisions to page 3 of the minutes.

Ms. Heflin advised those would be taken care of immediately.

The Board pondered on procedure for the existing motion on the floor to approve as presented.

Ms. Jenkins advised the motion would need to be amended due to the Chair's requested changes.

Ms. Maybach amended her motion to approve the minutes with the requested revisions by the Chair. Mr. Baggett seconded.

All in favor. The vote was as follows:

Ayes: *Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair;
Ms. Susan Helander; Mr. Van Baggett*

Nays:
Absent During Vote: *Mr. Geoffrey Fiutak*

OLD BUSINESS

Remote Participation Policy

Mr. Kovalik requested an overview from staff.

Ms. Jenkins advised this is the same policy brought forward to the Board last month, but clarity was added by the Town Attorney in response to questions from the Board regarding portions of the document.

Ms. Griggs reiterated the policy pulls all of its requirements directly from the State Code.

Mr. Baggett questioned #7c of the document and how that applies to the Town due to the requirement to live within the Town Limits to serve on the Board.

Ms. Griggs advised the requirement comes directly from the State Code, but the Board could add a footnote to the document citing the requirement to live within the Town Boundary in order to serve on the Board.

Ms. Heflin advised the Board could adopt the document with the requested changes.

Mr. Kovalik asked for a motion.

Mr. Baggett motioned to approve the remote participation policy with the changes as requested prior. Ms. Maybach seconded. All in favor. The vote was as follows:

Ayes: *Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair;
Ms. Susan Helander; Mr. Van Baggett*

Nays:
Absent During Vote: *Mr. Geoffrey Fiutak*

There were no further questions.

BOARDMEMBER'S TIME

Discussion Regarding Retention of Legal Counsel

Ms. Maybach asked staff if there was an update on the Board's request for funding of separate legal counsel.

Ms. Jenkins advised staff has prepared a report to share with the Town Council at their August 13th meeting for consideration of the funding request.

Mr. Kovalik asked what process needed to be followed after the decision was rendered by Council or if there is an existing procedure.

Ms. Jenkins stated there is not an existing procedure for the request as this is the first of its kind.

Mr. Kovalik expressed interest in adding a work session item to the next board meeting, with the caveat that the item could be moved to the following Board meeting if no decision was reached by Council.

There was no further discussion on this item.

September Board Meeting Discussion

Mr. Kovalik asked if there was a conflict with the date of the Board's regularly scheduled meeting in September.

Ms. Jenkins advised the Board the next scheduled meeting of the Board would be on September 3, 2024, after the holiday.

All members of the Board advised they would be available to attend the September meeting.

There were no further questions or updates from staff.

ADJOURNMENT

Ms. Maybach motioned to adjourn. Mr. Baggett seconded, all in favor. No discussion. The vote was as follows:

Ayes: *Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair; Ms. Susan Helander; Mr. Van Baggett*

Nays:

Absent During Vote: *Mr. Geoffrey Fiutak*

The meeting was adjourned at 5:17pm.

I hereby certify that this is a true and exact record of actions taken by the Board of Zoning Appeals of the Town of Warrenton on August 6, 2024.

Lawrence "Larry" Kovalik
BZA Chair



TOWN OF WARRENTON

Community Development Department

PO BOX 341
WARRENTON, VIRGINIA 20188
<http://www.warrentonva.gov>
Landdevelopment@warrentonva.gov
(540) 347-2405

STAFF REPORT

August 19, 2024

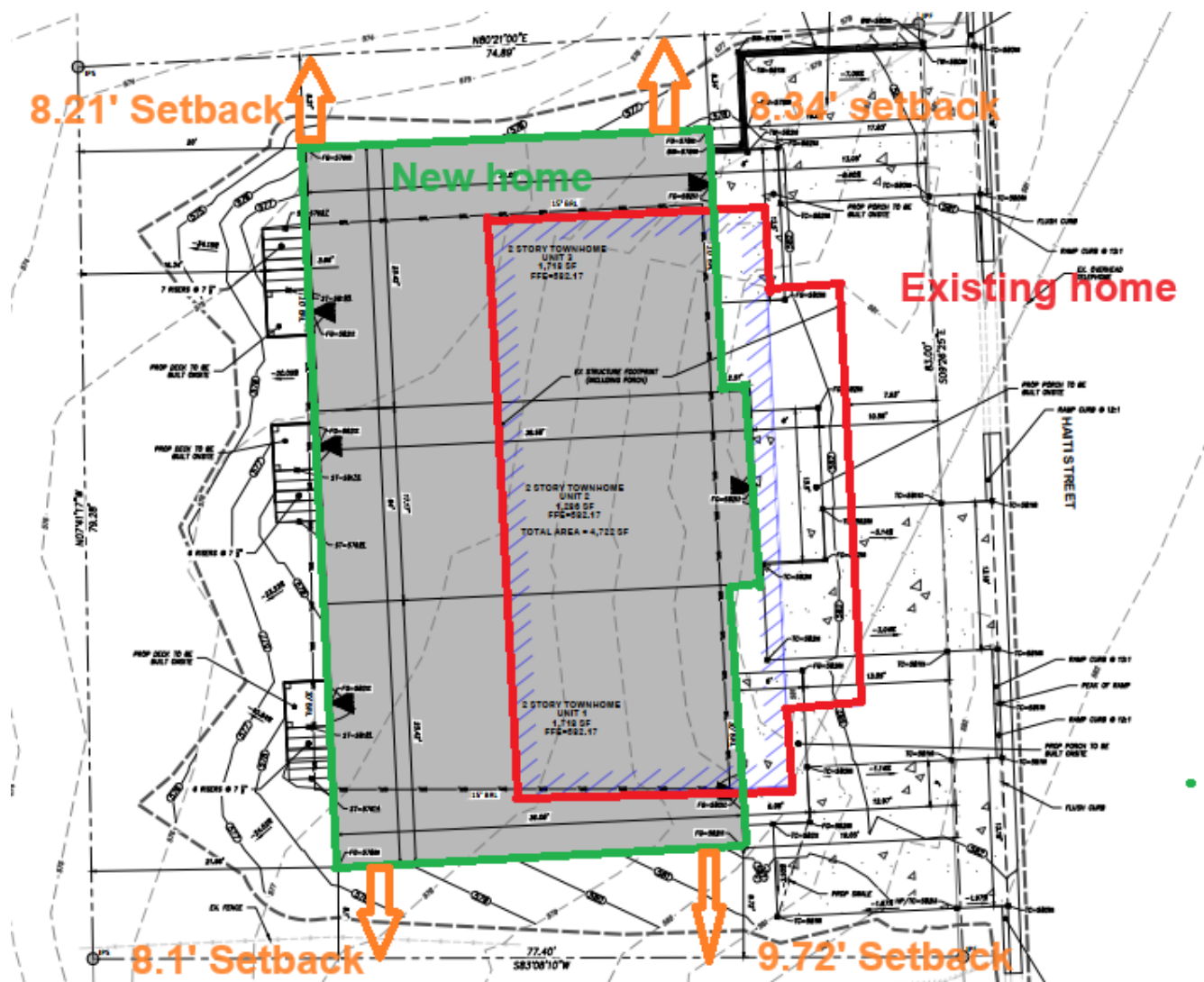
Property Owner(s) / Applicant:	Fauquier Habitat for Humanity/ Melanie Burch
Application #	BZA #2024-2
Location:	130-134 Haiti Street
PIN:	6984-44-8436-000
Acreage:	0.1417 Acres (6,176 Square Feet)
Zoning	Residential R-6
Comprehensive Plan Designation:	Medium Density Residential
Land Use:	Residential, Three-Family Dwelling
Request:	The Applicant is seeking approval of a Variance from Zoning Ordinance Article 3-4.3.4, to allow the construction of a three-family dwelling within the required side yard setback.
Recommendation:	Staff recommends the Board of Zoning Appeals approve BZA #2024-2 per the pattern motion of approval dated September 3, 2024.

REQUEST

The applicant is requesting a variance from Article 3-4.3.4 of the Zoning Ordinance to reconstruct a three-family dwelling or "Triplex" within the side setback of the subject property.

The proposed location for the three-family dwelling would require a variance of approximately 7' on each side of the parcel from the required 15' side setback. The request for the variance of side yard setback comes from the inability to meet minimum side yard setback requirements due to the size of the home being required to meet minimum size and design standards for a triplex based on Universal Design Standards and accessibility requirements.

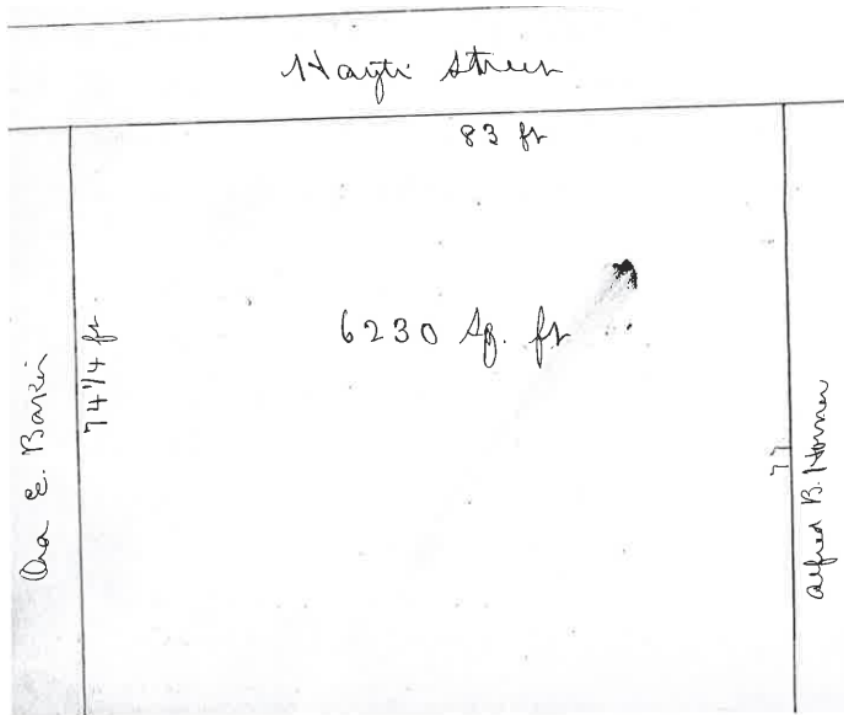
(130-134 Haiti Street Proposed Lot Layout)



BACKGROUND

The subject property was created from two separate lots of record as part of an estate division in 1895 as recorded in Deed Book 86 page 297. The lot contained approximately 6,230 square feet at the time of its sale in 1914 as recorded in Deed Book 110 page 302.

(Lot Depiction from 1914 Deed)



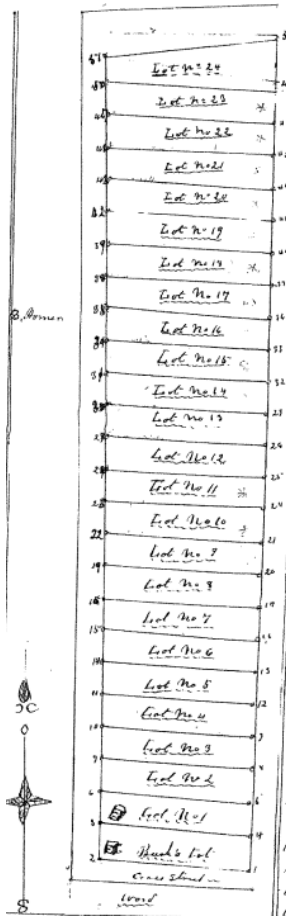
The property is zoned Residential (R-6) and has remained R-6 since at least 1991. Prior Zoning Maps indicate that the lot was zoned R-B in the 1950's, and R-7 (Replaced by R-6 in 1991). The lot is currently 0.1417 acres (6,176 square feet) in size, and fronts along Haiti Street for approximately 83 feet.

A structure labeled as "colored tenements" also known as "multi-family housing" appears on a Sanborn Map dated 1924, but the structure did not appear in a deed of record until 1969. Staff estimates the structure was constructed sometime between 1914 and 1924 based off of the Sanborn Map. The applicant acquired the subject property on October 31, 2019, via deed recorded in Deed Book 1612, Page 287. Adjacent uses are single-family detached dwellings and a two-family dwelling.

ANALYSIS

The applicant has requested a variance of the required side yard setback, due to the existing lot's non-conforming size. These lots were created prior to the first Town Zoning Ordinance in 1955. As shown in the lot depiction from a deed dated June 29th, 1872, the subject property and adjacent lots along Haiti Street were created as long, narrow parcels that have never met the lot size requirements for their respective Zoning district.

(Lot Depiction from 1872 Deed)



The current Zoning Ordinance, under Article 3-4.3.4, requires the following lot size and setback for a three-family dwelling:

Use	Minimum	Minimum	Maximum	Minimum Setbacks		
	Lot Size (sq. ft.)	Lot Frontage (at front setback)	Lot Coverage (impervious surfaces)	Front	Side	Rear
Single-Family Dwelling	6,000	55 ft.	65%	20 ft.	8 ft.	20 ft.
Two-Family Dwelling	9,000	65 ft.	75%	20 ft.	15 ft.	20 ft.
Three-Family Dwelling	12,000	75 ft.	80%	20 ft.	15 ft.	20 ft.
Four-Family Dwelling	15,000	85 ft.	80%	20 ft.	15 ft.	20 ft.
Other Permitted Uses	6,000	55 ft.	65%	20 ft.	15 ft.	20 ft.

The proposed location for the three-family dwelling would require a variance of approximately 7' on each side of the parcel from the required 15' side setback. The request for the variance of side yard setback comes from the inability to meet minimum side yard setback requirements due to the size of the home being required to meet minimum size and design standards for a triplex based on Universal Design Standards and accessibility requirements.

Staff has reviewed the requested variance against the Virginia State Code and the Town of Warrenton Zoning Ordinance to determine if the request meets the criteria required to grant the variance. Below are the variance criteria with the staff's opinion on how the application meets each criterion. The BZA will need to determine if the application has provided sufficient proof that the request meets the standards for a variance as defined by Virginia State Code. Virginia State Code and the Zoning Ordinance define a variance as:

Variance – In the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the Ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the Ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

In granting a variance, the BZA may impose such conditions regarding a proposed structure's location, character, and other features or use as it may deem necessary in the public interest. The BZA may require a guarantee or bond to ensure compliance with the imposed conditions. The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinances. Per the Virginia State Code,

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would:

1. Unreasonably restrict utilization of the property, or

The structure on the subject property appears to have been constructed between 1914 and 1924, which would pre-date the Town of Warrenton's first Zoning Ordinance in 1955 and make the structure legally non-conforming to the current setbacks required by the Zoning Ordinance.

The applicant has proposed to re-construct an existing three-family dwelling, maintaining the existing non-conforming use. However, due to the necessity of meeting current accessibility requirements, the applicant requires a reduction in the side yard setback to accommodate the increased size of the structure.

OR

2. that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the Ordinance, or

The current lot size does not conform to the current or previous Ordinance requirement for a three-family dwelling but has historically been utilized for that purpose. The Ordinance currently requires that a three-family dwelling have a minimum lot size of 12,000 square feet. The existing lot is half of the required size. Prior Ordinances in 1959 and 1991 required a minimum lot size of 10,000 square feet and 12,000 square feet respectively; at no time in the past did the lot meet minimum size requirements for the use.

The lot is also encumbered by an existing 15' utility easement along the entire frontage of the property on Haiti Street. A variance would allow an existing use to be reconstructed to meet current code requirements without affecting the existing easement.

OR

3. *alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability."*

The applicant's statement of justification notes the increase in the size of the triplex is due to changes in universal design guidelines and Americans with Disabilities (ADA) construction requirements. A variance would allow the applicant to construct a dwelling that meets minimum building code requirements for ADA accessibility.

In addition to the three points above, no variance shall be authorized by the BZA unless it is determined that the request meets all five of the following criteria as listed in Zoning Ordinance Section 11-3.11.1 2. - *Standards for Variances*:

- a) *The property interest for which the variance is being requested was acquired in good faith, and any hardship was not created by the Applicant for the variance.*

The property was acquired in good faith by the applicant in 2019 by purchase of the property recorded in deed book 1612, page 287. The hardship was not created by the applicant, due to the age of the property and its pre-existing lot size of approximately 6,230 square feet, which is less than the minimum required for a three-family dwelling by Article 3-4.3.4 of the Zoning Ordinance.

- b) *The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.*

The existing use of the subject property as a three-family dwelling will continue. The proposed triplex will be located across the street from single-family detached dwellings at 129 Haiti Street (6984-44-9454-000), 123 Haiti Street (6984-44-9451-000), and an existing duplex located at 131 Haiti Street (6984-44-9458-000). The impact to neighboring properties would be limited due to the area being primarily residential, and a continuation of the existing use as a three-family dwelling.

- c) *The condition or situation of the property is not of so general or recurring of a nature as to be adopted as an amendment to the Ordinance.*

This property is unique in that the Haiti Street neighborhood is comprised of narrow and deep lots as depicted on a subdivision plat from 1872. The unique nature of the property's condition does not lend itself to an amendment of the Ordinance that would apply to all properties located within the Town.

- d) *The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.*

The existing three-family dwelling was constructed prior to the first Zoning Ordinance, but three-family dwellings have been a by-right permitted use in the district since approximately 1976, and prior to that as “apartments” in 1959. A variance to reduce the side yard setback by approximately 7’ would not change the existing residential use or change the Zoning district.

- e) *The relief or remedy sought by the variance application is not available through a special use permit process that is authorized in the Ordinance or the process for modification to the Zoning Ordinance at the time of the filing of the variance application.*

A Special Use Permit cannot provide relief from the setback requirements, nor are any waivers available for homes unable to meet setback requirements. The Zoning Ordinance does not allow for administrative approvals of setback reductions for non-conforming lots.

STAFF RECOMMENDATION

To grant a variance, the BZA must find that the application meets one of the first three criteria listed above regarding unreasonable utilization, alleviating a hardship, or accommodating a person with a disability. In addition, the variance must also meet all five of the remaining criteria noted above regarding good faith acquisition, no substantial detriment, not generally recurring, does not allow an unpermitted use, and is not available by other means.

Staff recommends that the variance application be granted due to the unique condition of the property. The imposition of a 15-foot-wide side-yard setback is a restriction on the reasonable use of the subject property, where the existing structure on the property has been utilized as a three-family dwelling since at least the 1920’s. A variance to reduce the side yard setback by 7’ will not be of substantial detriment to adjacent properties and will not result in a change in the use of the property. Staff recommends approving the Variance request to permit a reduction in side yard setback requirement to allow reconstruction of the existing triplex with the restriction that any accessory structures proposed on the triplex property such as porches, decks, and HVAC equipment do not extend beyond the allowable encroachments into the front and rear yard setbacks.

ATTACHMENTS

- A. Proposed Conditions of Approval / Proposed Motion for Denial
- B. Maps – Location, Zoning
- C. Photographs – Existing Conditions
- D. Existing Conditions Plat
- E. Proposed Lot Layout
- F. Variance Application Materials
- G. Building Plans for Triplex
- H. Deed of purchase-2019
- I. Historic Deed Research 1914-1969
- J. Utility Easement Agreement- 2020

PATTERN MOTION TO APPROVE VARIANCE VARIANCE

**BZA #2024-2- FAUQUIER
HABITAT FOR HUMANITY**

**BZA MEETING DATE:
SEPTEMBER 3, 2024**

In Application BZA #2024-2, I move to grant the Variance, after due notice and hearing as required by Code of Virginia §15.2-2204 and Article 11-3.11 of the Town of Warrenton Zoning Ordinance, based on upon the following Board findings:

1. The strict application of the Ordinance would unreasonably restrict the utilization of the property, the need for the variance will not be shared generally by other properties, and the variance is not contrary to the purpose of the ordinance.
2. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; and
3. The granting of the variance will not be of substantial detriment to the adjacent property and nearby properties in the proximity of that geographical area; and
4. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance; and
5. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
6. The relief or remedy sought by the variance application is not available through a Special Exception or Special Permit process that is authorized in the Ordinance or the process for a modification from a provision of the Zoning Ordinance at the time of the filing of the variance application.

The Variance is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The site shall be in substantial conformance with the information and drawings submitted with the variance application except as specifically modified by the conditions below or as necessary to meet Zoning Ordinance requirements.
2. The side-yard setbacks for the lot shall be reduced to approximately 8'. The reduction in setback shall not apply to any other areas of the lot, nor shall any accessory structures be permitted to exceed the allowable encroachment under Article 2-18 of the Zoning Ordinance.

PATTERN MOTION FOR DENIAL

VARIANCE

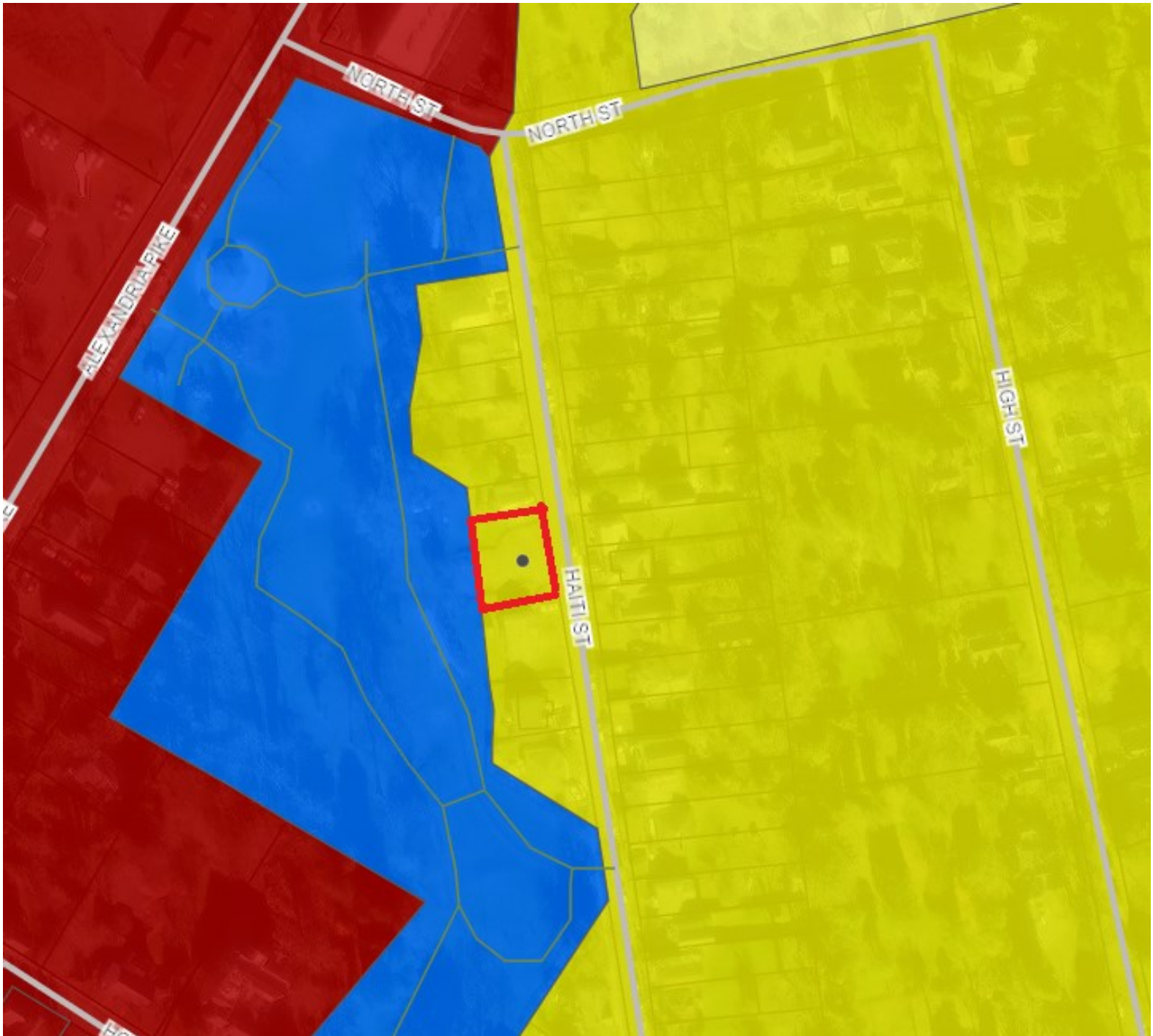
**BZA #2024-2- FAUQUIER
HABITAT FOR HUMANITY**

**BZA MEETING DATE:
SEPTEMBER 3, 2024**

In Application BZA #2024-2, I move to deny the Variance, after due notice and hearing, as required by Code of Virginia §15.2-2204 and Article 11-3.11 of the Town of Warrenton Zoning Ordinance, based on upon the following Board findings:

1. The strict application of the Ordinance inconveniences the Applicant but does not unreasonably restrict the utilization of the property.
2. The strict application of the Ordinance does not alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the Ordinance.
3. The strict application of the Ordinance does not alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability.
4. The variance would be contrary to the intent and purpose of the Zoning Ordinance.
5. The granting of the variance would not result in substantial justice being done.
6. The relief requested can be granted only through modification of the zoning ordinance.
7. _____
8. _____

Zoning and Location



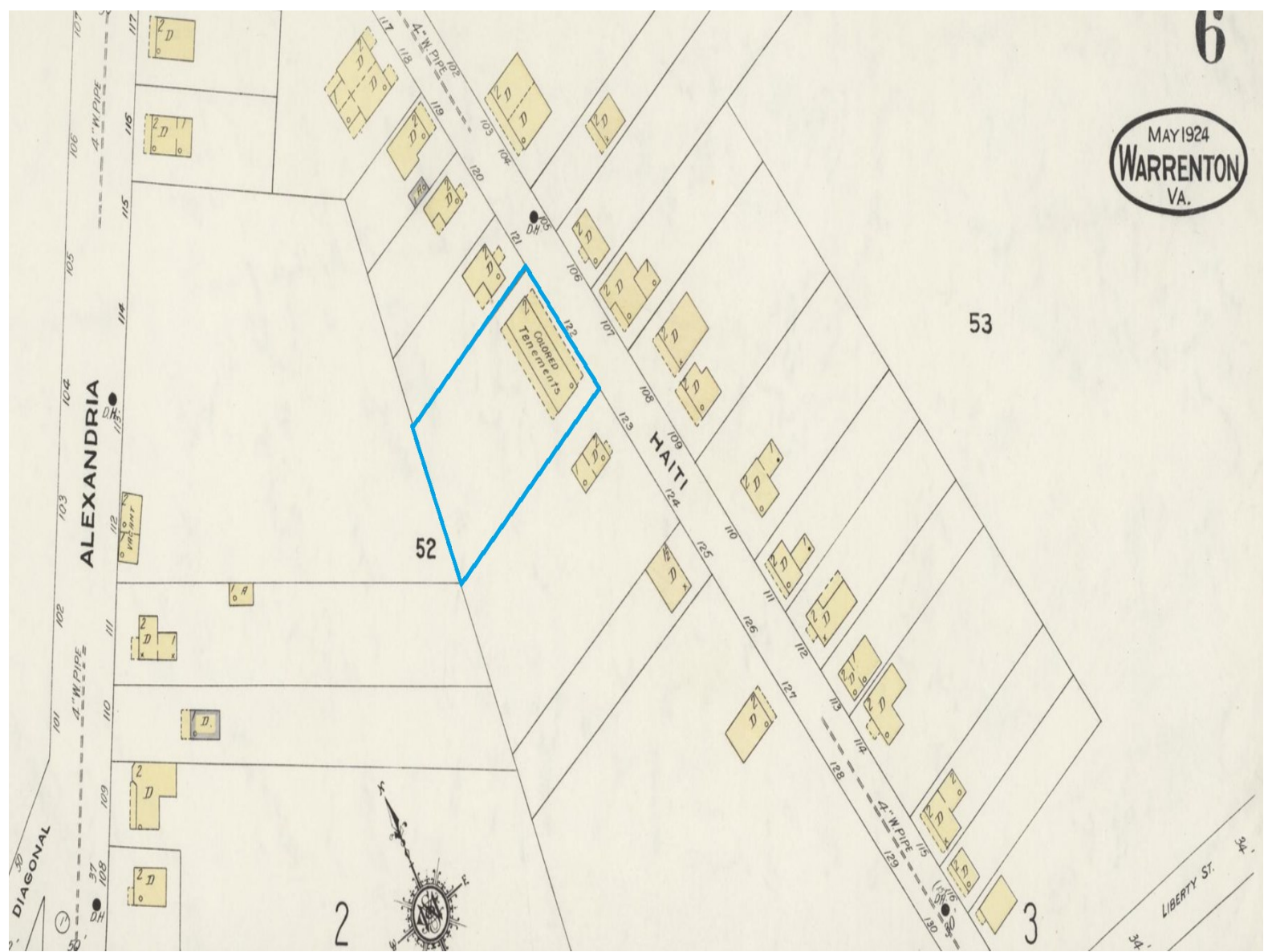
2017 Photograph of existing triplex

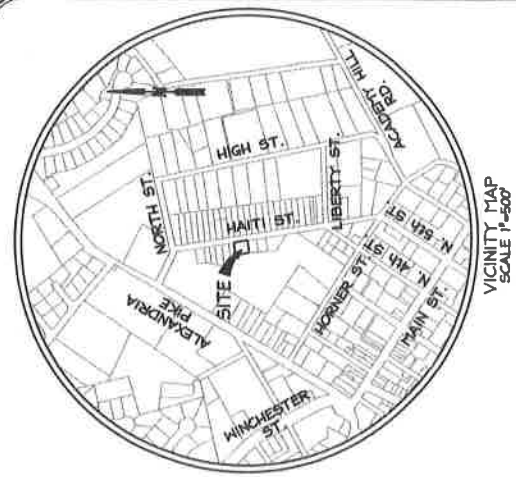


2018 Photograph of existing triplex



1924 Sanborn map





- LEGEND**
- IPS IRON PIPE SET
 - IRF IRON PIPE FOUND
 - IRF IRON ROD FOUND
 - N/F NON OR FORMERLY
 - NB MILL BOOK
 - DB DEED BOOK
 - PG PAGE
 - EP EDGE OF PAVEMENT
 - CG CURB & GUTTER
 - CG FINISH FLOOR ELEVATION
 - TC TOP OF CURB
 - S/M SIDEWALK
 - D/M DRIVEWAY
 - CLEAN OUT
 - SM SANITARY MANHOLE
 - WM WATER METER
 - GM GAS METER
 - GM GUY WIRE POLE
 - SD SATELLITE DISH
 - SIGN
 - FENCE LINE
 - OVERHEAD ELECTRIC LINE
 - OVERHEAD TELEPHONE LINE
 - OVERHEAD ELECTRIC & TELEPHONE LINE

NOTES:

1. THE SUBJECT PROPERTY IS LOCATED ON FEMA FLOOD INSURANCE RATE MAP, COMMUNITY-PANEL NUMBER 51061C0303C, DATED FEB. 6, 2008. THE PROPERTY IS LOCATED IN ZONE X. THIS DOES NOT CONSTITUTE A FLOOD STUDY BY THIS FIRM.
2. WETLANDS, IF ANY, NOT SHOWN.
3. NO TITLE REPORT FURNISHED. OTHER EASEMENTS AND/OR RIGHTS-OF-WAY MAY EXIST.
4. CURRENT ZONING: R-6.
5. THE PARCEL IS IDENTIFIED AS FAUQUIER COUNTY PIN 6984-44-846-000.
6. VERTICAL DATUM IS BASED ON NAVD88.

OWNER'S CONSENT STATEMENT

THE PLATTING OR DEDICATION OF THE FOLLOWING DESCRIBED LAND IDENTIFIED AS THE PROPERTY OF FAUQUIER HABITAT FOR HUMANITY, INC. IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS, AND TRUSTEES, IF ANY.

CERTIFICATE OF ACKNOWLEDGEMENT:

CITY/COUNTY OF _____
COMMONWEALTH/STATE OF _____

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED

BEFORE ME THIS _____ DAY OF _____, 20____
BY _____

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

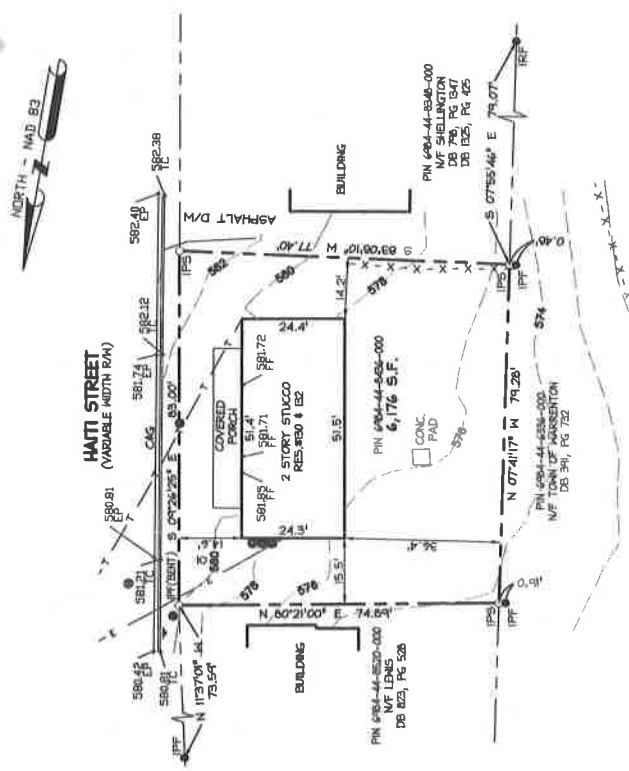
PLAT SHOWING
BOUNDARY & TOPOGRAPHICAL SURVEY
ON THE PROPERTY OF
FAUQUIER HABITAT FOR HUMANITY, INC.

DEED BOOK 1612, PAGE 287
DEED BOOK 121, PAGE 495
TOWN OF WARRENTON
FAUQUIER COUNTY, VIRGINIA
SCALE 1"=20' MAY 11, 2020

PROJECT #20006-060 SHEET 1 OF 1

CARSON
LAND CONSULTANTS

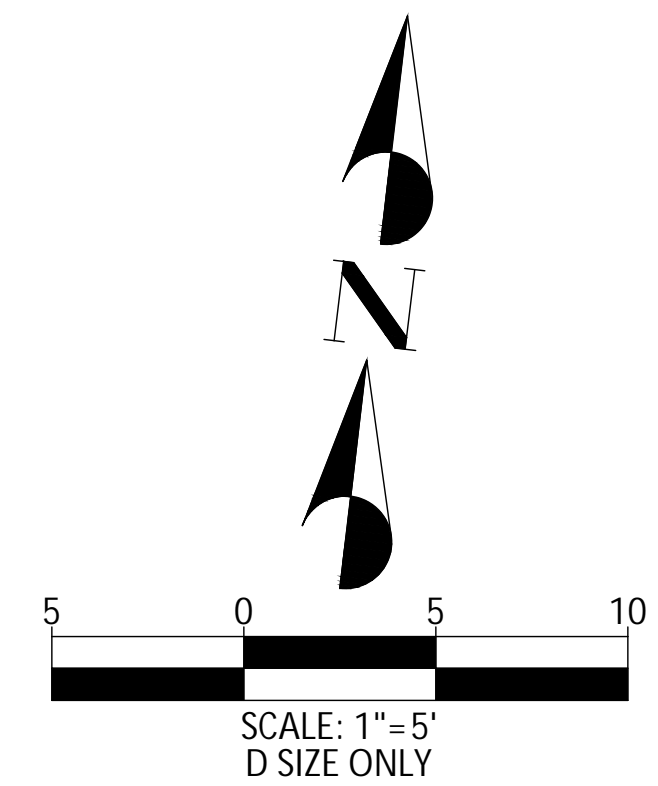
Land Planning, Surveying & Site Design
45 Main Street, 4th Floor • Warrenton, WA 97146
Phone: (503) 847-6861 • Fax: (503) 846-1805
www.CarsonLC.com



SURVEYOR'S CERTIFICATE

I, WALTER C. SAMPSELL, III, A DULY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT THIS BOUNDARY & TOPOGRAPHICAL SURVEY, TO THE BEST OF MY KNOWLEDGE AND BELIEF, IS CORRECT AND IS BASED ON A CURRENT FIELD SURVEY. I FURTHER CERTIFY THAT THE PROPERTY SHOWN HEREON LIES IN THE NAME OF FAUQUIER HABITAT FOR HUMANITY, INC. DEED BOOK 1612, PAGE 287; DEED BOOK 121, PAGE 495; AND DEED BOOK 121, PAGE 495. THIS TOPOGRAPHICAL SURVEY WAS COMPLETED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION, THAT THE IMAGERY AND/OR ORIGINAL DATA WAS OBTAINED ON MAY 11, 2020; AND THAT THIS PLAT, MAP, OR DIGITAL GEOSPATIAL DATA INCLUDING METADATA MEETS MINIMUM ACCURACY STANDARDS UNLESS OTHERWISE NOTED.





C067.2101
PROJECT #
C2 Layout Lot 130.dwg
FILENAME
MAY 22, 2024
DATE
1
SHEET NO.



TOWN OF WARRENTON

Department of Community Development

PO BOX 341
 WARRENTON, VIRGINIA 20188
<http://www.warrentonva.gov>
Permittech@warrentonva.gov
 (540) 347-2405

Land Development Application

Type of Development [select type(s) below]

Permit # _____

Planning	Zoning		
<input type="checkbox"/> Commission Permit (\$2232)	<input type="checkbox"/> Administrative Appeal	<input type="checkbox"/> Concept Plan Review	<input type="checkbox"/> Record / Vacate Plat
<input type="checkbox"/> Comprehensive Plan Amendment	<input type="checkbox"/> As-Built	<input type="checkbox"/> Easement Plat	<input type="checkbox"/> Site Development Plan
<input type="checkbox"/> Special Use Permit	<input type="checkbox"/> Bond Release/ Reduction	<input type="checkbox"/> Final Plat	<input checked="" type="checkbox"/> Variance
<input type="checkbox"/> Rezoning	<input type="checkbox"/> Bond Extension	<input type="checkbox"/> Preliminary Plat	<input type="checkbox"/> Waiver, Administrative
	<input type="checkbox"/> Boundary Adjustment	<input type="checkbox"/> Re-approval of Plat	<input type="checkbox"/> Waiver/Exception, Legislative
<input type="checkbox"/> Amendment to Existing Approved Application? If Yes, List Application _____			

Project Description

Project Name: 130-134 Haiti Street

Property Address (if no address, give closest cross street): 130-134 Haiti Street, Warrenton, VA 20186

Purpose of Request: Variance Request for reduction of side yard setbacks from 15' to 8'

Zoning District: R-6

Total Acres: .1418

Acres for Proposed Use: .1418

Parcel Identification Number(s): 6984-4484-36000

Contact Information (Attach separate page if necessary)

All Current Owners

Name & Company: Fauquier Habitat for Humanity, Inc. - Melanie Burch, CEO

Address: 98 Alexandria Pike, Suite 43, Warrenton, VA 20186

Phone: 540.341.4952, ext. 106

Email: MelanieBurch@fauquierhabitat.org

All Current Applicants (if different then owner):

Name & Company:

Address:

Phone:

Email:

Representative (if different then owner/applicant):

Name & Company: J. Gregory Ashwell, Esq. Ashwell & Ashwell PLLC

Address: 21 Cupeper St, Warrenton VA 20186

Phone: (540) 991-9100

Email: jga@ashwell-law.com

OWNER(S) AFFIDAVIT (Original Signatures Required)

I have read this application, understand its intent and freely consent to its filing. Furthermore, I have the power to authorize and hereby grant permission for Town of Warrenton officials and other authorized government agents on official business to enter the property to process this application.

APPLICANT(S) AFFIDAVIT (Original Signatures Required)

The information provided is accurate to the best of my knowledge. I acknowledge that all tests, studies, and other requirements of the Town of Warrenton Zoning Ordinance and Subdivision Ordinance and other requirements of review/approval agencies will be carried out at my expense. I understand that the Town may deny, approve or conditionally approve that for which I am applying.

Owner's Signature & Date: Melanie Burch 08/01/24Print Owner's Name: Melanie Burch, FHFH, Inc.Applicant's Signature & Date: Melanie Burch 08/01/24Print Applicant's Name: Melanie Burch, FHFH Inc.

TOWN OF WARRENTON BOARD OF ZONING APPEALS'

RULES OF PROCEDURE REGARDING APPEALS

Adopted October 5, 2021

The following procedural rules govern appeals before the Town of Warrenton's Board of Zoning Appeals ("BZA"):

A. Definitions:

Appellant: Any person aggrieved or any officer, department, board, commission, or authority of the Town affected by any decision of the Zoning Administrator or by any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the Town of Warrenton's Zoning Ordinance.

Appeal: Action taken to contest a decision of the Zoning Administrator or to contest any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the Town of Warrenton's Zoning Ordinance

B. Appellant to receive copy of Rules:

Town staff shall provide the appellant a copy of the BZA's Rules of Procedure Regarding Appeals upon appellant's request or no later than at the time appellant files its land development application noting its appeal. All appeals shall include as an Addendum, a statement by the appellants acknowledging receipt of these Rules of Procedure.

C. Submission requirements of written materials:

- (1) The appellant shall file a land development application and filing fee noting its appeal, along with a detailed statement of justification of the grounds for the appeal, in accordance with the relevant provisions of the Code of Virginia and the Town of Warrenton Zoning Ordinance, with the Town's Department of Community Development located at 21 Main Street, Warrenton, Virginia 20186. The appellant shall file eight (8) complete copies plus a digital copy of the statement of the justification, including copies of all exhibits, at the time of filing.
- (2) The appeal shall be placed on the BZA's next agenda for which it can be properly advertised, consistent with the legal notice requirements of the Code of Virginia and the Town of Warrenton Zoning Ordinance. There may be instances in which an appellant must file an appeal to protect its rights but appellant and Town staff are actively pursuing a resolution to the issue which resulted in the appeal. In those instances, appellant and Town staff can consent to postpone scheduling of the appeal. In those instances, the appeal will not be placed on the BZA's public meeting agenda until either party notifies the Secretary

of the BZA of the need to schedule it; however, both parties' consent to the postponement of the appeal shall be placed on the BZA's agenda.

- (3) Town staff shall file seven (7) copies plus a digital copy of its written response to the appeal, including copies of all exhibits, with the Secretary of the BZA within fourteen (14) business days of the date appellant filed its appeal. Staff shall also transmit by hand delivery, facsimile, or email a complete copy of its response to the appeal, including copies of all exhibits, to the appellant, so that the appellant receives its copy by 4:30 p.m. the same day staff files its response with the Secretary of the BZA.
- (4) The appellant may, but is not required to, file a written reply to staff's submission with the Department of Community Development. If appellant elects to file a written reply, it shall be filed within five (5) business days of the date staff filed its response to the appeal. The appellant shall file eight (8) complete copies plus a digital copy of its reply, including copies of all exhibits, at the time of filing.
- (5) If appellant raises new or different arguments in its written reply to Town staff's submission, staff may, but is not required, to file a reply with the Secretary of the BZA. If staff elects to file a reply, it shall be filed within three (3) business days of the date appellant filed its reply. Staff shall file seven (7) copies plus a digital copy of its reply, including copies of all exhibits, at the time of filing. Staff shall also transmit by hand delivery, facsimile, or email a complete copy of its reply, including copies of all exhibits, to the appellant, so that the appellant receives its copy by 4:30 p.m. the same day staff files its reply with the Secretary of the BZA.
- (6) There is no page limit for written submissions.
- (7) Untimely submission of written materials may preclude or hinder the BZA's consideration of them but shall not be grounds for delay of consideration except at the discretion of the BZA.

D. Oral argument at the public meeting:

- (1) Order of oral argument:
 - a. Town staff shall explain the basis for his/her determination; such determination is presumed to be correct. Town staff shall have twenty (20) minutes for this presentation.
 - b. Appellant or the appellant's representative has the burden to rebut the presumption of the determination's correctness by a preponderance of the evidence. Appellant shall have twenty (20) minutes to present their arguments.
 - c. Town staff shall have the opportunity to rebut the issues presented by Appellant. Staff's rebuttal is limited to five (5) minutes.
 - d. Appellant may only reply to Town staff's rebuttal if Town staff raises new issues during its rebuttal. Appellant's reply is limited to five (5) minutes.

- (2) The time periods set forth regarding presentation of appeals at the public meeting may be modified at the discretion of the BZA. The Chairperson shall enforce the time limitations so that the hearing is held in a fair and orderly manner.
- (3) Appeals will be heard in the order in which they appear on the agenda unless a majority of the membership of the BZA votes to modify the agenda.
- (4) If either party presents an exhibit at the public meeting which was not submitted with its written submission, then a copy shall be submitted to the Secretary for the BZA at the public meeting. That copy shall be included in the BZA's official record relating to the appeal. Untimely submission of exhibits may preclude or hinder the BZA's consideration of them but shall not be grounds for delay of consideration except at the discretion of the BZA.

E. Requests for deferral of appeals:

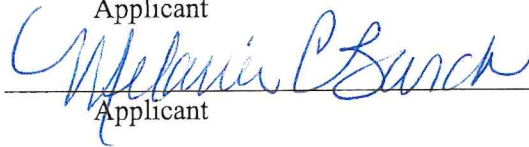
- (1) A request for a deferral of an appeal shall be in writing, shall be addressed to the BZA, and delivered to the Secretary of the BZA. The party requesting the deferral shall transmit a copy of the request for a deferral to the opposing party or its representative by hand delivery, facsimile, or email so that the opposing party receives its copy by 4:30 p.m. the same day the request for deferral is delivered to the Secretary of the BZA.
- (2) A request shall include the reason(s) why deferral is necessary.
- (3) A decision regarding a deferral shall be made by the BZA at the public meeting at which the case is scheduled to be considered.
- (4) The parties shall be prepared to proceed with argument of the appeal in the event the request for deferral is denied.

TOWN OF WARRENTON'S BOARD OF ZONING APPEALS

Addendum to Land Development Application

I hereby acknowledge receipt and have read the Town of Warrenton Board of Zoning Appeals' *Rules of Procedure Regarding Appeals*.

Applicant



Applicant

Melanie C Burch

Printed Name

August 1, 2024

Date

**FAUQUIER HABITAT FOR HUMANITY
VARIANCE REQUEST FOR 130-134 HAITI STREET**

Property Owner/Applicant:	Fauquier Habitat for Humanity, Inc.
Application Number:	BZA #2024-_____
Location:	130-134 Haiti Street, Warrenton, Virginia
PIN:	6984-4484-36000
Acreage:	6,176 Sq. Ft. or .1418 ac.
Zoning:	R-6 Residential
Comprehensive Plan Desig.:	Residential – Medium to High Density
Land Use:	Residential – Multi-Family Triplex
Request:	The Applicant is seeking approval of a Variance from Zoning Ordinance Section 3-4.3.4 Lot and Yard Regulations to permit a reduction of the side yard requirement from 15 feet to 8 feet, to allow the construction of a triplex for homebuyers who earn between 30-80% of the Area Median Income (AMI).

Request for Variance

The Applicant is requesting a variance from Article 3-4.3.4 of the Zoning Ordinance to reduce the side yard setbacks for the subject property, in order to construct a multi-family triplex building for families earning between 30-80% AMI in the community.

The Zoning Ordinance requires a minimum side yard setback of fifteen (15) feet for a three-family dwelling in the R-6 zoning district. This application requests that the side yard setback be reduced to 8 feet, in order to accommodate the Universal Design building size requirements for this parcel.

Background

Founded in 1991, Fauquier Habitat for Humanity (FHFH) is a non-profit organization, dedicated to building energy-efficient, sustainable and affordable housing for families who live or work in Fauquier County. To date, FHFH has built 64 homes and served over 300 families. During the twentieth century, various public policies systematically excluded Black and other households of color from equal access to homeownership, thriving neighborhoods, and economic opportunities. Local land use policies played a major role in this. Racialized zoning, racially restrictive deeds, and the demolition of Black neighborhoods as part of renewal all significantly contributed to racial inequities that carry forward into the present. These inequities are evident today in the form of continued racial segregation, staggering racial gaps in homeownership and wealth, and greater levels of exposure for people of color to unsafe homes and unstable housing. Today's economically exclusionary zoning sustains these impacts and entrenches segregation. The past few years have seen exploding interest in zoning reforms to enable lower-cost housing options in all neighborhoods. A growing number of Fauquier Habitat for Humanity's advocacy efforts are motivated by recognizing our collective and government's responsibility to undo the harmful effects of past and present land use policies that disadvantage people of color. These efforts seek to reform zoning and other land use policies in ways that genuinely lead to more affordable homes and residential stability for Black and other households of color while breaking up patterns of segregation. It is incumbent upon Fauquier Habitat for Humanity, as an organization that builds housing, to do everything we can with the assets and, with our knowledge base, to put those assets to work to solve the problem rather than just serving one family at a time.

The subject property is being rebuilt and revitalized in the Haiti Street Neighborhood - an historically underserved African American neighborhood with a rich history of family and social relationships and community engagement. The neighborhood is comprised of approximately 30 narrow lot single-family and multifamily residences located only two blocks away from the Warrenton central business district and Main Street. Fauquier Habitat's Neighborhood Revitalization (NR) program is based on an asset-based community development model that places residents as primary stakeholders and drivers to develop a collective vision for an improved quality of life in their neighborhood. We believe that working with the community and understanding local issues is necessary for any work to be successful, as residents and other stakeholders have a sense of ownership or agency. In 2019, Virginia Housing awarded FHFH a \$100,000 Community Impact Grant to study the housing planning activities critical to the development of affordable housing and to increase housing opportunities. HD Advisors, a housing and community development consulting service, partnered with FHFH to create a Small Area Plan presentation

focused on financial analysis of potential redevelopments and density scenarios, resident and community input sessions, architectural guidelines to develop homes that fit the character of the town and reflect the historical design of the original homes on the street, and community land trust analysis. In September 2019, the PATH Foundation awarded FHHF \$1,050,000 for the Haiti NR Initiative. This second grant was allocated to acquire and renovate a large part of the Haiti Street area to create affordable housing and neighborhood stability. Since the acquisition, FHHF has continued to work with the Haiti Street neighborhood to maintain trust, building single-family homes. Four houses are complete, four families are homeowners with mortgages and the homes are now in the Virginia Statewide Community Land Trust (VSCLT), a nonprofit organization created in 2021 that seeks to develop and maintain permanently affordable homeownership opportunities for low and moderate-income households.

Neighborhood History

Platted lots on Haiti Street date back to at least 1872 (see attached plat of subdivision recorded among the Fauquier County Land Records as a part of that Deed of Dedication found in Deed Book 64, page 272). Those lots, as originally configured, were narrow and deep to accommodate the perceived housing needs of the era.

Over the years, before the advent of zoning requirements, homes were sited and built according to those perceived needs. Since the inception of the Town Zoning Ordinance, the home locations along Haiti Street, as sited on their respective lots, have historically been considered existing non-conformities. Now that such homes have reached the end of their useful life, they must be replaced with homes which meet the standards of modern-day life.

Founded in 1991, the Applicant, Fauquier Habitat for Humanity, Inc. (FHHF) is a non-profit organization, dedicated to building energy-efficient, sustainable and affordable housing for families who live or work in Fauquier County. To date, FHHF has built 64 homes and served over 300 families.

As for 134 Haiti Street, the lot has an existing non-conforming triplex which must be replaced. Due to the siting of the existing home, any replacement dwelling should meet certain set-back requirements. Unfortunately, the existing Zoning Ordinance has minimum set-back requirements which cannot be met with the modern construction requirements for family dwellings with livable square footage needs.

The replacement of the dwelling with a duplex or single-family dwelling further reduces the supply of homes which address the needs of the underserved housing market targeted by the Applicant. The Applicant intends to replace this uninhabitable triplex with a modern triplex to meet the needs of three pre-screened, qualified

families. With that said, the triplex planned would exceed side set-back requirements, necessitating this request for a variance to reduce the set-back from 15 feet to 8 feet.

It is the Applicant's belief that the Board of Zoning Appeals can find that the requirements of Section 11-3.11.1 (1) – (8) of the Zoning Ordinance of the Town of Warrenton will be met. Perhaps of most importance, the “granting of the variance will not be of substantial detriment to adjacent and nearby properties in the proximity of that geographical area.” In fact, the variance would result in continuity in the neighborhood as it relates to replacement dwellings. Also of importance, the granting of the requested variance will not create an Unauthorized Variance under 11-3.11.2.

Furthermore, this variance application fits squarely within goals of the Town's current Comprehensive Plan and the 2009 Supplement to the Comprehensive Plan:

“GOAL F - Housing Goals

1. To encourage the development of a wide range of housing opportunities by type, design, and density for all residents of Warrenton.
2. To provide for affordable housing options. . .

Objectives

1. To provide standards for safe and decent housing for residents of the Town.
2. To establish a broad choice of housing types while encouraging the development of the single-family home as the major residential type.
3. To recognize the importance of affordable housing and promote its development in all new subdivisions.
4. To achieve and maintain a balanced mix of affordable housing in the Town so that a reasonable proportion of the people employed within the Town are able to live within the Town.”

Background and Current Situation/Past Efforts by the Town

During the past decade, the Town has made several significant efforts to address the problem of affordable housing, including formal acceptance of a Housing Action Plan in 1991 and preparation of a Comprehensive Housing Affordability Study in 1993 (CHAS). The 1991 Plan identified the problem of affordable housing in the Town as well as several approaches to address the problem, including: . . .

- Cooperating with Habitat for Humanity its efforts to construct affordable housing units.” *Town of Warrenton Comprehensive Plan, 2002-2025, Chapter 3, pp. 3-90 and 3-91*

Furthermore, the Comprehensive Plans recognizes the Town’s role in affordable housing options:

“Encourage a housing supply that supports the Warrenton workforce population. Continue to support the efforts of nonprofits such as Habitat for Humanity, Fauquier Housing Corporation, Community Touch and Fauquier Transitional Housing to provide planned affordable housing efforts and identify opportunities for joint action.” *Town of Warrenton Comprehensive Plan, 2002-2025, (2009 Update) p. 15*

The Updated Plan also recognizes the significant role Habitat plays in the provision of Permanent Housing – Construction and Renovation. “Fauquier Habitat for Humanity works in partnership with community churches, businesses, volunteers and families to eliminate the blight of poverty housing: leaky roofs, lack of indoor plumbing, kitchen or bath facilities, no source of heat, and other unsafe or unsanitary conditions. Since 1991, Habitat has built 37 homes, rehabilitated several others and is undertaking a new project to construct a 7 duplex subdivision at Sterling Court, just off Academy Hill Drive in Warrenton.” *Town of Warrenton Comprehensive Plan, 2002-2025, (2009 Update) p. 23.*

Definition and Criteria for Approval

Pursuant to Va. Code Ann. §15.2-2201 (1950, as amended) and the adopted Town of Warrenton Zoning Ordinance, the definition of a variance is stated as:

“...a reasonable deviation from those provisions regulating the shape, size or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure when the strict application of the Ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provide such variance is not contrary to the purpose of the Ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.”

In granting a variance, the BZA may impose such conditions regarding a proposed structure’s location, character, and other features or use as it may deem necessary in the public interest. The BZA may require a guarantee or bond to ensure compliance with the imposed conditions. The property upon which a property owner

has been granted a variance shall be treated as conforming for all purposes under state law and local ordinances. Va. Code Ann. §15.2-2309(2).

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would:

Unreasonably restrict utilization of the property; OR

That granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance; OR

Alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability.

In addition to the above criteria, no variance shall be authorized by the BZA unless it is determined that the request meets all five of the following requirements as set forth in Section 11-3.11.1.2 of the Zoning Ordinance, *Standards for Variances*:

- a. The property interest for which the variance is being requested was acquired in good faith, and any hardship was not created by the Applicant for the variance;
- b. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- c. The condition or situation of the property is not of so general or recurring of a nature as to be adopted as an amendment to the ordinance;
- d. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property;
- e. The relief or remedy sought by the variance application is not available through a special use permit process that is authorized in the ordinance or the process for the modification to the Zoning Ordinance at the time of the filing of the variance application

Discussion of Legal Requirements

- The request submitted is a reasonable deviation from the ordinance side yard requirement. Strict application would unreasonably restrict utilization of the property, is not shared generally by other properties, and is not contrary to the purpose of the ordinance

- A reduction in the side yard setback to 8 feet does not seem unreasonable to the Applicant, particularly since the side yard setback in this zoning district is currently 8 feet for a single-family dwelling; and therefore, the Applicant only requests the side yard requirement that is already standard within the district, albeit for a different housing type.
- Lack of variance approval would unreasonably restrict utilization of the property
 - The Applicant submits that the utilization of existing side yard requirement would in fact unreasonably restrict this lot from its existing use, which is multi-family housing. Built to a universal design, which provides a maximally accessible home to the broadest possible range of people.
- Grant of variance would alleviate a hardship due to a physical condition of the improvements on the subject property
 - The grant of the variance would alleviate the hardship caused by the existing side yard setback by allowing the Applicant to reconstruct the previous building, and maximize the utilization of the lot, to construct housing that serves underprivileged families.
- Property was acquired in good faith by the Applicant
 - The Applicant affirmatively states that the property was acquired in good faith.
- The hardship was not caused or created by the Applicant
 - The Applicant does not believe that the hardship that exists on this parcel was caused or created by the Applicant.
- The variance will not be a substantial detriment to other properties in the area
 - The Applicant submits that it is highly unlikely that this variance will result in a substantial detriment to the other properties in the neighborhood, and in fact will enhance the community by contributing to the revitalization of homes in the area.
- The situation or condition of the property is unique and non-recurring, and does not require an ordinance amendment
 - Although all parcels of property are unique, this particular lot has existing easements of record and a building footprint that has existed for many years and pre-dates the current ordinance requirement. The Applicant avers that it would be impractical to amend the side yard setback for the entire zoning district (via an ordinance amendment) to accommodate this request.
- The variance will not result in a non-permitted use or change the zoning classification

- The permitted use of multi-family housing will not be changed, nor will the zoning classification, if the reduction in the side yard requirement is granted.
- The special exception and modification of the zoning ordinance processes are not necessary for the relief requested by the variance and would be impractical to implement for all lots in the zoning district
 - For this particular parcel, the reduction of a side yard is the only modification requested. Since this request does not involve a change of use, which change is contemplated by the special exception and zoning ordinance modification processes, those application types are considered inapplicable and impractical for the subject property.

1. I have read the foregoing and find it to be a true and correct copy of the original as the same appears in the records of the County Court of Tazewell County, Virginia, and I have signed the same as such.

commissioners, named in the above order personally, appeared before me, and were duly sworn to view, and faithfully and impartially, ascertain a just compensation for the lot of land named in the order above as well as to assess the damages, and benefits that may arise from the condemnation thereof in respect to the residue of the tract.

Given under my hand this 16th day, May 1872

W. B. Ridd J.P.

Teste

Wm. M. Thomas Clerk

Morgan S. S.
Bond
Bonds of 1872

Know all men by these presents that we Samuel S. Morgan and John Baker are held and firmly bound unto the Commonwealth of Virginia in the sum of two thousand Dollars, to the payment whereof, well and truly to be made we bind ourselves and our heirs, executors and administrators, jointly & severally, by these presents, sealed with our seals and dated this 20th day of June 1872.

The condition of the above obligation is such that whereas the above bound Samuel S. Morgan, who at an election held for the County of Tazewell on the 23rd day of May 1872, was elected Township Clerk for the Township of Marshall in said County for the term of one year commencing on the first day of July 1872, has this day qualified before the Hon. Thomas Smith, Judge of the County Court of Tazewell County, in the vacation of said Court, Now if the said Samuel S. Morgan shall faithfully perform all the duties of his said office of Township Clerk for the Township of Marshall in said County, during his continuance in said office, then this obligation to be void, else to remain in full force -

Samuel S. Morgan (Seal)

John Baker (Seal)

Tazewell County, to wit:

To the Clerk of the County Court of said County;

This is to certify that Samuel S. Morgan, who at an election held on the 23rd day of May 1872 was elected Township Clerk for the Township of Marshall in said County for the term of one year, commencing on the first day of July 1872, this day qualified before me as such Clerk by taking the oath required by law & together with John Baker his surety, approved by me entered into & acknowledged bond in the penalty of two thousand Dollars payable & conditions according to law; which bond is herewith enclosed to you, and you are directed to record the same and to enter this order on the Minute Book of said Court as an order made in vacation -

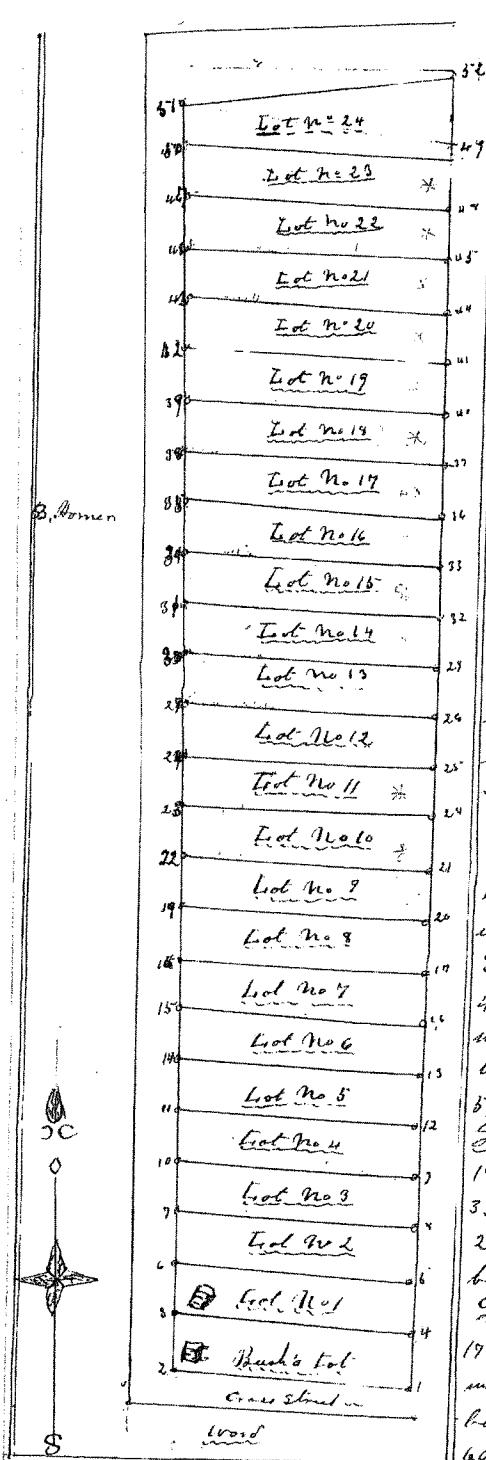
Given under my hand this 20th day of June 1872.

Thomas Smith, Judge of the County Court of Tazewell County

Nelson E. Plot
of land

The annexed Plot represents a lot of land in the town of Warrenton belonging to E. Nelson Esq. which at his request I subdivided into 24 lots as follows
Bush's lot - Begins on the N side of Grace Street at Poulton's corner. Then with said street N 87° 42' W 160 feet to intersection of Street then with said street N 5° 50' E 85 feet then N 87° 22' E 161 feet to (4) in Poulton's line then with Poulton S 8° E 38 feet to (1) containing 8855 feet - Lot No. 1 Begins at (3) on E side of street S 87° 42' E 161 feet to (4) then N 3° 10' 38 feet to (5) then S 87° 42' W 162 feet to (6) on E side of Street then with 3rd Street S 5° E 35 feet to the beginning, containing 8894 feet - Lot No. 2 Begins at (5) in Poulton's line then with (N 1) S 87° 42' W 162 feet to (6) then with the street N 5° 10' 35 feet to (7) thence at 87° 42' E 162 feet 11 inches to (8) in Poulton's line, thence with Poulton S 8° E 38 feet to the beginning, containing 8830 feet. Lot No. 3 Begins at (7) a stake on E. of street then with (N 2) S 87° 42' E 162 feet 11 inches to (8) in Poulton's line, then with Poulton N 5° W 35 feet to (9). Then at 87° 42' W 163 feet 10 inches to (10) on the E. side of street then with said street S 5° E 35 feet to the beginning, containing 8914 feet. Lot No. 4 Begins at (9) on Poulton's line corner to N 3 then with Poulton

RB64,
Pg 272



S 87° 1/2 E 172 feet 11 inches to (28) then with back line N 3° 10' 35" W 35 feet to (23) then with (N° 14) N 87° 1/2 W 173 feet to (30) then with street S 5° E 35 feet to the beginning, containing 6040 feet. Lot N° 14 Begins at (23) then with (N° 13) N 87° 1/2 W 173 feet to (30) then with street N 5° W 35 feet to (31) then with (N° 15) S 87° 1/2 E 173 feet 11 inches to (32) then S 3° E 35 feet to beginning & contains 6041 feet. Lot N° 15 Begins at (31) then with (N° 14) S 87° 1/2 E 173 feet 11 inches to (32) then with back line N 3° 10' 35" W 35 feet to (33) then N 87° 1/2 W 174 feet 10 inches to (34) then with street S 5° E 35 feet to the beginning, containing 6103 feet. Lot N° 16 Begins at (33) then with (N° 15) N 87° 1/2 W 174 feet 10 inches to (34) then with street N 5° W 35 feet to (35) then with (N° 17) S 87° 1/2 E 175 feet 7 inches to (36) then S 3° E 35 feet to (33) containing 6135 feet. Lot N° 17 Begins at (35) then with (N° 16) S 87° 1/2 E 175 feet 7 inches to (36) then with back line N 3° 10' 35" W 35 feet to (37) then with (N° 18) N 87° 1/2 W 176 feet 9 inches to (38) then S 3° E 35 feet to beginning, containing 6143 feet.

Lot $N^{\circ} 18$ Begins at (37) then with (17) $N 87^{\circ} 42' W$ 126 feet 8 in. to (38) then with street $N 3^{\circ} 10' 35'$ feet to (39) then with (K $^{\circ} 17$) $S 87^{\circ} 42' E$ 177 feet 7 in. to (40) thence $S 8^{\circ} 23' 35'$ feet to (37) the beginning containing 6200 feet. Lot $N^{\circ} 19$ Begins at (37) then with (K $^{\circ} 18$) $S 87^{\circ} 42' E$ 177 feet 7 in. to (40) then with back line $N 3^{\circ} 10' 35'$ feet to (41) then with $E 2^{\circ} 20'$ $N 87^{\circ} 42' W$ 175 feet 6 in. to (42) corner to $N^{\circ} 20$ on the E side of street. Thence with said street $S 5^{\circ} 23' 35'$ feet to the beginning, containing 6232 feet. Lot $N^{\circ} 20$ Begins at (41) corner to $N^{\circ} 19$ then with $N^{\circ} 19$ $S 87^{\circ} 42' W$ 172 feet 6 inches to (43) on E side of street then with said street $N 3^{\circ} 10' 35'$ feet to (43) corner to $N^{\circ} 21$ then with $N^{\circ} 21$ $S 87^{\circ} 42' E$ 177 feet 6 inches to (44) then with back line $S 3^{\circ} 10' 35'$ feet to the beginning containing 6264 feet. Lot $N^{\circ} 21$ Begins at (43) on street corner to $N^{\circ} 20$ then with $N^{\circ} 20$ $S 87^{\circ} 42' E$ 177 feet 5 in. to (44) in the back line. Then with back line $N 3^{\circ} 10' 35'$ feet to (45) corner to $N^{\circ} 22$ then with $N^{\circ} 22$ $N 87^{\circ} 42' W$ 180 feet 4 inches to (46) then $S 5^{\circ} 23' 35'$ feet along street to beginning, containing 6296 feet. Lot $N^{\circ} 22$ Begins at (45) corner to (K $^{\circ} 21$) then with $N^{\circ} 21$ $N 87^{\circ} 42' W$ 180 feet 4 inches to (46) on the E side of street. Then with street $N 3^{\circ} 10' 35'$ feet to (47) thence with Lot $N^{\circ} 23$ $S 87^{\circ} 42' E$ 181 feet 3 in. to (48) in the back line. Thence $S 3^{\circ} 10' 35'$ feet to the beginning, containing 6328 feet. Lot $N^{\circ} 23$ Begins at (47) corner to $N^{\circ} 22$ then with $S 87^{\circ} 42' E$ 181 feet 3 in. to (48) in the back line. Then $N 3^{\circ} 10' 35'$ feet to (49) corner to Lot $N^{\circ} 24$ then with said Lot $N^{\circ} 24$ $N 87^{\circ} 42' W$ 182 feet 2 inches to (50) on E side of street. Then with said street $S 5^{\circ} 23' 35'$ feet to the beginning, containing 6360 feet. Lot $N^{\circ} 24$ Begins at (49) in the back line corner to Lot $N^{\circ} 23$ then with (23) $N 87^{\circ} 42' W$ 182 feet 2 in. to (50) thence with street $N 3^{\circ} 10' 35'$ feet to (51) at the intersection of streets, then $N 8^{\circ} 23' 35'$ feet to (52) at the intersection of cross street & back line. Thence $S 3^{\circ} 10' 35'$ feet to beginning, containing 8222 feet. * The width of the N. cross street is 36 feet and of the S. cross street is 16 feet.

Clarke Office Fauquier County Court June 25th 1872

This Plat was this day received in the office & recorded at the request of E. Nelson

Teste

Wm. M. Home Clerk.

This Deed, made the twenty-fifth day of May 1872 between Wm. C. Gordon and Charlotte J. his wife of the county of Fauquier and state of Virginia of the first part, and William Gibson (cred) of the said county and state of the other part, witnesseth, that for and in consideration of the sum of One hundred Dollars, paid by the said Wm. Gibson the said Wm. C. Gordon and Charlotte J. his wife, have bargained, sold and conveyed unto the said Wm. Gibson by general warranty, a certain lot or parcel of land in the county of Fauquier, it being part of the said Wm. C. Gordon's portion of the real estate of Alexander Gordon Dec'd and part of the tract of land known as the Slip Bottom tract, and is bounded as follows viz: Beginning at a Red Oak on the north side of the Warrenton Road, corner to Jack Philips, R. L. Corone and Joseph Hackley's land. Recurring thence $S 8^{\circ} 23' 35'$ poles to a Rock and stake in Darnall's line thence $N 54^{\circ} 20' W$ 84 poles to a Rock corner in Joe Hackley's line, thence with Hackley's line $N 59^{\circ} 42' E$ 76.6 poles to the beginning, containing twenty acres be the same more or less together with all things thereto pertaining, also all right, title and interest in and to the same, free of other claims or encumbrances, unto the said Wm. Gibson, his heirs or assigns to have and to hold forever. In witness whereof the said Wm. C. Gordon and Charlotte J. his wife have hereunto set their hands and affixed their seals, the day and year first herein written.

Wm. C. Gordon (cred)

Charlotte J. Gordon (cred)

Fauquier County, to wit:

J. William B. Redd, a Justice of the Peace for the County of

BASIC MODULE SET INSTRUCTIONS

THIS IS A BASIC SET OF INSTRUCTIONS TO HELP GUIDE THE SET CREW ON DAY OF SET. SET CREW SHOULD READ THE PLANS THOROUGHLY PRIOR TO SET DAY. THESE SET INSTRUCTIONS COVER THE SET ORDER AND ANY MAJOR POINTS THAT MAY NEED TO BE ADDRESSED, PROPER MODULE CONNECTIONS AND FASTENING IS NOT PART OF THESE INSTRUCTIONS. SET CREW TO FOLLOW INDUSTRY STANDARD SAFETY PRACTICES AND OSHA REQUIREMENTS.

BASIC TWO-STORY/ FINISHED CAPE

SET FIRST FLOOR MODULES
INSTALL 2X ACROSS MARRIAGE LINE DIVIDED EQUALLY
SET 2ND FLOOR MODULES
RAISE ROOF AND PULL THE KNEEWALL INTO POSITION
SET GABLE WALLS
FLIP THE UPPER PANELS
INSTALL TURN GABLES/DORMERS AS PER PLAN IF APPLICABLE
FINISH DRYING IN

HIP OPTION

PART OF THE ROOF IS HINGED WITH THE REMAINDER SHIPPED PANELIZED INCLUDING THE HIP RAFTER. PART OF THE ROOF SHEATHING IS STEPPED BACK FOR SITE SETUP. THIS ROOF SHEATHING SHOULD BE INSTALLED AFTER THE FRAMING CONNECTIONS HAVE BEEN MADE.

NOTE:
PORCHES, DECKS AND/OR GARAGE TO BE THE DECISION OF THE BUILDER OR OWNER PER LOCAL CODES & REQUIREMENTS.


ADD FOUNDATION EXPOSURE TO OVERALL DIMENSIONS FOR AN ACCURATE ASSESSMENT OF THE OVERALL HEIGHT AND MEAN ROOF HEIGHT- BUILDING OFFICIAL TO VERIFY AND APPROVE ACTUAL MEAN ROOF HEIGHT ON-SITE.



FRONT ELEVATION

NOTE:
THESE RENDERINGS ARE AN ARTIST'S DEPICTION ONLY, MAY NOT REFLECT THE ACTUAL FINAL PRODUCT. PLAN UPDATES MAY NOT BE REFLECTED IN RENDERINGS. REFER TO THE CONSTRUCTION DOCUMENTS FOR ADDITIONAL INFORMATION. RENDERINGS SHALL NOT BE USED FOR CONSTRUCTION.

TOWNHOUSE - LOT #130, #132, #134
4,836 TOTAL SQ. FT.
FAUQUIER HABITAT FOR HUMANITY



Item 2.

CARDINAL HOMES®

PROJECT NO.

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SCALE:

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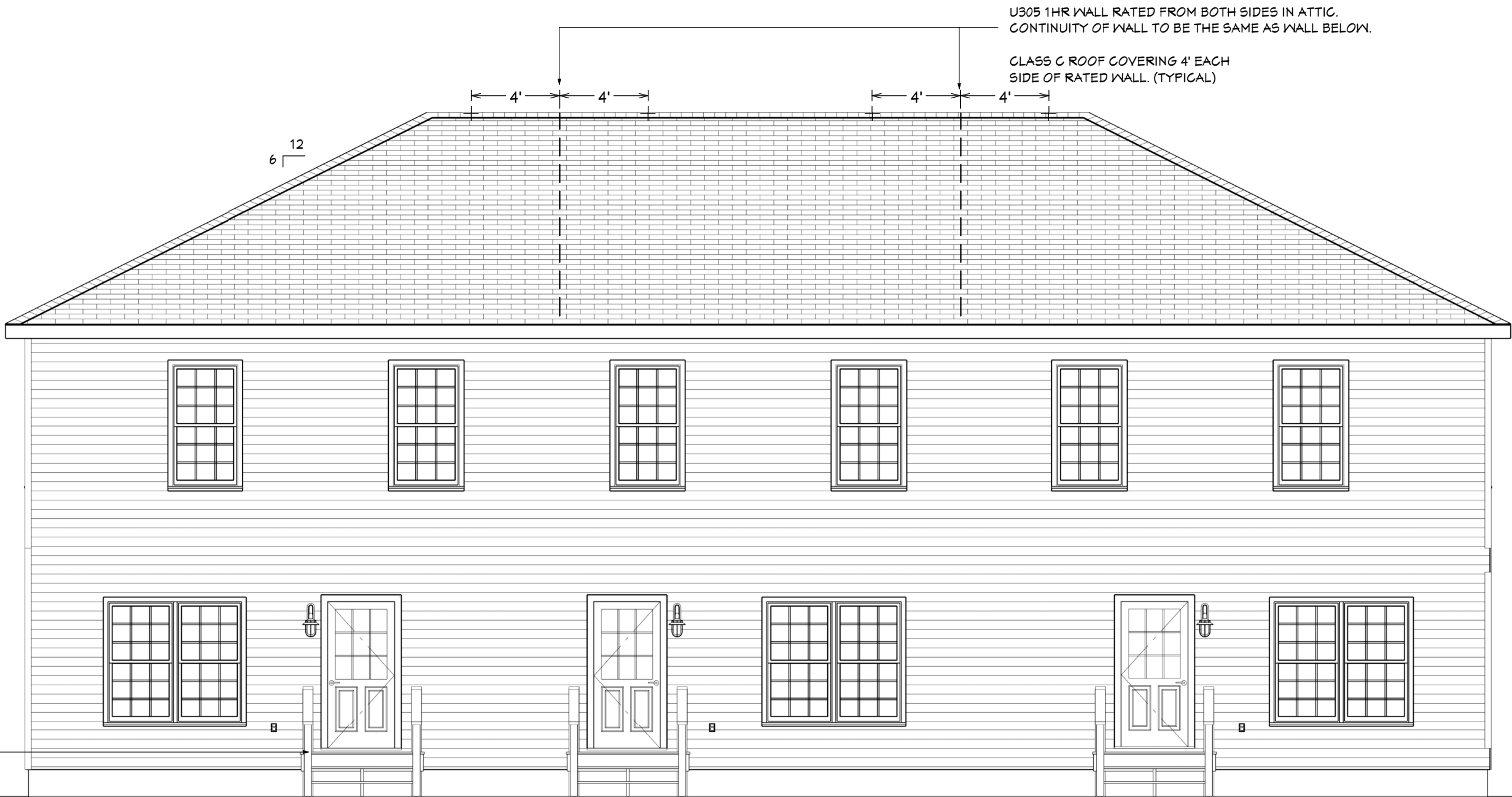
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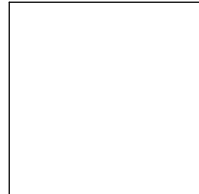
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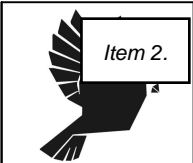
PORCHES BY
BUILDER AT SITE

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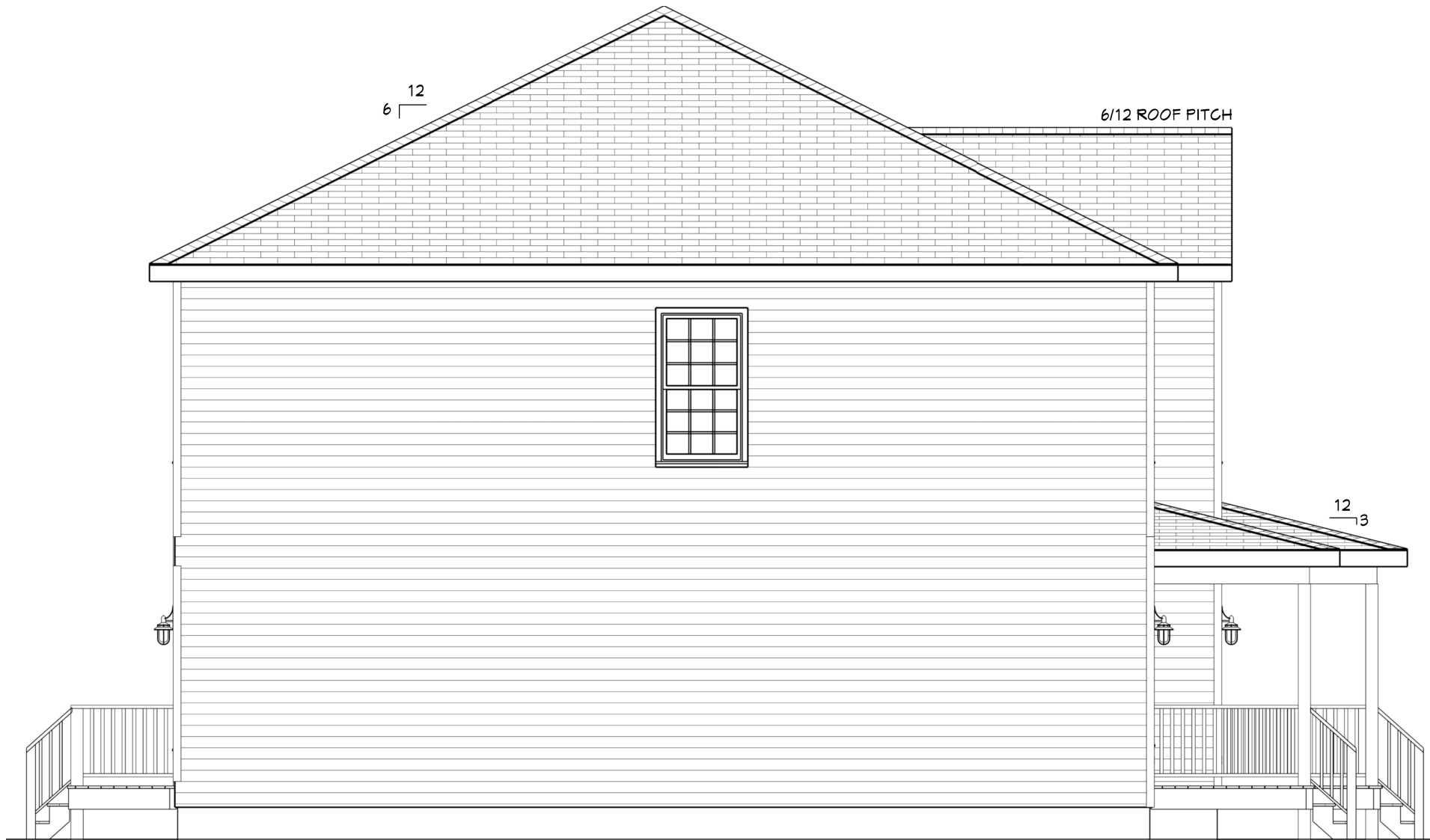
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LEFT ELEVATION

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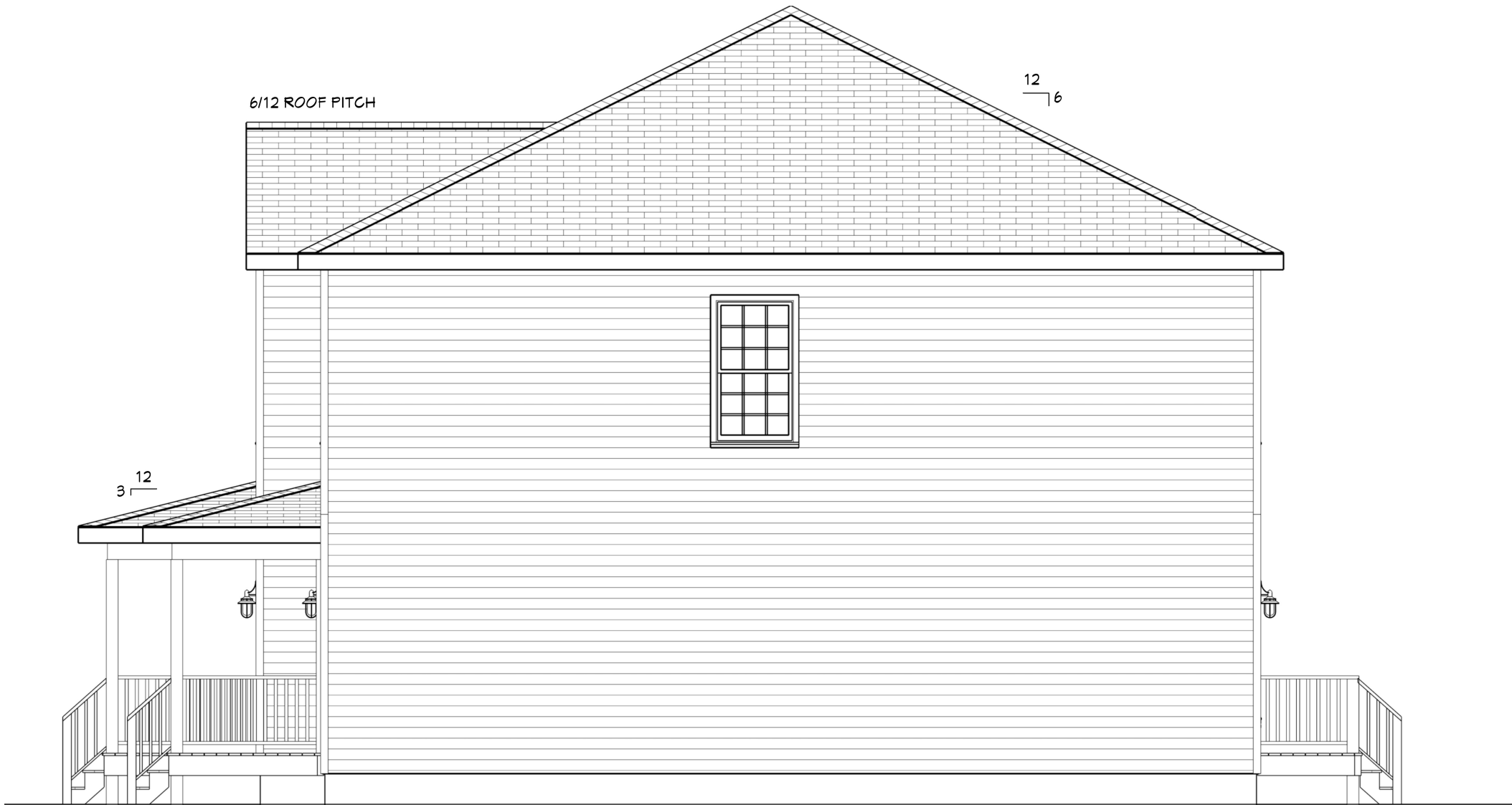
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RIGHT ELEVATION

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FLOOR PLAN

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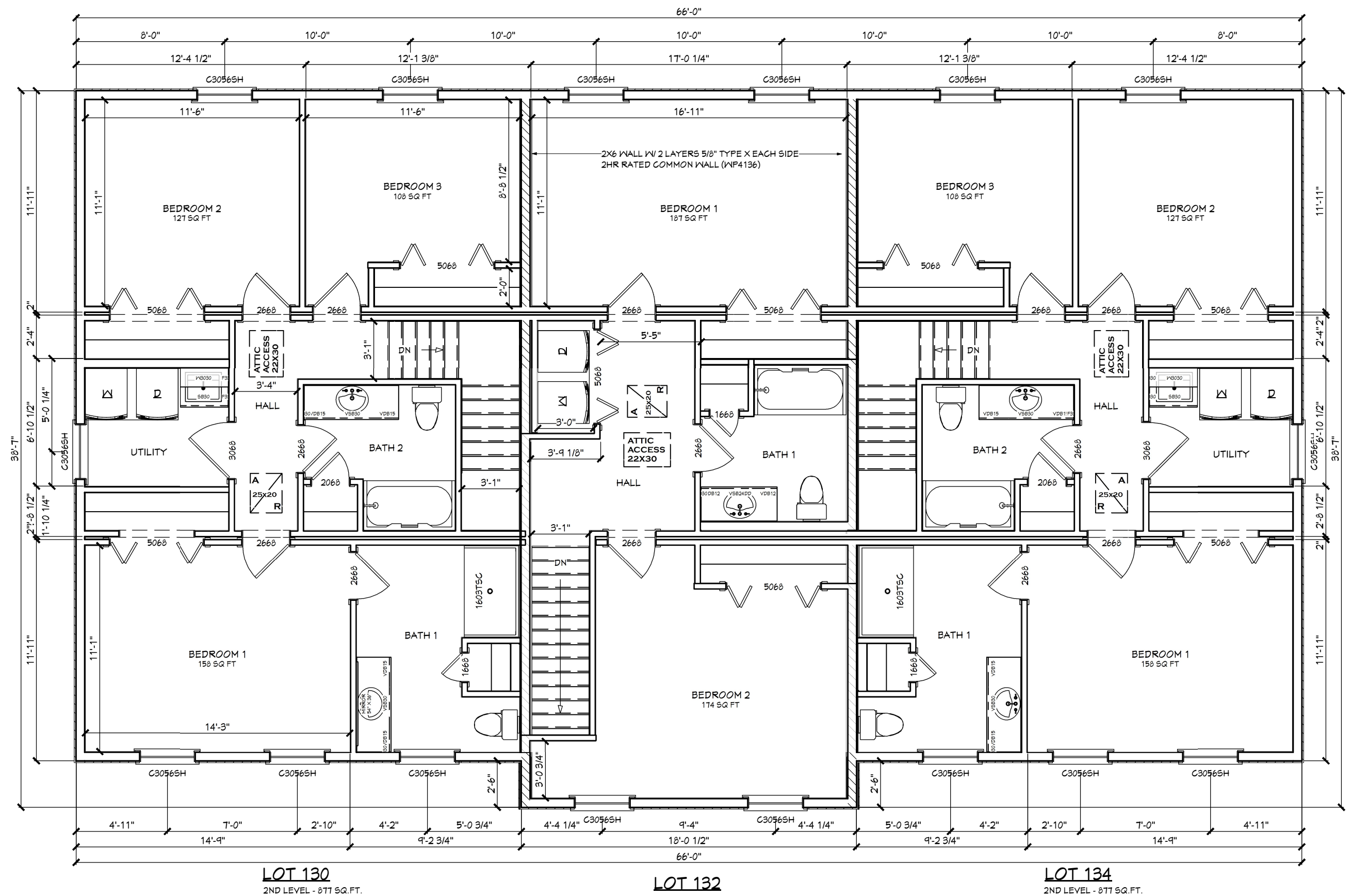
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WINDOW SCHEDULE 1ST FLOOR									
LABEL	QTY	FLOOR	WIDTH	HEIGHT	R/O	DESCRIPTION	NOTES	LIGHT	VENT
2C 3056-2 MULLED	3	1	73"	65 1/2"	77"X66 1/2"	MULLED UNIT		23.8	12.26
C3056SH	4	1	36"	66"	36 1/2"X66 1/2"	SINGLE HUNG		11.9	6.13

DOOR SCHEDULE 1ST FLOOR								
LABEL	QTY	FLOOR	SIZE	WIDTH	HEIGHT	R/O	DESCRIPTION	COMMENTS
3068	3	1	3068 L IN	36"	80"	38"X82 1/2"	HINGED-PER ORDER	
3068	2	1	3068 R IN	36"	80"	38"X82 1/2"	HINGED-PER ORDER	
2668	4	1	2668 L IN	30"	80"	32"X82 1/2"	HINGED-PER ORDER	
2668	3	1	2668 R IN	30"	80"	32"X82 1/2"	HINGED-PER ORDER	
17-3068	1	1	3068 L EX	36"	80"	38 1/2"X82 1/2"	EXT. HINGED-CRAFTSMAN THREE LITE II	LOW THRESHOLD
17-3068	2	1	3068 R EX	36"	80"	38 1/2"X82 1/2"	EXT. HINGED-CRAFTSMAN THREE LITE II	LOW THRESHOLD
4-3068	2	1	3068 L EX	36"	80"	38 1/2"X82 1/2"	EXT. HINGED-9 LITE, 2 PANEL	
4-3068	1	1	3068 R EX	36"	80"	38 1/2"X82 1/2"	EXT. HINGED-9 LITE, 2 PANEL	

WINDOW SCHEDULE 2ND FLOOR									
LABEL	QTY	FLOOR	WIDTH	HEIGHT	R/O	DESCRIPTION	NOTES	LIGHT	VENT
C3056SH	16	2	36"	66"	36 1/2"X66 1/2"	SINGLE HUNG		11.9	6.13

DOOR SCHEDULE 2ND FLOOR								
LABEL	QTY	FLOOR	SIZE	WIDTH	HEIGHT	R/O	DESCRIPTION	NOTES
5068	9	2	5068 L/R	60"	80"	62"X82 1/2"	4 DR. BIFOLD-PER ORDER	
3068	1	2	3068 L IN	36"	80"	38"X82 1/2"	HINGED-PER ORDER	
3068	1	2	3068 R IN	36"	80"	38"X82 1/2"	HINGED-PER ORDER	
2668	7	2	2668 L IN	30"	80"	32"X82 1/2"	HINGED-PER ORDER	
2668	6	2	2668 R IN	30"	80"	32"X82 1/2"	HINGED-PER ORDER	
2068	1	2	2068 R IN	24"	80"	26"X82 1/2"	HINGED-PER ORDER	
2068	1	2	2068 L IN	24"	80"	26"X82 1/2"	HINGED-PER ORDER	
1668	1	2	1668 L IN	18"	80"	20"X82 1/2"	HINGED-PER ORDER	
1668	2	2	1668 R IN	18"	80"	20"X82 1/2"	HINGED-PER ORDER	

- NOTE:
- INTERIOR DOORS NOT ON A MARRIAGE LINE HAVE A 2X4 FLAT HEADER. OTHER HEADER / STRUCTURAL SUPPORT OPTIONS MAYBE LISTED ON FLOOR PLAN
 - ALL EXTERIOR WINDOW & DOOR HEADERS TO BE (3) 2X4 SPF#2 HEADER UNLESS OTHERWISE NOTED
 - PG 32, BEAM SPANS
 - ALL MATELINE DOOR HEADERS TO BE (2) 2X4 SPF#2 HEADER
 - PER MODULE/ NO SPLICE UNLESS OTHERWISE NOTED
 - PG 2. BEAM SPANS



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WINDOW / DOOR SCHEDULE

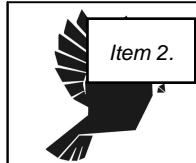
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TOWNHOUSE - LOT #130, #132, #134
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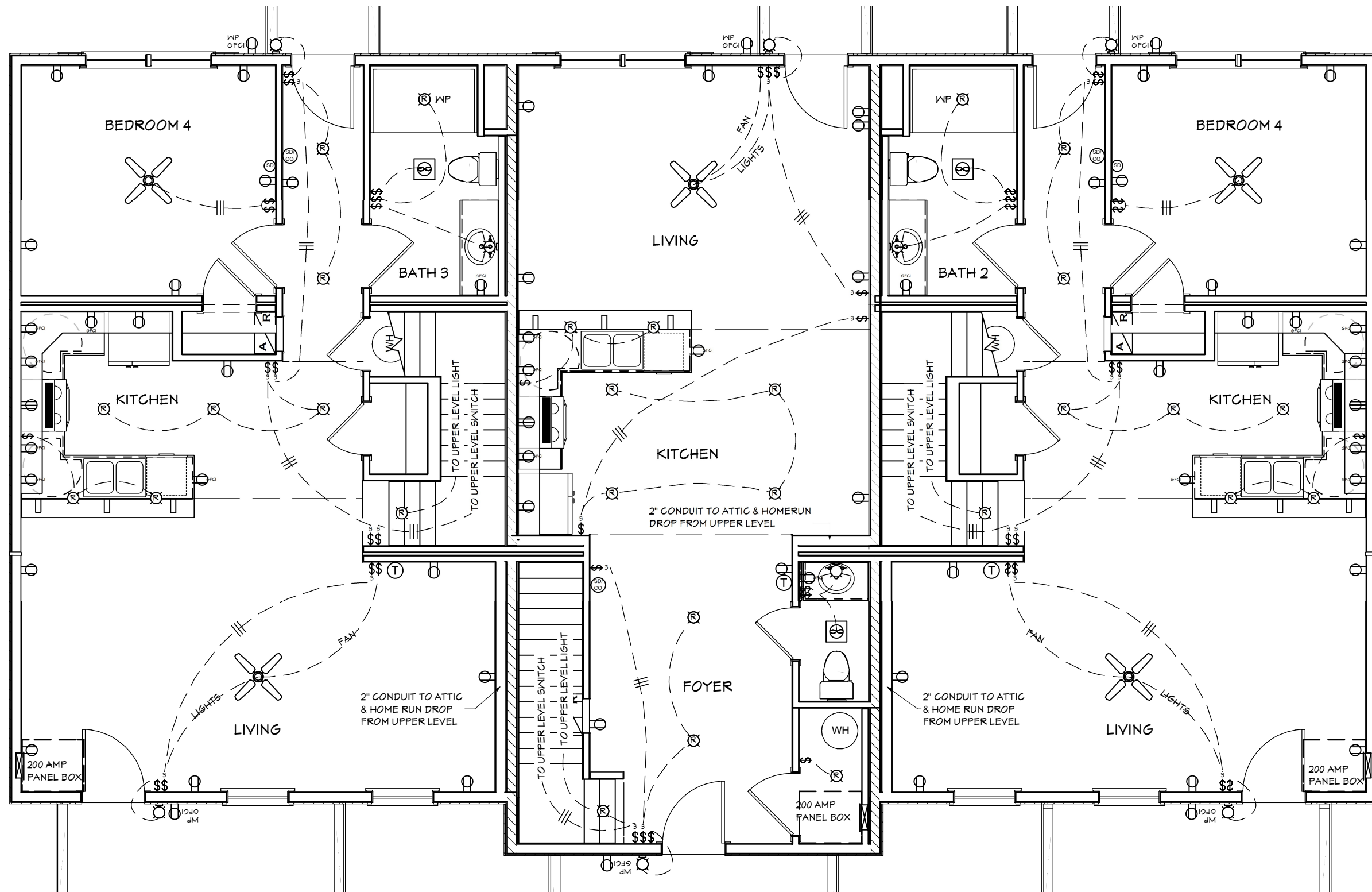
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1ST LEVEL

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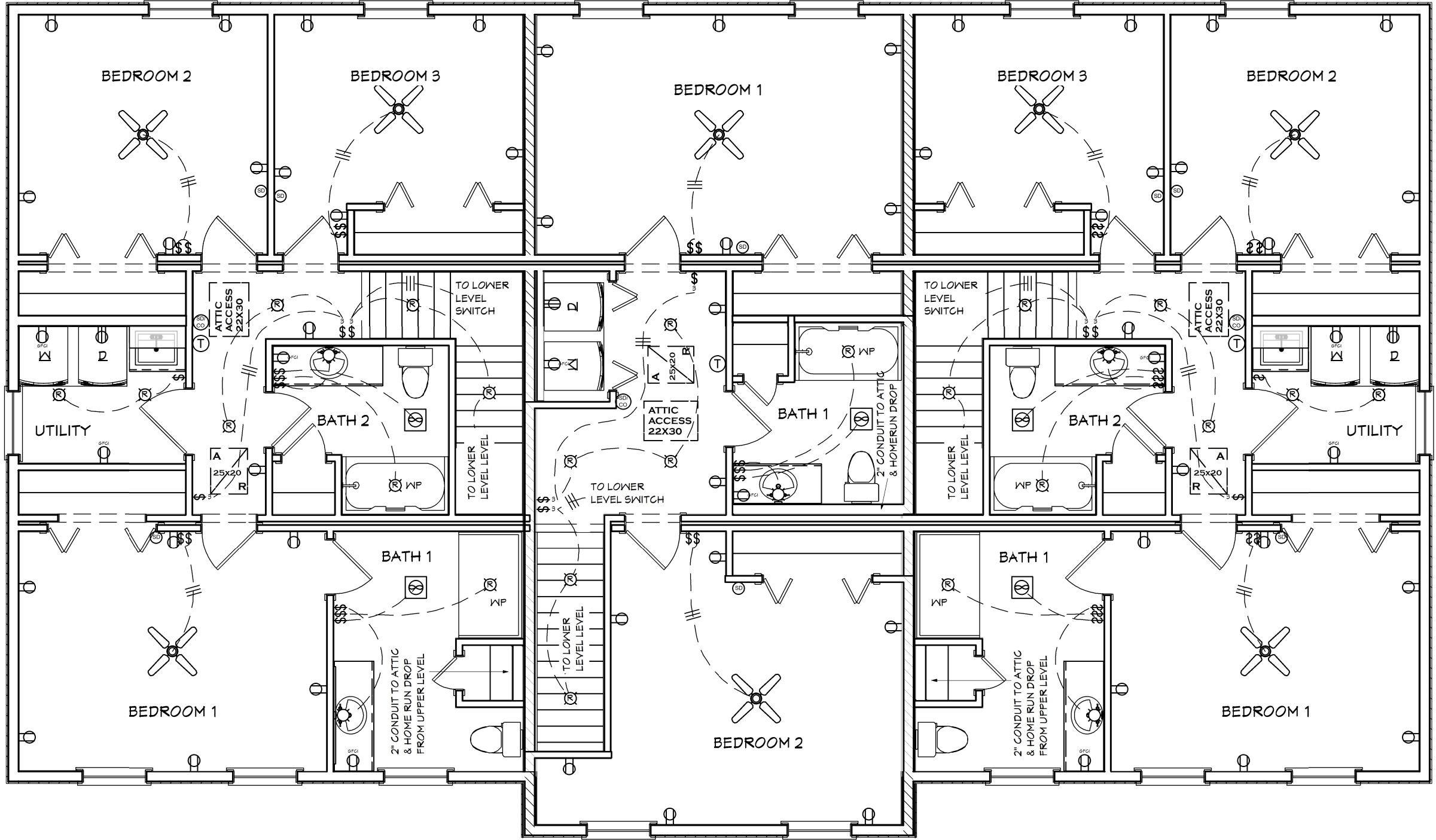
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2ND LEVEL

TOWNHOUSE - LOT #130, #132, #134
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FAUQUIER HABITAT FOR HUMANITY

ELECTRICAL NOTES

1. THE AMPACITY OF ALL GENERAL BRANCH CIRCUITS SHALL BE 20 AMPS. ALL OTHER CIRCUITS LISTED AS DEDICATED ON THE ELECTRICAL PANEL CIRCUIT DIRECTORY SHALL BE SIZED AS REQUIRED BY LISTING FOR INDIVIDUAL ITEMS. ALL GENERAL BRANCH RECEPTACLES ARE TO BE TAMPER RESISTANT EXCEPT FOR RECEPTACLES LOCATED WITHIN A DEDICATED SPACE FOR AN APPLIANCE THAT IN NORMAL USE ISN'T EASY MOVED FROM ON PLACE TO ANOTHER.
2. GENERAL CIRCUITING INFORMATION:
- A. ONE CENTRAL HEATING CIRCUIT (SPACE SHALL BE ALLOWED FOR ON MAIN PANEL UNLESS OTHERWISE NOTED)
- B. KITCHEN SMALL APPLIANCE AND DINING AREA RECEPTACLES - 20 AMP CIRCUITS, MINIMUM NUMBER IS 2. ALL EATING SPACES, INCLUDING DINING ROOM, DINING NOOKS, BREAKFAST AREAS, ETC., SHALL BE PROVIDED WITH THIS 20 AMP PROTECTION.
- C. LAUNDRY CIRCUIT - ONE 20 AMP CIRCUIT, GFCI PROTECTED, FOR WASHER AND ASSOCIATED RECEPTACLE IN AREA AND ONE DEDICATED 30 AMP CIRCUIT FOR DRYER.
- D. GENERAL LIGHTING AND CONVENIENCE RECEPTACLE BRANCH CIRCUITS AS DESIGNED PER RESIDENCE.
3. CARDINAL HOMES SHALL INSTALL A CIRCUIT DIRECTORY ON THE INSIDE COVER OF EVERY PANEL BOARD ENCLOSURE FOR CIRCUIT IDENTIFICATION. THE NUMBERS 1 THROUGH 14 SHALL BE RESERVED FOR THE FOLLOWING DEDICATED CIRCUITS: RANGE, WATER HEATER, DRYER, WELL, WASHER, BATH GFCI, SMOKE DETECTORS, AND KITCHEN SMALL APPLIANCE BRANCH CIRCUITS. THEY ARE TO BE CONSIDERED DEDICATED CIRCUITS AND MAY NOT SERVE ANY OTHER ITEM IN COMBINATION WITH THE DEDICATED LISTING. ALL OTHER NUMBERS MAY BE USED FOR GENERAL BRANCH CIRCUITS OR AS REQUIRED FOR ADDITIONAL DEDICATED CIRCUITS. ANY CIRCUIT LISTED AS DEDICATED ON THE DIRECTORY MAY ONLY SERVE THE ITEM(S) LISTED AS DEDICATED TO THAT CIRCUIT.
4. NONMETALLIC CABLE (NM) IS USED THROUGHOUT AND IS INSTALLED AND SUPPORTED AS PER IT'S LISTING.
5. POWER AND LIGHTING DISTRIBUTION:
- A. GENERAL USE RECEPTACLES SHALL BE DISTRIBUTED WITHIN THE RESIDENCE.
- B. SMALL KITCHEN APPLIANCE SHALL NOT BE COMBINED WITH ANY OTHER RECEPTACLE TO COMPLETE ANY OTHER CIRCUIT. ALL SMALL KITCHEN APPLIANCE CIRCUITS SHALL NOT SERVE ANY OTHER OUTLETS OR DEVICES. SMALL KITCHEN APPLIANCE COUNTER TOP RECEPTACLES SHALL BE PROVIDED WITH GROUND FAULT PROTECTION. SMALL KITCHEN APPLIANCE CIRCUITS SHALL BE ON 20 AMP BREAKERS.
- C. BATHROOM RECEPTACLES - EACH BATHROOM SHALL HAVE A MINIMUM OF ONE WALL RECEPTACLE INSTALLED ADJACENT TO EACH LAVATORY. THIS RECEPTACLE SHALL BE PROVIDED WITH GROUND FAULT CIRCUIT INTERRUPTION.
- D. OUTDOOR RECEPTACLES - EACH HOME SHALL BE PROVIDED WITH A MINIMUM OF TWO OUTDOOR RECEPTACLES, ONE IN FRONT AND ONE IN BACK. PURCHASER TO SUPPLY AND INSTALL EXTERIOR GFCI RECEPTACLES ON SITE IF GRADE LEVEL DOES NOT ALLOW RECEPTACLE INSTALLATION AT THE REQUIRED HEIGHT. THESE RECEPTACLES SHALL BE PROVIDED WITH GFCI PROTECTION.
6. SMOKE DETECTORS:
- ALL SMOKE DETECTORS SUPPLIED AND INSTALLED BY CARDINAL HOMES AND ALSO THOSE THAT ARE SITE INSTALLED SHALL BE APPROVED AND LISTED AS REQUIRED. THEY SHALL BE INSTALLED AND LOCATED IN EACH RESIDENCE. ALL DETECTORS SHALL BE WIRED AS TO BE INTERCONNECTED, RECEIVING PRIMARY POWER FROM A PERMANENT LIGHTING SOURCE, WITH PROVISIONS FOR BATTERY BACK-UP POWER. THE POWER SOURCE SHALL BE FROM A CIRCUIT THAT WOULD BE IN NORMAL DAILY USE BY THE HOUSEHOLD. THE SMOKE DETECTOR POWER SOURCE SHALL BE SO NOTED ON THE PLANS AND CIRCUIT DIRECTORY. ALL SMOKE DETECTORS MUST BE WIRED TO BE CONTAINED IN THE SAME CIRCUIT.
7. ARC FAULT BREAKERS:
- ALL 120-VOLT, SINGLE PHASE, 15-AND 20 AMP-BRANCH CIRCUITS SUPPLYING OUTLETS INSTALLED IN BEDROOMS, SHALL BE PROTECTED BY A LISTED ARC-FAULT CIRCUIT INTERRUPTER IN ACCORDANCE WITH VIRGINIA UNIFORM STATEWIDE BUILDING CODE

ALL ELECTRICAL BOXES IN THE FIRE-RATED ASSEMBLY WALL SHALL BE RATED FOR ONE HOUR

FIRE RATINGS / EMERGENCY LIGHTING

1. ELECTRICAL & DATA BOXES INSTALLED IN FIRE RATED ASSEMBLIES SHALL BE RATED 1HR MIN.
2. THRU PENETRATIONS OF RATED WALL ASSEMBLIES SHALL BE PROTECTED
- BOXES INSTALLED SO THAT THE ANNULAR SPACE BETWEEN THE WALL MEMBRANE AND THE BOX DOES NOT EXCEED 1/8"
 - BOXES INSTALLED IN RATED ASSEMBLIES ON OPPOSITE SIDES OF WALL SHALL BE PROTECTED BY SOLID FIREBLOCKING, OR PUTTY PADS APPLIED TO BOTH BOXES
3. THRU PENETRATIONS OF HORIZONTAL RATED ASSEMBLIES SHALL BE PROTECTED BY AN APPROVED THROUGH PENETRATION FIRESTOP SYSTEM
4. MEMBRANE PENETRATIONS BY ELECTRICAL & DATA BOXES INSTALLED IN FIRE RATED ASSEMBLIES SHALL BE PROTECTED
5. THE BRANCH CIRCUIT FEEDING EMERGENCY LIGHTING SHALL BE THE SAME BRANCH CIRCUIT AS THAT SERVING THE NORMAL LIGHTING IN THAT AREA AND BE CONNECTED AHEAD OF ANY LOCAL SWITCHES.

ELECTRICAL - LEGEND	
SYMBOL	DESCRIPTION
	CEILING FAN (WIRE ONLY)
	VENTILATION FANS: CEILING MOUNTED, WALL MOUNTED
	LIGHT FIXTURES: SURFACE, PENDANT, CEILING RECESSED, WP LIGHT
	LIGHT FIXTURES: FLUSH MOUNTED, WALL SCONGE WALL
	FLUORESCENT LIGHT FIXTURE
	240V RECEPTACLE
	110V RECEPTACLE: DUPLEX, WEATHER PROOF, GFCI
	SWITCHES: SINGLE POLE, 3-WAY, 4-WAY
	SWITCHES: DIMMER, TIMER
	WALL JACKS: PHONE, TV (CONDUIT ONLY)
	THERMOSTAT
	DOOR BELL: TRANSFORMER, CHIME, PUSH BUTTON
	SMOKE DETECTOR, CARBON MONOXIDE / SD COMBO
	UNDER CABINET LIGHTS
	ELECTRICAL DISTRIBUTION PANEL

ADDITIONAL ELECTRICAL NOTES:

ELECTRICAL DEVICE INSTALLATION HEIGHTS

RECEPTACLE
TYPICAL WALL HEIGHT: 20" TO TOP OF BOX
KITCHEN (36"H X 24"D) CABINET: 46 1/2"
VANITY / DESK (30"H X 21"D): 45 1/2"

WALL SWITCH
TYPICAL WALL HEIGHT: 45 1/2" TO TOP OF BOX
LOWER ANY ADDITIONAL GANG BOX IN CONJUNCTION WITH TYPICAL GANG BOX

EXTERIOR CARRIAGE STYLE LIGHTS
12" OFF OF DOOR JAMB 74" TO CENTER OF SIDING PLATE

VANITY LIGHTS
WITH MEDICINE CABINET = 81" TO CENTER OF BOX
WITH 36IN MIRROR = 85" TO CENTER OF BOX

TRANSFORMER BOX LOCATION (FOR DOOR BELL)
INSTALL THE TRANSFORMER IN A SMALL 2R CLOSET OVER THE DOOR

DOOR BELL
INSTALL ON LATCH SIDE IN BRICK MOLD AT 42IN FROM FLOOR TO CENTER

THERMOSTAT WIRE LOCATION
TYPICAL WALL HEIGHT: 60" TO WIRE PENETRATION

MISC.
PHONE/TV/DATA ROUGH IN CONDUIT JACKS
TYPICAL WALL HEIGHT: 20" TO TOP OF BOX

FUTURE HVAC CONDUIT LOCATION PREP FOR CAPE / TWO STORY
(2) 2" CONDUIT INSTALLED FROM FLOOR TO CEILING FOR HVAC PREP

***PANEL SCHEDULE "A" & PANEL SCHEDULE "B"			
200 AMP			
RANGE	40A 8/3	1	2 25A 10/2
RANGE	40A 8/3	3	4 25A 10/2
DRYER	30A 10/3	5	6 20A 12/3
DRYER	30A 10/3	7	8 20A 12/3
SM. APPL - (KIT.)	20A 12/2	9	10 20A 12/2
LAUNDRY	20A 12/2	11	12 20A 12/2
BATH 1 & GFCI RECS.	20A 12/2	13	14 20A 12/2 ▲
BATH 2 & GFCI RECS	20A 12/2	15	16 20A 12/2 ▲
BATH 3 & GFCI RECS	20A 12/2	17	18 20A 12/2 ▲
KITCHEN LGTS	20A 12/2	19	20 20A 12/2 ▲
LIVING ROOM	20A 12/2	21	22 20A 12/2
DISHWASHER W/ LOCKOUT & GFCI	20A 12/2	23	24 20A 12/2 ▲
HOODFAN	20A 12-2	25	26 20A 12/2
		27	28
		29	30
		31	32
2ND LEVEL HVAC	20A 12-3	33	34 60A * H. P. (SITE INSTALLED)
2ND LEVEL HVAC	20A 12-3	35	36 60A * H. P. (SITE INSTALLED)
A/C (SITE INSTALLED) *	30A	37	38 60A * H. P. (SITE INSTALLED)
A/C (SITE INSTALLED) *	30A	39	40 60A * H. P. (SITE INSTALLED)
GFCI - GFCI BREAKER OR CIRCUIT WITH A GFCI RECEPT- (ONE OR THE OTHER NOT BOTH) ▲ COMBINATION ARC FAULT CIRCUIT INTERRUPTER			
* BREAKER NOT INSTALLED AT C.H. ***SEPARATE PANEL BOXES FOR "A" & "B"			

PANEL SCHEDULE "C"			
200 AMP			
RANGE	40A 8/3	1	2 25A 10/2
RANGE	40A 8/3	3	4 25A 10/2
DRYER	30A 10/3	5	6 20A 12/3
DRYER	30A 10/3	7	8 20A 12/3
SM. APPL - (KIT.)	20A 12/2	9	10 20A 12/2
LAUNDRY	20A 12/2	11	12 20A 12/2
BATH 1 & GFCI RECS.	20A 12/2	13	14 20A 12/2 ▲
BATH 2 & GFCI RECS	20A 12/2	15	16 20A 12/2 ▲
KITCHEN LGTS	20A 12/2	17	18 20A 12/2 ▲
LIVING ROOM	20A 12/2	19	20 20A 12/2 ▲
DISHWASHER W/ LOCKOUT & GFCI	20A 12/2	21	22
HOODFAN	20A 12-2	23	24
		25	26
		27	28
		29	30
		31	32
2ND LEVEL HVAC	20A 12-3	33	34 60A * H. P. (SITE INSTALLED)
2ND LEVEL HVAC	20A 12-3	35	36 60A * H. P. (SITE INSTALLED)
A/C (SITE INSTALLED) *	30A	37	38 60A * H. P. (SITE INSTALLED)
A/C (SITE INSTALLED) *	30A	39	40 60A * H. P. (SITE INSTALLED)
GFCI - GFCI BREAKER OR CIRCUIT WITH A GFCI RECEPT- (ONE OR THE OTHER NOT BOTH) ▲ COMBINATION ARC FAULT CIRCUIT INTERRUPTER			
* BREAKER NOT INSTALLED AT C.H.			



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TOWNHOUSE - LOT #130, #132, #134
4,836 TOTAL SQ. FT.
FAUQUIER HABITAT FOR HUMANITY

FOUNDATION NOTES:

1.) THIS FOUNDATION IS BASED UPON THE FOLLOWING LOADING CONDITIONS:

- ROOF LIVE LOAD: SEE COVERPAGE
- FLOOR LIVE LOAD: 40 P.S.F.
- WIND LOADING: SEE COVERPAGE
- MINIMUM ALLOWABLE SOIL BEARING: 2,000 P.S.F. (2,500 P.S.F GA)

IF THESE CONDITIONS CANNOT BE VERIFIED (FIELD), THEN THE FOUNDATION MUST BE ADJUSTED BY A REGISTERED ENGINEER OR ARCHITECT IN ACCORDANCE WITH GOOD ENGINEERING PRACTICE.

2.) BUILDER MUST CHECK AND CONFIRM ALL DIMENSIONS PRIOR TO COMMENCING CONSTRUCTION.

3.) FOUNDATION PLAN IS FOR DIMENSIONS ONLY- FOUNDATION DESIGN AND COMPLETION TO BE BY BUILDER INCLUDING FOOTING DRAINS, VAPOR BARRIER, SILL PLATES, WATER-PROOFING, INSULATION, BACKFILL AND ALL FINISH WORK. ALL WORK MUST COMPLY WITH STATE AND LOCAL CODES AS WELL AS PROFESSIONAL STANDARDS.

4.) ALL CONCRETE TO HAVE A MINIMUM COMPRESSIVE STRENGTH (fc) OF 2,500 P.S.I. ALL STEEL TO BE GRADE 40 OR BETTER. STEEL MUST COMPLY WITH ASTM A615.

5.) ALL MASONRY UNITS ARE TO BE LAID IN TYPE "M" OR "S" MORTAR. HOLLOW MASONRY PIERS TO BE CAPPED WITH 4" SOLID MASONRY FOR 1 STORY & 8" SOLID MASONRY FOR 2 & 21 STORIES. SEE APPLICABLE CODES FOR ALTERNATE METHODS.

6.) THE CRAWLSPACE MUST BE PROVIDED WITH AN ACCESS PANEL MEASURING 18" X 24". IF MECHANICAL EQUIPMENT IS LOCATED IN CAWNSPACE AREA, THE ACCESS TO BE 22" WIDE X 30" HIGH MINIMUM.

7.) CRAWLSPACE AREA SHALL BE PROVIDED WITH VENTILATION OPENINGS THROUGH THE FOUNDATION WALL. THE MINIMUM NET AREA OF VENTILATION SHALL BE 1 SQ. FT. FOR EACH 150 SQ. FT. OF UNDER FLOOR SPACE.

THIS NUMBER MAY BE REDUCED DEPENDING ON LOCAL CODE JURISDICTIONS. THE VENTILATION OPENINGS SHALL BE PLACED WITHIN 3 FEET OF EACH CORNER OF THE BUILDING AND MAY BE CORROSION-RESISTANT WIRE MESH WITH THE LEAST DIMENSION BEING 1/8". EXCEPTIONS EXIST THAT MAY REDUCE THE NUMBER OF FOUNDATION VENTS, TYPE OF VENT OR REQUIRE AN APPROVED VAPOR BARRIER IS THE RESPONSIBILITY OF THE BUILDER OR OWNER TO COMPLY WITH LOCAL CODES & REQUIREMENTS.

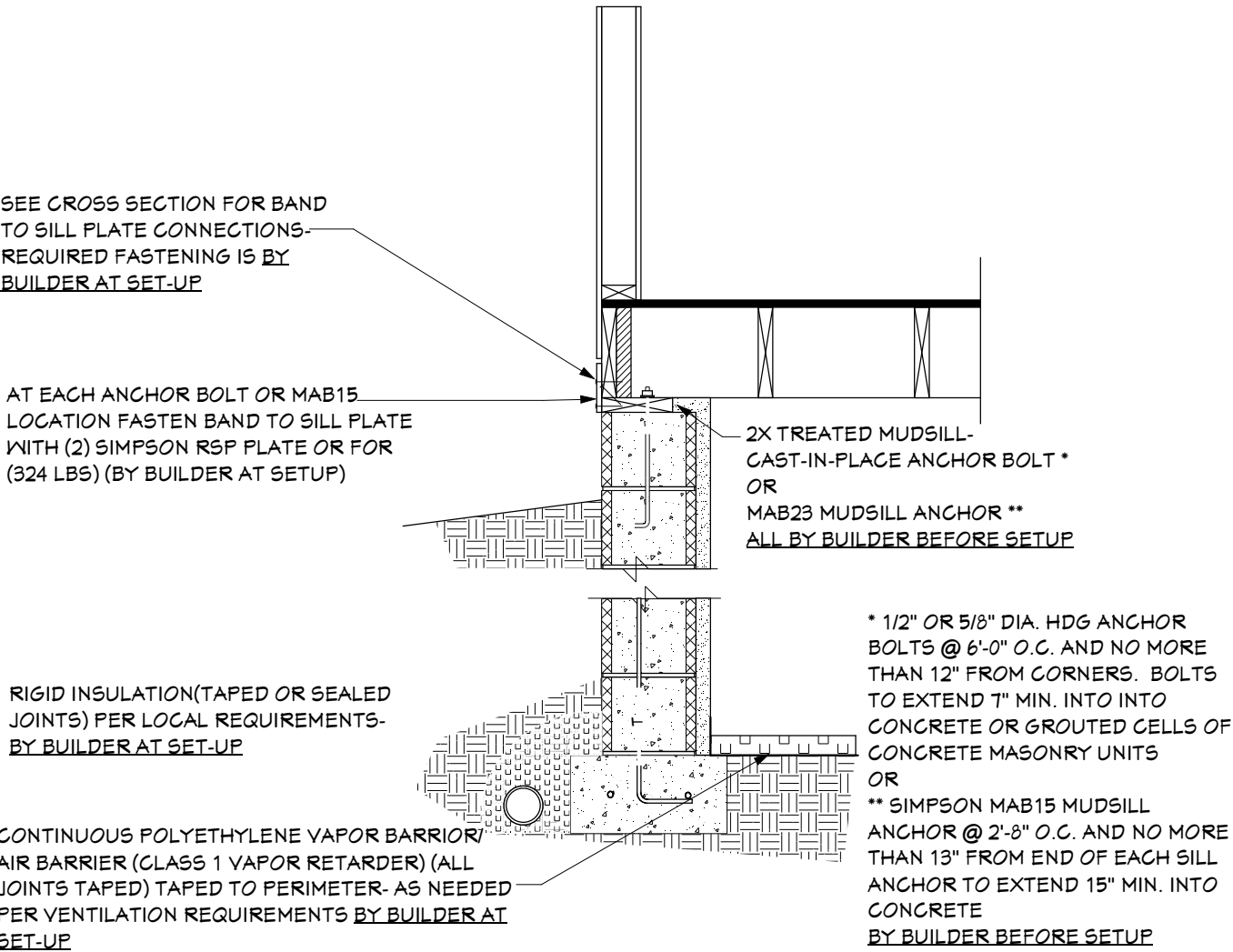
8.) ALL FOOTINGS SHALL BE SUPPORTED ON UNDISTURBED SOIL OR ENGINEERED FILL. EXTERIOR FOOTINGS SHALL EXTEND BELOW APPLICABLE FROST LINE AND AT LEAST 12" BELOW THE UNDISTURBED SOIL. SEE APPLICABLE CODE FOR EXCEPTIONS. MINIMUM COMPRESSIVE STRENGTH OF CONCRETE FOR FOOTINGS SHALL BE 2500 PSI AFTER 28 DAYS.

9.) FOUNDATION ANCHORAGE PER SECTION R403.1.6


10.)FINISH GRADE SHALL FALL AWAY A MINIMUM OF 6 INCHES WITHIN THE FIRST 10 FEET.

11.) PROVIDE TERMITE SHIELDS AS REQUIRED BY LOCAL CODE AND SUSCEPTIBLY.

12.) INFILTRATION, ALL OPENINGS IN THE EXT. BLDG. ENVELOPE SHALL BE SEALED AGAINST AIR INFILTRATION.



CMU FOUNDATION: UNFINISHED FLOOR TO FOUNDATION SITE CONNECTIONS USING 1/2 OR 5/8" ANCHOR BOLTS OR SIMPSON MAB15 MUDSILL ANCHORS- FOUNDATION DESIGN HAS BEEN EXTRAPOLATED FROM CHAPTER 4 OF THE IRC-



Item 2.

CARDINAL HOMES®

PROJECT NO.
-

FP. NUMBER
223217

PRINT NO.
-

DATE
9/15/23

DRAWN BY:
EW

SCALE:
3/16" = 1'-0"

REVISIONS

FOUNDATION

© 2024 KITUWAH MANUFACTURING, LLC

SHEET:
4.1 OF 6

47

TOWNHOUSE - LOT #130, #132, #134
4,836 TOTAL SQ. FT.
FAUQUIER HABITAT FOR HUMANITY

**CARDINAL
HOMES®**

PROJECT NO. |

—

FP. NUMBER

223217

PRINT NO.

—

ATE

9/15/23

DRAWN BY:

EW

SCALE:

$$3/8" = 1'-0"$$

REVISIONS

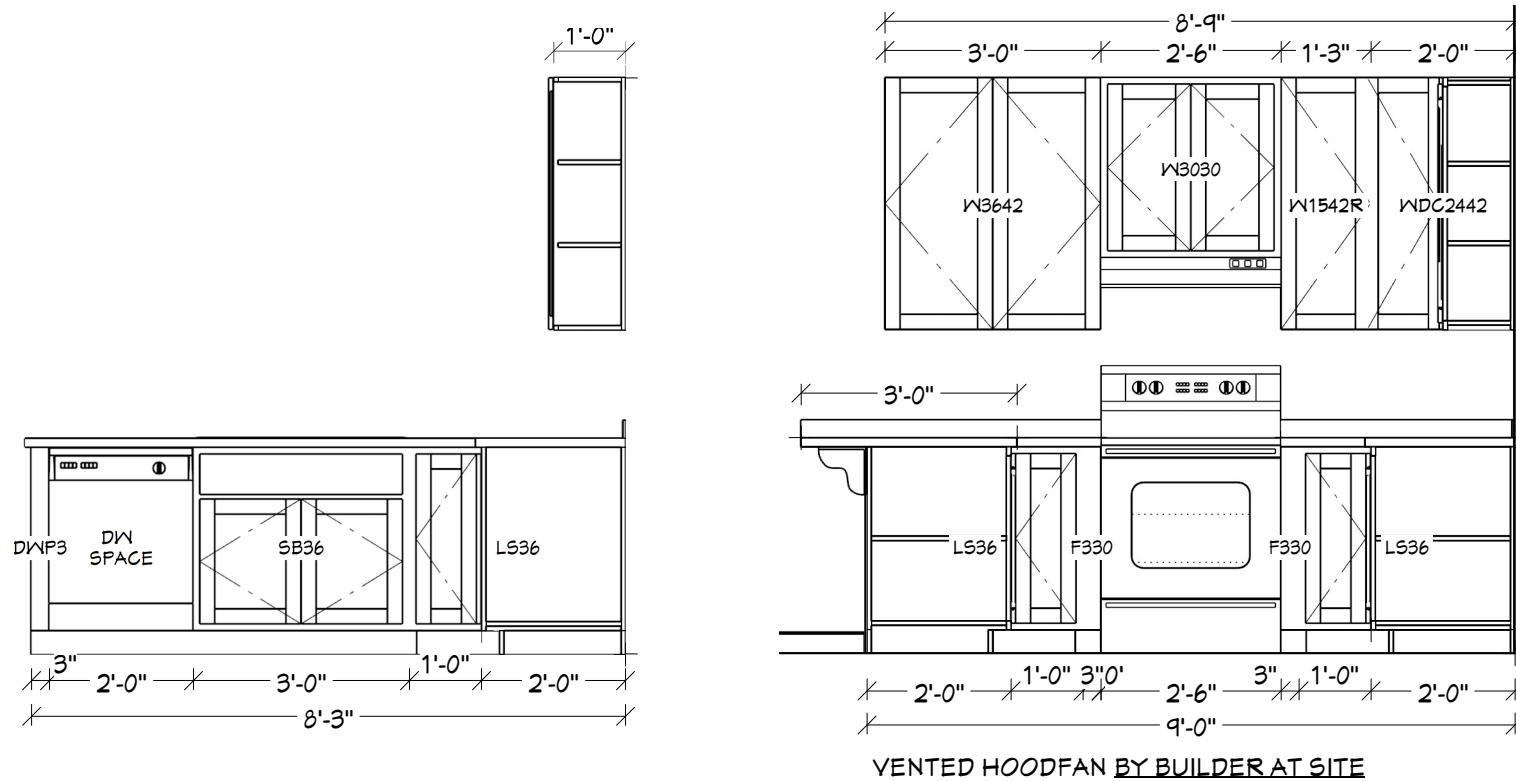
CABINEIS

© 2024 KIUWAH MANUFACTURING, LLC

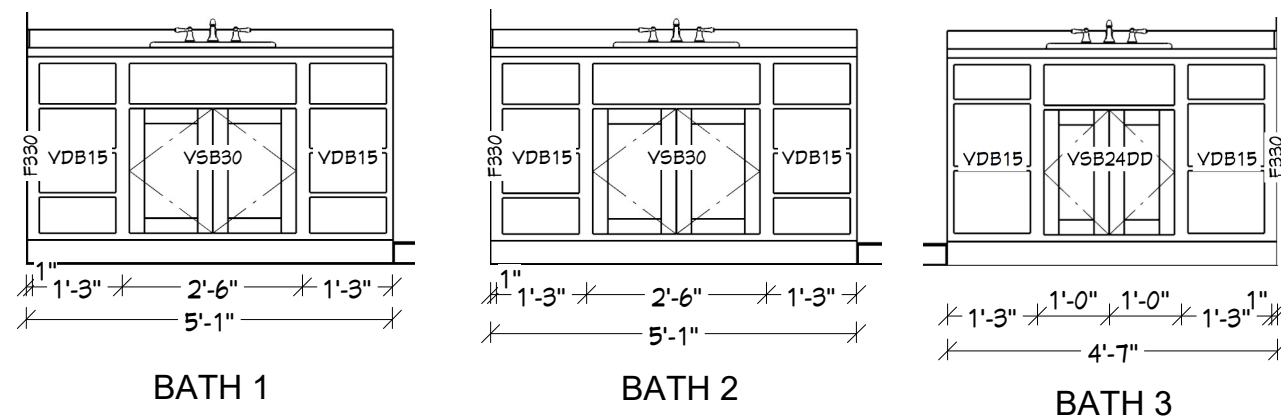
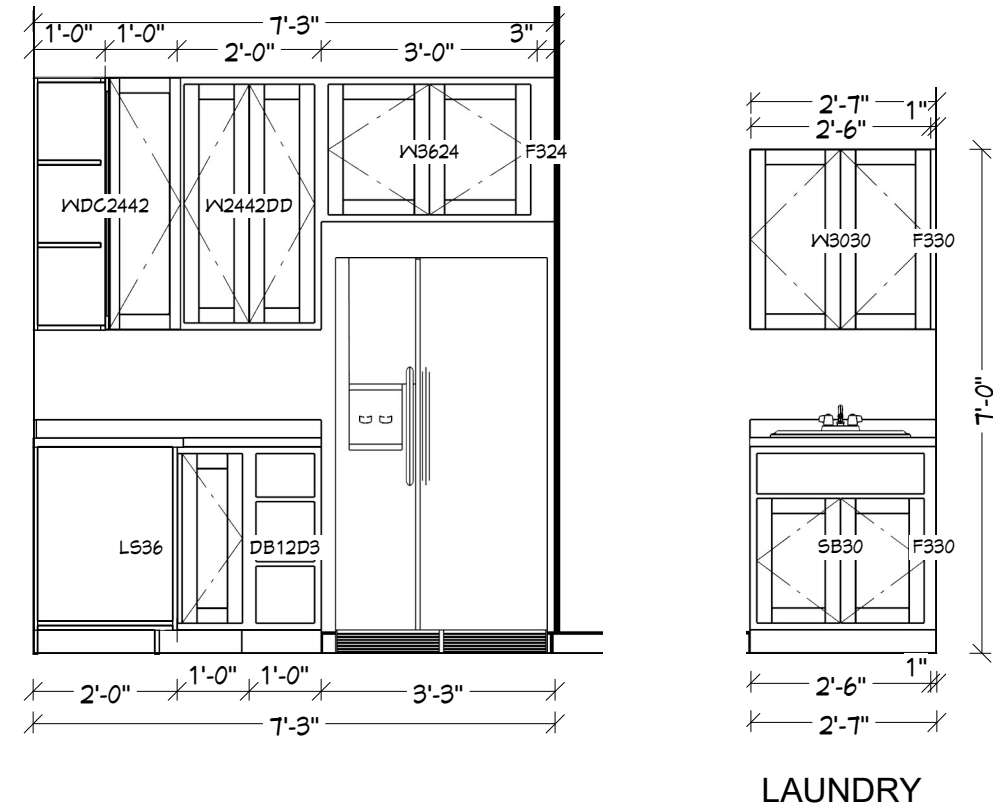
SHEET:

CABINETS

8



KITCHEN CABINETS



WOLF CABINETS MARKED WITH ** ARE
SPECIAL ORDER AND REQUIRE A LONGER LEAD TIME

TOEKICKS TO BE USED ON ALL BASE CABINETS

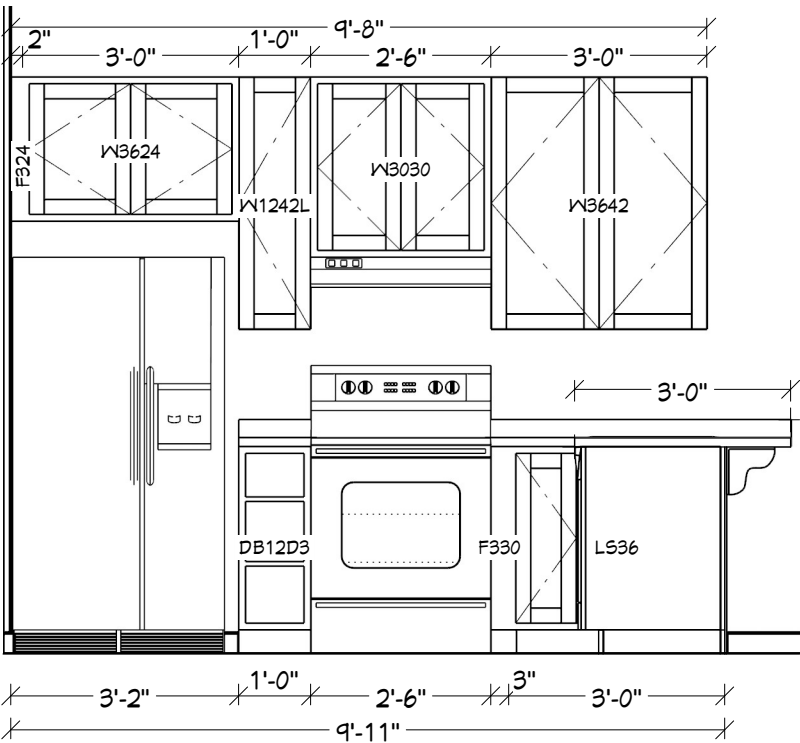
CROWN MOULDING (CCROWN134) ON ALL WALL CABINETS

LOT 130

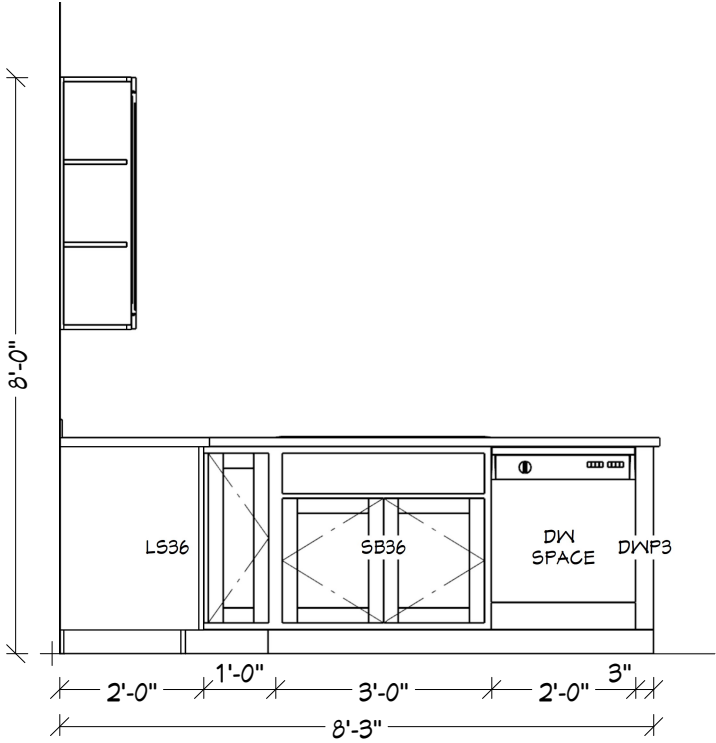
CABINET SCHEDULE LOT 130,132,134		
LABEL	QTY	FLOOR
LS36	5	1
DB12D3	3	1
WSM 1/2"	2	1
F330	9	1
W3030	3	1
SB30	2	2
WDC2442	2	1
W1542L	1	1
W2442DD	2	1
SB36	3	1
DWP3	3	1
P4836	9	1
BAR BRACKET	9	1
W1542R	1	1
VSBB24DD	2	1
VDB15	4	1
VSBB30	1	1
W1242L	1	1
W3624	3	1
F324	3	1
W3642	3	1
W3030	2	2
F330	9	2
VDB12	2	2
VDB15	8	2
VSBB24DD	1	2
VSBB30	4	2

NOTE:
THESE RENDERINGS ARE AN ARTIST'S DEPICTION ONLY, MAY NOT REFLECT THE ACTUAL FINAL PRODUCT. PLAN UPDATES MAY NOT BE REFLECTED IN RENDERINGS. REFER TO THE CONSTRUCTION DOCUMENTS FOR ADDITIONAL INFORMATION. RENDERINGS SHALL NOT BE USED FOR CONSTRUCTION.

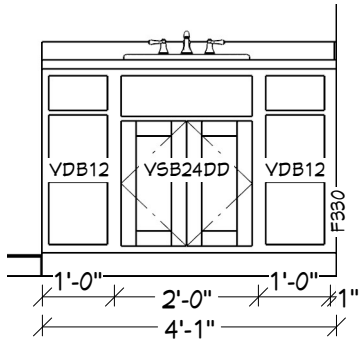
TOWNHOUSE - LOT #130, #132, #134
4,836 TOTAL SQ. FT.
FAUQUIER HABITAT FOR HUMANITY



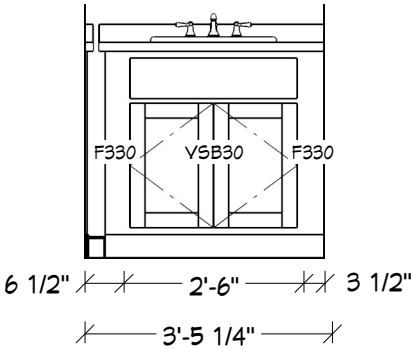
VENTLESS HOODFAN BY BUILDER AT SITE



KITCHEN CABINETS



BATH 1



BATH 2

LOT 132


NOTE:
THESE RENDERINGS ARE AN ARTIST'S DEPICTION ONLY, MAY NOT REFLECT THE ACTUAL FINAL PRODUCT. PLAN UPDATES MAY NOT BE REFLECTED IN RENDERINGS. REFER TO THE CONSTRUCTION DOCUMENTS FOR ADDITIONAL INFORMATION. RENDERINGS SHALL NOT BE USED FOR CONSTRUCTION.

WOLF CABINETS MARKED WITH ** ARE SPECIAL ORDER AND REQUIRE A LONGER LEAD TIME

TOEKICKS TO BE USED ON ALL BASE CABINETS

CROWN MOULDING (CCROWN134) ON ALL WALL CABINETS

TOWNHOUSE - LOT #130, #132, #134
4,836 TOTAL SQ. FT.
FAUQUIER HABITAT FOR HUMANITY



Item 2.

CARDINAL HOMES®

PROJECT NO.
-

FP. NUMBER
223217

PRINT NO.
-

DATE
9/15/23

DRAWN BY:
EW

SCALE:
3/8" = 1'-0"

REVISIONS
-

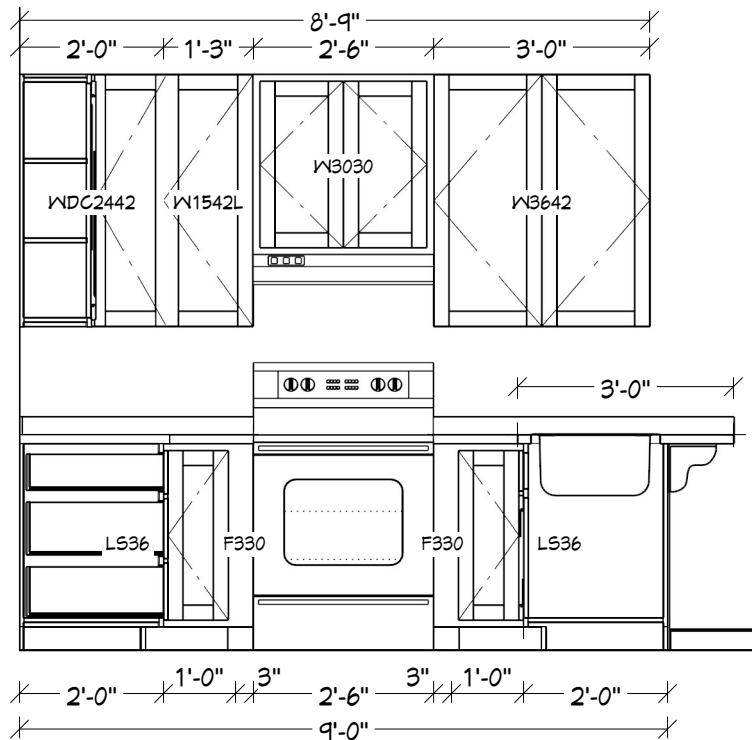
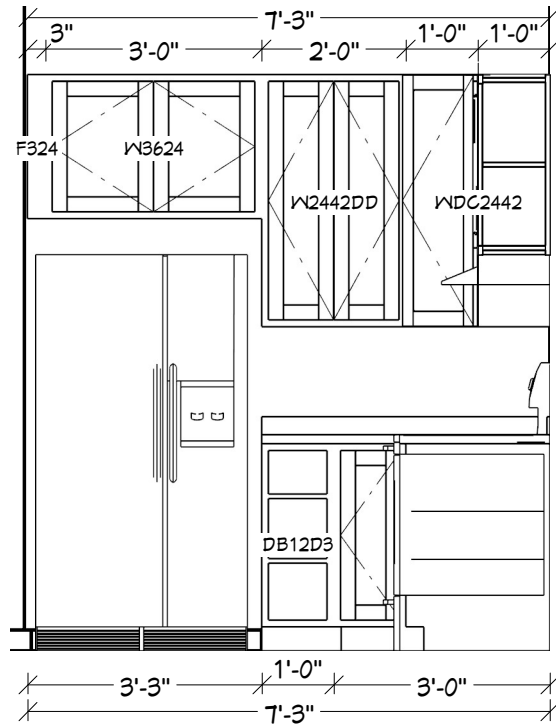
CABINETS

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SHEET:

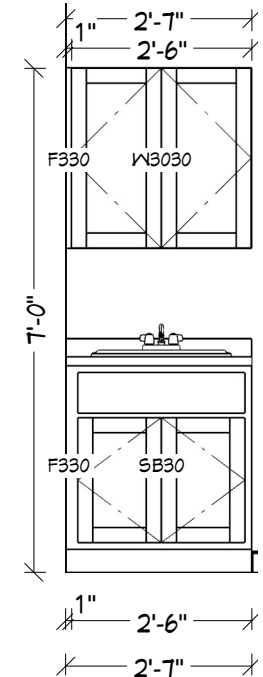
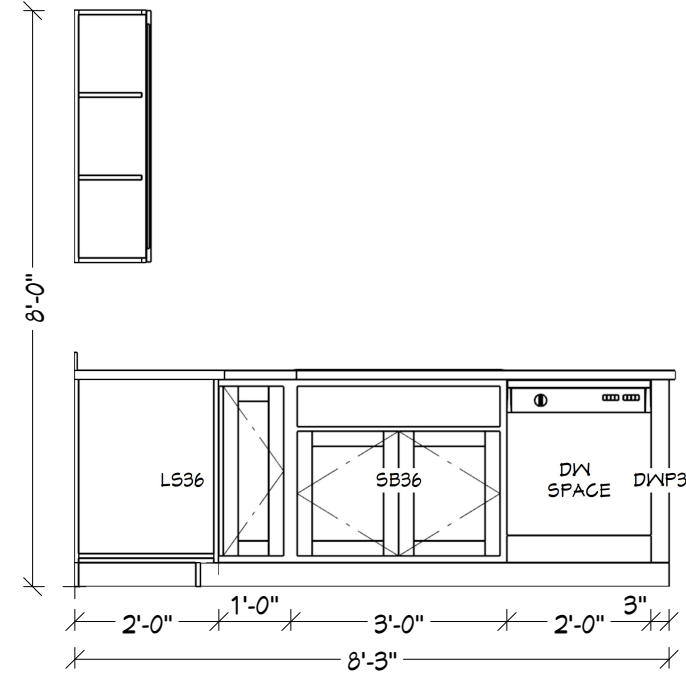
CABINETS

49

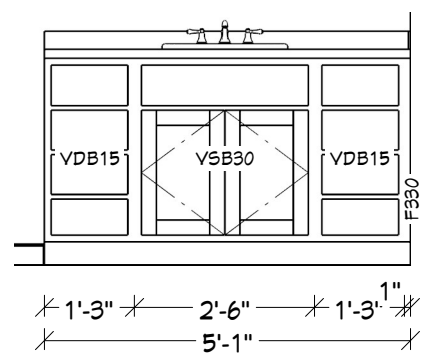


VENTED HOODFAN BY BUILDER AT SITE

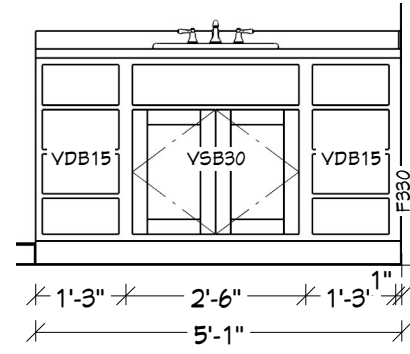
KITCHEN CABINETS



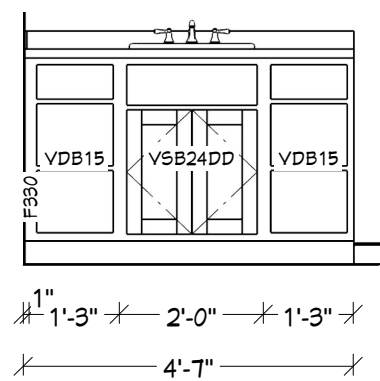
LAUNDRY



BATH 1



BATH 2



BATH 3

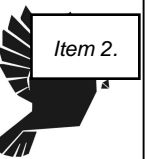
LOT 134

WOLF CABINETS MARKED WITH ** ARE SPECIAL ORDER AND REQUIRE A LONGER LEAD TIME

TOEKICKS TO BE USED ON ALL BASE CABINETS

CROWN MOULDING (CCROWN134) ON ALL WALL CABINETS

TOWNHOUSE - LOT #130, #132, #134
4,836 TOTAL SQ. FT.
FAUQUIER HABITAT FOR HUMANITY



CARDINAL HOMES®

PROJECT NO.

-

FP. NUMBER

223217

PRINT NO.

-

DATE

9/15/23

DRAWN BY:

EW

SCALE:

3/8" = 1'-0"

REVISIONS

CABINETS

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SHEET:

CABINETS

50

BK 1612 PG 287 - 291

Consideration: \$778,600.00
Assessment: \$778,600.00
Grantee Address: 98 Alexandria Pike, Suite 43, Warrenton, VA 20186
Tax Map #: 6984-44-9002-00, 6984-44-8436-000, 6984-43-9745-000, 6984-54-0254-000,
and 6984-44-9545-000 & 6984-44-9538-000,
Prepared by: Patricia A. Woodward, P. O. Box 1037, Warrenton, VA 20188, VS8# 19850
After recording return to: Cardinal Settlement Services, Inc., 25 Horner Street, Warrenton, VA 20186
Title Insurer: Fidelity National Title Insurance Company

THIS DEED, made and entered into this 30th day of October 2019, by and between **Eva C. HARRIS**, widowed and unremarried, GRANTOR, and **FAUQUIER HABITAT FOR HUMANITY, INC.**, a Virginia corporation, GRANTEE;

WITNESSETH:

THAT FOR and in consideration of the sum of TEN DOLLARS (\$10.00), cash in hand paid by the Grantee, and other good and valuable consideration, receipt whereof is now acknowledged, the Grantor does now hereby, with GENERAL WARRANTY OF TITLE and ENGLISH COVENANTS OF TITLE in FEE SIMPLE, grant, bargain, sell, and convey unto the Grantee, all of that certain lots or parcels of land, with all rights, ways, easements and improvements thereunto belonging or appurtenant thereto, and more particularly described as follows:

See, Schedule A attached hereto and made a part hereof

Inclusion of the Tax Map Parcel number in this Deed is pursuant to §17.1-252 of the Code of Virginia, 1950, as amended, is not a part of the legal description of the property conveyed, and the Grantor makes no warranty as to its accuracy.

This conveyance is made subject to any restrictions, reservations or easements of record.

WITNESS the following signature and seal:

Eva C. Harris (SEAL)
EVA C. HARRIS

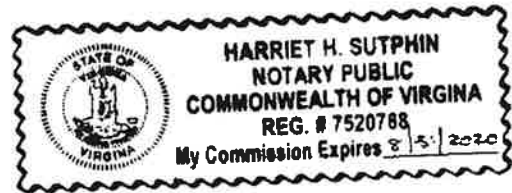
COMMONWEALTH OF VIRGINIA
~~CITY~~/COUNTY OF Fauquier, TO-WIT:

The foregoing document was acknowledged before me this 30th day of October by Eva C. Harris.

My Commission Expires: August 31, 2020

W:\Harris, Eva\Habitat 2019\2019-10-28 Deed_Harris to Habitat.wpd

Harriet H. Sutphin
NOTARY PUBLIC



Schedule A

PARCEL 1 (GPIN 6984-44-9002-000):

ALL THAT certain lot of land lying and being situated in Warrenton, Fauquier County, Virginia, at the intersection of North Third Street (now known as North Fourth Street), Hayti (Haiti) Street, and Wood Street (now known as Liberty Street) and bounded and described as follows, to wit: Beginning at a post at corner of the Alfred B. Horner and John Tyler lots and running in a Southeastern direction 111 feet to a stone on North Third Street (now known as North Fourth Street); thence along North Third Street (now known as North Fourth Street) in an easterly direction 60 feet to a post at the intersection of said North Third Street (now known as North Fourth Street), Wood Street (now known as Liberty Street) and Hayti (Haiti) Street; thence along said Hayti (Haiti) Street in a Northerly direction 161 feet to a post at corner of Alfred B. Horner lot; thence along said Alfred B. Horner lot in a westerly direction 176 feet to a post in corner of Alfred B. Horner and John Tyler lots to the beginning.

LESS AND EXCEPT therefrom a portion of said property fronting a distance of 42 feet on Haiti Street, conveyed to Lester Robinson by Deed from Carrie W. Parkinson, widow, dated November 28, 1958, and recorded in Deed Book 204 at page 4, among the records of the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

AND BEING the same property conveyed to Harrington W. Harris, by Deed from Harrington W. Harris and Eva C. Harris, dated January 18, 2005, and recorded in Deed Book 1139, at page 941, among the Fauquier County, Virginia land records. Harrington W. Harris died April 2, 2009, devising the subject property in Eva C. Harris by Last Will and Testament recorded in Will Book 243, page 2238 as confirmed by Deed of Confirmation recorded in Deed Book 1549, at page 370, among the records of the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

PARCEL 2 (GPIN 6984-44-8436-000):

ALL THAT certain tract or parcel of land situate on the west side of Haiti Street in the Town of Warrenton, Fauquier County, Virginia, improved by one frame apartment house, bearing Warrenton street numbers 130, 132 and 134, being the same identical property which was conveyed to Ford G. Anderson by deed of Annie H. Green, widow in Deed Book 121 at page 495, among the records of the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

AND BEING the same property conveyed to Harrington W. Harris, Sr. and Eva C. Harris, husband and wife, as tenants by the entirety with the common law right of

survivorship, by Deed from Ethel E. Anderson, widow, and Frances A. Shepherd and Charles Edward Shepherd, Jr., her husband, dated April 25, 1969, and recorded in Deed Book 253 at page 347. Harrington W. Harris, Sr. died April 2, 2009, leaving Eva C. Harris as surviving tenant.

PARCEL 3 (GPIN 6984-43-9745-000):

ALL THAT certain tract or parcel of land containing 0.2133 acres, more or less, situate in the Town of Warrenton, Fauquier County, Virginia, as more particularly described by plat of survey and metes and bounds description prepared by VH&D, Inc., Land Surveyors and Civil Engineers, Warrenton, Virginia, under date of October 13, 1983, said plat of survey and metes and bounds description being recorded in Deed Book 436 at page 248, among the records of the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

AND BEING the property conveyed to Harrington W. Harris, Sr. and Eva C. Harris, husband and wife, as tenants by the entirety with the common law right of survivorship, by Deed from Wendell R. Grant and Shirley M. Grant, husband and wife, dated January 19, 1989, and recorded in Deed Book 611 at page 1265. Harrington W. Harris, Sr. died April 2, 2009, leaving Eva C. Harris as surviving tenant.

PARCEL 4 (GPIN 6984-54-0254-000):

ALL THAT certain lot or parcel of land with the improvements thereon, lying and being situated on Haiti Street in the Town of Warrenton, Fauquier County, Virginia, designated as Lot 7 according to a plat and survey to be found recorded in Deed Book 64 at page 272, among the records of the Clerk's Office of the Circuit Court of Fauquier County, Virginia, containing 5,446 square feet, more or less.

AND BEING the property conveyed to Harrington W. Harris, Sr. and Eva C. Harris, husband and wife, as tenants by the entirety with the common law right of survivorship, by Deed from Virginia C. Coles, dated June 29, 1988 and recorded in Deed Book 599 at page 1760 among the aforesaid county land records. Harrington W. Harris, Sr. died April 2, 2009, leaving Eva C. Harris as surviving tenant.

PARCEL 5 (GPINS 6984-44-9545-000 AND 6984-44-9538-000):

ALL THAT certain lot or parcel of land lying and being situate in the Town of Warrenton in Fauquier County, Virginia, and containing 7,696 square feet, more or less according to plat and survey of R.M. Bartenstein, C.L.S., No. 549, dated December 14, 1954, and being the property designated on said plat and survey as Lot

A, which plat and survey are recorded with a certain deed from May L. Johnson, widow; William Perry Johnson and Elizabeth B. Johnson, his wife; Robert S. Johnson and Elizabeth H. Johnson, his wife, and Willard A. Johnson and Theoling H. Johnson, his wife; to John Hancock, et al, dated April 21, 1955, recorded May 4, 1955, in Deed Book 191, page 96, among the records of the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

SUBJECT TO a 15 foot easement for ingress and egress appurtenant to Lots B and C as described in Deed recorded in Deed Book 197, page 562, among the records of the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

AND BEING THE property conveyed to Harrington W. Harris by Deed from Harrington W. Harris and Charles E. Smith, Sr., dated March 1, 2006, recorded in Deed Book 1205, at page 1887 among the Fauquier County, Virginia land records. Harrington W. Harris died April 2, 2009, devising the subject property in Eva C. Harris by Last Will and Testament recorded in Will Book 243, page 2238 as confirmed by Deed of Confirmation recorded in Deed Book 1549, at page 370, among the records of the Clerk's Office of the Circuit Court of Fauquier County, Virginia.

RECORDED IN CLERK'S OFFICE OF
FAUQUIER ON
Oct 31, 2019 AT 11:43:00 AM
\$779.00 GRANTOR TAX PD
AS REQUIRED BY VA CODE § 58.1-802
STATE: \$389.50 LOCAL: \$389.50
FAUQUIER COUNTY, VA
GAIL H BARB CLERK OF CIRCUIT COURT

Gail H Barb

DB 110 pg 302

Alfred B. Horner
to J B B
Annie H. Green
Exact date to Annie H. Green this 4 May 1914
T.E.B.

THIS DEED made this eleventh day of April 1914, between Alfred B. Horner (single) party of the first part and Annie H. Green, party of the second part. WITNESSETH: That for and in consideration of the sum of four hundred dollars (\$400.00) cash in hand paid by the party of the second part to the said party of the first part the receipt of which at and before the sealing and delivery of this deed is hereby acknowledged, he the said Alfred B. Horner, party of the first part has bargained, granted and sold, and by these presents does hereby grant, bargain, sell and convey with general warranty unto the said Annie H. Green party of the second part all that certain lot of land on the Western side of Hayti Street in the Town of Warrenton, Fauquier County, Virginia, beginning at the Southeastern corner of the lot of Ora E. Baker on the western side of Hayti Street; thence westerly with said said Baker's lot 74 1/4 feet to the Southwestern corner of said lot of Ora E. Baker and Alfred B. Horner's lot; thence Southerly 79 feet to a stone in Alfred B. Horner's land; thence Easterly 77 feet to Hayti Street; thence northerly with the said Hayti Street 83 feet to the beginning CONTAINING six thousand two hundred and thirty square feet (6230 sq ft) be the same more or less. The same being part of lot No. 11 of "Ice Pond Lot" allotted to Charles G. Horner and part of Lot No. 12 of "Ice Pond Lot" allotted to Alfred B. Horner in the division of the estate of the late G R B Horner in the Chancery suit of "Belt vs Horner" recorded in Deed Book 86 page 297, of the records of Fauquier Circuit Court, 2 October 1895, reference to which is here made; reference also being made to the deed from Charles G. Horner to Alfred B. Horner dated 24 August 1906 and recorded in D B 98 page 399, for further description of part of the lot hereby conveyed. A rough plat of the lot is hereto attached. TO HAVE AND TO HOLD the said lot or parcel of land, together with all and singular the improvements rights, ways, easements and appurtenances unto the same belonging to the said Annie H. Green her heirs and assigns in fee simple. Witness the following signature and seal the day and year first above written.

Alfred B. Horner, (SEAL).

Fauquier County, to wit:- I, T.E. Bartenstein, Deputy Clerk of the Circuit Court in and for the County aforesaid in the

State of Virginia, do certify that Alfred B. Horner, whose name is signed to the writing above dated the 11 April 1914 has acknowledged the same before me in my Office and County aforesaid. Given under my hand this 11 April 1914.

T.E. Bartenstein, Dep. Clerk.
Clerks Office of Fauquier Circuit Court, 14 April 1914.

This deed was this day received in said Office and with certif

Ora E. Baker
74 1/4 ft
6230 sq. ft

Hayti Street

83 ft

against loss by fire and lightning, but with full insurable value, and we have said insurance endorsed for the benefit of the said party of the third part who shall, at its option, in case of loss by fire, apply the money so received to the payment of the debt herein secured, whether due or not, or in rebuilding upon the same property, said new buildings to be likewise insured, and also to pay all taxes that may become due or be assessed against said land and building during the continuance of this trust; and that upon any neglect to so insure, or pay taxes, any party secured hereby may have said buildings insured, pay the premiums thereon, and pay said taxes, and the expense so paid shall be added to and be a charge hereby secured and bear interest from the time of said payments. Should there be no default hereunder, according to the true tenor and effect hereof, then shall this instrument be null and void and released at the costs of the party of the first part else remain in full force and effect. Witness the following signature and seal of the party of the first part the day and year first hereinabove written. S L Larrabee (SEAL)

State of Virginia, County of Fauquier, to-wit: I, Maude C Colvin, a Notary Public in and for the county and state aforesaid, whose commission expires on the 22nd day of July, 1924, do hereby certify that S L Larrabee, whose name is signed to the foregoing deed of trust, bearing date on the 1st day of February, 1921, has acknowledged the same before me in my County aforesaid, Given under my hand this the 1st day of February, 1921.

Maude C Colvin, N. P.

Clerk's Office of Fauquier Circuit Court, 2nd February, 1921.

This deed of trust was this day received in said office and with certificate admitted to record at 3.10 P M

Teste: T E Bartenstein, Clerk.

XX

THI S DEED made this 31st day of January, 1921, by and between Annie H Green, a widow, party of the first part and Ford G Anderson, party of the second part; WITNESSETH: That for and in consideration of the payment by the party of the second part to the party of the first part of the sum of two thousand and one hundred dollars in cash, receipt whereof is hereby acknowledged, the said party of the first part does hereby grant, bargain, sell and convey unto the party of the second part, with general warranty, that lot with the buildings and improvements thereon, situated in the town of Warrenton, Fauquier County, state of Virginia, fronting eighty three feet on Hay ti street, and being the same lot conveyed by Alfred B Horner to the said party of the first part by deed dated April 11th, 1914, and recorded in the Clerk's Office of said Fauquier County in Deed Book 110 page 302 to which said deed reference is hereby made for a better description of said lot. TO HAVE AND TO HOLD to the said party of the second part his heirs and assigns in fee simple forever. In witness whereof, the said party of the first part has hereunto signed her name and affixed her seal the day and year first above written.

Annie H Green

(SEAL)

State of New York, City of County of New York, to-wit: I, Stephen A Hubbard, a Notary Public in and for the County of Richmond, in the state of New York, do hereby certify that Annie H Green, whose name is signed to the writing above, bearing date the 31st day of January, 1921, has acknowledged the same before me in my County and State aforesaid. My commission will expire on the 30th day of March 1921. Given under my hand and notarial seal this 1st day of February 1921. (NOTARIAL SEAL)

A S Hubbard, Notary Public.

Stephen A Hubbard, Notary Public, Richmond County, No 64, Certificate filed in N Y County N Y County No 151 N Y Register No 1258. Commission expires March 30. 1921.

(Two Dollars and Fifty Cents Internal Revenue Stamps Cancelled)

Clerk's Office of Fauquier Circuit Court, 2nd February, 1921.

This deed was this day received in said office and with certificate admitted to record at 3.35 P M

Teste: T E Bartenstein, Clerk.

XX

THI S DEED made this 29th day of December, in the year one thousand nine hundred and twenty, between Fannie Belle Rixey, and Samuel F Rixey, her husband, parties of the first part and N C Noland, party of the second part; WITNESSETH: That in consideration of the sum of one hundred and twenty five

dollars cash in hand paid by the party of the second part to the said parties

ANNIE H GREEN
TO) B & S
F G ANDERSON

F B RIXEY & AL
TO) B & S
husb N C NOLAND

Witness atty
for Ann H Green
this 14 Jan 1921
J E B dm

671

THIS DEED, made this 25th day of April, 1969, between ETHEL E. ANDERSON, widow, and FRANCES A. SHEPHERD and CHARLES EDWARD SHEPHERD, JR., her husband, parties of the first part, and HARRINGTON W. HARRIS and EVA C. HARRIS, husband and wife, as tenants by the entirety with common-law right of survivorship, parties of the second part, WITNESSETH:

That in consideration of the sum of Ten Dollars (\$10.00) cash and other valuable considerations moving from the parties of the second part to the parties of the first part, receipt of all of which at the sealing and delivery of this deed is hereby acknowledged, the parties of the first part do hereby bargain, sell, grant and convey, unto the parties of the second part, as tenants by the entirety with common-law right of survivorship, all of the following described real estate, to-wit:

All of that certain lot or parcel of land situate on the west side of Hayti Street in the Town of Warrenton, Fauquier County, Virginia, improved by one frame apartment house, bearing Warrenton street numbers 130, 132 and 134, being the same identical property which was conveyed to the late Ford G. Anderson by deed of Annie H. Green widow, dated January 31, 1921, recorded February 2, 1921 in Deed Book 121, Page 495, in the Clerk's Office of the Circuit Court of Fauquier County, Virginia, which property by the will of the said Ford G. Anderson probated February 17, 1933, and recorded in Will Book 53, Page 352, in said Clerk's Office was devised to the said Frances A. Shepherd (under the name of Frances La Marque Anderson), and Ethel E. Anderson.

The aforesaid real estate is conveyed subject to any public utility company easements of record or visible on the premises, and subject to the oral month-to-month tenancies of the present occupants of the aforesaid apartment.

TO HAVE AND TO HOLD the above described real estate, together with all rights, ways, easements and appurtenances thereunto belonging, unto the parties of the second part, as tenants by the entirety with common-law right of survivorship, in fee simple.

Except as to any public utility company easement of record or visible on the premises, and except as to the aforesaid month-to-month tenancies, the parties of the first part covenant that they will WARRANT GENERALLY the property hereby conveyed, that they have the right to convey

Return to:
Harrington Harris
At 3 Box 65
Warrenton, VA

Specimen
May 28,
1969
Harris

the said land to the grantees, that the grantees shall have quiet possession of the said land, free from all encumbrances, and that they, the parties of the first part, will execute such further assurances of the said land as may be requisite.

WITNESS the following signatures and seals.

Ethel E. Anderson (SEAL)
ETHEL E. ANDERSON

Frances A. Shepherd (SEAL)
FRANCES A. SHEPHERD

Charles Edward Shepherd Jr. (SEAL)
CHARLES EDWARD SHEPHERD, JR.

STATE OF VIRGINIA
COUNTY OF FAUQUIER, to-wit:

I, Wallace J. Brown, a Notary Public in and for the County of Fauquier, State of Virginia, do certify that ETHEL E. ANDERSON, FRANCES A. SHEPHERD, whose names are signed to the foregoing deed dated the 25th day of April, 1969, have each acknowledged the same before me in my County and State aforesaid.

My commission expires the 4th day of April, 1972.
Given under my hand this 20th day of May, 1969.

Wallace J. Brown
Notary Public

STATE OF VIRGINIA
COUNTY OF FAUQUIER, to-wit:

I, Elizabeth R. Roland, a Notary Public in and for the County of Fauquier, State of Virginia, do certify that CHARLES EDWARD SHEPHERD, JR., whose name is signed to the foregoing deed dated the 25th day of April, 1969, has acknowledged the same before me in my County and State aforesaid.

My commission expires the 24 day of August, 1969.
Given under my hand this 20 day of May, 1969.

Elizabeth R. Roland
Notary Public

Virginia: In the Clerk's Office of Fauquier Circuit Court, 20 May 1969

This instrument was this day received in said Office
and with certificate admitted to record at 11:52 A.M.
Tax of \$ 5.00 imposed by Section 58-54(b) Paid

Teste: W. Brown Clerk

672

DEFERRED PURCHASE MONEY

THIS DEED OF TRUST made this 25th day of APRIL, 19 69 . by and between HARRINGTON W. HARRIS and EVA C. HARRIS, husband and wife, hereinafter called Grantor, whether one or more than one, and WALLACE N. TIFFANY and CARROLL J. MARTIN, JR., Warrenton, Fauquier County, Virginia. hereinafter called Trustee (any or all may act), whether one or more than one, and ETHEL E. ANDERSON and/or FRANCES A. SHEPHERD. hereinafter called Beneficiary.

WITNESSETH:

THAT FOR AND IN CONSIDERATION of the sum of TEN DOLLARS (\$10.00) in hand paid at and before the execution and delivery of this instrument, the receipt of which is hereby acknowledged, and for the express purpose of securing the payment of the hereinafter-described indebtedness, the said GRANTOR does hereby grant, sell and convey, WITH COVENANTS OF GENERAL WARRANTY OF TITLE, unto the said TRUSTEE (if there be more than one Trustee, any or all may act), all of the following described real estate, with the appurtenances thereunto belonging:

All that certain lot or parcel of land situate on the west side of Haiti Street in the Town of Warrenton, Fauquier County, Virginia, improved by one frame apartment house, bearing Warrenton street numbers 130, 132 and 134, and being the same identical property which was conveyed to the late Ford G. Anderson by Deed of Annie H. Green, widow, dated 31 January, 1921, and found of record in the Office of the Clerk of the Circuit Court of Fauquier County, Virginia, in Deed Book 121, Page 495.

And being the same and identical real estate which was conveyed to the Grantors herein by Ethel E. Anderson, et als, by Deed dated 25 April, 1969 and intended to be recorded in the aforesaid Clerk's Office immediately preceding the recordation of this Deed of Trust.

Specific reference to all of which being here made for a more complete description of the property hereby conveyed.

Attn: W. N. Tiffany
W. N. Tiffany

*Copy of Deed
May 28, 1969
[Signature]*

THE GRANTOR hereby grants to the holder of the obligations secured hereunder the right and power to appoint a substitute trustee in accordance with the provisions of Section 28-49, Code of Virginia, 1950, as amended.

IN TRUST, NEVERTHELESS, to secure the payment of a debt in the principal sum of FOUR
THOUSAND AND NO/100 ----- dollars (\$4,000.00).

with interest from date at the rate of 6 % per annum; which said debt (both principal and interest) is now evidenced by that certain negotiable promissory note, bearing even date herewith, in the principal sum of \$ 4,000.00 , executed by HARRINGTON W. HARRIS and EVA C. HARRIS, husband and wife as maker(s) and payable to the order of ETHEL E. ANDERSON and/or FRANCES A. SHEPHERD with interest at 6 % per annum from date until paid.

WHICH SAID NOTE is payable in MONTHLY ----- installments of NINETY-THREE and 95/100
----- dollars (\$ 93.95 -----), commencing on the 15th day of
JUNE -----, 19 69, and MONTHLY ----- thereafter until the principal and

JUNE 19 69, and MONTHLY thereafter until the principal and interest are fully paid, except that the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable on the 15th day of MAY 19 73.

WHICH SAID NOTE provides that if any installment is not paid at the time and place specified, the entire amount unpaid, principal and accrued interest, shall at once become due and payable, without notice, at the option of the holder thereof, but failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default; waives presentment, demand, protest and notice; waives the benefit of the Homestead Exemption, and provides for 15% additional, as attorney's fees, in case payment shall not be made at maturity.

THIS DEED OF TRUST is made under the provisions of Code of Virginia Sections 55-59 and 55-60, as amended, and shall be construed to impose and confer upon the parties hereto and the beneficiary hereunder, all the rights, duties and obligations prescribed by the said Sections 55-59 and 55-60, as amended, and in short form in the event of sale is 5%. Advertisement hereinafter otherwise restricted or expanded or changed. Trustee concur in the foregoing of sale is 5%. Advertisement required: to publish the time, place and terms of sale once a week for four successive weeks in a newspaper published or having general circulation in the County or City, with the last insertion, if desired, on the day of sale. Insurance against fire and windstorm is required in an amount equal to the face of said note, and the policy or policies must be placed with the beneficiary hereunder.

SHOULD THERE BE NO DEFAULT HERUNDER, according to the true tenor and effect hereof, then this instrument shall be null and void and released at the cost of the Grantor, else remain in full force and effect.

WITNESS the following signature(s) and seal(s):

s): Deborah W. Harris (SEAL)
HARRINGTON W. HARRIS

Eva C. Harris (SEAL)
EVA C. HARRIS

(SEAL)

(SEAL)

STATE OF VIRGINIA
COUNTY OF FAUQUIER TO-WIT:

I, Linda W. Daley, a Notary Public in and for the county/city and state of California, do hereby certify that HARRINGTON W. HARRIS and EVA C. HARRIS, husband and wife

whose name(s) are signed to the foregoing DEED OF TRUST, bearing date on the 25th day of APRIL 1969, have acknowledged the same before me, in my county/city aforesaid.

My commission expires on the 11th day of March, 1972.

GIVEN UNDER MY HAND this 8th day of March, 1969

Virginia: In the Clerk's Office of Fauquier Circuit Court, 20 May 1969
This instrument was this day received in said Office
J. L. Riley
Notary Public

tax of \$ — imposed by Section 58-54(b) Paid
 Teller: Adrian Clerk

The foregoing Deed of Trust has been fully paid and satisfied
The Georgia Trust Co. of Atlanta
By Geo. F. Pettit - President
By Geo. W. Pettit - Secretary
By J. H. Williams - Treasurer
By J. H. Williams - Secretary
 Signature attested and *Noted*
76 May 1913

(Signature)
secured herein exhibited to me cancelled, this 7th May 1973.
H. L. Pearce own. Clerk.

XX



Item 2.

Doc ID: 008749090004 Type: DEE
Recorded: 09/15/2020 at 12:52:00-PM
Fee Amt: \$46.33 Page 1 of 4
Fauquier County, VA
Gail H Barb Clerk of Circuit Court
File# 2020-00010629

BK **1648** PG **1382-1385**

Underground Distribution Easement Agreement

This Underground Distribution Easement Agreement (this "Agreement") is made and entered into as of September 1st, 2020 by and between FAUQUIER HABITAT FOR HUMANITY, INC. ("GRANTOR") and VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service corporation, doing business as Dominion Energy Virginia, with its principal office in Richmond, Virginia ("GRANTEE").

WITNESSETH:

1. That for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, GRANTOR grants and conveys unto GRANTEE the perpetual right, privilege and non-exclusive easement on the property described herein, for the distribution and transmission of electricity and internal communications related thereto (the "Easement") which shall include the right to lay, construct, operate and maintain one or more lines of underground conduits and cables and the right to install, operate and maintain certain aboveground facilities associated with the underground electric distribution system.

2. The portion of the GRANTOR's property encumbered by the Easement shall be referred to herein as the "Right-of-Way." The Right-of-Way shall extend across the lands of the GRANTOR situated in Fauquier County Virginia, as more fully described on Plat Number 12-20-4077 (the "Plat"), attached to and made a part of this Agreement. The location and width of the boundaries of the Right-of-Way is shown in broken lines on the Plat, the width of the Right-of-Way shall be fifteen (15) feet.

3. All facilities constructed hereunder shall remain the property of GRANTEE. GRANTEE shall have the right to inspect, reconstruct, remove, repair, improve, relocate (within the boundaries of the Right-of-Way), and make such changes, alterations, substitutions, additions to or extensions of the GRANTEE's facilities as GRANTEE may from time to time deem advisable.

4. GRANTEE shall have the right to keep the Right-of-Way clear of all obstructions which would interfere with its exercise of the rights granted hereunder and/or endanger the safe and proper operation of GRANTEE's facilities. Subject to the foregoing, GRANTEE shall repair damage caused by GRANTEE to roads, fences or other improvements on GRANTOR's property provided, however, GRANTOR gives written notice thereof to GRANTEE within sixty (60) days after such damage occurs.

5. GRANTOR may use the Right-of-Way for any reasonable purpose not inconsistent with the rights hereby granted, provided such use does not interfere with GRANTEE's exercise of any of its rights hereunder and/or endanger the safe and proper operation of GRANTEE's facilities.

6. GRANTEE shall have the right of ingress to and egress from the Right-of-Way over such private roads and/or lands of Grantor as may now or hereafter exist within the property boundaries of GRANTOR.

7. GRANTOR represents that it has the right to convey the rights and privileges granted hereunder; that GRANTEE shall have quiet and peaceable possession, use and enjoyment of the easement granted hereunder; and that GRANTOR shall execute such further assurances thereof as may be reasonably required.

Prepared by and after recording return to: Pike Engineering, 46030 Manekin Plaza, Suite 180, Sterling, VA 20166.

DVPIDNo(s). 12-20-4077
Tax Map. 6984-44-8436-000

EXAMINED &
RETURNED

8. This Right of Way Agreement is binding upon the successors and assigns of the parties hereto.

NOTICE TO LANDOWNER: You are conveying rights to a public service corporation. A public service corporation may have the right to obtain some or all of these rights through exercise of eminent domain. To the extent that any of the rights being conveyed are not subject to eminent domain, you have the right to choose not to convey those rights and you could not be compelled to do so. You have the right to negotiate compensation for any rights that you are voluntarily conveying.

WITNESS the following signatures and seals:

Corporate Seal

Fauquier Habitat for Humanity, INC
(A Virginia Corporation)

By:

(Signature)

DARRELL NEHER
(Name of Person Signing)

Its:

CEO

State of Virginia

City/County of Fauquier

The foregoing instrument was acknowledged before me this 1st day of September 2020.

By, DARRELL NEHER
(Name of Person Signing)

CEO
(Title of Person Signing)

Of Fauquier Habitat for Humanity, INC., on behalf of the Corporation

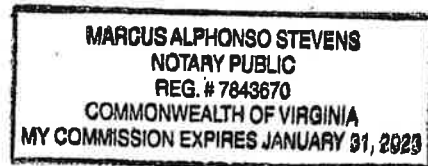
Marcus Stevens
Notary Public (Print Name)

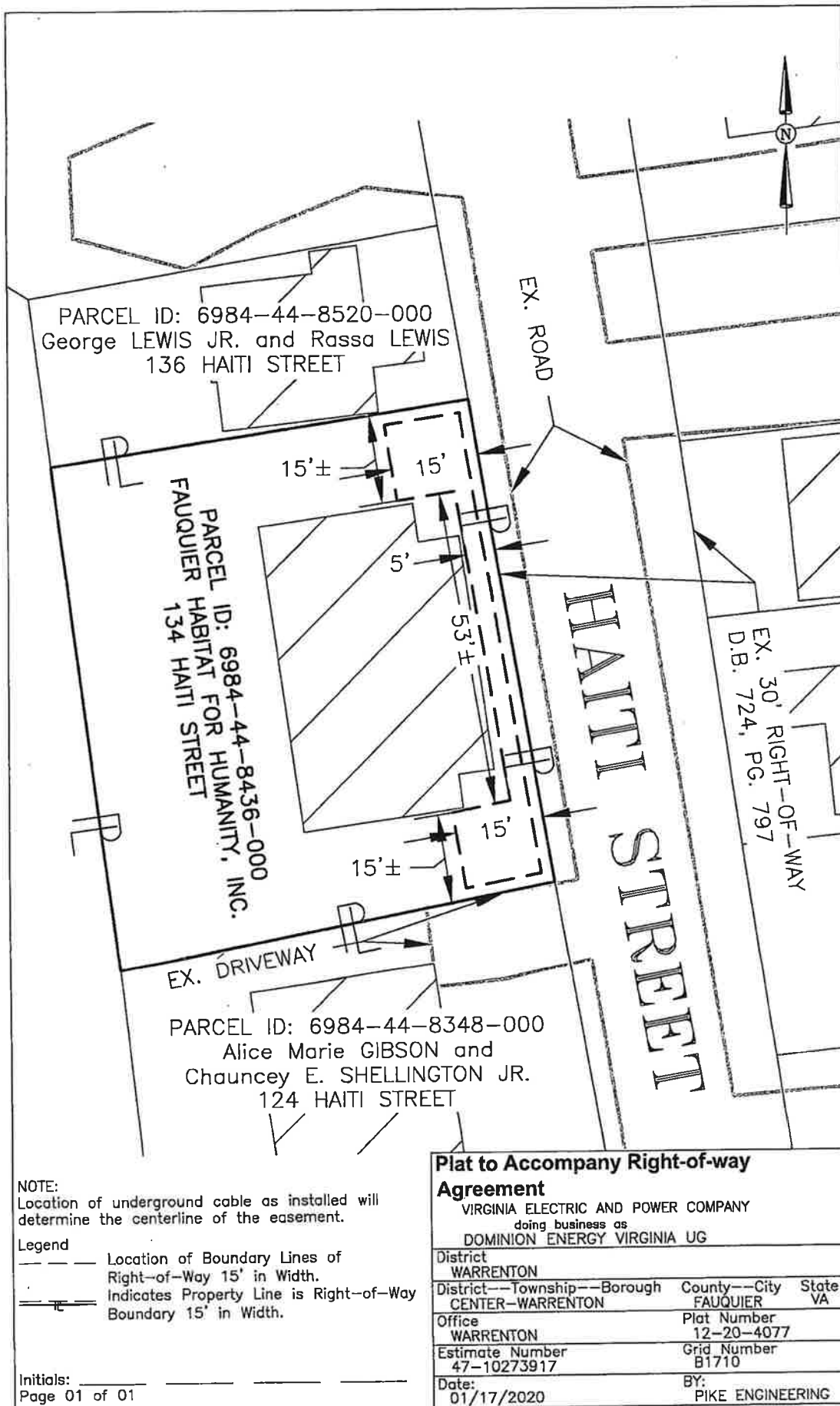
Marcus Stevens
Notary Public (Signature)

Notary Public Reg. No. 7843670

My Commission Expires: 1/31/2023

DVPIDNo(s). 12-20-4077





RECORDED IN CLERK'S OFFICE OF
FAUQUIER ON
SEPTEMBER 15, 2020 at 12:52:00 PM
AS REQUIRED BY VA CODE §58.1-802
STATE: \$0.00 LOCAL: \$0.00
FAUQUIER COUNTY, VA
GAIL H BARB CLERK OF CIRCUIT COURT

Gail H Barb



BZA REPORT

Warrenton Board of Zoning

Item 3.

Larry Kovalik, Chair
Malea Maybach
Geoff Fiutak
Susan Helander
A Van Baggett

BZA Meeting Date:	September 3 rd , 2024.
Agenda Title:	Board of Zoning Appeals Legal Representation Discussion
Requested Action:	Consider the proposal and determine next steps
Department / Agency Lead:	Board of Zoning Appeals
Staff Lead:	Chair, Larry Kovalik

EXECUTIVE SUMMARY

The Warrenton Board of Zoning appeals has requested funding from the Warrenton Town Council for legal representation. A resolution granting that request was passed at the August 13th, 2024, Regular Town Council meeting.

The process regarding use of the funds appropriated by Council for the BZA,

1. The proposed BZA counsel will submit an engagement letter noting that the source of funds is the Town Council's appropriation.
2. If the Town approves the engagement, the Town Manager will endorse the engagement letter and provide a copy to the BZA.
3. The engagement will begin upon the Town Manager's execution and delivery of the engagement letter.

The Chair of the BZA has received a proposal from one firm that he has been in contact with. It is recommended to enter into closed session to discuss the proposal and the direction that the BZA would like to give staff on the matter.

A vote can be held to enter into closed session as permitted under § 2.2-3711 (A)(1), a personnel matter involving: Discussion, consideration or interviews of prospective candidates for employment or appointment; OR assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of the Town. specifically dealing with Board of Zoning Appeals legal representation.

After the closed session concludes, a vote to certify the closed session must be held.

The BZA can then pass a motion or resolution to proceed with their request.

BACKGROUND

The Board of Zoning Appeals is a quasi-judicial body that is appointed by the Fauquier County Circuit Court. The purpose of the Board is to hear and decide appeals from any order, requirement, decision or

determination made by an administrative officer of the Town in the administration or enforcement of the Zoning Ordinance. The duties and powers of the Board of Zoning Appeals are regulated by the Code of Virginia, §15.2-2308 and subsequent sections, as well as the Town Zoning Ordinance, Article 11, Section 11-2 *Board of Zoning Appeals*. A copy of the relevant Code of Virginia sections is included with this staff report as Attachment C; a copy of Zoning Ordinance Section 11-2 is included as Attachment D.

On July 2, 2024 the Board of Zoning Appeals held a work session to discuss recent applications to the Board and court filings listing the Board at the request of the Chair. After lengthy discussion the Board members passed a motion to request that the Town Council provide funds so that the Board may retain legal counsel that is separate and independent from the Town and the Town Attorney on a short-term, as-needed basis.

BZA RECOMMENDATION

Consider the representation and identify how the representation

Service Level/Collaborative Impact

The purpose of the Board of Zoning Appeals is to hear and decide appeals from any order, requirement, decision or determination made by an administrative officer of the Town in the administration or enforcement of the Zoning Ordinance. In the matter of an appeal, the Town Attorney represents the Town, and cannot provide legal advice to the Board of Zoning Appeals.

Fiscal Impact

The Board of Zoning Appeals relies on the Town to provide any funding necessary to perform the duties of the Board. The Board does not have a budget line item for legal counsel. Therefore, should the Board desire legal counsel, the Board must request funds from the Town Council.

Legal Impact

The Code of Virginia, §15.2-2308, Subsection D, states that upon request of the Board of Zoning Appeals, the governing body shall consider appropriation of funds so that the Board may employ or contract for services to include legal counsel.

ATTACHMENTS

- A. Closed Session Form
- B. July 2, 2024 Motion
- C. July 5, 2024 Email from Chairman Kovalik
- D. Code of Virginia, §15.2-2308
- E. Zoning Ordinance Section 11-2
- F. Town Council Staff Report 08.13.24

G. RES-24-08-03



Motion for Convening a Closed Session

BZA Meeting Date: September 3rd, 2024.

Agenda Title:

I move that the Council convene in closed session to discuss the following:

- ☒ As permitted by Virginia Code § 2.2-3711 (A)(1), a personnel matter involving:
Discussion, consideration or interviews of prospective candidates for employment or appointment; OR
_____ assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of the Town, specifically dealing with Board of Zoning Appeals legal representation
- _____ As permitted by Virginia Code § 2.2-3711 (A)(3), a matter involving:
_____ discussion or consideration of the acquisition of real property for a public purpose; OR
_____ disposition of publicly held real property
specifically involving _____ [Give location of property], because discussion in an open meeting would adversely affect the City's bargaining position or negotiating strategy.
- _____ As permitted by Virginia Code § 2.2-3711 (A)(4), a matter requiring the protection of the privacy of individuals in personal matters not involving the public business.
- _____ As permitted by Virginia Code § 2.2-3711 (A)(7), consultation with legal counsel or briefing by staff members or consultants pertaining to:
_____ probable litigation involving _____ [Give subject]; OR
_____ the pending case of _____ [Give case name],
where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the City.
- _____ As permitted by Virginia Code § 2.2-3711 (A)(8), consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel, relating to _____ [Give nature of matter].
- _____ As permitted by Virginia Code § 2.2-3711 (A)(29), discussion of the award of a public contract for _____ [Give nature of the contract] involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the City Council.
- _____ As permitted by Virginia Code § _____, a matter involving:

[IDENTIFY THE APPLICABLE PARAGRAPH OF § 2.2-3711(A) OR OTHER LAW AND GIVE THE SUBJECT MATTER AND PURPOSE FOR THE CLOSED SESSION.]

Votes:

Ayes:

Nays:

Absent from Vote: None

CERTIFICATION MOTION AFTER RECONVENING IN PUBLIC SESSION:

(requires a recorded roll call vote)

I move that the Council certify that, in the closed session just concluded, nothing was discussed except the matter or matters (1) specifically identified in the motion to convene in closed session and (2) lawfully permitted to be discussed in a closed session under the provisions of the Virginia Freedom of Information Act as cited in that motion.

Votes:

Ayes:

Nays:

Absent from Vote: None

For Information:

Town Clerk

Effective date:

Stephen Clough, Town Recorder



Office of the Town Manager
Frank Cassidy

Warrenton Town Council

Carter Nevill, Mayor
Heather Sutphin, Ward 1
William Semple, Ward 2
Brett Hamby, Ward 3
James Hartman, Ward 4 Vice Mayor
Eric Gagnon, Ward 5
Paul Mooney, At Large
David McGuire, At Large

Item 3.

STAFF REPORT

Council Meeting Date:	August 13, 2024.
Agenda Title:	Request from the Board of Zoning Appeals for Funding to Retain Independent Legal Counsel
Requested Action:	Hold a Work Session to Consider the Request
Department / Agency Lead:	Community Development
Staff Lead:	Heather Jenkins, Zoning Administrator

EXECUTIVE SUMMARY

Town Staff have identified a source of funding for the BZA to retain independent legal counsel. A Resolution has been prepared for consideration by the Town Council so as to grant the funding request.

BACKGROUND

The Board of Zoning Appeals is requesting that the Town Council provide funding to retain independent legal counsel to advise the Board regarding legal matters and court filings currently before the Board. A copy of the motion passed by the Board on July 2, 2024 to request funding for legal counsel is included with this staff report as [Attachment A](#); a copy of the email detailing the specifics of the request from the Board Chair is included as [Attachment B](#).

The Board of Zoning Appeals is a quasi-judicial body that is appointed by the Fauquier County Circuit Court. The purpose of the Board is to hear and decide appeals from any order, requirement, decision or determination made by an administrative officer of the Town in the administration or enforcement of the Zoning Ordinance. The duties and powers of the Board of Zoning Appeals are regulated by the Code of Virginia, §15.2-2308 and subsequent sections, as well as the Town Zoning Ordinance, Article 11, Section 11-2 *Board of Zoning Appeals*. A copy of the relevant Code of Virginia sections is included with this staff report as [Attachment C](#); a copy of Zoning Ordinance Section 11-2 is included as [Attachment D](#).

On July 2, 2024 the Board of Zoning Appeals held a work session to discuss recent applications to the Board and court filings listing the Board at the request of the Chair. After lengthy discussion the Board members passed a motion to request that the Town Council provide funds so that the Board may retain legal counsel that is separate and independent from the Town and the Town Attorney on a short-term, as-needed basis.

STAFF RECOMMENDATION

Staff recommends that per Code of Virginia §15.2-2308, Subsection D, that the Town Council should consider the Board of Zoning Appeal's request for appropriation of funds to retain legal counsel.

Service Level/Collaborative Impact

The purpose of the Board of Zoning Appeals is to hear and decide appeals from any order, requirement, decision or determination made by an administrative officer of the Town in the administration or enforcement of the Zoning Ordinance. In the matter of an appeal, the Town Attorney represents the Town, and cannot provide legal advice to the Board of Zoning Appeals.

Fiscal Impact

The Board of Zoning Appeals relies on the Town to provide any funding necessary to perform the duties of the Board. The Board does not have a budget line item for legal counsel. Therefore, should the Board desire legal counsel, the Board must request funds from the Town Council.

Legal Impact

The Code of Virginia, §15.2-2308, Subsection D, states that upon request of the Board of Zoning Appeals, the governing body shall consider appropriation of funds so that the Board may employ or contract for services to include legal counsel.

ATTACHMENTS

- A. July 2, 2024 Motion
- B. July 5, 2024 Email from Chairman Kovalik
- C. Code of Virginia, §15.2-2308
- D. Zoning Ordinance Section 11-2

**TOWN COUNCIL**

H.E. Carter Nevill, Mayor
Paul W. Mooney
David A. McGuire
Heather D. Sutphin
William T. Semple II
Brett A. Hamby
James N. Hartman III, Vice Mayor
Eric F. Gagnon

Motion of Board of Zoning Appeals Request to Town Council

Ms. Melea Maybach motioned to ask the Town Council to appropriate some funds for independent legal counsel for the Board of Zoning Appeals. Seconded by Mr. A. Van Baggett.

The motion was clarified during discussion to state that the request was for the Town Council to provide funding on a short term as needed basis to discuss the items before the Board of Zoning Appeals currently.

Heather Jenkins

From: Larry Kovalik
Sent: Thursday, July 4, 2024 8:18 PM
To: Heather Jenkins
Cc: Frank Cassidy; Amber Heflin; Rob Walton; Matthew Cute; Griggs, Ruth T.; Stephen Clough
Subject: Re: BZA Funding Request

Good Day Heather,

The funds will be used to understand the Board's legal rights and obligations in light of the competing Writs and associated Exhibits and Statements that have been filed in the Circuit Court by the Town Attorney and concerned citizens.

I have estimated 30-40 hours of work on this assignment based on Rob Walton's observations of similar matters which he conveyed to me during the brief discussion you referenced in your email. This is to cover review of the Writs (Mandamus and Prohibition), Appellants Exhibits 1-11, Plaintiffs-Petitioners Exhibits A-F, Plaintiffs-Petitioners Exhibits 1-3, Plaintiffs Statement of Justification and any additional document(s) deemed pertinent to this matter.

I believe we can accommodate this review within a budget of \$15,000. The Board will take all measures to utilize the legal resources and appropriated funding in the most cost efficient and cost effective manner as possible.

Hourly Rates are as follows;

Senior Attorney is \$650/hour.

Senior Associate is \$375/hour.

Paralegal is \$200/hour.

Thank You

Larry Kovalik
 Chairman, Town of Warrenton Board of Zoning Appeals

From: Heather Jenkins <hjenkins@warrentonva.gov>
Sent: Wednesday, July 3, 2024 9:31 AM
To: Larry Kovalik <lkovalik@warrentonva.gov>
Cc: Frank Cassidy <fcassidy@warrentonva.gov>; Amber Heflin <aheflin@warrentonva.gov>; Rob Walton <rwalton@warrentonva.gov>; Matthew Cute <mcute@warrentonva.gov>; Griggs, Ruth T. <RGriggs@sandsanderson.com>; Stephen Clough <sclough@warrentonva.gov>
Subject: BZA Funding Request

Good morning, Larry.

As we briefly discussed this morning, please provide the following for the funding request:

- A detailed explanation of what the funds will be used for, to include approximate duration.
- A cost estimate of an hourly rate and total time, as well as a lump sum estimate.

This will be provided to Town Council along with a copy of the Board's resolution from Tuesday evening. Council will need to decide on the funding request, and then administrative staff will need to adjust other departmental budgets to provide the funding.

Please have this information sent to me before noon this Friday (the 5th) so that this can be placed on the July Council agenda.

Thank you,
Heather

Heather E. Jenkins, PLA, CZA
Zoning Administrator
Community Development Department



21 Main Street
Warrenton, VA 20186
(540) 347-1101 x144
warrentonva.gov

Code of Virginia
 Title 15.2. Counties, Cities and Towns
 Subtitle II. Powers of Local Government
 Chapter 22. Planning, Subdivision of Land and Zoning
 Article 7. Zoning

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, or in a town with a population of 3,500 or less, either three, five, or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each, except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least 30 days in advance of the expiration of any term of office and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality, except that one may be a member of the local planning commission, any member may be appointed to serve as an officer of election as defined in § 24.2-101, and any elected official of an incorporated town may serve on the board of the county in which the member also resides. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman 24 hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years, except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the

board shall not be entitled to vote on matters before the board. Notwithstanding any other provision of law, general or special, for the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing body. Except for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Upon request of the board of zoning appeals, the governing body shall consider appropriation of funds so that the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. If a board has needs that surpass the budgeted amount, the governing body shall review the board's request. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least 15 days' notice.

E. Notwithstanding any contrary provisions of this section, in the Cities of Portsmouth and Virginia Beach, members of the board shall be appointed by the governing body. The governing body shall also appoint at least one but not more than three alternates to the board.

Code 1950, §§ 15-825, 15-850, 15-968.8; 1950, pp. 176, 489; 1952, c. 688; 1962, c. 407, § 15.1-494; 1975, c. 641; 1976, c. 642; 1977, c. 172; 1982, c. 3; 1989, c. 27; 1992, c. 47; 1997, cc. 570, 587; 1998, cc. 346, 520, 528; 1999, c. 838; 2002, cc. 205, 545; 2007, c. 813; 2009, c. 734; 2010, c. 705; 2015, cc. 406, 407, 597; 2019, c. 703; 2020, cc. 11, 1006; 2021, Sp. Sess. I, c. 355; 2022, c. 249.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
 Title 15.2. Counties, Cities and Towns
 Subtitle II. Powers of Local Government
 Chapter 22. Planning, Subdivision of Land and Zoning
 Article 7. Zoning

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings

A. The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.

B. Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection G of § 2.2-3707.

C. For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

D. This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.

2015, c. 597; 2023, c. 536.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
 Title 15.2. Counties, Cities and Towns
 Subtitle II. Powers of Local Government
 Chapter 22. Planning, Subdivision of Land and Zoning
 Article 7. Zoning

§ 15.2-2309. Powers and duties of boards of zoning appeals

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application. Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair

housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted.

No variance shall be considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204.

However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

Code 1950, §§ 15-831, 15-850, 15-968.9; 1950, p. 176; 1962, c. 407, § 15.1-495; 1964, c. 535; 1972, c. 695; 1975, cc. 521, 641; 1987, c. 8; 1991, c. 513; 1996, c. 555; 1997, c. 587; 2000, c. 1050; 2002, c. 546; 2003, c. 403; 2006, c. 264; 2008, c. 318; 2009, c. 206; 2015, c. 597; 2018, c. 757.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 15.2. Counties, Cities and Towns
Subtitle II. Powers of Local Government
Chapter 22. Planning, Subdivision of Land and Zoning
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§ 15.2-2310. Applications for special exceptions and variances

Applications for special exceptions and variances may be made by any property owner, tenant, government official, department, board or bureau. Applications shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board who shall place the matter on the docket to be acted upon by the board. No special exceptions or variances shall be authorized except after notice and hearing as required by § 15.2-2204. The zoning administrator shall also transmit a copy of the application to the local planning commission which may send a recommendation to the board or appear as a party at the hearing. Any locality may provide by ordinance that substantially the same application will not be considered by the board within a specified period, not exceeding one year.

Code 1950, §§ 15-828 through 15-830, 15-832, 15-833, 15-850, 15-968.10; 1950, p. 176; 1962, c. 407, § 15.1-496; 1966, c. 256; 1975, cc. 521, 641; 1989, c. 407; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
 Title 15.2. Counties, Cities and Towns
 Subtitle II. Powers of Local Government
 Chapter 22. Planning, Subdivision of Land and Zoning
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§ 15.2-2311. Appeals to board

A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given and the zoning administrator's written order is sent by registered or certified mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. A decision by the board on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with this section. The owner's actual notice of such notice of zoning violation or written order or active participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order. For jurisdictions that impose civil penalties for violations of the zoning ordinance, any such civil penalty shall not be assessed by a court having jurisdiction during the pendency of the 30-day appeal period.

B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date

of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical errors.

D. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

1975, c. 521, § 15.1-496.1; 1983, c. 12; 1993, c. 780; 1995, c. 424; 1997, c. 587; 2005, cc. 625, 677; 2008, c. 378; 2010, c. 241; 2011, c. 457; 2012, cc. 400, 550, 606; 2017, c. 665; 2019, c. 387.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 15.2. Counties, Cities and Towns
Subtitle II. Powers of Local Government
Chapter 22. Planning, Subdivision of Land and Zoning
Article 7. Zoning

§ 15.2-2312. Procedure on appeal

The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and make its decision within ninety days of the filing of the application or appeal. In exercising its powers the board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

1975, c. 521, § 15.1-496.2; 1983, c. 444; 1986, c. 483; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 15.2. Counties, Cities and Towns
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§ 15.2-2313. Proceedings to prevent construction of building in violation of zoning ordinance

Where a building permit has been issued and the construction of the building for which the permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the board of zoning appeals.

1975, c. 521, § 15.1-496.3; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
 Title 15.2. Counties, Cities and Towns
 Subtitle II. Powers of Local Government
 Chapter 22. Planning, Subdivision of Land and Zoning
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§ 15.2-2314. Certiorari to review decision of board

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court. Once the writ of certiorari is served, the board of zoning appeals shall have 21 days or as ordered by the court to respond. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings in the circuit court. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, the decision of the board of zoning appeals shall be

presumed to be correct. The petitioner may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

Costs shall not be allowed against the locality or the governing body, unless it shall appear to the court that the locality or the governing body acted in bad faith or with malice. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality or the governing body may request that the court hear the matter on the question of whether the appeal was frivolous.

Code 1950, §§ 15-834 through 15-839, 15-850, 15-958.11; 1950, p. 176; 1962, c. 407, § 15.1-497; 1975, c. 641; 1988, c. 856; 1994, c. 705; 1996, c. 450; 1997, c. 587; 2001, c. 422; 2003, c. 568; 2005, cc. 625, 677; 2006, c. 446; 2010, c. 241; 2015, c. 597; 2017, c. 661; 2020, c. 86.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Article 11 Administration, Procedures and Enforcement

**Amended by Town Council: February 12, 2013
December 11, 2018
December 10, 2019
March 10, 2020
April 12, 2022**

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Article 11 Administration, Procedures and Enforcement

11-1 Administration

11-1.1 Zoning Administrator.

The provisions of this Ordinance shall be enforced by the designated agent of the Town of Warrenton, who shall be known as the Zoning Administrator. The Zoning Administrator shall have all necessary authority on behalf of the Town Council to administer and enforce the Zoning Ordinance. His authority shall include:

1. ordering in writing the remedying of any condition found in violation of this Ordinance;
2. insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311 of the Code of Virginia and Article 11 of this Ordinance; and
3. in specific cases, making findings of fact and, with concurrence of the Town attorney, conclusions of law regarding determinations of rights accruing under § 15.2-2307 of the Code of Virginia.
4. granting a variance from any building setback requirement contained in the Zoning Ordinance in accord with Article 11 of this Ordinance and § 15.2-2286 of the Code of Virginia.
5. The Zoning Administrator shall respond within ninety (90) days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.
6. In addition to the regulations and requirements herein contained concerning the administration of this Ordinance, the Zoning Administrator may establish reasonable additional administrative forms and procedures deemed necessary for the proper administration of this Ordinance.
7. Such other powers as may be granted in the Code of Virginia.

11-1.2 Certified Copy.

A certified copy of the Zoning Ordinance, as adopted and including any amendments, shall be filed in the office of the Zoning Administrator of Warrenton and in the office of the Clerk of the Circuit Court of Fauquier County, Virginia.

11-1.3 Processing Fees.

It is the intent of the Town that at least part of the cost of administering this Ordinance be borne by those responsible for development; therefore, a fee schedule, as prescribed by the Town Council and modified from time to time, shall apply to all permits, reviews, and

processing as required by this Ordinance.

- 11-1.4 **Payment of Delinquent Taxes Prior to Filing a Land Use Application.** Prior to the filing of an application for a special use permit, special exception, variance, rezoning, site plan, subdivision plat, land disturbance permit, or other land use permit, the applicant shall produce evidence that any delinquent Town real estate taxes properly assessed against the subject property have been paid in full, in accord with § 15.2-2286 (E) of the Code of Virginia, as amended.

11-2 Board of Zoning Appeals

11-2.1 General Provisions (Purpose, Authority and Membership)

- 11-2.1.1 The Board of Zoning Appeals shall hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of the Zoning Ordinance.
- 11-2.1.2 The Board of Zoning Appeals shall adopt such rules and regulations as it may consider necessary to carry out its authorized business.
- 11-2.1.3 The Board shall consist of five (5) members and shall be appointed by the Circuit Court of Fauquier County. Members shall be residents of the Town of Warrenton. The Board shall receive compensation for traveling expenses and may receive other such compensation as may be authorized by the Town Council. Appointments to fill vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.
- 11-2.1.4 The term of office shall be for five (5) years. One of the five (5) appointed members may be an active member of the Planning Commission.
- 11-2.1.5 Any member of the Board may be removed, for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the Circuit Court, after a hearing held after at least fifteen (15) days written notice.
- 11-2.1.6 Any member of the Board shall be disqualified to act upon a matter before the Board with respect to property in which the member has an interest.
- 11-2.1.7 The Board shall choose annually its own chairman and vice-chairman who shall act in the absence of the chairman.
- 11-2.1.8 The Town Manager shall appoint a staff member to serve as secretary to the Board of Zoning Appeals, without vote and shall prepare minutes of meetings, keep all records and conduct official correspondence of the Board. In the

absence of the secretary at any meeting, the Board shall appoint some other person, who may or may not be a member of the Board, to prepare the minutes thereof.

11-2.2 Rules and Regulations

- 11-2.2.1 The meeting of the Board shall be held at the call of its chairman or, in his absence, the acting chairman, or at such times as a quorum of the Board may determine.
- 11-2.2.2 The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses.
- 11-2.2.3 The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.
- 11-2.2.4 All meetings of the Board shall be open to the public. A favorable vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official or to decide in favor of the applicant on any matter upon which the Board is required to pass.
- 11-2.2.5 For the conduct of any hearing and the taking of any action or transaction of official business, a quorum shall be required of not less than three (3) members of the Board.
- 11-2.2.6 In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from. The concurring vote of three (3) members shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the Ordinance or to effect any proceedings and other official actions, which shall be filed in the office of the Board and shall be public records.

11-2.3 Powers and Duties

The Board of Zoning Appeals shall have the following powers and duties:

- 11-2.3.1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this Ordinance or of any ordinance adopted pursuant thereto, in

accord with Section 11-3.13 of this Ordinance, including decisions of the Zoning Administrator. The decision on such appeals shall be based on the Board's judgment of whether the administrative officer was correct. The Board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision. In the case of interpreting the zoning map, the board shall interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The Board shall not have the power to change the locations of district boundaries as established by Ordinance.

11-2.3.2. To authorize upon appeal or original application in specific cases a variance as defined in § 15.2-2201 of the Code of Virginia, from the terms of this Ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this ordinance shall be observed and substantial justice done and the requirements in Section 11-3.12.

11-2.3.3. No provision of this section shall be construed as granting any Board the power to rezone property or to base Board decisions on the merits of the purpose and intent of any ordinances duly adopted by the Town Council.

11-2.3.4. When giving any required notice to owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.

11-2.3.5. Records

The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. It shall keep full records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record.

11-2.3.6. Periodic Reports

The Board shall submit a report of its activities to the Town Council at least once each year.

11-2.3.7. Limitation

All provisions of this Ordinance relating to the Board shall be strictly construed. The Board, as a body of limited jurisdiction, shall act in full

conformity with all provisions and definitions in this Ordinance and in strict compliance with all limitations contained therein.

11-2.3.8. Decisions Subject to Judicial Review

In accord with § 15.2-2314 of the Code of Virginia, as amended, all decisions and findings of the Board shall be final decisions, and shall be subject to judicial review in the following manner:

1. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board or bureau of the Town, may present to the Circuit Court of Fauquier County a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board of Zoning Appeals.
2. Upon the presentation of such petition, the court shall allow a Writ of Certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board of Zoning Appeals and on due cause shown, grant a restraining order.
3. The Board of Zoning Appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
4. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with the commissioner's findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which a determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
5. Costs shall not be allowed against the Board of Zoning Appeals, unless it shall appear to the court that the Board acted in bad faith or with malice in making the decision appealed from. In the event the decision of the Board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the Writ of Certiorari.

11-3 Procedures for Application Review and Approval

11-3.1 Types of Permit Applications

This Ordinance provides for the following types of permit applications for land use and development:

1. *Land Disturbance Permit* - subject to review and approval by the Planning Director.
2. *Zoning Permit* - subject to review and approval by the Zoning Administrator.
3. *Building Permit* - subject to review and approval by the Building Official.
4. *Occupancy Permit* - subject to review and approval by the Zoning Administrator.
5. *Site Development Plan* - in accordance with the Zoning Ordinance of the Town of Warrenton and subject to review and approval by the Planning Director.
6. *Subdivision Plat* - in accordance with the Subdivision Ordinance of the Town of Warrenton and subject to review and approval by the Planning Director.
7. *Commission Permit ("2232 Review")* - subject to public review and approval by the Planning Commission.
8. *Zoning Amendment (including Conditional Zoning Procedures)* - subject to review and approval by the Town Council.
9. *Special Use Permit* - subject to review and approval by the Town Council.
10. *Variances* - subject to review and approval by the Board of Zoning Appeals and, for certain cases as provided for herein, subject to review and approval by the Zoning Administrator.
11. *Appeals* - subject to review and approval by the Board of Zoning Appeals.
12. *Additional Governmental Approval*. All departments, officials and public employees of the Town vested with the duty or authority to issue permits or licenses shall conform to the provisions of this chapter. They shall issue permits or licenses for uses, buildings or purposes only when they are in conformance with the provisions of this Ordinance. Any such permit or license, if issued in conflict with the provisions of this Ordinance, shall be null and void.

11-3.2 Public Hearing Procedures

11-3.2.1 Advertisement and Notice is Required.

Prior to each public hearing involving planning and zoning matters before the Planning Commission, the Town Council or the Board of Zoning Appeals, the Town shall provide advertisement and written notice as may be required by §§ 15.2-2204 and 15.2-2285 of the Code of Virginia, as amended.

11-3.2.2 Notice by Town.

Notwithstanding any other provisions of this section, whenever the notices required under this Section are sent on behalf of an agency, department or division of the Town, such notice shall be sent by the Zoning Administrator and may be sent by first class mail; however, the Zoning Administrator shall make affidavit that such mailings have been made and file such affidavit with the papers in the pertinent application or case.

11-3.2.3 Notice and Certification by Applicant.

For any application for amendment or development approval for which a public hearing is required before the Planning Commission and the Council and which is initiated by an applicant, the applicant shall be responsible for providing notice in accord with § 15.2-2204 of the Code of Virginia. A certification of notice and a listing of the persons to whom notice has been sent shall be filed with the Zoning Administrator by the applicant at least five days prior to the first public hearing of the Commission. A counterpart of such affidavit shall be presented to the Planning Commission or the Council at the beginning of its public hearing. The applicant may rely upon records of the local real estate assessor's office or the applicable website, if available, to ascertain the names of persons entitled to notice.

11-3.2.4 Condominium Ownership.

In the case of a condominium, written notice may be sent to the unit owner's association instead of to each individual unit owner.

11-3.2.5 Additional Notice Required for Deferrals

If an item is not heard at a public hearing for which it was noticed, but is deferred to a specific date, no additional notice at a public hearing is required by this Section.

11-3.2.6 Additional Notice Required for Recessed Public Hearings.

If a public hearing is begun but the agenda not completed, thereby requiring the meeting to be recessed, no additional notice is required as long as the dates for completion of the public hearing agenda is announced at the hearing which has been recessed.

11-3.2.7 Speakers at Public Hearings.

All witnesses and speakers presenting facts, evidence or opinion at any public hearing shall provide their name, address and affiliation, if any, for the record.

Witnesses or speakers may be required to give oath or affirmation regarding the truth of their statements. At the discretion of the person presiding over the hearing, speakers may be limited as to the time they are allowed to speak.

11-3.3 Land Disturbance Permit

11-3.3.1 Permit Required

No person shall engage in any kind of land disturbing activity, as defined in Article 11, within the Town of Warrenton until they have acquired a Land Disturbance Permit.

Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of the required erosion and sediment control plan and receipt of a land disturbance permit shall be the responsibility of the owner of the land.

11-3.3.2 Plan Submission

If filed separately from a site development plan, three (3) copies of the erosion and sediment control plan shall be submitted to the Administrator. If submitted with the site development plan, the erosion and sediment control plan shall accompany each copy of the site plan submission.

11-3.3.3 Approved Plan.

An approved plan is required before the issuing of any other building or development permits.

11-3.3.4 Plan, Action.

Any erosion and sedimentation plan submitted under the provisions of this Article and the Town's Erosion and Sediment Control Ordinance will be acted on within forty-five (45) days from receipt by either approving or disapproving in writing and, if disapproved, giving specific reasons for such disapproval. If no formal action has been taken by the plan approving authority within forty-five (45) days after receipt of a plan, the plan shall be deemed approved.

11-3.3.5 Plan Amendments.

An approved plan may be changed by the plan approving authority in the following cases:

1. where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
2. where the person responsible for carrying out the approved plan finds that because of changed circumstances, or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this Article, are agreed to by the plan approving authority and the person responsible for carrying out the plan.

11-3.3.6 Bonding.

Prior to the issuance of any permit, the Administrator shall also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the Town Attorney for the Town of Warrenton, to ensure that measures could be taken by the Town, at the applicant's expense, should they fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of them by the approved plan as a result of their land disturbing activity. This cash escrow, letter of credit, or other acceptable legal arrangement will provide for a right-of-entry by representatives of the Town, for purposes of inspection, reinstallation, maintenance, or any conservation practices as may be necessary.

1. If the Town takes such conservation action upon such failure by the permittee, the agency may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.
2. Within sixty (60) days of the achievement of adequate stabilization of the land disturbing activity, the bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.
3. These requirements are in addition to all other provisions of this Article relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

11-3.3.7 Inspections and Enforcement, Generally.

Inspections shall be performed by the Town's Construction Inspector or Building Official and enforcement shall be performed by the Zoning Administrator.

11-3.3.8 Monitoring, Reports, and Inspections.

The Construction Inspector or Building Official, through the Administrator shall: (i) provide for periodic inspections of the land disturbing activity, and (ii) may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. The owner, permittee or person responsible for carrying out the plan, or operator shall be given notice of the inspection. If the plan approving authority through the Administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the mail to the plan certification, or by delivery at the site of the land disturbing activity to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed in violation of this Article and upon conviction shall be subject to the penalties provided in Section 11-5 herein.

With respect to approved plans for erosion and sediment control in connection with all regulated land disturbing activities which require a permit, the Administrator may require of the person responsible for carrying out the plan such monitoring and reports, and may make such on-site inspections, after notice to that person, as are deemed necessary to determine whether the soil erosion and sediment control is performed, and whether such measures are effective in controlling soil erosion and sediment resulting from the land disturbing activity. Such person shall have the opportunity to accompany the inspector on any on-site inspection.

After land clearing operations have begun, no area shall be denuded for more than thirty (3) days unless authorized by the Administrator. All trenches for storm, sewer, water, and gas lines are to be backfilled, compacted, seeded, and mulched within seven (7) days of backfill.

11-3.3.9 Acceptance of Performance.

Upon completion of an approved erosion and sedimentation control plan, the permittee shall notify the Administrator of such completion. The Town Construction Inspector or Building Official shall then inspect the work and plantings, and upon their determination that they are in compliance with the approved plan, they shall notify the Administrator, who shall issue a letter of

preliminary acceptance. A condition of any such preliminary acceptance shall be that the applicant or permittee guarantee all erosion and sedimentation control work for a period of one (1) year from the date of its preliminary acceptance, or for a period of one (1) year from repair or replanting ordered by the Administrator, until such time that all control structures and a minimum of ninety (90) percent of all plantings shall have survived for a year without need of further replanting or repair. The Administrator may order in writing such replanting or repair work as shall be deemed necessary to enforce compliance with the approved plan and guarantee at any time during the one (1) year period. Such an order shall serve to revoke the preliminary acceptance and shall cause the applicant to renew the guarantee for an additional one (1) year from the date of replanting or repair. Final acceptance shall occur when preliminary acceptance has remained unrevoked for a period of one (1) year, or when all control structures and a minimum of ninety (90) percent of all plants have survived for a period of one (1) year without need of further replanting or repair. For the purposes of this Article, normal cleaning of silt basins alone shall not be construed to be repair work.

11-3.3.10 Appeals.

Final decisions of the Administrator under this Article shall be subject to review by the Board of Zoning Appeals, provided, that an appeal is filed within thirty days from the date of any written decision by the Administrator.

Final decisions of the Administrator or Board of Zoning Appeals under the Article shall be subject to review by the Fauquier County circuit court, provided, that an appeal is filed within thirty (30) days from the date of the final written decision of the Board.

11-3.3.11 Violations; Remedies; Civil Penalties; Notice.

1. Stop Work Order.

Upon receipt of a sworn complaint of a violation of this Article from the representative of the program authority or the Board responsible for ensuring program compliance, the chief administrative officer of the program authority or the Board may, in conjunction with or subsequent to a notice to comply as specified in subsection A above, issue an order requiring that all or part of a land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged

noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A above. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply.

The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the chief administrative officer or his designee may issue an order to the owner requiring that all construction and other work on the site other than corrective measures be stopped until an approved plan or any required permit have been obtained.

Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of an order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Any person violating or failing, neglecting, or refusing to obey an order issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

2. Civil Penalties, generally.

Except as set out immediately herein below, any person who violates this Article may be liable to the Town in a civil action for civil penalties of One Hundred Dollars (\$100.00) for any one violation. Each day during which the violation is found to have existed shall constitute a separate offense. The total civil penalties for a series of specified violations arising from the same operative set of facts shall not exceed Three Thousand Dollars (\$3,000.00). Notwithstanding the foregoing, the civil penalty for commencement of land-disturbing activities without an

approved permit as provided in Section 4-5 of this ordinance shall be One Thousand Dollars (\$1,000.00), except that civil penalties for a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not exceed a total of Ten Thousand Dollars (\$10,000.00).

3. Injunctions and Other Relief.

Notwithstanding any other relief or remedy available under this Article, the Administrator may apply to the Circuit Court of Fauquier County for injunctive or such other equitable relief as might be appropriate in the case of a violation or threatened violation of any of the provisions of the Article, without the necessity of showing that there does not exist an adequate remedy at law.

4. Notice of Violation.

In no case shall the Administrator begin legal action to enforce the provisions of this Article unless and until they have first given, or made diligent effort to give, specific notice to the applicant or permittee, as the case may be, of any violation of this Article for which such legal or equitable relief is to be sought. Such notice shall give the applicant or permittee a reasonable opportunity under the particular circumstances to correct the situation before the enforcement action is brought.

5. Civil Penalties.

Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this Article shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation.

6. Cumulative Remedies.

The remedies provided for in this Article shall be cumulative in the sense that the imposition of, or attempt to impose, one (1) remedy shall not act as a restriction of any right to impose or attempt to impose, any other remedy authorized by this Article.

7. Administrative Fines.

With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Administrator, or any

condition of a permit or any provision of this Article, the Town Council, or the Administrator may provide, in an order issued by the Town Council or the Administrator against such person, for payment of civil charges for violations in specific sums, not to exceed Two Thousand Dollars (\$2,000) for each violation. Such civil charges shall be instead of any appropriate civil penalties which could be imposed as outlined in Section 11-5.

11-3.3.12 Criminal Penalties - Misdemeanor.

Violators of this Article shall be guilty of a Class One misdemeanor and subject to a fine not exceeding \$2,500, or twelve months imprisonment in jail, or both, for each violation.

11-3.4 Zoning Permits

11-3.4.1 Zoning Permit Required

No permitted principal or accessory building, structure or use, or building, structure or use permissible by special exception, shall be constructed, reconstructed, moved, added to or structurally altered or otherwise allowed without a zoning permit issued by the Zoning Administrator. A zoning permit is required in all cases where a building permit is required.

Failure to obtain a zoning permit shall be a violation of this chapter and punishable under Section 11-5.

The Zoning Administrator shall maintain a record of all zoning permits and a copy shall be furnished, upon request, to any person.

11-3.4.2 Application for Zoning Permit

An application for a Zoning Permit shall be made to the Zoning Administrator, who shall require and be furnished by the applicant with all plans and documents as may be determined to be necessary to evaluate whether the proposed structure and facilities will be in compliance with the provisions of this Ordinance.

In order for an application for a zoning permit to be deemed complete, each such application shall be accompanied by the following items, unless waived by the Zoning Administrator as not pertinent. The Zoning Administrator may also require additional information necessary in order to determine if the application conforms with the provisions of this Ordinance.

1. A statement from the Town Director of Public Works that all applicable regulations and requirements for water and wastewater facilities have been complied with.
2. A complete description of the intended use or uses.
3. If a dwelling, the number of housekeeping units within the structure.
4. A plot plan signed by the applicant drawn to scale showing dimensions of the structure with respect to property lines and public highways; provided, no part of which is to be located less than the required setback distance from any property line or right-of-way of any public highway.
5. Number, size, location and lighting of signs, if any.
6. Off-street parking and other facilities.
7. Proposed utilities and their locations.
8. Drainage design and proposal.
9. Topographic map, if determined to be necessary by the zoning administrator.
10. Fee in accord with the fee schedule adopted by the Town Council.

11-3.4.3 Standards for Issuance

Zoning permits issued on the basis of plans and applications approved by the zoning administrator authorize only the use, arrangement and construction set forth in the approved plans and applications, and no other use, arrangement or construction. Use, arrangement and construction at variance with that authorized shall be deemed a violation of this chapter and punishable as provided under Section 11-5.

No zoning permit shall be issued where it appears that the structure to be constructed or the use contemplated would be in violation of the provisions of this Ordinance or any other applicable law, ordinance or regulation. The issuance of a zoning permit shall not afford protection to any owner who is found to be in violation of this Ordinance or any other applicable law, ordinance or regulation.

If it appears that the proposed structure and use of land or structure is in conformity with the provisions of this chapter, a zoning permit shall be issued to the applicant by the zoning administrator. If an intended use is found to be in compliance with this Ordinance, before proceeding, the applicant is still required to ensure compliance with the Virginia Uniform Statewide Building Code, and all other applicable laws, ordinances and regulations.

Approval or denial of a zoning permit shall be made within ten (10) working days of the time at which the Zoning Administrator has deemed that the zoning

permit application is complete.

11-3.4.4 Duration of Valid Zoning Permit

Any zoning permit issued shall be valid for one year. If an applicant has not completed construction of the building after one year of receiving the permit, the applicant may re-apply.

11-3.5 Building Permits

11-3.5.1 Building Permit Required

No principal or accessory building, structure or use shall be constructed, reconstructed, moved, added to or structurally altered or otherwise allowed without a building permit issued by the Building Official.

Failure to obtain a building permit shall be a violation of this chapter and punishable under Section 11-5 of this Ordinance.

The Building Official shall maintain a record of all building permits and a copy shall be furnished, upon request, to any person.

11-3.5.2 Application for Building Permit

An application for a Building Permit shall be made to the Building Official, who shall require and be furnished with all such plans and documents as may be required to determine whether the proposed structure and facilities will be in compliance with the provisions of this ordinance and with the Virginia Statewide Uniform Building Code.

In order for an application for a Building Permit to be deemed complete, each such application shall be accompanied by the following items, unless an item is deemed not pertinent by the Building Official, and such additional information as the Building Official may require as being necessary in order to determine if the application conforms with the provisions of this Ordinance and the Building Code:

1. The size and shape of the parcel of land on which the proposed building is to be constructed
2. Scale drawings which accurately show the design, construction, dimensions and materials of all proposed buildings and structures
3. The location of such buildings and structures with respect to the property lines of said parcel of land, and the right-of-way of any street or highway

adjoining said parcel of land.

4. Proposed utilities and their location.
5. Drainage scheme.
6. Fee in accord with the fee schedule adopted by the Town Council.

11-3.5.3 Standards for Issuance

Building permits issued on the basis of plans and applications approved by the Building Official authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement and construction at variance with that authorized shall be deemed a violation of this chapter and punishable as provided under Section 11-5 of this chapter.

No building permit shall be issued before receipt of a zoning permit for the proposed use and structure. Building and zoning permits for the same use and structure may be submitted, reviewed and approved concurrently.

No building permit shall be issued where it appears that the structure to be constructed or the use contemplated would be in violation of the provisions of this Ordinance or any other applicable law, ordinance or regulation. The issuance of a building permit, however, shall not afford protection to any owner who is found to be in violation of this Ordinance or any other applicable law, ordinance or regulation.

If the proposed structure is in conformity with the provisions of this Ordinance and the Virginia Uniform Statewide Building Code, a building permit shall be issued to the applicant by the Building Official.

Approval or denial of a building permit shall be made within ten (10) working days of the time at which the Building Official has deemed that the application for permit is complete.

11-3.5.4 Duration of Valid Building Permit

Building permits issued shall be valid for one year.

11-3.6 Occupancy Permit

11-3.6.1 Occupancy Permit Required.

Land may be used, and buildings occupied, structurally altered, erected, or changed in use for any purpose as permitted in the District in which such land

or building is located, only after an occupancy permit has been issued by the Zoning Administrator. Such a permit shall state that the building or the proposed use, or the use of the land, complies with the provisions of this Ordinance. A similar permit shall be issued for the purpose of maintaining, renewing, or changing a nonconforming use. An occupancy permit either for the whole or a part of a building or the use of the land shall be applied for simultaneously with the application for a building permit.

11-3.6.2 Standards for Issuance.

The Occupancy Permit shall be issued within ten (10) days after final approval by the Building Official of the erection or structural alteration of such building or part which has conformed with the provisions of this Ordinance and all previously issued permits and approvals for the site, including building permits, zoning permits and site plans.

No Occupancy Permit shall be granted until all improvements shown on any approved site plan have been completed in accordance therewith.

11-3.7 Site Development Plan

11-3.7.1 Site Development Plan Required

No person shall commence any use or erect any structure, including additions to existing structures, parking areas or other required site plan features, without first obtaining the approval of a site development plan by the Planning Director as set forth in this article. No use shall be carried on, no structure erected or enlarged, and no other improvement or construction undertaken, except as shown upon an approved site development plan.

A site development plan shall be required for the following uses in the enumerated districts:

- Multi-family dwellings, town houses and all other dwellings except single family detached, two-family and accessory dwellings.
- All uses in the RO, PSP, CBD, LI and C Districts
- For all special use permits

11-3.7.2 Exemptions from Site Development Plan Requirement

The following are exempt from having to file a site plan: the lawful construction, alteration and occupancy of a single or two-family dwelling or

accessory unit, with or without a garage. Exemption from the site plan requirements does not authorize violation of any other provision of this Ordinance.

11-3.7.3. Site Development Plan Requirements

Every site plan shall be submitted to the Planning Director in accordance with the applicable standards and regulations for Site Development Plans as provided in the Town of Warrenton Subdivision and Development Ordinance.

11-3.7.4. Review and Approval

Upon receipt of any Site Development Plan, the Zoning Administrator shall review it in accordance with the applicable procedures, standards and regulations for Site Development Plans as provided in this Ordinance.

11-3.7.5. Revisions To, Or Deviation From, Approved Plan.

After a Site Development Plan has been approved by the Zoning Administrator, minor adjustments of the plan, which are in substantial compliance with this article and the other provisions of this Ordinance and which serve the overall purposes of this section, may be approved by the Zoning Administrator. Deviation from an approved site plan without the written approval of the zoning administrator shall void the plan and the Zoning Administrator shall require the applicant to resubmit a new plan for consideration. Any major revision of an approved Site Development Plan shall be made in the same manner as the originally approved plan.

11-3.8 Commission Permit (“2232 Review”)

11-3.8.1 Permit Required

In accord with the Code of Virginia, §15.2-2232, no street, park or other public area or public structure, public utility, public building or public service corporation facility other than railroads, whether publicly or privately owned, shall be constructed, established or authorized unless and until the general location or approximate location, character and extent thereof has been submitted to and approved by the Planning Commission as being substantially in accord with the adopted comprehensive plan or part thereof.

Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal

service extensions of public utilities or public service corporations shall not require approval, unless involving a change in location or extent of a street or public area.

11-3.8.2 Application

An application for a commission permit shall be filed with the Zoning Administrator and shall meet the minimum submission requirements as prescribed for a zoning permit in Section 11-3.4.2. and in addition shall include a written statement of justification from the applicant as to why the proposed improvement should be deemed to be in accord with the Comprehensive Plan.

An application is not necessary for features already specifically shown on the Comprehensive Plan, as determined by the Planning Director.

11-3.8.3 Planning Commission Action

In connection with any such determination, the Planning Commission may, and at the direction of the Town Council shall, hold a public hearing, after notice as required by §15.2-2204 of the Code of Virginia.

The Planning Commission shall communicate its findings pursuant to this section to the Town Council, indicating its approval or disapproval, along with written reasons therefore. Failure of the commission to act within sixty (60) days of submission of an application, unless such time is extended by the Council, shall be deemed approval.

11-3.8.4 Issuance of Permit; Town Council Review

The Zoning Administrator, on behalf of the Planning Commission, shall issue a Commission Permit following approval by the Planning Commission pursuant to this section. The Council may overrule the action of the Commission by a vote of a majority of its membership.

11-3.8.5 Appeal of Denial of Permit

The owners or their agents may appeal the decision of the Planning Commission to the Council within ten (10) days after the decision of the Commission. The appeal shall be by written petition to the Council setting forth the complete reasons for the appeal. The appeal shall be heard by the Council within sixty (60) days of its submission. A majority vote of the Council shall overrule the Commission.

11-3.9 Zoning Amendments

11-3.9.1 Authority for Change.

Whenever the public necessity, convenience, general welfare, or good zoning practice require, the Town Council may, by ordinance, amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated by resolution of the Town Council, or by motion of the Planning Commission, or by petition of any property owner, addressed to the Town Council, in accord with the procedures and requirements of this Ordinance.

The regulations, restrictions and boundaries established in this Ordinance may, from time to time, be amended, supplemented, changed, modified or repealed, by ordinance, by a majority vote of the Town Council after recommendation by the Planning Commission, provided that a public hearing shall be held in relation thereto at which parties in interest and citizens shall have an opportunity to be heard; and that notice shall be given of the time and place of such hearing as provided for in §§ 15.2-2204 and 15.2-2285 of the Code of Virginia, as amended.

11-3.9.2 Initiation of Amendment

Either a zoning map or text amendment may be proposed by resolution of the Town Council, by motion of the Planning Commission, or by application by the owner, contract purchaser with the owner's written consent, or the owner's agent therefore, of the property which is the subject of the proposed amendment.

11-3.9.3 Submission of Application for Amendment.

Every application for amendment of the Zoning Ordinance shall contain the following items, as applicable. Applicability shall be determined by the Planning Director who may waive or modify any of the designated submission items if appropriate given the nature of the application and so as to facilitate review by the Town and the public. Five (5) copies of the complete application shall be submitted.

1. The applicant's name, address, phone number and email address, and signature.
2. The applicant's authorized representative's name, address, phone number and email address.

3. The property owner's name, address, phone number and email address and signature.
4. A summary of existing data and conditions of the property, including:
 - Existing zoning classification
 - Tax Map and parcel numbers
 - Address of the property
 - Total acreage
5. A plan of the property, at a scale of 1"=200', showing the extent of the area to be rezoned, streets bounding and intersecting the area, the land use and zone classification of abutting districts, and photographs of the area to be rezoned and abutting areas.
6. A plan to a scale of 1" = 200', unless an alternative scale is requested and approved by the Planning Director, indicating the locations of existing and proposed topography, vegetation, floodplain, wetlands, structures, uses, streets, and areas for off-street parking and loading.
7. A boundary survey of the property to be rezoned
8. Information at the time of submission, on all parcels contiguous to the subject property and any property within 100 feet of the boundary, including:
 - Existing zoning
 - Existing land use
 - Proposed land use
 - Historic buildings or structures
9. A statement of justification that explains the circumstances in the proposed district and the abutting districts and any other factors on which the applicant relied as reasons for supporting the proposed zoning amendment, including the degree of compliance of the proposed request and subsequent development plans with the provisions of the Comprehensive Plan.
10. The approximate time schedule for the beginning and completion of development in the area and any proposed phasing of the development.
11. A Concept Development Plan for the property, showing the proposed uses and their general relationships within the site and external to the site, including proposed structures, uses, streets, parking areas, open space areas, vegetation, sidewalks and trails and means of access to the existing road system
12. A Traffic Study that shows the projections for trip generation, traffic volume and levels of service on site and on the adjacent road system,

including provisions for safely accommodating both vehicular and pedestrian traffic.

13. Information about the market area to be served by the proposed development if a commercial use, including population, effective demand for proposed business facilities, and any other information describing the relationship of the proposed development to the needs of the market area.
14. A statement of Impact Mitigation describing and analyzing the various impacts of the proposed rezoning, including fiscal, environmental conditions, and public facilities and utilities impacts, and the proposed methods for mitigating any anticipated impacts.
15. Any development conditions or proffers
16. Disclosure of Real Parties in Interest
17. Certificate of Payment of Taxes, verifying that real estate taxes have been paid for all property included in the application.
18. Record of Pre-Application Conference
19. Fees, in accord with the fee schedule adopted by the Town Council
20. A statement describing in detail the existing character of the area.

11-3.9.4 Staff Review of Application

1. Pre-Application Conference.

Prior to filing an application, an applicant shall meet with the Planning Director and discuss the proposed application and land uses and questions regarding the procedures or substantive requirements of this Ordinance. In connection with all such conferences, the Zoning Administrator shall be consulted as appropriate. A request for a pre-application conference shall be made to the Planning Director and shall be accompanied by a sketch map of the site, a description of the proposed project or use, and a list of the issues to be discussed at the conference. The Planning Director shall respond to each written request for a pre-application conference within fifteen (15) calendar days of receipt.

2. Review of Application for Completeness.

No application shall be accepted and reviewed unless determined by the Planning Director to be complete. A complete application is one which meets the minimum submission requirements established herein. Each application shall be reviewed to determine if it includes the minimum submission requirements. The Planning Director shall maintain a current log of all pending complete applications.

3. Acceptance of Complete Application.

Within fifteen (15) calendar days of submission of the application, the Planning Director shall either officially accept the application as complete and forward to the applicant a notice of acceptance, or reject the application if it is incomplete and forward to the applicant a notice of incompleteness specifying those areas of additional information necessary for acceptance and review.

If a notice of incompleteness is issued, the applicant may resubmit the application with the additional data required. Upon resubmission, the Planning Director will review the resubmitted application in the manner provided in this section for the original application.

If the application is not resubmitted within sixty (60) days of being determined incomplete, the Planning Director shall notify the applicant that the original application has been rejected as incomplete.

4. Referrals. Upon official acceptance of the application for zoning amendment, the Planning Director shall forward a copy of the application to all town departments and county or state agencies whose comments are necessary or desirable for full and appropriate review of the merits of the application.
5. Referral responsibilities. Each reviewing agency shall prepare a staff report of referral comments which sets out in writing its comments and recommendations regarding the application and shall forward such staff report to the Director of Planning.
6. Review of Referrals. All referral comments shall be provided to and reviewed by the Director of Planning within thirty (30) calendar days after an application has been officially accepted. The Planning Director shall forward to the applicant a written review of the issues raised by the application.
7. Applicant Response. Upon receipt of the written report from the Planning Director, an applicant may submit a written request for a meeting with the Planning Director to discuss the matters contained in the report and the application. Such request shall include a response to the matters raised in the Director's written report.
8. Required Action by Other Entities. In the event that this Ordinance requires that an application not be granted until acted upon by some government board or agency other than the Town Planning Commission

and Council, the Planning Director shall forward the application for amendment to such board or agency for appropriate action prior to notification to an applicant that an application is ready to be presented to the Planning Commission or Town Council. The Planning Commission may make its recommendations on an application contingent on required action by the other boards or agencies.

9. Report and Notice to Applicant. The Planning Director shall compile the referrals and other information pertinent to the application, prepare a written staff report with proposed findings and recommendations as to the application, and notify the applicant that the report is complete and the application is ready to be presented to the Planning Commission and Town Council for public hearing.
10. Submission to Planning Commission. Within sixty (60) days of formal acceptance of the application, the Planning Director shall forward the application and staff report to the Planning Commission for its review.

11-3.9.5 Amendment to Application

An application may be amended by the submission of additional information or proposed changes to the application after it has been officially accepted. If the additional information or proposed changes submitted are to conform with recommendations made by Town staff, commissions or boards, then it shall not be deemed an amendment and the application shall continue to be processed on its original time line.

However, if the additional information or proposed changes submitted by the applicant are at the applicant's request, then the Planning Director shall review the information within fifteen (15) calendar days of receipt and render a finding as to whether the submitted information necessitates repeating any portion of the review process including public hearings. If any portion must be repeated, the Director shall notify the applicant in writing within the fifteen (15) calendar day period that the additional information or proposed changes must be withdrawn, submitted as a new application, or will require the applicant to approve an extension of the time limits prescribed in this Section and such notice shall specify the required extension. The applicant will then have fifteen (15) calendar days to provide the Director with a written response either granting the necessary extension or withdrawing the additional information or proposed changes. If the applicant chooses to withdraw the information, then the application will proceed based on its original timeline.

11-3.9.6 Withdrawal of Application

An application for rezoning may be withdrawn at any time upon written request by the applicant and with the consent of either the Planning Commission or the Town Council, whichever body has advertised the hearing; There shall be no refund of rezoning fees in the case of withdrawal either before or after advertising. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action.

11-3.9.7 Planning Commission Review.

Within sixty (60) calendar days after a zoning amendment application has been submitted to the Planning Commission from the Planning Director, and generally within one hundred twenty (120) days after official acceptance of the application by the Town, the Planning Commission shall hold a public hearing on the application after notice as required by § 15.2-2204 of the Code of Virginia.

11-3.9.8 Report by Planning Commission

The Planning Commission shall report to the Town Council its recommendation with respect to the proposed amendment. Failure of the Planning Commission to report to the Town Council within one hundred (100) days after the first meeting of the commission after the proposed amendment or reenactment has been referred to the commission, shall be deemed a recommendation for approval, unless the proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of the time period

If the proposed amendment consists of a change in the text of this Ordinance, the Commission may recommend revisions to the proposal. If the proposed amendment consists of a change in zoning district boundaries, it may recommend that the land be rezoned to a different zoning district classification than that requested if the Commission is of the opinion that such revision is in accord with sound zoning practice and the adopted Comprehensive Plan, is in furtherance of the purposes of this Ordinance and is not more intensive than the advertised/noticed proposed use. Before recommending a larger extent of land or a rezoning to a more intensive classification than was set forth in the application, the Commission shall hold an additional duly noticed public hearing on the matter.

In recommending the approval or denial of any proposed amendment to this Ordinance, the Planning Commission should state its reasons for such

recommendation.

Tabling or deferring an application for rezoning on the grounds of inadequate data may be requested by the applicant for a period of no longer than ninety (90) days, after which the application shall be considered to be automatically withdrawn. All costs involved in re-applying and re-advertising shall be paid by the applicant.

11-3.9.9 Town Council Review and Action.

After receiving the report of the Planning Commission, or after the lapse of one hundred (100) days past the initial meeting of the Planning Commission on the application without Commission recommendation, the Town Council shall hold its own public hearing after notice and advertising required by § 15.2-2204 of the Code of Virginia. The Council may approve the zoning amendment as requested by the applicant, it may deny the amendment, or it may approve a zoning classification of less intensity than that requested, if available in the Ordinance, without holding a new hearing. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing. The Town Council must act on the proposed zoning amendment within one year of official acceptance of the application.

11-3.9.10 Evidentiary Matters Before the Town Council

All information, testimony or other evidence presented by an applicant for a zoning amendment shall be presented to the Planning Commission in conjunction with its review and hearing on the application. If the Town Council determines that an applicant is presenting evidence which is substantially or materially different from that presented to the Commission, the Council may refer the application back to the Commission for such additional consideration and action as the Council may deem appropriate. All costs in re-advertising shall be paid by the applicant.

11-3. 9.11 Contesting a Decision of the Town Council

Every action contesting a decision of the Town Council for granting or failing to adopt a proposed zoning ordinance or amendment thereto or granting or failing to grant a special exception or special use permit, shall be filed within thirty (30) days of such decision with the Fauquier County Circuit Court.

11-3.9.12 Criteria for Consideration of Zoning Map Amendments.

In considering requests for zoning map amendments, the Planning Commission and Town Council should consider, among other issues, the following factors:

1. whether the rezoning request, if granted, would further the public interest, and whether it conforms with the goals, objectives, and policies of the Comprehensive Plan;
2. whether the rezoning is consistent with the town's Future Land Use Plan, as identified in the Comprehensive Plan, and established character of the area and land use patterns;
3. whether the rezoning is justified by changed or changing conditions;
4. whether the rezoning, if granted, would create an isolated district unrelated to adjacent districts;
5. whether utility, sewer and water, transportation, school, recreation, stormwater management and other facilities exist or can be provided to serve the uses that would be permitted on the property if it were rezoned;
6. whether the rezoning will be compatible with properties and uses in the vicinity and not have an adverse impact on these properties or their values;
7. whether there are adequate sites available elsewhere in the Town for the proposed use, or uses, in districts where such uses are already allowed;
8. whether the impact that the uses that would be permitted if the property were rezoned will have upon the volume of vehicular and pedestrian traffic and traffic safety in the vicinity and whether the proposed rezoning provides sufficient measures to mitigate such impacts;
9. whether a reasonable and viable economic use of the subject property exists under the current zoning;
10. whether the effect of the proposed rezoning on environmentally sensitive land or natural features, wildlife habitat, vegetation, water quality and air quality is compatible with the Town's Comprehensive Plan;
11. whether the proposed rezoning encourages economic development activities in areas designated by the Comprehensive Plan and provides desirable employment and enlarges the tax base;
12. whether the proposed rezoning considers the current and future requirements of the community as to land for various purposes, including housing and business, as determined by population and economic studies;
13. the effect of the proposed rezoning to provide moderate housing by enhancing opportunities for all qualified residents of the Town; and
14. the effect of the rezoning on natural, scenic, archaeological, or historic features of significant importance.

11-3.9.13 Criteria for Consideration of Text Amendments.

If the request is for an amendment of the text of this Ordinance, the Planning Commission and Town Council shall consider the following matters, in addition to any relevant matters included in Section 11-3.9.12:

1. Whether the proposed text amendment is consistent with the Comprehensive Plan.
2. Whether the proposed text amendment is consistent with the intent and purpose of this Ordinance.

11-3.9.14 Joint Public Hearing.

The Town Council and the Planning Commission may hold a joint public hearing following proper public notice under § 15.2-2204 of the Code of Virginia, as amended.

11-3.9.15 Majority Requirement for Change in Ordinance.

An affirmative vote of at least a majority of the members of the Town Council shall be required to adopt, amend, or reenact a zoning ordinance.

11-3.9.16 Timing of Application Consideration and Reconsideration

Proposed amendments shall be considered as soon as feasible, based on the regular schedule of the Planning Commission and the Town Council meetings and the schedule of newspaper publication relative to public notice.

Upon the denial of any application filed to change a zoning district designation, no further application concerning any or all of the same property shall be filed for rezoning to the same use in less than twelve (12) months from the time of denial by the Town Council, unless this requirement is specifically waived by the Town Council.

11-3.9.17 Conditional Zoning

1. Purpose and Authority

As part of a petition to rezone property and amend the official zoning map, the property owner may voluntarily proffer in writing certain conditions and restrictions on the use and development of his property, such conditions being in addition to, or modification of, the regulations provided for a particular zone or zoning district by this Ordinance. The

Zoning Administrator shall be vested with all necessary authority to administer, interpret and enforce such conditions and restrictions, all in accordance with the terms of §15.2-2296 et seq. of the Code of Virginia, as amended..

While the conditions may vary from property to property by reason of the nature of the use and different circumstances at a particular location, it is not the intention of this section to authorize conditions limited to a particular individual or group, owner, or operator, and the provisions of this section shall not be used for the purpose of discrimination in housing.

2. Proffered Conditions.

As a part of an application for rezoning or amendment to the zoning district map, the owner or owners of the property involved may, prior to a public hearing before the Town Council, voluntarily proffer in writing such reasonable conditions, in addition to the regulations provided for the zoning district or districts as herein set forth, as he deems appropriate for the particular case to address impacts of the proposed use.

For the purpose of this Ordinance, proffered conditions may include written statements, development plans, profiles, elevations, and/or other demonstrative materials. Materials of whatever nature and intended as proffers shall be annotated with the following statement signed by the owner or owners of the subject property: "I (we) hereby voluntarily proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission unless an amendment thereto is mutually agreed upon by the Town Council, and the undersigned."

3. When Proffers Are Made.

Proffered conditions should be submitted for Staff review as part of the initial application for rezoning..

Proffered conditions made at the Planning Commission meeting shall be forwarded to the Town Council prior to the Council's public hearing.

To be considered by the Planning Commission, proffers must be submitted with the application prior to advertising for public hearing.

4. Contents of Proffer.

Proffered conditions shall be signed by all persons having an ownership interest in the property and shall be notarized. Proffered conditions shall contain a statement that the owners voluntarily enter into the proffers contained therein.

5. Review and Revision of Proffered Conditions.

Additional conditions may be proffered by the applicant during or subsequent to the public hearing before the Planning Commission, provided however that after proffered conditions are signed and made available for public review and the public hearing before the Town Council has been advertised (whether or not jointly held with the Planning Commission) no change or modification to any proffered condition shall be approved without a second advertised public hearing thereon.

6. Modifications to Proffers.

After the Town Council's public hearing has been advertised, should additional or modified conditions be proffered by the applicant, which conditions were specifically discussed at the public hearing before the Planning Commission, then a second public hearing need be held only before the Town Council before the application and the modified conditions can be reviewed and acted on by the Council.

7. Additional Conditions.

Should additional conditions be proffered by the applicant at the time of the public hearing before the Town Council, which conditions were not addressed at the public hearing before the Planning Commission, or if the proffered conditions are modified beyond the scope of any conditions considered at the public hearing before the Planning Commission, the application shall be the subject of a second public hearing before both the Planning Commission and the Town Council, which hearing may be held either separately or jointly.

8. Annotation of Zoning District Map.

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

public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district. Such conditions shall become a part of the zoning regulations applicable to the property in question, regardless of changes in ownership or operation, unless subsequently changed by an amendment to the zoning district map, and such conditions shall be in addition to the specific regulations set forth in this Ordinance for the zoning district in question.

9. Enforcement of Conditions.

The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer, interpret and enforce conditions attached to a rezoning or amendment to the zoning district map, including: (a) the ordering in writing of the remedy of any noncompliance with such conditions; (b) the bringing of legal action to insure compliance with such conditions, including injunction, abatement, or other appropriate action or proceeding; and (c) requiring a guarantee, satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. Provided, further, that failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

Upon approval by the Town Council, proffered conditions shall become a part of the zoning regulations applicable to the property, and are enforceable under the same provisions for enforcement as all other provisions in the Ordinance.

10. Substantial Conformance Required.

Upon approval, any site plan, subdivision plat or development plan thereafter submitted for the development of the property in question shall be in substantial conformity with the approved zoning and all proffered statements, plans, profiles, elevations, or other demonstrative materials, and no development shall be approved by any Town official in the absence of said substantial conformity.

11. Substantial Conformance Defined.

For the purpose of this Section, substantial conformity mean that conformity which leaves a reasonable margin for adjustment due to final engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials presented or proffered by the applicant. Determinations of substantial conformance shall be made by the Zoning Administrator.

12. Guarantee for Construction of Improvements.

A guarantee, satisfactory to the Town Council, may be required in an amount sufficient for and conditioned upon the construction of any public improvements required by a rezoning request and the proffered conditions. This guarantee may be reduced or released by the Council or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been completed in whole or in part. The guarantee shall be required no later than final site plan or subdivision approval, whichever may occur earlier in time.

13. No Permits Shall Be Issued That Do Not Comply With Proffers.

Failure to meet or comply with any proffered conditions shall be sufficient cause to deny the issuance of any site plan or subdivision approvals, grading permits, zoning permits, building permits, or certificates of occupancy as may be determined appropriate by the Zoning Administrator. In addition to the other penalties appropriate for violations of this Ordinance, failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any development approvals or permits relating to the land area which was the subject of the conditional zoning. To this end, each application for a development approval or permit shall include an affidavit by the applicant that all applicable proffers have or will be complied with as agreed upon at the time of rezoning. The burden shall be on the applicant to verify that proposed development complies with all proffered conditions.

14. Appeal of Proffer Decision.

Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal such decision to the Town Council. Such appeal shall be filed within thirty (30) calendar days from

the date of the decision being appealed by filing a notice of appeal with the Zoning Administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the complete basis for the appeal. Upon receipt of the appeal notice, the Council shall take such testimony as it deems appropriate and should render its decision within sixty (60) calendar days after receipt of the appeal notice. The Town Council may reverse or affirm wholly or partly or may modify the decision of the Zoning Administrator.

15. Change of Approved Conditions.

Once proffered conditions have been approved, and there is cause for an amendment which would not be in substantial conformity with them, then an application shall be filed for an amendment of the proffered conditions. Applications can be filed by any landowner subject to conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303 or 15.2-2303.1 and Section 1 of this Article. Written notice of such application shall be provided as prescribed in Section H of § 15.2-2204 to any landowner subject to such existing proffered conditions. The approval of such amendment or variation by the Town Council shall not in itself cause the use of any other property to be determined a non-conforming use per Section 11-4.3 of this Ordinance.

If the amendment concerns an approved site development plan, such application shall include the submission requirements for a site development plan set forth in Section 11-3.7 of this Ordinance, except that the Planning Director may waive any submission requirement if such requirement is not necessary for an adequate review of the amendment application. Such amendment shall be the subject of public hearing in accordance with the requirements for a new application. No such amendment or variation of any conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303 or 15.2-2303.1 and Section 1 of this Article until after public hearings before the Planning Commission and Town Council are advertised pursuant to Article 11-3.2 of this Ordinance. Where a landowner subject to the conditions noted above requests an amendment to such proffered conditions and where such amendment does not affect conditions of use or density, the Town may waive requirements for public hearings.

11-3.10 Special Use Permits and Waivers

11-3.10.1 Authorization.

Uses listed in the district regulations as “permissible uses upon approval by the Town Council” shall be reviewed and acted upon by the Planning Commission and Town Council as provided in Section 11-3.2 of this Ordinance.

Uses listed in the district regulations as “permissible uses upon approval by the Town Council” shall be reviewed and acted upon by the Town Council as provided in Section 11-3.10.10 of this Ordinance.

Special use permits may be granted to establish or construct uses or structures which have the potential for a harmful impact upon the health, safety, and welfare of the public upon finding that the use, with conditions, will not have a deleterious impact, and will reflect the spirit and intent of the Comprehensive Plan as well as this Ordinance.

In acting on a request for a special use permit, the Town Council shall consider the impact of the requested special use.

Only those special use permits that are expressly authorized in a particular zoning district, or elsewhere in this Ordinance may be approved, including waivers where authorized. The Council may approve special use permits or waivers subject to conditions on such permits that shall apply to the property or use, regardless of any change in ownership.

11-3.10.2 Application.

Application for a special use permit shall be filed on the appropriate form therefore as provided by the Zoning Administrator and in accordance with the instructions which accompany the form. Special use permit applications shall contain the same information as required for zoning amendment applications set forth in Section 11-3.9. In addition, unless waived in part by the Zoning Administrator, the applicant shall provide all of the information, data, and studies needed to allow the Planning Commission and Town Council, to reach conclusive evaluations, which shall include, but not be limited to, the following:

- 1 A Statement of Justification explaining the compatibility of the proposed use with the existing and proposed land uses adjacent to and in the vicinity of the site and any potential impacts on the environment

and on the neighborhood due to the proposed use intensity, number of participants, acreage, hours of operation, traffic, lighting, and access, as well as the matters set forth in section 11.3-11.3.

- 2 A vicinity map depicting the adjacent and nearby (within 1,000 feet) land uses, streets and other data customarily incidental to a vicinity map.
- 3 A proposed site development plan indicating the location of the anticipated structures, setback lines, street pattern, parking provisions, a screening plan, and common open space if applicable. Such plans shall be contained on sheets measuring a minimum of 18" X 24" and a maximum of 36" X 24".
- 4 An analysis of the impact on the Town's transportation network and the ability of adjacent streets and intersections to efficiently and safely move the volume of traffic generated by the development, along with estimates of cost and means of providing improvements required to service the proposed special use.
- 5 An analysis of the impact on the Town's community facilities including estimates of costs and means of providing the additional community facilities which will be needed to serve the proposed special use. Community facilities include, but shall not be limited to, sewage disposal facilities and systems, solid waste disposal facilities and systems, water supply facilities and systems, storm drainage facilities and systems, and electrical utility facilities and systems.
- 6 An analysis of the ability of the Town to provide police and fire protection to the proposed special use.
- 7 The proposed configuration and intensity of lighting facilities to be arranged in such a manner to protect the streets and neighboring properties from direct glare or hazardous interference.
- 8 Noise impact and abatement studies to determine potential impact on adjoining properties and neighborhoods.
- 9 The delineation of any necessary screening for any uses or structural features deemed to be incompatible with the objectives of this Article, the remainder of this Zoning Ordinance, or the Comprehensive Plan including walls, fences, plantings, and/or other enclosures. Other landscaping to enhance the effectiveness of the screening and to insure the compatibility of use may also be required.
- 10 The delineation of screening and buffering of all parking areas will be required in accordance with a landscaping plan. Parking areas forward of the established building setback line will be prohibited.
- 11 The delineation of major trees on the site. Except to protect the public safety, avoid property loss, or provide for required parking, all major trees forward of the building setback line may be required for

preservation if their removal would diminish the character of the neighborhood.

11-3.10.3. Evaluation Criteria; Issues for Consideration

In considering a Special Use Permit application, the following factors should be considered. The applicant also shall address these factors in its statement of justification:

1. Whether the proposed Special Use Permit is consistent with the Comprehensive Plan.
2. Whether the proposed Special Use Permit will adequately provide for safety from fire hazards and have effective measures of fire control.
3. The level and impact of any noise emanating from the site, including that generated by the proposed use, in relation to the uses in the immediate area.
4. The glare or light that may be generated by the proposed use in relation to uses in the immediate area.
5. The proposed location, lighting and type of signs in relation to the proposed use, uses in the area, and the sign requirements of this Ordinance.
6. The compatibility of the proposed use with other existing or proposed uses in the neighborhood, and adjacent parcels.
7. The location and area footprint with dimensions (all drawn to scale), nature and height of existing or proposed buildings, structures, walls, and fences on the site and in the neighborhood.
8. The nature and extent of existing or proposed landscaping, screening and buffering on the site and in the neighborhood.
9. The timing and phasing of the proposed development and the duration of the proposed use.
10. Whether the proposed Special Use Permit will result in the preservation or destruction, loss or damage of any significant topographic or physical, natural, scenic, archaeological or historic feature.
11. Whether the proposed Special Use Permit at the specified location will contribute to or promote the welfare or convenience of the public.
12. The traffic expected to be generated by the proposed use, the adequacy of access roads and the vehicular and pedestrian circulation elements (on and off-site) of the proposed use, all in relation to the public's interest in pedestrian and vehicular safety, efficient traffic movement and access in case of fire or catastrophe.
13. Whether the proposed use will facilitate orderly and safe road development and transportation.

14. Whether, in the case of existing structures proposed to be converted to uses requiring a Special Use Permit, the structures meet all code requirements of the Town of Warrenton.
15. Whether the proposed Special Use Permit will be served adequately by essential public facilities, services and utilities.
16. The effect of the proposed Special Use Permit on environmentally sensitive land or natural features, wildlife habitat and vegetation, water quality and air quality.
17. Whether the proposed Special Use Permit use will provide desirable employment and enlarge the tax base by encouraging economic development activities consistent with the Comprehensive Plan.
18. The effect of the proposed Special Use Permit use in enhancing affordable shelter opportunities for residents of the Town, if applicable.
19. The location, character, and size of any outdoor storage.
20. The proposed use of open space.
21. The location of any major floodplain and steep slopes.
22. The location and use of any existing non-conforming uses and structures.
23. The location and type of any fuel and fuel storage.
24. The location and use of any anticipated accessory uses and structures.
25. The area of each proposed use.
26. The proposed days/hours of operation.
27. The location and screening of parking and loading spaces and/or areas.
28. The location and nature of any proposed security features and provisions.
29. The number of employees.
30. The location of any existing and/or proposed adequate on and off-site infrastructure.
31. Any anticipated odors which may be generated by the uses on site.
32. Refuse and service areas.

11-3.10.4. Conditions and Restrictions

In approving a Special Use Permit, the Town Council may impose such conditions, safeguards and restrictions as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special uses upon other properties in the neighborhood, and to carry out the general purpose and intent of this Ordinance. Conditions and restrictions may include, but are not limited to, those related to fencing, planting or other landscaping, additional set backs from property lines, location and arrangement of lighting, setting of reasonable time limitations and other reasonable requirements deemed necessary to mitigate the impacts of the use and safeguard the interests of the public. The Council may require a

guarantee or bond to ensure that conditions imposed will be complied with. All required conditions shall be set out in the documentation approving the Special Use Permit.

11-3.10.5. Period of Validity

As a condition of approval, a special use permit may be granted for a specific period of time with expiration of the approval to occur at the termination of a stated period. In such case, an extension may be granted prior to expiration by the original approving body, upon written application, without notice or hearing. After expiration, no extension may be granted without complying with the requirements for an initial application for a special use permit unless a qualified application for renewal is actively under consideration by the approving body.

11-3.10.6. Staff Review

Wherever a use or structure is listed either as a permissible use subject to approval of a special use permit, application shall be made to the Planning Director who shall prepare a report and refer such application to the Planning Commission for those uses that are listed as permissible upon approval by the Town Council, and to the Board of Zoning Appeals for those uses listed as permissible upon approval by the Board. Application for a special use permit shall be filed, containing such material and be processed in the same manner as for zoning amendments as provided for in Section 11-3.10. A Special Use Permit may be submitted in conjunction with a zoning map amendment application.

11-3.10.7. For Uses to be Acted Upon by the Town Council, as listed in Article 3

Upon review of the application and supporting data, the Planning Commission shall make its recommendation to the Town Council as to whether the application complies with the special use provisions in the particular district and the Comprehensive Plan, including verification that the use is specifically authorized within the district, and whether it should be approved or denied.

Before submitting its recommendation to Town Council, the Planning Commission shall hold a public hearing which may be a joint public hearing with the Town Council, after notice as required by § 15.2-2204 of the Code of Virginia, as amended. Following the public hearing, the Commission shall forward its recommendation to the Town Council.

11-3.10.8 Town Council Review and Hearing.

For those uses that are listed as permissible upon approval by the Town Council, the Town Council shall consider the recommendations of the Town Planning Commission before granting or denying approval of a special use permit. Before rendering a decision on a particular special use permit, the Town Council shall hold a public hearing, which may be a joint public hearing with the Planning Commission, after notice as required by § 15.2-2204 of the Code of Virginia, as amended.

11-3.10.9 Modifications to the Application or Conditions.

For those uses that are listed as permissible upon approval by the Town Council, after the Planning Commission has made its recommendation to the Town Council, should the application be modified, or additional conditions be agreed to or offered by the applicant that results in a more intense use or higher density or alters conditions that were intended to mitigate the impact of the development as determined by the Zoning Administrator, then a second public hearing shall be held by the Planning Commission before the modified application can be heard by the Town Council. The applicant shall be responsible for paying any additional advertising fees required for a subsequent public hearings before the Planning Commission and the Town Council. The Town Council may still impose reasonable conditions on the applicant, in accord with § 15.2-2286 of the Code of Virginia, as amended.

However, should additional information or modified conditions be submitted by the applicant after the Planning Commission has made its recommendation to the Town Council, which modifications or conditions were discussed at the public hearing before the Planning Commission, then a second public hearing before the Planning Commission shall not be required.

11-3.10.10 For Uses to be Acted Upon by the Town Council

Upon review of the application and supporting data, and before rendering a decision on a particular special use permit, the town Council shall hold a public hearing after notice as required by § 15.2-2204 of the Code of Virginia, as amended, and subsequently shall determine whether the application complies with the special use provisions in the particular district and the Comprehensive Plan, including verification that the use is specifically authorized within the district, and whether it should be approved or denied.

11-3.10.11 Construction Already Commenced.

Nothing contained herein shall require any change in the plans or construction of any building or structure subject to a vested right prior to the effective date of this Ordinance.

11-3.11 Variances

11-3.11.1. Variances Determined by the Board of Zoning Appeals

1. Variances Authorized

- a) The Board of Zoning Appeals shall grant a variance if the applicant proves, by a preponderance of the evidence, that the strict application of the terms of the Ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to the physical condition relating to the property or improvements thereon at the time of the effective date of the Ordinance. For properties located within the Floodplain District, the additional factors and limitations contained in Section 3-5.1.8 of this Ordinance shall also apply.
- b) No variance shall be considered except after notice and hearing as required by §15.2-2204 of the Code of Virginia as amended.
- c) The concurring vote of the majority of the BZA shall be required to authorize a variance.

2. Standards for Variances

In granting a variance, the BZA may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being, and will continue to be, complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local Ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the Ordinance. Where the expansion is proposed within an area of the site or part of the structure

for which a variance is required, the approval of an additional variance shall be required. No variance in the strict application of any provision of this Ordinance shall be authorized by the BZA except upon the following findings:

- a) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
- b) The granting of the variance will not be of substantial detriment to the adjacent property and nearby properties in the proximity of that geographical area;
- c) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance;
- d) The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
- e) The relief or remedy sought by the variance application is not available through a special use permit process that is authorized in the Ordinance or the process for modification to the Zoning Ordinance at the time of the filing of the variance application.

11-3.11.2. Unauthorized Variances

- 1. No variance shall be authorized that would permit the establishment of any use not otherwise permitted in the zoning district under the specific provisions of this Ordinance.
- 2. No variance shall be authorized that would result in an increase in density from that permitted by the applicable zoning district regulations.
- 3. No variance shall be authorized that would relate to nonconforming uses.
- 4. No variance shall be authorized that would reduce the amount of off-street parking space required by Article 7.
- 5. No variance shall be authorized that would relate to signs.
- 6. No variance shall be authorized in cases where the applicant, subsequent to the effective date of this Ordinance, has purchased a portion of a larger parcel, which portion has an area or width less than required by the provisions of this Ordinance at the time of such purchase or which portion has unusual physical characteristics, that are

set forth as the basis for the application for a variance, which would not exist if such portion had not been detached by such purchase from the larger parcel of which it was a part.

7. No variance shall be authorized that would permit the establishment of any use not otherwise permitted in a floodplain.
8. No variance shall be authorized merely for the purpose of convenience or economic hardship.

11-3.11.3. Procedures for Variances

1. Application for Variance

Pursuant to provisions of this article and §15.2-2309 of the Code of Virginia, as amended, any person seeking a variance from the application of regulations of this chapter, shall first submit his proposal to the Zoning Administrator on a form to be provided by the Zoning Administrator, including therewith satisfactory evidence that any delinquent real estate taxes owed to the county which have been properly assessed against the subject property have been paid, and all plans and information relating to the application required by the board of zoning appeals pursuant to §15.2-2310 of the Code of Virginia. The application shall be transmitted promptly to the secretary of the Board of Zoning Appeals, who shall place the matter on the docket to be acted upon by the board.

The Zoning Administrator shall also transmit a copy of the application to the local Planning Commission which may send a recommendation to the Board or appear as a party at the hearing.

2. Decision on Variance Application

Upon receipt of an application or appeal, the Board of Zoning Appeals shall fix a reasonable time for a hearing of such application or appeal in conformance with §15.2-2204 of the Code of Virginia.

The proposal shall then be advertised pursuant to provisions of §15.2-2204 of the Code of Virginia prior to public hearing by the Board of Zoning Appeals. The Zoning Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.

The Board of Zoning Appeals shall render a decision on any application submitted to it within sixty (60) days after the date of the

hearing thereon.

3. Burden of Applicant

The applicant for a variance shall bear the burden of producing evidence to support the required findings and to establish that the requested variance satisfies all standards for a Variance.

4. Withdrawal of Application

An application or appeal to the Board of Zoning Appeals may be withdrawn by the applicant or appellant at any time prior to the deadline for cancellation of the newspaper advertisement for the first public hearing. After such deadline, an application or appeal may be withdrawn only with the permission of the Board of Zoning Appeals. An application or appeal which is not withdrawn pursuant to this subsection shall be either granted or denied on its merits.

5. Re-Application

If any application is denied by the Board of Zoning Appeals on its merits, no application requesting the same relief with respect to all or part of the same property shall be considered by the Board within twelve (12) months after the date of such denial.

11-3.12 Appeal to the Board of Zoning Appeals

11-3.12.1 When Appeals May be Taken

1. An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the Zoning Administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article or any ordinance adopted pursuant thereto.
2. Such appeal shall be made within thirty (30) days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certified to the Board that by reason of facts stated in the certificate a stay would in his opinion

cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise, than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

11-3.12.2 Appeal Procedure

1. Appeals shall be filed with the Board of Zoning Appeals in care of the Zoning Administrator, who shall provide a copy of the appeal to the secretary of the Board, and a third copy provided to the individual, official, department, or agency concerned, if any.
2. Appeals requiring an advertised public hearing shall be accompanied by cash payments to the Town in accordance with the Fee Schedule as set by Town Council by resolution.
3. Upon receipt of an application or appeal, the Board shall fix a reasonable time for the hearing, give public notice thereof in accord with § 15.2-2204 of the Code of Virginia, as well as due notice to the parties in interest.
4. The Board shall make its decision within ninety days of the filing of the application or appeal.
5. In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the Ordinance or to effect any variance from the Ordinance.
6. The Board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

11-3.12.3 Withdraw of Appeal

An application or appeal to the Board of Zoning Appeals may be withdrawn by the applicant/appellant at any time prior to the deadline for cancellation of the newspaper advertisement provided for in this article. After such deadline, an application or appeal may be withdrawn only with the permission of the Board. An application or appeal which is not withdrawn pursuant to this subsection shall be either granted or denied on the merits by the Board, either in whole or in part.

11-3.12.4 Court Petition

1. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board, or bureau of the Town may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board.
2. Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowances of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board, and on due cause shown, grant a restraining order.
3. The Board of Zoning Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
4. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
5. Costs shall not be allowed against the Board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from.

11-3.13 Sign Permit

Signs permits shall be required in accordance with Article 6. The timing and application type used for the permitting of signs shall be as specified in Article 6-4.

11-4 Non-Conforming Uses and Structures

11-4.1 Purpose

The purpose of this section is to regulate and limit the development and continued existence of uses, structures, and lots legally established prior to the effective date of this Ordinance which do not conform to the requirements of this Ordinance. Many nonconformities may continue, but the provisions of this subsection are designed to curtail substantial investment in nonconformities and to bring about their eventual improvement to a conforming status or elimination in order to preserve the integrity of this Ordinance and the desired character of the Town and to protect the public health and safety.

Any nonconforming use, structure, or lot which lawfully existed as of the effective date of this Ordinance and which remains nonconforming, and any use, structure, or lot which has become nonconforming as a result of the adoption of this Ordinance or any subsequent reclassification of zoning districts or other amendment to this Ordinance, may be continued or maintained only in accordance with the terms of this section. The limitations of this section shall not apply to structures or lots whose nonconforming features are the subject of a variance that has been granted by the Board of Zoning Appeals or by the Zoning Administrator, or a modification or condition that was approved by the Town Council.

It is the intent of this chapter to abide by the letter and spirit of the provisions of § 15.2-2307 of the Code of Virginia. It is further the intent of this chapter that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the districts involved.

11-4.2 Continuation

- 11-4.2.1 If at any time after the enactment of this Ordinance a lawful use of land and/or structures exists which would not be permitted by this chapter, the use may be continued so long as it remains otherwise lawful. A use of land or use of structure established in violation of contemporary zoning regulations is illegal, not nonconforming.
- 11-4.2.2 If any change in title of possession or renewal of a lease of any such lot or structure occurs, the use existing may be continued.
- 11-4.2.3 If any nonconforming use (structure or activity) is discontinued for a period exceeding two (2) years, after the enactment of this Ordinance, it shall be

deemed abandoned and any subsequent use shall conform to the requirements of this Ordinance.

- 11-4.2.4 Whenever a nonconforming structure, lot, or activity has been changed to a more restricted nonconforming use, such existing use may only be changed to a use of the same or less restricted category or to a less non-conforming activity as identified in the zoning district within which it is located.

11-4.3 Non-Conforming Uses

11-4.3.1 Expansion

No nonconforming use shall be enlarged, increased or extended to occupy a greater area of land than was occupied on the effective date of this provision to the Ordinance, unless such enlargement does not result in an increase in nonconformity or results in a change to a use permitted in the district.

11-4.3.2 Discontinuance

If any nonconforming use of land and/or structure ceases for any reason for a period of more than two (2) years, any subsequent use of such land and/or structure shall conform to the regulations specified by this chapter for the district in which such land is located.

11-4.3.3 Superseded

When any nonconforming use, or nonconforming structure and use in combination, is superseded by a permitted use and/or structure, the use shall thereafter conform to the regulations for the district, and no nonconforming use and/or structure shall thereafter be resumed.

11-4.3.4 Moving

No such nonconforming use and/or structure shall be moved in whole or in part to any portion of the land or parcel other than that occupied by such use and/or structure at the effective date or amendment of this ordinance, unless such move results in decreasing the degree of nonconformity or results in conformity with the requirements for the district.

11-4.3.5 Additional Uses

No additional uses which would be prohibited in the district involved shall be allowed.

11-4.3.6 Special Use Permits

Any lawful existing use which is permissible as a special permit use in a district under the terms of this Ordinance shall not be deemed a nonconforming use in such district, but shall, with written notification and proof to the Zoning Administrator, be considered a lawful conforming use in that district.

11-4.4 Non-Conforming Structures and Buildings

11-4.4.1 Repairs and Maintenance

On any building or structure devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding twenty (20) percent of the current replacement value of the structure provided that the cubic content of the structure as it existed at the time of passage or amendment of this Ordinance shall not be increased. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

11-4.4.2 Expansion or Enlargement

A nonconforming structure to be extended or enlarged shall conform with the provisions of this Ordinance, except as provided for herein. No nonconforming use and/or structure shall be enlarged, increased or extended to occupy a greater area of land than twenty-five percent (25%) more than was occupied on the date of adoption or amendment of this ordinance unless such enlargement does not result in an increase in nonconformity or results in a change to a use permitted in the district.

11-4.4.2 Restoration or Replacement

1. If a nonconforming use or structure is destroyed or damaged in any manner to the extent that the cost of restoration to its condition before the occurrence shall exceed seventy-five (75) percent of the cost of reconstructing the entire structure, it shall be restored only if it complies with the requirements of this Ordinance.
2. Where a conforming structure devoted to a nonconforming activity, or where a nonconforming structure is damaged less than seventy-five (75) percent of the cost of reconstructing the entire structure, either may be repaired or restored, provided any such repair or restoration is started

within twelve (12) months and completed within eighteen (18) months from the date of partial destruction.

3. Historic structures designated as contributing structures to an Historic District adopted by the Town Council shall be exempt from the limitations of Sections 11-4.4.2.1 and 11-4.4.2.2.
4. The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any structure or activity devoted to a nonconforming use.
5. If a nonconforming structure or portion thereof containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, rebuilt or used, except in conformity with the regulations of the district in which it is located.

11-4.4.3 Pre-existing Setback

Any structure which existed on the date of adoption of this Ordinance which is nonconforming solely due to a setback or yard requirement imposed by this Ordinance may be enlarged, increased, extended, repaired or replaced so long as any such improvements do not result in an increase in the degree of nonconformity.

11-4.4.4 Illegal Structures

No structure that fails to conform with the requirements of this chapter shall be erected.

11-4.5 Non-Conforming Lots

11-4.5.1 Use

Any lot of record at the time of the adoption of this Ordinance which is less in area or width than the minimum required by this Ordinance may be used when the requirements regarding setbacks, side, and rear yards are met.

11-4.5.2 Changes in District Boundaries

Whenever the boundaries of a district are changed by amendment of this Ordinance, any uses of land, legal structures or buildings which become nonconforming as a result of such change shall become subject to the most current provisions of this Ordinance. Such affected use, lot or structure shall be accorded nonconforming use, lot and/or structure status as may be appropriate

under the terms of this Ordinance.

11-4.5.3 Division, Boundary Line Adjustment

No lot or parcel or portion thereof shall be used or sold in a manner reducing compliance with lot width or other requirements established by this chapter, nor shall any division be made which creates a lot with width or area below the requirements stated in this chapter.

Notwithstanding the provisions of the paragraph above, boundary line adjustments may be permitted between nonconforming lots, or between a conforming and a nonconforming lot, provided that the Zoning Administrator determines that the degree of nonconformity for any lot resulting from such boundary line adjustment is not increased due to such adjustment.

11-4.5.4 Condemnation

Any lawfully created lot which, by reason of condemnation for alignment, realignment of a federal or state road, has been reduced in size to any area less than that required by this Ordinance shall be considered a lawful nonconforming lot of record subject to the provisions set forth in this section.

11-4.5.5 Violations Are Not Nonconformities

Uses or structures established in violation of zoning regulations are lawful nonconformities. The burden of proof shall be upon the owner of the property to establish the lawful nonconforming status of a claimed non-conforming use.

11-4.5.6 Accessory Uses/Buildings, Signs

A lawful nonconforming use of a structure, a lawful nonconforming use of land or a lawful nonconforming use of a structure and land in combination shall not be continued, extended or enlarged by use or establishment of either an accessory use or building or by attachment on a building or premises of additional signs intended to be seen from off the premises. Non-conforming signs are regulated in Article 6-16 unless otherwise noted.

11-5 Enforcement and Penalties

11-5.1 Conformance to Provision. All departments, officials, and public employees of the Town of Warrenton which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance. They shall issue permits for uses, buildings, or purposes only when they are in harmony with the provisions of this Ordinance. Any

such permit, if issued in conflict with the provisions of this Ordinance, shall be null and void.

11-5.2. Zoning Administrator

Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written violation complaint. The Zoning Administrator shall properly record such complaint, investigate it and take appropriate action thereon if warranted.

Upon his becoming aware of any violation of any provision of this chapter, the Zoning Administrator shall serve notice of such violation on the person committing or permitting such violation. If such violation has not ceased within thirty (30) days or such other reasonable time set by the Zoning Administrator and specified in the notice, he shall institute such legal action as may be necessary to remedy and terminate the violation.

The Zoning Administrator shall order the discontinuance of illegal use of land, buildings or structures, removal of illegal building or structures or of illegal additions, alterations or structural changes and discontinuance of any illegal work being done, or shall take any other action authorized by this chapter to ensure compliance with, or to prevent violation of, its provisions.

Notice of a zoning violation or a written order of the Zoning Administrator shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty (30) days, and that the decision shall be final and unappealable if not appealed within thirty (30) days.

11-5.3 Violation of Provisions.

Any person, firm, or corporation, whether as principal, owner, lessee, agent, employee or otherwise, who violates, causes, or permits the violation of any of the provisions of this Ordinance shall be guilty of a Class 2 misdemeanor. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this Ordinance is committed, continued, or permitted by such person, firm, or corporation, and shall be punishable as herein provided.

11-5.4 Recourse for Unlawful Use.

The Zoning Administrator of the Town of Warrenton may institute any appropriate action of proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, or conversion of any building or structure, or the unlawful use of land; to restrain, correct, or abate such violation; to prevent the occupancy of said building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises. The remedies provided for in this section are cumulative and not exclusive and shall be in

addition to any other remedies provided by law.

August 13, 2024
Town Council
Regular Meeting
RES-24-08-03

**A RESOLUTION TO AMEND THE FISCAL YEAR 2025 ADOPTED BUDGET BY \$15,000 FOR OUTSIDE
LEGAL COUNSEL TO THE BOARD OF ZONING APPEALS**

WHEREAS, the Warrenton Town Council is charged by the Code of Virginia with the preparation of an annual budget for the Town of Warrenton; and

WHEREAS, on June 11, 2024, the Town Council adopted the Town of Warrenton Fiscal Year 2025 Budget; and

WHEREAS, the Warrenton Board of Zoning Appeals has requested funding to engage outside legal counsel regarding recent applications to the Board and court filings listing the Board; and

WHEAREAS, the Town Attorney shall review the legal counsel selected by the Board; and

WHEAREAS, upon approval by the Town Attorney, the Town Manager will enter into an agreement with the selected legal counsel on behalf of the Town of Warrenton and notify the Chairman of the Board of Zoning Appeals that they may proceed to obtain the requested legal advice; and

NOW, THEREFORE, BE IT RESOLVED, that this 13th day of August 2024 the Warrenton Town Council hereby amends the Fiscal Year 2025 Adopted Budget to appropriate \$15,000 from the General Fund Balance for the Board of Zoning Appeals legal services.

Votes:


Ayes: Ms. Heather Sutphin; Mr. William Semple; Mr. James Hartman, Vice Mayor; Mr. Eric Gagnon; Mr. Paul Mooney; Mr. David McGuire

Nays: Mr. Brett Hamby

Absent from Meeting:

For Information:
Budget Manager

ATTEST:



Town Recorder