



**PUBLIC NOTICE
WILLIAMSBURG CITY COUNCIL**

The Williamsburg City Council will hold a public hearing on Thursday, September 8, 2011, 2:00 p.m. in the Stryker Building, 412 North Boundary Street, to consider the following:

PCR #11-008: Amendment of zoning regulations pertaining to rental of bedrooms to roomers in owner-occupied single-family detached dwellings. The three alternatives that will be considered are: (1) No change to the existing regulations; (2) Allow the rental of one bedroom to one roomer by right and the rental of bedroom(s) to two roomers with administrative approval; and (3) Allow the rental of one bedroom to one roomer by right, the rental of bedroom(s) to two roomers with administrative approval by the Zoning Administrator, and the rental of bedrooms to three or four roomers with Board of Zoning Appeals approval. Alternatives (2) and (3) create separate sections for rental of rooms to visitors (Sec. 21-605) and rental of rooms to roomers (Sec. 21-605.1), redefine owner-occupancy, and do not allow corporate ownership for rental of rooms to roomers.

PCR #11-015: Request of Carlton Holdings, LLC for a special use permit to construct a commercial building and 29 condominium units at 301 Second Street and 320 Penniman Road. This property is zoned B-2 Corridor Commercial District, and is identified as Williamsburg Tax Map No. 469-0A-00-010, 011.

Additional information is available at www.williamsburgva.gov/Index.aspx?page=1036 or at the Planning Department [(757) 220-6130], 401 Lafayette Street. Interested citizens are invited to attend this hearing and present their comments to the Council.

If you are disabled and need accommodation in order to participate in the public hearing, please call the City Manager's office at (757) 220-6100, (TTY) 220-6108, no later than 12:00 noon, Thursday, September 1, 2011.

Donna F. Scott
City Council Clerk



CITY OF WILLIAMSBURG
MEMORANDUM

DATE: August 18, 2011

SUBJECT: PCR #11-008
Rental of bedrooms to roomers in owner-occupied single family detached dwellings

CITY COUNCIL REFERRAL

On April 14, City Council referred the issue of rental of bedrooms to roomers to Planning Commission. City Council's discussion focused on allowing owner-occupants to rent to more than one roomer with administrative rather than Board of Zoning Appeals approval; the idea being to encourage room rentals in owner-occupied houses compared to non-owner-occupied houses rented to three individuals.

City Council listed three possible alternatives for consideration, and requested that Planning Commission look at these and others as a means to better accommodate students and others in the City's single family neighborhoods:

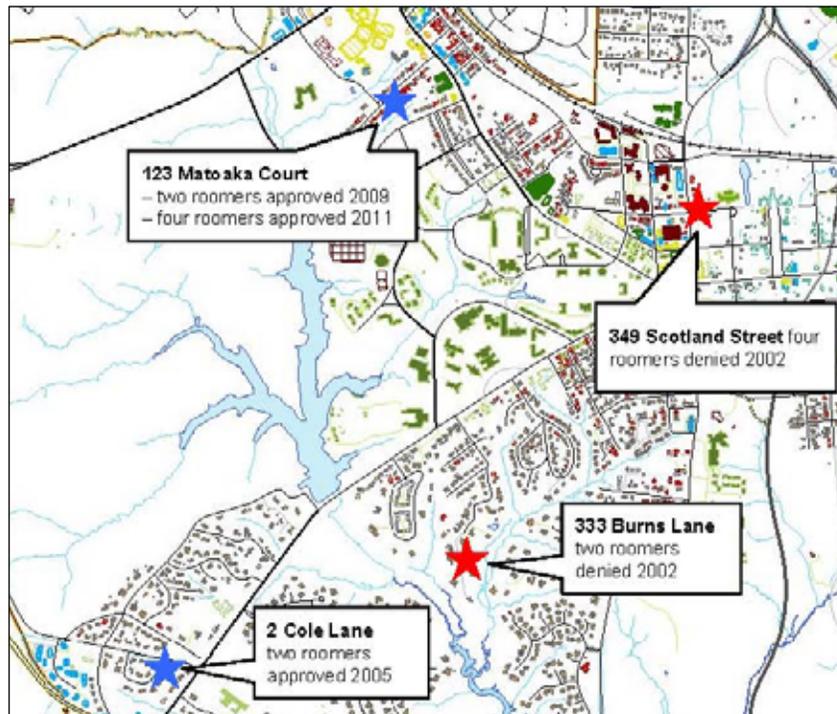
1. Allow rental of bedrooms to two roomers with administrative approval by the Zoning Administrator.
2. Allow rental of bedrooms to up to four roomers with administrative approval by the Zoning Administrator.
3. Allow rental of bedrooms to two roomers with administrative approval by the Zoning Administrator, and to three or four roomers with Board of Zoning Appeals approval.

EXISTING REGULATIONS

Currently, the Zoning Ordinance allows the rental of one bedroom to one roomer by right. Rental of bedrooms to more than one roomer is allowed if a special exception is approved by the Board of Zoning Appeals, with a maximum of two bedrooms rented to two roomers each, for a total of four roomers. Bedroom rentals are only allowed in owner-occupied single family detached dwellings. A copy of the existing regulations are attached.

The regulations for renting rooms to roomers were adopted in 1991, and to date five requests for special exceptions have been made to the Board of Zoning Appeals. Two were denied, and three were approved:

- 333 Burns Lane, two bedrooms to two roomers, denied April 2, 2002 (BZA #02-008)
- 2 Cole Lane, two bedrooms to two roomers, approved December 6, 2005 (BZA #05-021)
- 349 Scotland Street, two bedrooms to four roomers, denied September 5, 2006 (BZA #06-009)
- 123 Matoaka Court, one bedroom to two roomers, approved with conditions October 6, 2009 (BZA #09-008)
- 123 Matoaka Court, two bedrooms to four roomers, approved with conditions February 1, 2011 (BZA #11-001)



PLANNING COMMISSION ALTERNATIVES

Planning Commission discussed City Council's referral at the April 20 regular meeting, the April 27 work session, the May 18 regular meeting and the June 15 regular meeting.

The Commission originally considered three alternatives:

1. No change to the existing regulations.
2. Allow rental of bedrooms to two roomers by right.
3. Allow rental of bedrooms to two roomers by right, to three roomers with administrative approval, and to four roomers with special exception approval by the Board of Zoning Appeals.

At their May 18 meeting, the Commission reduced these to two alternatives:

1. No change to the existing regulations.
2. Allow rental of one bedroom to one roomer by right, rental of bedroom(s) to two roomers with administrative approval, and to three or four roomers with special exception approval by the Board of Zoning Appeals.

At their June 15 meeting, the Commission modified Alternate 2, as suggested by staff, and decided to hold a public hearing on July 20 to consider these two alternatives:

1. No change to the existing regulations.
2. Allow rental of one bedroom to one roomer by right, and the rental of bedroom(s) to two roomers with administrative approval by the Zoning Administrator.

At their July 20 meeting, the Commission held a public hearing and recommended Alternate 2 by a vote of 4-2.

City Council has requested Planning Commission hold a second public hearing on August 17 to evaluate the following three alternatives:

1. No change to the existing regulations.
2. Allow rental of one bedroom to one roomer by right, and the rental of bedroom(s) to two roomers with administrative approval by the Zoning Administrator.
3. Allow rental of one bedroom to one roomer by right, the rental of bedroom(s) to two roomers with administrative approval by the Zoning Administrator, and the rental of bedrooms to three or four roomers with special exception approval by the Board of Zoning Appeals.

Alternatives 2 and 3 create separate sections for rental of rooms to visitors (Sec. 21-605) and rental of rooms to roomers (Sec. 21-605.1), redefine owner-occupancy, and do not allow corporate ownership for rental of rooms to roomers.

PLANNING COMMISSION RECOMMENDATION

Planning Commission held a public hearing on August 17, and seven citizens spoke on this proposal. Following the public hearing, Planning Commission decided, by a vote of 7-0, that alternative 3 was not acceptable. Planning Commission then recommended to City Council, by a vote of 4-3, that no change be made to the existing regulations (alternate 1).

CITY COUNCIL PUBLIC HEARING

The City Council public hearing is scheduled for September 8 at 2:00 p.m. in the Council Chamber at the Stryker Building, 412 North Boundary Street.



Reed T. Nester, AICP
Planning Director



CITY OF WILLIAMSBURG

MEMORANDUM

TO: Planning Commission

DATE: April 14, 2011

SUBJECT: Rental of bedrooms to roomers

City Council would like to consider changes in regulations governing renters in owner-occupied, detached single-family houses. At the March 10 and April 11 City Council meetings discussion focused on allowing owner occupants to rent to more than one roomer with administrative rather than Board of Zoning Appeals approval. The idea is to encourage room rentals in owner-occupied houses compared to non-owner-occupied houses rented to three individuals.

Options include:

1. Allow rental of bedrooms to two roomers with administrative approval by the Zoning Administrator.
2. Allow rental of bedrooms to up to four roomers with administrative approval by the Zoning Administrator.
3. Allow rental of bedrooms to two roomers with administrative approval by the Zoning Administrator, and to three or four roomers with Board of Zoning Appeals approval.

City Council requests that Planning Commission look at these three options and others as a means to better accommodate students and others in the City's single-family neighborhoods.

A handwritten signature in black ink that reads "Clyde A. Haulman".

Clyde A. Haulman
Mayor

**EXISTING ZONING ORDINANCE REGULATIONS
ROOM RENTALS TO ROOMERS**

Sec. 21-605. Rental of bedrooms in single-family detached dwellings to roomers and visitors.

(a) Intent. These regulations are established to allow the rental of bedrooms to roomers and visitors in single-family detached dwellings while at the same time preserving the residential character of the neighborhoods in which the dwellings are located. To these ends, bedroom rentals are limited to owner-occupied dwellings. Rentals to roomers, being largely residential in character, are allowed throughout residential districts; rentals to visitors, being more commercial in character, are allowed only along specified major streets to avoid bringing increased traffic and congestion by nonresidents into residential districts. In addition, rentals to visitors are limited to a minority of the single-family detached dwellings on the specified streets, with greater restrictions placed on the minor corridors, in order to ensure that all of the corridors maintain their residential character.

(b) Owner-occupied single-family detached dwelling defined.

(1) For the purpose of this section, a single-family detached dwelling shall be deemed "owner-occupied" only so long as it is regularly occupied by:

- a. An adult individual who owns at least a 50 percent undivided fee simple interest in such dwelling and the lot upon which it is located and regularly occupies said dwelling as his or her principal place of residence; or
- b. The stockholders of at least 51 percent of the individual outstanding voting stock of a corporation, chartered in the Commonwealth of Virginia, or the members of a limited liability company chartered in the Commonwealth of Virginia, who own the controlling interest therein, which corporation or limited liability company owns full fee simple title to the dwelling and the lot on which it is located.

(2) Ownership shall be established as follows:

- a. Record ownership of fee simple title shall be certified by an attorney-at-law duly licensed to practice in the Commonwealth of Virginia, and shall be based upon examination of the land records in the Clerk's Office for the Circuit Court of the City of Williamsburg and County of James City made not earlier than the day before delivery of the certification to the zoning administrator. Such certification shall be in form acceptable to the city attorney.
- b. The identity of stockholders of a corporation and members of a limited liability company shall be established by affidavit of all stockholders or members in form satisfactory to the city attorney.
Such affidavit shall state that said stockholders of the majority interest of the corporation, or the majority of the

**EXISTING ZONING ORDINANCE REGULATIONS
ROOM RENTALS TO ROOMERS**

members of the limited liability company, regularly occupy the dwelling as their primary residence.

- c. On the first business day of each January following the issuance of the special exception, the ownership and occupancy of the dwelling and lot, if unchanged, shall be established as follows:
 - 1. In the case of individual ownership, by affidavit of the owner or owners originally identified in the attorney's title certification furnished in connection with the permit application;
 - 2. In the case of corporate ownership, the corporation's continued full fee simple ownership and the identity of the controlling stockholders shall be established by the affidavit of the president of the corporation and the continued occupancy of the dwelling and lot as the principal residence of the controlling stockholders shall be established by their affidavits; or
 - 3. In the case of ownership by a limited liability company, the company's continued ownership of full fee simple ownership, the fact that the members previously identified as owning control of the limited liability company continue to do so and that all of said members continue to occupy the dwelling and lot as their primary residence shall be established by their affidavits.
- d. If a change in fee simple ownership of the dwelling and lot has occurred since the last annual certification, than [then] the current fee simple ownership shall again be established by certificate of a duly licensed attorney-at-law based upon examination of the land records in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City. In such case, the identity of controlling stockholders, in the case of a corporation or controlling members, in the case of limited liability company and the facts regarding occupancy shall be established by affidavits as provided in section 21-605(b)(2)c. above.
- e. Should ownership, control or occupancy of a dwelling for which a special exception has been issued at any time fail to meet the requirements of this section 21-605(b), and if compliance has not been achieved within 60 days of the zoning administrator's notice of noncompliance, then the special exception shall become null and void.

**EXISTING ZONING ORDINANCE REGULATIONS
ROOM RENTALS TO ROOMERS**

(c) Rental of one bedroom to one roomer. The rental of one bedroom to one roomer shall be allowed by right, subject to the following:

- (1) Rentals shall be limited to owner-occupied single-family detached dwellings.
- (2) The furnishing of meals for compensation to such rental occupant by a member of the family is also permitted.
- (3) No additional off-street parking shall be required.
- (4) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.

(d) Rental of bedrooms to more than one roomer. The rental of bedrooms to more than one roomer shall be contingent upon approval as a special exception use by the board of zoning appeals in accordance with section 21-97(f), and subject to the following:

- (1) Rentals shall be limited to owner-occupied single-family detached dwellings.
- (2) No more than two bedrooms in the principal dwelling may be rented to roomers.
- (3) No persons other than members of the immediate family residing on the premises shall be involved in the rental of the permitted bedroom(s).
- (4) The furnishing of meals for compensation to permitted occupants by a member of the family is also permitted.
- (5) No more than two roomers shall occupy a bedroom at the same time, unless otherwise reduced by the requirements of the Uniform Statewide Building Code and all other applicable laws and regulations.
- (6) The following parking requirements shall apply:
 - a. One offstreet parking space shall be provided for each roomer (as required by Article V, Parking), and shall be reserved for use by the occupants of the rental bedrooms.
 - b. The board of zoning appeals, when ruling on the special exception, shall consider the location of the offstreet parking and its impact on adjoining residences and the adjacent street(s). When necessary to preserve the character of the surrounding neighborhood and streetscape, the board may prohibit the location of offstreet parking in front yards and/or the street side yards for corner lots.
 - c. Parking shall be screened from adjoining residences and street(s) by an element of the building, fence, wall or landscape buffer, and shall be approved by the board of zoning appeals when ruling on the special exception.
 - d. Parking spaces and driveways shall be constructed of gravel, compacted stone, concrete, asphalt, brick or paving stones.

**EXISTING ZONING ORDINANCE REGULATIONS
ROOM RENTALS TO ROOMERS**

- e. Parking spaces and driveways (for both the single-family detached dwelling and the proposed bedroom rentals) shall not occupy more than 30 percent of a front or rear yard area, and shall not occupy more than 15 percent of the total lot area for lots having a lot area of 20,000 square feet or less; nor more than ten percent of the total lot area for lots having a lot area of more than 20,000 square feet. When applying for a special exception, existing parking spaces and driveways that are constructed of gravel, compacted stone, concrete, asphalt, brick or paving stones may be used to provide the required parking, even if they are not in compliance with these standards. All new parking spaces and driveways shall comply with these standards.
 - f. Parking shall be allowed only in driveways or parking spaces meeting these requirements, and shall be prohibited elsewhere on the lot.
- (7) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.
 - (8) The application for a special exception shall include: a floor plan showing the location of each bedroom to be rented, including its dimensions and floor area, the location of exits and the location of smoke detectors; and a minor site plan in accordance with Article VII, Site Plans, showing the location of the parking to be provided, the location of proposed screening and landscaping, and lot coverage of the driveways and parking areas.
 - (9) It shall be a violation of this section to advertise for rent to roomers any bedrooms exceeding the number of bedrooms authorized herein or which are determined by the zoning administrator to be legally nonconforming.

Alternate #2
Rental of one bedroom to one roomer by right and the rental of bedroom(s) to two roomers with administrative approval by the Zoning Administrator

ORDINANCE # 11-__
PROPOSED ORDINANCE # 11-__

**AN ORDINANCE AMENDING CHAPTER 21, ZONING,
ARTICLE IV, SUPPLEMENTAL DISTRICT REGULATIONS,
BY REVISING SEC. 21-605 AND ADDING SEC. 21-605.1, PERTAINING TO RENTAL
OF BEDROOMS IN OWNER-OCCUPIED SINGLE-FAMILY DETACHED DWELLINGS
TO TWO ROOMERS
(PCR #11-008)**

These revisions to Chapter 21, Zoning, are intended to promote the health, safety and general welfare of the public and to carry out the purpose and intent of Chapter 21 as stated in Sec. 21-1.

BE IT ORDAINED that Chapter 21, Zoning, of the Code of the City of Williamsburg, Virginia is hereby amended by revising Article IV. Supplemental District Regulations, Sec. 21-605, Rental of bedrooms in single-family dwellings to roomers and visitors; and by adding Sec. 21-605.1, Rental of bedrooms in single-family detached dwellings to roomers, to read as follows:

Sec. 21-605. Rental of bedrooms in single-family detached dwellings to roomers and visitors.

(a) Intent. These regulations are established to allow the rental of bedrooms to visitors in single-family detached dwellings while at the same time preserving the residential character of the neighborhoods in which the dwellings are located. To these ends, bedroom rentals are limited to owner-occupied dwellings. ~~Rentals to roomers, being largely residential in character, are allowed throughout residential districts; r~~ Rentals to visitors, being more commercial in character, are allowed only along specified major streets to avoid bringing increased traffic and congestion by nonresidents into residential districts. In addition, rentals to visitors are limited to a minority of the single-family detached dwellings on the specified streets, with greater restrictions placed on the minor corridors, in order to ensure that all of the corridors maintain their residential character.

(b) Owner-occupied single-family detached dwelling defined.

(1) For the purpose of this section, a single-family detached dwelling shall be deemed "owner-occupied" only so long as it is regularly occupied by:

a. A family, as defined in section 21-2 of the zoning ordinance, in which at least one adult member is the sole fee simple owner or who owns at least a 50 percent undivided interest in such dwelling and the lot upon which it is located and

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- regularly occupies said dwelling as his or her primary place of residence; or
- b. An adult individual who owns at least a 50 percent undivided fee simple interest in such dwelling and the lot upon which it is located and regularly occupies said dwelling as his or her primary place of residence; or
- c. One adult individual, along with the family of that individual, who regularly occupies said dwelling as his or her primary place of residence and who is also the creator, trustee, or primary beneficiary of a Revocable Trust or Irrevocable Trust in which the dwelling is held, provided that such trust must be created or existing for estate planning purposes or another similar purpose and not for the acquisition or holding of real estate assets as part of any commercial enterprise.
- d. The stockholders of at least 51 percent of the individual outstanding voting stock of a corporation, chartered in the Commonwealth of Virginia, or the members of a limited liability company chartered in the Commonwealth of Virginia, who own the controlling interest therein, which corporation or limited liability company owns full fee simple title to the dwelling and the lot on which it is located.

(2) Ownership shall be established as follows:

- a. Record ownership of fee simple title shall be certified by an attorney-at-law duly licensed to practice in the Commonwealth of Virginia, and shall be based upon examination of the land records in the Clerk's Office for the Circuit Court of the City of Williamsburg and County of James City made not earlier than the day before delivery of the certification to the zoning administrator. Such certification shall be in form acceptable to the city attorney.
- b. The identity of stockholders of a corporation and members of a limited liability company shall be established by affidavit of all stockholders or members in form satisfactory to the city attorney.
Such affidavit shall state that said stockholders of the majority interest of the corporation, or the majority of the members of the limited liability company, regularly occupy the dwelling as their primary residence.
- c. On the first business day of each January following the issuance of the special exception, the ownership and occupancy of the dwelling and lot, if unchanged, shall be established as follows:

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1. In the case of individual ownership, by affidavit of the owner or owners originally identified in the attorney's title certification furnished in connection with the permit application;
 2. In the case of corporate ownership, the corporation's continued full fee simple ownership and the identity of the controlling stockholders shall be established by the affidavit of the president of the corporation and the continued occupancy of the dwelling and lot as the principal residence of the controlling stockholders shall be established by their affidavits; or
 3. In the case of ownership by a limited liability company, the company's continued ownership of full fee simple ownership, the fact that the members previously identified as owning control of the limited liability company continue to do so and that all of said members continue to occupy the dwelling and lot as their primary residence shall be established by their affidavits.
- d. If a change in fee simple ownership of the dwelling and lot has occurred since the last annual certification, than [then] the current fee simple ownership shall again be established by certificate of a duly licensed attorney-at-law based upon examination of the land records in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City. In such case, the identity of controlling stockholders, in the case of a corporation or controlling members, in the case of limited liability company and the facts regarding occupancy shall be established by affidavits as provided in section 21-605(b)(2)c. above.
 - e. Should ownership, control or occupancy of a dwelling for which a special exception has been issued at any time fail to meet the requirements of this section 21-605(b), and if compliance has not been achieved within 60 days of the zoning administrator's notice of noncompliance, then the special exception shall become null and void.
- ~~(b) — Owner-occupied single-family detached dwelling defined.~~
- ~~(1) — For the purpose of this section, a single family detached dwelling shall be deemed "owner-occupied" only so long as it is regularly occupied by:~~
- a. ~~An adult individual who owns at least a 50 percent undivided fee simple interest in such dwelling and the lot upon which it~~

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~~is located and regularly occupies said dwelling as his or her principal place of residence; or~~

~~b. The stockholders of at least 51 percent of the individual outstanding voting stock of a corporation, chartered in the Commonwealth of Virginia, or the members of a limited liability company chartered in the Commonwealth of Virginia, who own the controlling interest therein, which corporation or limited liability company owns full fee simple title to the dwelling and the lot on which it is located.~~

~~(2) Ownership shall be established as follows:~~

~~a. Record ownership of fee simple title shall be certified by an attorney-at-law duly licensed to practice in the Commonwealth of Virginia, and shall be based upon examination of the land records in the Clerk's Office for the Circuit Court of the City of Williamsburg and County of James City made not earlier than the day before delivery of the certification to the zoning administrator. Such certification shall be in form acceptable to the city attorney.~~

~~b. The identity of stockholders of a corporation and members of a limited liability company shall be established by affidavit of all stockholders or members in form satisfactory to the city attorney.~~

~~Such affidavit shall state that said stockholders of the majority interest of the corporation, or the majority of the members of the limited liability company, regularly occupy the dwelling as their primary residence.~~

~~c. On the first business day of each January following the issuance of the special exception, the ownership and occupancy of the dwelling and lot, if unchanged, shall be established as follows:~~

~~1. In the case of individual ownership, by affidavit of the owner or owners originally identified in the attorney's title certification furnished in connection with the permit application;~~

~~2. In the case of corporate ownership, the corporation's continued full fee simple ownership and the identity of the controlling stockholders shall be established by the affidavit of the president of the corporation and the continued occupancy of the dwelling and lot as the principal residence of the controlling stockholders shall be established by their affidavits; or~~

~~3. In the case of ownership by a limited liability company, the company's continued ownership of full fee simple ownership, the fact that the members~~

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~~previously identified as owning control of the limited liability company continue to do so and that all of said members continue to occupy the dwelling and lot as their primary residence shall be established by their affidavits.~~

- ~~d. If a change in fee simple ownership of the dwelling and lot has occurred since the last annual certification, than [then] the current fee simple ownership shall again be established by certificate of a duly licensed attorney at law based upon examination of the land records in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City. In such case, the identity of controlling stockholders, in the case of a corporation or controlling members, in the case of limited liability company and the facts regarding occupancy shall be established by affidavits as provided in section 21-605(b)(2)c. above.~~
- ~~e. Should ownership, control or occupancy of a dwelling for which a special exception has been issued at any time fail to meet the requirements of this section 21-605(b), and if compliance has not been achieved within 60 days of the zoning administrator's notice of noncompliance, then the special exception shall become null and void.~~

~~(c) Rental of one bedroom to one roomer. The rental of one bedroom to one roomer shall be allowed by right, subject to the following:~~

- ~~(1) Rentals shall be limited to owner-occupied single-family detached dwellings.~~
- ~~(2) The furnishing of meals for compensation to such rental occupant by a member of the family is also permitted.~~
- ~~(3) No additional off-street parking shall be required.~~
- ~~(4) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.~~

~~(d) Rental of bedrooms to more than one roomer. The rental of bedrooms to more than one roomer shall be contingent upon approval as a special exception use by the board of zoning appeals in accordance with section 21-97(f), and subject to the following:~~

- ~~(1) Rentals shall be limited to owner-occupied single-family detached dwellings.~~
- ~~(2) No more than two bedrooms in the principal dwelling may be rented to roomers.~~
- ~~(3) No persons other than members of the immediate family residing on the premises shall be involved in the rental of the permitted bedroom(s).~~

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- ~~(4) The furnishing of meals for compensation to permitted occupants by a member of the family is also permitted.~~
- ~~(5) No more than two roomers shall occupy a bedroom at the same time, unless otherwise reduced by the requirements of the Uniform Statewide Building Code and all other applicable laws and regulations.~~
- ~~(6) The following parking requirements shall apply:
 - ~~a. One offstreet parking space shall be provided for each roomer (as required by Article V, Parking), and shall be reserved for use by the occupants of the rental bedrooms.~~
 - ~~b. The board of zoning appeals, when ruling on the special exception, shall consider the location of the offstreet parking and its impact on adjoining residences and the adjacent street(s). When necessary to preserve the character of the surrounding neighborhood and streetscape, the board may prohibit the location of offstreet parking in front yards and/or the street side yards for corner lots.~~
 - ~~c. Parking shall be screened from adjoining residences and street(s) by an element of the building, fence, wall or landscape buffer, and shall be approved by the board of zoning appeals when ruling on the special exception.~~
 - ~~d. Parking spaces and driveways shall be constructed of gravel, compacted stone, concrete, asphalt, brick or paving stones.~~
 - ~~e. Parking spaces and driveways (for both the single-family detached dwelling and the proposed bedroom rentals) shall not occupy more than 30 percent of a front or rear yard area, and shall not occupy more than 15 percent of the total lot area for lots having a lot area of 20,000 square feet or less; nor more than ten percent of the total lot area for lots having a lot area of more than 20,000 square feet. When applying for a special exception, existing parking spaces and driveways that are constructed of gravel, compacted stone, concrete, asphalt, brick or paving stones may be used to provide the required parking, even if they are not in compliance with these standards. All new parking spaces and driveways shall comply with these standards.~~
 - ~~f. Parking shall be allowed only in driveways or parking spaces meeting these requirements, and shall be prohibited elsewhere on the lot.~~~~
- ~~(7) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.~~
- ~~(8) The application for a special exception shall include: a floor plan showing the location of each bedroom to be rented, including its~~

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~~dimensions and floor area, the location of exits and the location of smoke detectors; and a minor site plan in accordance with Article VII, Site Plans, showing the location of the parking to be provided, the location of proposed screening and landscaping, and lot coverage of the driveways and parking areas.~~

- ~~(9) It shall be a violation of this section to advertise for rent to roomers any bedrooms exceeding the number of bedrooms authorized herein or which are determined by the zoning administrator to be legally nonconforming.~~

(c) ~~(e)~~ *Rental of bedrooms to visitors.* The rental of bedrooms to one or more visitors shall be contingent upon approval as either a special exception use by the board of zoning appeals in accordance with section 21-97(f), or as a special use permit by the city council in accordance with article II, division 2, and subject to the following:

- (1) Rentals shall be limited to owner-occupied single-family detached dwellings.
- (2) No more than four bedrooms in the principal dwelling may be rented to visitors with a special exception approved by the board of zoning appeals. With a special use permit approved by the city council, no more than six bedrooms may be rented to visitors in the principal dwelling, with a minimum lot size of one acre (43,560 square feet).
- (3) No persons other than members of the immediate family residing on the premises shall be involved in the rental of the permitted bedroom(s).
- (4) The only meal that may be provided is breakfast, and it shall only be served to visitors renting bedrooms in the dwelling. Breakfast shall be furnished only by a member of the immediate family residing on the premises.
- (5) No more than two visitors shall occupy a bedroom at the same time, except for any child under 16 years of age, unless otherwise reduced by the requirements of the Uniform Statewide Building Code and all other applicable laws and regulations.
- (6) Rental of bedrooms to visitors shall be permitted only in single-family detached dwellings located on lots contiguous to the major streets or portions thereof listed below, and only if the single-family detached dwelling and its front door faces the major street. The number of single-family detached dwellings allowed to rent bedrooms to visitors is limited to a percentage of the single-family detached dwellings in the city existing on each street or portion of street listed below, as of February 8, 1996, that meet the above listed requirements, as follows: 45 percent for the portion of Richmond Road between Brooks Street and Virginia Avenue; 45 percent for all of Jamestown Road; and ten percent for all other streets or portions of streets listed below. The major streets and the number of single-family detached dwellings allowed to rent bedrooms to visitors are:

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- a. Capitol Landing Road from Lafayette Street to Queen's Creek -- four single-family detached dwellings are allowed to rent bedrooms to visitors.
 - b. Henry Street between Lafayette Street and Mimosa Drive -- two single-family detached dwellings are allowed to rent bedrooms to visitors.
 - c. Jamestown Road -- 15 single-family detached dwellings are allowed to rent bedrooms to visitors.
 - d. Lafayette Street -- three single-family detached dwellings are allowed to rent bedrooms to visitors.
 - e. Page Street -- one single-family detached dwelling is allowed to rent bedrooms to visitors.
 - f. Richmond Road between Brooks Street and Virginia Avenue -- ten single-family detached dwellings are allowed to rent bedrooms to visitors.
- (7) Vehicular access shall be permitted only from the streets listed above, or from a side street intersecting with a listed street. When necessary to preserve the character of the surrounding neighborhood and streetscape, the board may prohibit vehicular access from a side street intersecting with a listed street.
- (8) The following parking requirements shall apply:
- a. One offstreet parking space shall be provided for each bedroom rented to visitors (as required by Article V, Parking), and shall be reserved for use by the occupants of the rental bedrooms.
 - b. The board of zoning appeals, when ruling on the special exception, and the city council when ruling on the special use permit, shall consider the location of the offstreet parking and its impact on adjoining residences and the adjacent street(s). When necessary to preserve the character of the surrounding neighborhood and streetscape, the board or the council may prohibit the location of offstreet parking in front yards and/or the street side yards for corner lots.
 - c. Parking shall be screened from adjoining residences and adjacent streets(s) by an element of the building, fence, wall or landscape buffer, and shall be approved by the board of zoning appeals when ruling on the special use permit, or by city council when ruling on the special use permit.
 - d. Parking spaces and driveways shall be constructed of gravel, compacted stone, concrete, asphalt, brick or paving stones.
 - e. Parking spaces and driveways (for both the single-family detached dwelling and the proposed bedroom rentals) shall not occupy more than 30 percent of a front or rear yard area, and shall not occupy more than 15 percent of the total lot area for lots having a lot area of 20,000 square feet or less; nor more than ten percent of the total

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lot area for lots having a lot area of more than 20,000 square feet. When applying for a special exception or special use permit, existing parking spaces and driveways that are constructed of gravel, compacted stone, concrete asphalt, brick or paving stones may be used to provide the required parking, even if they are not in compliance with these standards. All new parking spaces and driveways shall comply with these standards.

1. As part of a request for a special use permit for the rental of more than four bedrooms [which requires a minimum lot size of one acre (43,560 square feet)], city council may allow parking spaces and driveways to occupy up to 15 percent of the total lot area. This shall supersede the restrictions stated in section 21-705.1(b).
- f. Parking shall be allowed only in driveways or parking spaces meeting these requirements, and shall be prohibited elsewhere on the lot.
- (9) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.
- (10) The application for a special exception shall include: a floor plan showing the location of each bedroom to be rented, including its dimensions and floor area, the location of exits and the location of smoke detectors; and a minor site plan in accordance with Article VII, Site Plans, showing the location of the parking to be provided, the location of proposed screening and landscaping, and lot coverage of the driveways and parking areas.
- (11) It shall be a violation of this section to advertise for rent to visitors any bedroom exceeding the number of bedrooms authorized herein or which are determined by the zoning administrator to be legally nonconforming.
- (12) The board of zoning appeals shall not make a final decision on a proposal to rent bedrooms to visitors until it has received a recommendation from the planning commission's site plan review committee on the minor site plan.
- (13) Bedrooms presently rented to roomers shall not be rented to visitors unless all requirements of this section 21-605 are met, which includes approval as a special exception use by the board of zoning appeals.
- (14) The owner-occupant of the single-family dwelling renting bedrooms to visitors shall keep records of all bedrooms rented, which shall be submitted to the zoning administrator for the previous quarter on April 20, July 20, October 20 and January 20 of each year, and at any other time upon the request of the zoning administrator. The records shall be submitted on a form provided by the zoning administrator, and shall include each bedroom rented, the date rented, the number of persons occupying the bedroom, the number of motor vehicles parked on the premises by the occupant(s) of the bedroom, and the names of all persons residing in the dwelling for the reporting period. The owner-occupant shall

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certify by affidavit at the bottom of each page that the records are true and correct and represent all bedrooms rented and the occupants thereof for the stated time period.

- (15) A special exception approved by the board of zoning appeals, or a special use permit approved by the city council, shall expire 180 days from the date of the approval unless the applicant has obtained a certificate of occupancy and a business license for the rental of rooms to visitors.
- (16) A special exception approved by the board of zoning appeals, or a special use permit approved by the city council, shall remain valid only as long as there are at least 100 bedroom rental nights each calendar year. If there are less than 100 bedroom rental nights in a calendar year, the special exception approval shall expire. If less than a full calendar year remains following the approval of the special exception by the board of zoning appeals or a special use permit approved by the city council, the required bedroom rental nights shall be prorated based upon the portion of the calendar year remaining. A bedroom rental night is defined as the rental of an individual bedroom for one night. These restrictions shall not to apply to the rental of bedrooms to visitors that were approved by the board of zoning appeals prior to February 8, 1996, or which were determined by the zoning administrator to have been legally nonconforming as of February 8, 1996.
- (17) Any special exception or special use permit granted to a single-family detached dwelling and lot pursuant to this section shall become null and void if within any 48-month period a court of competent jurisdiction has issued two injunctions arising out of violations of such special exception or special use permit, or of any provision of this section 21-605, to the same record owner of such dwelling and lot or to one or more of the same individuals identified in the zoning administrator's records as regularly occupying the subject dwelling as their residence. The special exception or special use permit shall, however, not become null and void until all appeal periods have run regarding such injunctions.

Sec. 21-605.1. Rental of bedrooms in single-family detached dwellings to roomers.

(a) Intent. These regulations are established to allow the rental of bedrooms to roomers in single-family detached dwellings while at the same time preserving the residential character of the neighborhoods in which the dwellings are located. To these ends, bedroom rentals are limited to owner-occupied dwellings that serve as the primary residence of the owner. The intent of this section being incompatible with business purposes, residential property owned by business entities do not qualify for this use, notwithstanding occupancy of the property by one or more members of the business entity. Rentals to roomers, being largely residential in character, are allowed throughout residential districts.

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(b) Owner-occupied single-family detached dwelling defined.

(1) For the purpose of this section, a single-family detached dwelling shall be deemed "owner-occupied" only so long as it is regularly occupied by:

a. A family, as defined in section 21-2 of the zoning ordinance, in which at least one adult member is the sole fee simple owner or who owns at least a 50 percent undivided interest in such dwelling and the lot upon which it is located and regularly occupies said dwelling as his or her primary place of residence; or

b. An adult individual who owns at least a 50 percent undivided fee simple interest in such dwelling and the lot upon which it is located and regularly occupies said dwelling as his or her primary place of residence; or

c. One adult individual, along with the family of that individual, who regularly occupies said dwelling as his or her primary place of residence and who is also the creator, trustee, or primary beneficiary of a Revocable Trust or Irrevocable Trust in which the dwelling is held, provided that such trust must be created or existing for estate planning purposes or another similar purpose and not for the acquisition or holding of real estate assets as part of any commercial enterprise.

(2) For purposes of this section, fee simple interest of the dwelling may not be held by any corporation, limited liability company, partnership, including but not limited to profession, general or limited partnerships, or by any other form of business entity recognized under the laws of the Commonwealth of Virginia.

(c) Rental of one bedroom to one roomer. The rental of one bedroom to one roomer shall be allowed by right, subject to the following:

(1) Rentals shall be limited to owner-occupied single-family detached dwellings.

(2) The furnishing of meals for compensation to such rental occupants by a member of the family is also permitted.

(3) No additional off-street parking shall be required.

(4) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.

(d) Rental of bedrooms to two roomers. The rental of bedrooms to two roomers shall be contingent upon administrative approval by the zoning administrator or his/her designee, and subject to the following:

(1) Rentals shall be limited to owner-occupied single-family detached dwellings, and ownership shall be established as follows:

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- a. Record ownership of fee simple title shall be certified by an attorney-at-law duly licensed to practice in the Commonwealth of Virginia, and shall be based upon examination of the land records in the Clerk's Office for the Circuit Court of the City of Williamsburg and County of James City made not earlier than the day before delivery of the certification to the zoning administrator. Such certification shall be in form acceptable to the city attorney.
- b. On the first business day of each January following the issuance of the administrative approval, the ownership and occupancy of the dwelling and lot, if unchanged, shall be established by affidavit of the owner or owners originally identified in the attorney's title certification furnished in connection with the permit application;
- (2) The furnishing of meals for compensation to such rental occupants by a member of the family is also permitted.
- (3) No more than two roomers shall occupy a bedroom at the same time.
- (4) The following parking requirements shall apply:
 - a. One parking space shall be provided for each bedroom rented, plus two parking spaces for the single-family detached dwelling. Parking spaces may be off-street in accordance with Article V, Parking, or located along the frontage of the adjoining public street and contiguous to the lot. The minimum length of a parking space located on an adjoining public street shall be 18 feet, and shall not include curb cuts for driveways.
 - b. Parking spaces and driveways shall meet the requirements of section 21-705.1, Special regulations for single-family detached dwellings.
- (5) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.
- (6) The application shall include: a floor plan showing the location of each bedroom to be rented, including its dimensions and floor area, the location of exits and the location of smoke detectors; and a plot plan showing the location of the existing parking and the parking to be provided and the lot coverage of the driveways and parking areas.
- (7) It shall be a violation of this section to advertise for rent to roomers any bedrooms exceeding the number of bedrooms authorized herein or which are determined by the zoning administrator to be legally nonconforming.

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(e) Applicability to other provisions of the zoning ordinance. Nothing in this section shall be construed as permitting occupancy by roomers as authorized herein in addition to occupants authorized by other provisions of the zoning ordinance, except that a family as defined in section 21-2 of the zoning ordinance may rent to roomers as provided herein notwithstanding the number of family members also residing at the property. In no event shall one or more roomers as authorized by this section be permitted to occupy a property in addition to the three unrelated individuals allowed by right in residential zoning districts, which number shall include the property owner, or in addition to four unrelated individuals, including the property owner, as provided by section 21-619. Roomers authorized by this section will count as unrelated individuals for purposes of determining the maximum residential occupancy permitted by the zoning ordinance.

This ordinance shall become effective on the tenth day following its passage.

Adopted: _____

Clyde A. Haulman, Mayor

Donna Scott, City Council Clerk

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Rental to one roomer in an owner-occupied single family dwelling allowed by right, to two roomers with administrative approval by the Zoning Administrator, and to three or four roomers with special exception approval by the Board of Zoning Appeals

ORDINANCE #11-__
PROPOSED ORDINANCE #11-__

AN ORDINANCE AMENDING CHAPTER 21, ZONING,
ARTICLE IV, SUPPLEMENTAL DISTRICT REGULATIONS,
BY REVISING SEC. 21-605 AND ADDING SEC. 21-605.1, PERTAINING TO RENTAL
OF BEDROOMS IN OWNER-OCCUPIED SINGLE-FAMILY DETACHED DWELLINGS
TO ROOMERS
(PCR #11-008)

These revisions to Chapter 21, Zoning, are intended to promote the health, safety and general welfare of the public and to carry out the purpose and intent of Chapter 21 as stated in Sec. 21-1.

BE IT ORDAINED that Chapter 21, Zoning, of the Code of the City of Williamsburg, Virginia is hereby amended by revising Article IV. Supplemental District Regulations, Sec. 21-605, Rental of bedrooms in single-family dwellings to roomers and visitors; and by adding Sec. 21-605.1, Rental of bedrooms in single-family detached dwellings to roomers, to read as follows:

Sec. 21-605. Rental of bedrooms in single-family detached dwellings to roomers and visitors.

(a) Intent. These regulations are established to allow the rental of bedrooms to visitors in single-family detached dwellings while at the same time preserving the residential character of the neighborhoods in which the dwellings are located. To these ends, bedroom rentals are limited to owner-occupied dwellings. ~~Rentals to roomers, being largely residential in character, are allowed throughout residential districts; r~~ Rentals to visitors, being more commercial in character, are allowed only along specified major streets to avoid bringing increased traffic and congestion by nonresidents into residential districts. In addition, rentals to visitors are limited to a minority of the single-family detached dwellings on the specified streets, with greater restrictions placed on the minor corridors, in order to ensure that all of the corridors maintain their residential character.

(b) *Owner-occupied single-family detached dwelling defined.*

(1) For the purpose of this section, a single-family detached dwelling shall be deemed "owner-occupied" only so long as it is regularly occupied by:

a. A family, as defined in section 21-2 of the zoning ordinance, in which at least one adult member is the sole fee simple owner or who owns at least a 50 percent undivided interest in such dwelling and the lot upon which it is located and

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- regularly occupies said dwelling as his or her primary place of residence; or
- b. An adult individual who owns at least a 50 percent undivided fee simple interest in such dwelling and the lot upon which it is located and regularly occupies said dwelling as his or her primary place of residence; or
- c. One adult individual, along with the family of that individual, who regularly occupies said dwelling as his or her primary place of residence and who is also the creator, trustee, or primary beneficiary of a Revocable Trust or Irrevocable Trust in which the dwelling is held, provided that such trust must be created or existing for estate planning purposes or another similar purpose and not for the acquisition or holding of real estate assets as part of any commercial enterprise.
- d. The stockholders of at least 51 percent of the individual outstanding voting stock of a corporation, chartered in the Commonwealth of Virginia, or the members of a limited liability company chartered in the Commonwealth of Virginia, who own the controlling interest therein, which corporation or limited liability company owns full fee simple title to the dwelling and the lot on which it is located.

(2) Ownership shall be established as follows:

- a. Record ownership of fee simple title shall be certified by an attorney-at-law duly licensed to practice in the Commonwealth of Virginia, and shall be based upon examination of the land records in the Clerk's Office for the Circuit Court of the City of Williamsburg and County of James City made not earlier than the day before delivery of the certification to the zoning administrator. Such certification shall be in form acceptable to the city attorney.
- b. The identity of stockholders of a corporation and members of a limited liability company shall be established by affidavit of all stockholders or members in form satisfactory to the city attorney.
Such affidavit shall state that said stockholders of the majority interest of the corporation, or the majority of the members of the limited liability company, regularly occupy the dwelling as their primary residence.
- c. On the first business day of each January following the issuance of the special exception, the ownership and occupancy of the dwelling and lot, if unchanged, shall be established as follows:

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1. In the case of individual ownership, by affidavit of the owner or owners originally identified in the attorney's title certification furnished in connection with the permit application;
 2. In the case of corporate ownership, the corporation's continued full fee simple ownership and the identity of the controlling stockholders shall be established by the affidavit of the president of the corporation and the continued occupancy of the dwelling and lot as the principal residence of the controlling stockholders shall be established by their affidavits; or
 3. In the case of ownership by a limited liability company, the company's continued ownership of full fee simple ownership, the fact that the members previously identified as owning control of the limited liability company continue to do so and that all of said members continue to occupy the dwelling and lot as their primary residence shall be established by their affidavits.
- d. If a change in fee simple ownership of the dwelling and lot has occurred since the last annual certification, then [then] the current fee simple ownership shall again be established by certificate of a duly licensed attorney-at-law based upon examination of the land records in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City. In such case, the identity of controlling stockholders, in the case of a corporation or controlling members, in the case of limited liability company and the facts regarding occupancy shall be established by affidavits as provided in section 21-605(b)(2)c. above.
- e. Should ownership, control or occupancy of a dwelling for which a special exception has been issued at any time fail to meet the requirements of this section 21-605(b), and if compliance has not been achieved within 60 days of the zoning administrator's notice of noncompliance, then the special exception shall become null and void.

~~(b) Owner-occupied single family detached dwelling defined.~~

~~(1) For the purpose of this section, a single family detached dwelling shall be deemed "owner-occupied" only so long as it is regularly occupied by:~~

~~a. An adult individual who owns at least a 50 percent undivided fee simple interest in such dwelling and the lot upon which it~~

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~~is located and regularly occupies said dwelling as his or her principal place of residence; or~~

~~b. The stockholders of at least 51 percent of the individual outstanding voting stock of a corporation, chartered in the Commonwealth of Virginia, or the members of a limited liability company chartered in the Commonwealth of Virginia, who own the controlling interest therein, which corporation or limited liability company owns full fee simple title to the dwelling and the lot on which it is located.~~

~~(2) Ownership shall be established as follows:~~

~~a. Record ownership of fee simple title shall be certified by an attorney-at-law duly licensed to practice in the Commonwealth of Virginia, and shall be based upon examination of the land records in the Clerk's Office for the Circuit Court of the City of Williamsburg and County of James City made not earlier than the day before delivery of the certification to the zoning administrator. Such certification shall be in form acceptable to the city attorney.~~

~~b. The identity of stockholders of a corporation and members of a limited liability company shall be established by affidavit of all stockholders or members in form satisfactory to the city attorney.~~

~~Such affidavit shall state that said stockholders of the majority interest of the corporation, or the majority of the members of the limited liability company, regularly occupy the dwelling as their primary residence.~~

~~c. On the first business day of each January following the issuance of the special exception, the ownership and occupancy of the dwelling and lot, if unchanged, shall be established as follows:~~

~~1. In the case of individual ownership, by affidavit of the owner or owners originally identified in the attorney's title certification furnished in connection with the permit application;~~

~~2. In the case of corporate ownership, the corporation's continued full fee simple ownership and the identity of the controlling stockholders shall be established by the affidavit of the president of the corporation and the continued occupancy of the dwelling and lot as the principal residence of the controlling stockholders shall be established by their affidavits; or~~

~~3. In the case of ownership by a limited liability company, the company's continued ownership of full fee simple ownership, the fact that the members~~

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~~previously identified as owning control of the limited liability company continue to do so and that all of said members continue to occupy the dwelling and lot as their primary residence shall be established by their affidavits.~~

- ~~d. If a change in fee simple ownership of the dwelling and lot has occurred since the last annual certification, then [then] the current fee simple ownership shall again be established by certificate of a duly licensed attorney-at-law based upon examination of the land records in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City. In such case, the identity of controlling stockholders, in the case of a corporation or controlling members, in the case of limited liability company and the facts regarding occupancy shall be established by affidavits as provided in section 21-605(b)(2)c. above.~~
- ~~e. Should ownership, control or occupancy of a dwelling for which a special exception has been issued at any time fail to meet the requirements of this section 21-605(b), and if compliance has not been achieved within 60 days of the zoning administrator's notice of noncompliance, then the special exception shall become null and void.~~

~~(c) Rental of one bedroom to one roomer. The rental of one bedroom to one roomer shall be allowed by right, subject to the following:~~

- ~~(1) Rentals shall be limited to owner-occupied single-family detached dwellings.~~
- ~~(2) The furnishing of meals for compensation to such rental occupant by a member of the family is also permitted.~~
- ~~(3) No additional off-street parking shall be required.~~
- ~~(4) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.~~

~~(d) Rental of bedrooms to more than one roomer. The rental of bedrooms to more than one roomer shall be contingent upon approval as a special exception use by the board of zoning appeals in accordance with section 21-97(f), and subject to the following:~~

- ~~(1) Rentals shall be limited to owner-occupied single-family detached dwellings.~~
- ~~(2) No more than two bedrooms in the principal dwelling may be rented to roomers.~~
- ~~(3) No persons other than members of the immediate family residing on the premises shall be involved in the rental of the permitted bedroom(s).~~

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- ~~(4) The furnishing of meals for compensation to permitted occupants by a member of the family is also permitted.~~
- ~~(5) No more than two roomers shall occupy a bedroom at the same time, unless otherwise reduced by the requirements of the Uniform Statewide Building Code and all other applicable laws and regulations.~~
- ~~(6) The following parking requirements shall apply:
 - ~~a. One offstreet parking space shall be provided for each roomer (as required by Article V, Parking), and shall be reserved for use by the occupants of the rental bedrooms.~~
 - ~~b. The board of zoning appeals, when ruling on the special exception, shall consider the location of the offstreet parking and its impact on adjoining residences and the adjacent street(s). When necessary to preserve the character of the surrounding neighborhood and streetscape, the board may prohibit the location of offstreet parking in front yards and/or the street side yards for corner lots.~~
 - ~~c. Parking shall be screened from adjoining residences and street(s) by an element of the building, fence, wall or landscape buffer, and shall be approved by the board of zoning appeals when ruling on the special exception.~~
 - ~~d. Parking spaces and driveways shall be constructed of gravel, compacted stone, concrete, asphalt, brick or paving stones.~~
 - ~~e. Parking spaces and driveways (for both the single-family detached dwelling and the proposed bedroom rentals) shall not occupy more than 30 percent of a front or rear yard area, and shall not occupy more than 15 percent of the total lot area for lots having a lot area of 20,000 square feet or less; nor more than ten percent of the total lot area for lots having a lot area of more than 20,000 square feet. When applying for a special exception, existing parking spaces and driveways that are constructed of gravel, compacted stone, concrete, asphalt, brick or paving stones may be used to provide the required parking, even if they are not in compliance with these standards. All new parking spaces and driveways shall comply with these standards.~~
 - ~~f. Parking shall be allowed only in driveways or parking spaces meeting these requirements, and shall be prohibited elsewhere on the lot.~~~~
- ~~(7) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.~~
- ~~(8) The application for a special exception shall include: a floor plan showing the location of each bedroom to be rented, including its~~

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~~dimensions and floor area, the location of exits and the location of smoke detectors; and a minor site plan in accordance with Article VII, Site Plans, showing the location of the parking to be provided, the location of proposed screening and landscaping, and lot coverage of the driveways and parking areas.~~

~~(9) It shall be a violation of this section to advertise for rent to roomers any bedrooms exceeding the number of bedrooms authorized herein or which are determined by the zoning administrator to be legally nonconforming.~~

(c) ~~(e)~~ *Rental of bedrooms to visitors.* The rental of bedrooms to one or more visitors shall be contingent upon approval as either a special exception use by the board of zoning appeals in accordance with section 21-97(f), or as a special use permit by the city council in accordance with article II, division 2, and subject to the following:

- (1) Rentals shall be limited to owner-occupied single-family detached dwellings.
- (2) No more than four bedrooms in the principal dwelling may be rented to visitors with a special exception approved by the board of zoning appeals. With a special use permit approved by the city council, no more than six bedrooms may be rented to visitors in the principal dwelling, with a minimum lot size of one acre (43,560 square feet).
- (3) No persons other than members of the immediate family residing on the premises shall be involved in the rental of the permitted bedroom(s).
- (4) The only meal that may be provided is breakfast, and it shall only be served to visitors renting bedrooms in the dwelling. Breakfast shall be furnished only by a member of the immediate family residing on the premises.
- (5) No more than two visitors shall occupy a bedroom at the same time, except for any child under 16 years of age, unless otherwise reduced by the requirements of the Uniform Statewide Building Code and all other applicable laws and regulations.
- (6) Rental of bedrooms to visitors shall be permitted only in single-family detached dwellings located on lots contiguous to the major streets or portions thereof listed below, and only if the single-family detached dwelling and its front door faces the major street. The number of single-family detached dwellings allowed to rent bedrooms to visitors is limited to a percentage of the single-family detached dwellings in the city existing on each street or portion of street listed below, as of February 8, 1996, that meet the above listed requirements, as follows: 45 percent for the portion of Richmond Road between Brooks Street and Virginia Avenue; 45 percent for all of Jamestown Road; and ten percent for all other streets or portions of streets listed below. The major streets and the number of single-family detached dwellings allowed to rent bedrooms to visitors are:

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- a. Capitol Landing Road from Lafayette Street to Queen's Creek -- four single-family detached dwellings are allowed to rent bedrooms to visitors.
 - b. Henry Street between Lafayette Street and Mimosa Drive -- two single-family detached dwellings are allowed to rent bedrooms to visitors.
 - c. Jamestown Road -- 15 single-family detached dwellings are allowed to rent bedrooms to visitors.
 - d. Lafayette Street -- three single-family detached dwellings are allowed to rent bedrooms to visitors.
 - e. Page Street -- one single-family detached dwelling is allowed to rent bedrooms to visitors.
 - f. Richmond Road between Brooks Street and Virginia Avenue -- ten single-family detached dwellings are allowed to rent bedrooms to visitors.
- (7) Vehicular access shall be permitted only from the streets listed above, or from a side street intersecting with a listed street. When necessary to preserve the character of the surrounding neighborhood and streetscape, the board may prohibit vehicular access from a side street intersecting with a listed street.
- (8) The following parking requirements shall apply:
- a. One offstreet parking space shall be provided for each bedroom rented to visitors (as required by Article V, Parking), and shall be reserved for use by the occupants of the rental bedrooms.
 - b. The board of zoning appeals, when ruling on the special exception, and the city council when ruling on the special use permit, shall consider the location of the offstreet parking and its impact on adjoining residences and the adjacent street(s). When necessary to preserve the character of the surrounding neighborhood and streetscape, the board or the council may prohibit the location of offstreet parking in front yards and/or the street side yards for corner lots.
 - c. Parking shall be screened from adjoining residences and adjacent streets(s) by an element of the building, fence, wall or landscape buffer, and shall be approved by the board of zoning appeals when ruling on the special use permit, or by city council when ruling on the special use permit.
 - d. Parking spaces and driveways shall be constructed of gravel, compacted stone, concrete, asphalt, brick or paving stones.
 - e. Parking spaces and driveways (for both the single-family detached dwelling and the proposed bedroom rentals) shall not occupy more than 30 percent of a front or rear yard area, and shall not occupy more than 15 percent of the total lot area for lots having a lot area of 20,000 square feet or less; nor more than ten percent of the total

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lot area for lots having a lot area of more than 20,000 square feet. When applying for a special exception or special use permit, existing parking spaces and driveways that are constructed of gravel, compacted stone, concrete asphalt, brick or paving stones may be used to provide the required parking, even if they are not in compliance with these standards. All new parking spaces and driveways shall comply with these standards.

1. As part of a request for a special use permit for the rental of more than four bedrooms [which requires a minimum lot size of one acre (43,560 square feet)], city council may allow parking spaces and driveways to occupy up to 15 percent of the total lot area. This shall supersede the restrictions stated in section 21-705.1(b).
- f. Parking shall be allowed only in driveways or parking spaces meeting these requirements, and shall be prohibited elsewhere on the lot.
- (9) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.
- (10) The application for a special exception shall include: a floor plan showing the location of each bedroom to be rented, including its dimensions and floor area, the location of exits and the location of smoke detectors; and a minor site plan in accordance with Article VII, Site Plans, showing the location of the parking to be provided, the location of proposed screening and landscaping, and lot coverage of the driveways and parking areas.
- (11) It shall be a violation of this section to advertise for rent to visitors any bedroom exceeding the number of bedrooms authorized herein or which are determined by the zoning administrator to be legally nonconforming.
- (12) The board of zoning appeals shall not make a final decision on a proposal to rent bedrooms to visitors until it has received a recommendation from the planning commission's site plan review committee on the minor site plan.
- (13) Bedrooms presently rented to roomers shall not be rented to visitors unless all requirements of this section 21-605 are met, which includes approval as a special exception use by the board of zoning appeals.
- (14) The owner-occupant of the single-family dwelling renting bedrooms to visitors shall keep records of all bedrooms rented, which shall be submitted to the zoning administrator for the previous quarter on April 20, July 20, October 20 and January 20 of each year, and at any other time upon the request of the zoning administrator. The records shall be submitted on a form provided by the zoning administrator, and shall include each bedroom rented, the date rented, the number of persons occupying the bedroom, the number of motor vehicles parked on the premises by the occupant(s) of the bedroom, and the names of all persons residing in the dwelling for the reporting period. The owner-occupant shall

Alternate #3

Rental to one roomer in an owner-occupied single family dwelling allowed by right, to two roomers with administrative approval by the Zoning Administrator, and to three or four roomers with special exception approval by the Board of Zoning Appeals

certify by affidavit at the bottom of each page that the records are true and correct and represent all bedrooms rented and the occupants thereof for the stated time period.

- (15) A special exception approved by the board of zoning appeals, or a special use permit approved by the city council, shall expire 180 days from the date of the approval unless the applicant has obtained a certificate of occupancy and a business license for the rental of rooms to visitors.
- (16) A special exception approved by the board of zoning appeals, or a special use permit approved by the city council, shall remain valid only as long as there are at least 100 bedroom rental nights each calendar year. If there are less than 100 bedroom rental nights in a calendar year, the special exception approval shall expire. If less than a full calendar year remains following the approval of the special exception by the board of zoning appeals or a special use permit approved by the city council, the required bedroom rental nights shall be prorated based upon the portion of the calendar year remaining. A bedroom rental night is defined as the rental of an individual bedroom for one night. These restrictions shall not to apply to the rental of bedrooms to visitors that were approved by the board of zoning appeals prior to February 8, 1996, or which were determined by the zoning administrator to have been legally nonconforming as of February 8, 1996.
- (17) Any special exception or special use permit granted to a single-family detached dwelling and lot pursuant to this section shall become null and void if within any 48-month period a court of competent jurisdiction has issued two injunctions arising out of violations of such special exception or special use permit, or of any provision of this section 21-605, to the same record owner of such dwelling and lot or to one or more of the same individuals identified in the zoning administrator's records as regularly occupying the subject dwelling as their residence. The special exception or special use permit shall, however, not become null and void until all appeal periods have run regarding such injunctions.

Sec. 21-605.1. Rental of bedrooms in single-family detached dwellings to roomers.

(a) Intent. These regulations are established to allow the rental of bedrooms to roomers in single-family detached dwellings while at the same time preserving the residential character of the neighborhoods in which the dwellings are located. To these ends, bedroom rentals are limited to owner-occupied dwellings that serve as the primary residence of the owner. The intent of this section being incompatible with business purposes, residential property owned by business entities do not qualify for this use, notwithstanding occupancy of the property by one or more members of the business entity. Rentals to roomers, being largely residential in character, are allowed throughout residential districts.

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Rental to one roomer in an owner-occupied single family dwelling allowed by right, to two roomers with administrative approval by the Zoning Administrator, and to three or four roomers with special exception approval by the Board of Zoning Appeals

(b) Owner-occupied single-family detached dwelling defined.

(1) For the purpose of this section, a single-family detached dwelling shall be deemed "owner-occupied" only so long as it is regularly occupied by:

a. A family, as defined in section 21-2 of the zoning ordinance, in which at least one adult member is the sole fee simple owner or who owns at least a 50 percent undivided interest in such dwelling and the lot upon which it is located and regularly occupies said dwelling as his or her primary place of residence; or

b. An adult individual who owns at least a 50 percent undivided fee simple interest in such dwelling and the lot upon which it is located and regularly occupies said dwelling as his or her primary place of residence; or

c. One adult individual, along with the family of that individual, who regularly occupies said dwelling as his or her primary place of residence and who is also the creator, trustee, or primary beneficiary of a Revocable Trust or Irrevocable Trust in which the dwelling is held, provided that such trust must be created or existing for estate planning purposes or another similar purpose and not for the acquisition or holding of real estate assets as part of any commercial enterprise.

(2) For purposes of this section, fee simple interest of the dwelling may not be held by any corporation, limited liability company, partnership, including but not limited to profession, general or limited partnerships, or by any other form of business entity recognized under the laws of the Commonwealth of Virginia.

(c) Rental of one bedroom to one roomer. The rental of one bedroom to one roomer shall be allowed by right, subject to the following:

(1) Rentals shall be limited to owner-occupied single-family detached dwellings.

(2) The furnishing of meals for compensation to such rental occupants by a member of the family is also permitted.

(3) No additional off-street parking shall be required.

(4) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.

(d) Rental of bedrooms to two roomers. The rental of bedrooms to two roomers shall be contingent upon administrative approval by the zoning administrator or his/her designee, and subject to the following:

Alternate #3

Rental to one roomer in an owner-occupied single family dwelling allowed by right, to two roomers with administrative approval by the Zoning Administrator, and to three or four roomers with special exception approval by the Board of Zoning Appeals

- (1) Rentals shall be limited to owner-occupied single-family detached dwellings, and ownership shall be established as follows:
 - a. Record ownership of fee simple title shall be certified by an attorney-at-law duly licensed to practice in the Commonwealth of Virginia, and shall be based upon examination of the land records in the Clerk's Office for the Circuit Court of the City of Williamsburg and County of James City made not earlier than the day before delivery of the certification to the zoning administrator. Such certification shall be in form acceptable to the city attorney.
 - b. On the first business day of each January following the issuance of the administrative approval, the ownership and occupancy of the dwelling and lot, if unchanged, shall be established by affidavit of the owner or owners originally identified in the attorney's title certification furnished in connection with the permit application;
- (2) The furnishing of meals for compensation to such rental occupants by a member of the family is also permitted.
- (3) No more than two roomers shall occupy a bedroom at the same time.
- (4) The following parking requirements shall apply:
 - a. One parking space shall be provided for each bedroom rental, plus two parking spaces for the single-family detached dwelling. Parking spaces may be off-street in accordance with Article V, Parking, or located along the frontage of the adjoining public street and contiguous to the lot. The minimum length of a parking space located on an adjoining public street shall be 18 feet, and shall not include curb cuts for driveways.
 - b. Parking spaces and driveways shall meet the requirements of Sec. 21-705.1, Special regulations for single-family detached dwellings.
- (5) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.
- (6) The application shall include: a floor plan showing the location of each bedroom to be rented, including its dimensions and floor area, the location of exits and the location of smoke detectors; and a plot plan showing the location of the existing parking and the parking to be provided and the lot coverage of the driveways and parking areas.
- (7) It shall be a violation of this section to advertise for rent to roomers any bedrooms exceeding the number of bedrooms authorized herein or which are determined by the zoning administrator to be legally nonconforming.

Alternate #3

Rental to one roomer in an owner-occupied single family dwelling allowed by right, to two roomers with administrative approval by the Zoning Administrator, and to three or four roomers with special exception approval by the Board of Zoning Appeals

(e) Rental of bedrooms to three or four roomers. The rental of bedrooms to three or four roomers shall be contingent upon approval as a special exception use by the board of zoning appeals in accordance with section 21-97(f), and subject to the following:

- (1) Rentals shall be limited to owner-occupied single-family detached dwellings, and ownership shall be established as follows:
 - a. Record ownership of fee simple title shall be certified by an attorney-at-law duly licensed to practice in the Commonwealth of Virginia, and shall be based upon examination of the land records in the Clerk's Office for the Circuit Court of the City of Williamsburg and County of James City made not earlier than the day before delivery of the certification to the zoning administrator. Such certification shall be in form acceptable to the city attorney.
 - b. On the first business day of each January following the issuance of the special exception, the ownership and occupancy of the dwelling and lot, if unchanged, shall be established by affidavit of the owner or owners originally identified in the attorney's title certification furnished in connection with the permit application;
- (2) The furnishing of meals for compensation to such rental occupants by a member of the family is also permitted.
- (3) No more than two roomers shall occupy a bedroom at the same time.
- (4) The following parking requirements shall apply:
 - a. One parking space shall be provided for each bedroom rental, plus two parking spaces for the single-family detached dwelling. Parking spaces may be off-street in accordance with Article V, Parking, or located along the frontage of the adjoining public street and contiguous to the lot. The minimum length of a parking space located on an adjoining public street shall be 18 feet, and shall not include curb cuts for driveways.
 - b. The board of zoning appeals, when ruling on the special exception, shall consider the location of the offstreet parking and its impact on adjoining residences and the adjacent street(s). When necessary to preserve the character of the surrounding neighborhood and streetscape, the board may prohibit the location of offstreet parking in front yards and/or the street side yards for corner lots.

Alternate #3

Rental to one roomer in an owner-occupied single family dwelling allowed by right, to two roomers with administrative approval by the Zoning Administrator, and to three or four roomers with special exception approval by the Board of Zoning Appeals

- c. Parking spaces and driveways shall meet the requirements of Sec. 21-705.1, Special regulations for single-family detached dwellings.
- (5) Applicable provisions of the Uniform Statewide Building Code, and all other applicable laws and regulations, shall be met.
- (6) The application for the special exception shall include: a floor plan showing the location of each bedroom to be rented, including its dimensions and floor area, the location of exits and the location of smoke detectors; and a plot plan showing the location of the existing parking and the parking to be provided, the location of the proposed screening and landscaping, and the lot coverage of the driveways and parking areas.
- (7) It shall be a violation of this section to advertise for rent to roomers any bedrooms exceeding the number of bedrooms authorized herein or which are determined by the zoning administrator to be legally nonconforming.

(f) Applicability to other provisions of the zoning ordinance. Nothing in this section shall be construed as permitting occupancy by roomers as authorized herein in addition to occupants authorized by other provisions of the zoning ordinance, except that a family as defined in section 21-2 of the zoning ordinance may rent to roomers as provided herein notwithstanding the number of family members also residing at the property. In no event shall one or more roomers as authorized by this section be permitted to occupy a property in addition to the three unrelated individuals allowed by right in residential zoning districts, which number shall include the property owner, or in addition to four unrelated individuals, including the property owner, as provided by section 21-619. Roomers authorized by this section will count as unrelated individuals for purposes of determining the maximum residential occupancy permitted by the zoning ordinance.

This ordinance shall become effective on the tenth day following its passage.

Adopted: _____

Clyde A. Haulman, Mayor

Donna Scott, City Council Clerk



CITY OF WILLIAMSBURG
MEMORANDUM

DATE: August 18, 2011

SUBJECT: PCR #11-015
Request of Carlton Holdings, LLC for a special use permit to construct a commercial building and 29 condominium units at 301 Second Street and 320 Penniman Road.

Carlton Holdings, LLC is requesting a special use permit for a mixed use development consisting of a one-story 13,250 square foot commercial building and 29 townhouse style condominium units at 301 Second Street and 320 Penniman Road. The existing 7,200 square foot building currently occupied by The Velvet Shoestring will remain. The Zoning Ordinance requires a total of 90 parking spaces for the anticipated commercial uses and 90 spaces are shown. The condominiums require 66 spaces and 66 are provided.

COMPREHENSIVE PLAN

The Comprehensive Plan designates this area as Corridor Commercial. This land use category designates land on the City's heavily traveled entrance corridors for commercial and service uses primarily oriented to the automobile. This category applies to local shopping areas, as well as to existing and future hotels, restaurants and other tourism retail uses. It also includes the automobile-oriented commercial uses along Second Street. Substantial sections of Richmond Road, Capitol Landing Road, York Street and Second Street are currently developed in this land use pattern, which is also intended for the small portion of Mooretown Road that is located within the City Limits. To ensure high quality development, the more intensive commercial uses should require special use permits. Corridor Commercial land use is intended to promote the City's economic development policy for its limited, remaining high-visibility commercial sites.

Residential should be allowed in Corridor Commercial areas but only as multifamily combined with non-residential uses in a mixed-use format. This will ensure that valuable commercial land is not completely used for residential purposes. Residential uses should require a special use permit to ensure compatibility with commercial uses.

ZONING

These properties are located in the Corridor Business District B-2. The Corridor Business District allows a variety of commercial uses such as retail sales establishments with a gross floor area less than 50,000 square feet, offices, hotels and motels, restaurants and multifamily dwellings, provided that not more than 50 percent of

the gross floor area on any lot may be devoted to multifamily use. With a special use permit, 67 percent of the gross floor area may be devoted to multifamily use on any lot. The density allowed in this district is 14 dwelling units per net acre.

The Statement of Intent for the Corridor Business District reads:

This district is established to provide locations on heavily traveled collector and arterial highways for those commercial and service uses primarily oriented to the automobile. This district is applied along those streets primarily used to access local shopping areas, and providing locations for existing and future hotels, restaurants and other tourism retail uses.

The special use permit section of the Zoning Ordinance (Sec. 21-43) establishes the following criteria for special use permits:

- (a) *The proposed use shall be:*
 - (1) *In harmony with the adopted comprehensive plan;*
 - (2) *In harmony with the intent and purpose of the zoning district in which the use is proposed to be located;*
 - (3) *In harmony with the character of adjacent properties and the surrounding neighborhoods, and with existing and proposed development.*
- (b) *The proposed use shall be adequately served by essential public services such as streets, drainage facilities, fire protection and public water and sewer facilities.*
- (c) *The proposed use shall not result in the destruction, loss or damage of any feature determined to be of significant ecological, scenic or historic importance.*
- (d) *The proposed use shall be designed, sited and landscaped so that the use will not hinder or discourage the appropriate development or use of adjacent properties and surrounding neighborhoods.*

Additional reasonable standards as deemed necessary to protect the public interest and welfare may be imposed, including: more restrictive sign standards; additional open space, landscaping or screening requirements; additional yard requirements; special lighting requirements; limitation on hours of operation; and additional offstreet parking and loading requirements.

The Planning Director or Planning Commission may require the following additional information:

- (1) A traffic impact analysis, showing the effect of traffic generated by this project on surrounding streets and neighborhoods.
- (2) A public utility analysis, showing the effect of this project on public water, sewer and/or storm drainage facilities.

- (3) A fiscal impact analysis. The Planning Director or the Planning Commission may request the City Council to provide funds for the preparation of this study by the City.

A traffic analysis for sight distance and driveway locations was submitted for this project. The public utility analysis and fiscal impact analysis are not needed.

ARCHITECTURAL REVIEW

These properties are located in the Corridor Protection District, and are subject to Architectural Review Board review as a part of the special use permit process. The Architectural Review Board reviewed the request and recommended conceptual approval of the design on August 9, 2011 (ARB#11-040).

TRAFFIC

The original submittal had two entrances on Second Street and three entrances on Penniman Road. Currently both entrances on Second Street are two-way. The proposed plan provides a two-way entrance on Second Street at the west end of the property with a one-way drive aisle and exit onto Second Street in front of the Velvet Shoestring. After review, the number of entrances on Penniman Road has been reduced from the three originally proposed to a single entrance that meets VDOT standards for driveway entrances and sight distance. To provide for emergency access, two areas have been designed to allow emergency vehicles to mount the curb and gain access to the site in an emergency situation.

STORMWATER MANAGEMENT

The original submittal provided an underground piping system that discharged stormwater into the piping system on Penniman Road and then into the ravine between this property and property in Middletown Farms Subdivision, which is located in York County. Based on the condition of the ravine adjacent to Penniman Road the stormwater plan has been revised to provide an underground piping system that will discharge stormwater further down the ravine to help mitigate the damage to the existing stream. Peak runoff rates are reduced to values lower than the collective runoff rates of the current development. Total pollutant loading is reduced by the use of best management practices and the purchase of pollutant load credits (Regional Access Credits) from the City.

ENVIRONMENTAL

This property was purchased by the current owners in 2005. At that time a limited Phase II Environmental Site Assessment was performed. The Phase II Environmental Site Assessment summary notes "Different parts of the main building were used as a welding and machine shop, a tire store, a muffler shop, upholstery shop, automobile parts store, and a flea market during the period from 1960 to late 1990's. Most recently,

a part of the property was used as an automobile repair, maintenance, and detailing facility for the Williamsburg Ford Lincoln Mercury Dealership located nearby. The site currently contains seven above ground storage tanks (AST) for storage of used motor oil, new motor oil, fuel oil, or anti-freeze, one in-ground sump, and one in-ground hydraulic lift.” ECS, LLC was hired to evaluate the potential impacts of the past use of the property on soil and on the groundwater beneath the site. Five borings were done as well as screening soil samples for volatile organic compounds and collecting soil and groundwater samples for laboratory analyses. The areas tested included the in-ground hydraulic vehicle lift, in-ground sump, the location of seven above ground oil storage tanks, and the area located at the southeasterly corner of the property boundary where waste material used as uncontrolled fill was found. Based on their assessment, ECS found no evidence of the presence of underground storage tanks at the site. They found insignificant concentrations of volatile organic compounds (VOCs) and concentrations of representative individual VOC, semi-volatile organic compounds (SVOCs), arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver acetone in the soil and groundwater samples that were significantly lower than the corresponding Tier III DEQ Voluntary Remediation Project screening levels and the corresponding EPA toxicity characteristic concentration levels. ECS stated that “subsurface soil and groundwater at the subject site do not appear to be impacted by the past activities, in-ground hydraulic lift, in-ground sump, above ground oil storage tanks, and the fill area. As such, it is our opinion that no further environment investigation, sampling or testing is warranted for the subject site.”

SUBSURFACE AND GEOTECHNICAL ENGINEERING REPORT

A subsurface exploration and geotechnical engineering analysis for the proposed development was performed by ECS on December 29, 2010. The report notes that the majority of the site was cleared and contained low lying vegetation and that the subsoil and groundwater conditions at the site are generally suitable for support of the proposed building and pavement construction provided the recommendations in the report are followed.

Eighteen borings were performed on the site, and it was found that up to 20 feet of fill was located across the site and predominantly located on the east side of the property adjacent to the stream. The borings revealed the fill generally contains a mixture of Sandy Clay and Clayey Sand with Organics, and construction debris (concrete, gravel, wood etc).

The report evaluated shallow foundations, Timber Piles and Helical Anchors. Since the fill composition is largely unknown they recommended exploratory test pits to verify that deep foundation elements can be installed without damage. The report recommended that a follow-up study and addendum report be completed prior to construction of this project, and this is detailed below.

On June 14, 2011 ECS dug five test pits and noted the following:

- A small topsoil layer ranging from .17 feet to 1.3 feet exists in the pit areas.

- The next layer from .17 feet up to four feet contains large pieces of fill debris up to two feet in size. (Sand, gravel, clay, concrete debris, wood fragments, glass fragments, brick fragment, and garbage debris, gray and black, gray and orangish brown, gray and dark brown and moist fill).
- The third layer contains smaller pieces of fill less than 2 feet in size ranging in depth from 3 feet to 16 feet. The report notes sand, with gravel, clay, concrete debris, wood fragments, glass fragments, brick fragments, and garbage debris, gray and brown, dark gray, gray and black, moist fill.

Based on the test pit observations, ECS recommended removal of the top 3 to 4 feet of FILL materials on the project site, which is comprised of SAND type soils containing large sized pieces of debris. Below the top 3 to 4 feet and extending to the maximum of FILL depth of 16 feet, the fill material is comprised of varying soil types and small pieces of debris (gravel, organics, brick and concrete fragments, etc). ECS noted that it generally appears that helical piles can be installed to support the building foundations if the top 3 to 4 feet of fill is removed. They noted that this recommendation is based on the conditions observed at the five test pits and that if obstructions are encountered in other areas deeper depths of removal may be necessary.

CHESAPEAKE BAY

This site is located in a Chesapeake Bay Preservation Area. Specifically, the stream to the east between this property and the adjacent Middletown Farms Subdivision is regulated by our Chesapeake Bay Ordinance. The applicant has provided a 100 foot Resource Protection Area (RPA) buffer adjacent to the stream and will encroach into the buffer for sewer connections and the stormwater discharge pipe which are allowed by the regulations. The RPA has a considerable amount of fill debris. Staff recommends leaving the fill in place over the RPA in this area since large trees and ground cover has grown over the area, and the applicant be required to remove the loose debris by hand in the fall or winter when ground cover is not present. To remove the debris will cause more damage to the stream bed, the removal of trees and vegetation and will require a mitigation plan for replanting the area. I have spoken with our Chesapeake Bay local assistance department representative and he agrees with this recommendation.

LANDSCAPING

The front portion of the site which currently houses The Velvet Shoestring requires a waiver from the 15 foot landscape requirements because of the wide Second Street right-of-way. The driveway aisle is located on the Second Street right of way. To provide a 15 foot landscape island for the existing parking in front Velvet Shoestring will require the removal of existing parking resulting in insufficient parking for the proposed commercial building. The applicant proposes to enter into agreement with the City to plant and maintain the existing landscape island along Second Street to meet the intent of the 15 foot landscape requirement which is acceptable to staff due to the irregular

and wide right-of-way for Second Street. The submitted landscape plan meets the City's requirements, and is acceptable to staff.

SITE PLAN REVIEW COMMITTEE

The Site Plan Review Committee reviewed this site plan at their July meeting. The Committee recommended approval for up to 29 condominium units provided a ten foot minimum separation distance is provided between the residential buildings and the RPA to allow for construction and maintenance of the buildings. They also recommended approval of the landscape waiver and the removal of all fill under the buildings due to unknown debris being dumped on the site. Since that meeting, the applicant has relocated the buildings to provide the ten foot minimum distance from the rear of the buildings to the Resource Protection Area as recommended by the Site Plan Review Committee.

ANALYSIS

The 2006 Comprehensive Plan designates this area as Corridor Commercial and Second Street is a highly visible commercial corridor. The Comprehensive Plan states that multifamily residential should be allowed as a special use permit in conjunction with non-residential uses. This proposal provides non-residential and residential uses with the commercial uses located on the highly visible Second Street corridor and the less visible Penniman Road area housing the residential use. The B-2 District allows up to 67 percent of the gross floor area on any lot to be devoted to multifamily use if a special use permit is approved. It requires the non-residential floor area to be constructed simultaneously with or prior to the construction of the multi-family floor area.

A conceptual landscape plan has been submitted as part of this project. This project provides over 56% landscaped open space and 20% is required. A 7,215 square foot recreation area has been provided for the condominiums adjacent to Penniman Road (5,800 square feet is required). A lighting plan will be required for final site plan.

Since no hazardous material has been found on the site, disclosure of the fact that the units were built on fill is not required.

A site visit revealed a considerable amount of loose debris is located in the Resource Protection Area. To use heavy equipment to remove large chunks of concrete will heavily damage this area and will result in damage to the stream which is experiencing considerable erosion from stormwater over the years. The removal of loose debris such as buckets, metal, small concrete, bricks and other debris would be a benefit to the environment and adjacent property owners. This removal should be performed in the fall or winter when vegetation has died and debris is more visible.

STAFF RECOMMENDATION

Staff recommends that Planning Commission recommend to City Council that a special use permit be approved for the proposed commercial buildings and up to 29 condominium units contingent upon the following:

1. The non-residential floor area shall be constructed simultaneously with or prior to the construction of the multi-family floor area.
2. The final site plan shall be in accord with the preliminary site plan.
3. The final landscape plan shall be in accord with the conceptual landscape plan. Planning Commission reserves the right to require additional landscaping in conjunction with final site plan approval.
4. Approval of a landscape waiver along Second Street contingent upon the applicant entering into an agreement with the City on the planting and maintenance of the landscape area in the City right-of-way prior to approval of the final site plan.
5. Three to four feet of fill being removed from the residential site up to the sewer easement in accordance with the ECS recommendation. For the those areas proposed for residential buildings and within five feet of those buildings, all fill must be removed and replaced with compacted or documented engineered fill.
6. In conjunction with the construction of the condominiums, loose debris in the Resource Protection Area shall be removed by hand to the satisfaction of the Zoning Administrator during fall or winter months when vegetation has died and removal is less damaging to existing vegetation.
7. A site lighting plan being approved by Planning Commission with the maximum height of any light fixture not exceeding 20 feet from grade for the residential area and 24 feet for the commercial area.
8. If the removal of any fill results in any debris being uncovered that requires additional regulatory approval, this approval must be granted and the situation abated and mitigated before further construction can continue on the site.

PLANNING COMMISSION RECOMMENDATION

Planning Commission held a public hearing on August 17, and two citizens spoke on the proposal. Following the public hearing, Planning Commission recommended to City Council by a vote of 7-0 that the special use permit be approved for the proposed commercial buildings and up to 29 condominium units contingent upon the following:

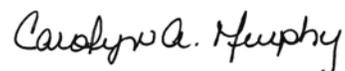
1. The non-residential floor area shall be constructed simultaneously with or prior to the construction of the multi-family floor area.
2. The final site plan shall be in accord with the preliminary site plan.
3. The final landscape plan shall be in accord with the conceptual landscape plan. Planning Commission reserves the right to require additional landscaping in conjunction with final site plan approval.

4. Approval of a landscape waiver along Second Street contingent upon the applicant entering into an agreement with the City on the planting and maintenance of the landscape area in the City right-of-way prior to approval of the final site plan.
5. Three to four feet of fill being removed from the residential site up to the sewer easement in accordance with the ECS recommendation. For the those areas proposed for residential buildings and within five feet of those buildings, all fill must be removed and replaced with compacted or documented engineered fill.
6. In conjunction with the construction of the condominiums, loose debris in the Resource Protection Area shall be removed by hand to the satisfaction of the Zoning Administrator during fall or winter months when vegetation has died and removal is less damaging to existing vegetation.
7. A site lighting plan being approved by Planning Commission with the maximum height of any light fixture not exceeding 20 feet from grade for the residential area and 24 feet for the commercial area.
8. If the removal of any fill results in any debris being uncovered that requires additional regulatory approval, this approval must be granted and the situation abated and mitigated before further construction can continue on the site.

Planning Commission also recommended that the City Manager consider the reduction of the posted speed limit from 35 mph to 25 mph in conjunction with the construction of the residential portion of this development.

CITY COUNCIL PUBLIC HEARING

The City Council public hearing is scheduled for September 8 at 2:00 p.m. in the Council Chamber at the Stryker Building, 412 North Boundary Street.



Carolyn A. Murphy, AICP
Deputy Planning Director



COMMERCIAL/RETAIL ELEVATION-SECOND STREET



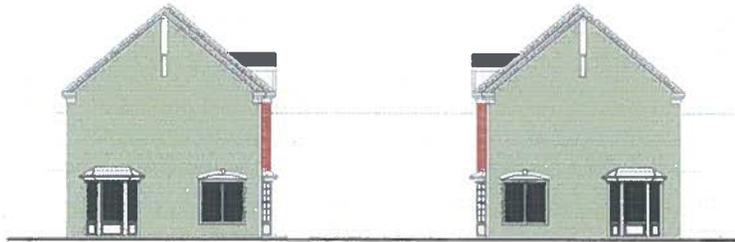
COMMERCIAL/RETAIL ELEVATION-PARKING LOT



COMMERCIAL /RETAIL ELEVATION(ADJACENT TO JIFFY LUBE PROPERTY)



TYPICAL RESIDENTIAL FRONT ELEVATION



TYPICAL RESIDENTIAL END ELEVATIONS



TYPICAL RESIDENTIAL REAR ELEVATION



TYPICAL RESIDENTIAL FRONT ELEVATION (ALTERNATE ROOF)

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Second Street/Penniman Property

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Second Street/Penniman Property

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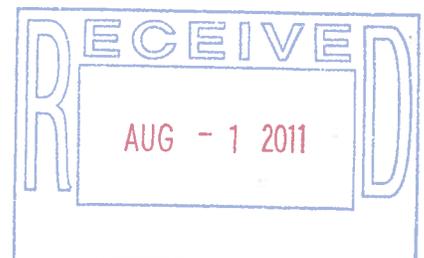
**LIMITED PHASE II ENVIRONMENTAL SITE ASSESSMENT
PETERSON PROPERTY
301, 309, AND 311 SECOND STREET AND 320 PENNIMAN ROAD
WILLIAMSBURG, VIRGINIA 23185**

ECS MID-ATLANTIC, LCC PROJECT 07:7667

**PREPARED FOR
JAMESTOWN MANAGEMENT COMPANY
WILLIAMSBURG, VA**

JUNE 27, 2005

PCR# 11-015



1.0 EXECUTIVE SUMMARY

ECS Mid-Atlantic, LLC (ECS) has been contracted by Jamestown Management Co, LLC to conduct limited environmental site assessment (ESA) for the Peterson property. This property, also referred to as "*subject property*", "*site*", or "*the property*" is located at 301, 309, and 311 Second Street and 320 Penniman Road within the City of Williamsburg, Virginia (Figure 1, Appendix I). Different parts of the main building were used as a welding and machine shop, a tire store, a muffler shop, upholstery shop, automobile parts store, and a flea market during the period from 1960 to late 1990s. Most recently, a part of the property was used as an automobile repair, maintenance, and detailing facility for the Williamsburg Ford Lincoln Mercury Dealership located nearby. The site currently contains seven above ground storage tanks (AST) for storage of used motor oil, new motor oil, fuel oil, or anti-freeze, one in-ground sump, and one in-ground hydraulic lift.

To evaluate the potential impacts of the past use of the property on soil and groundwater beneath the site, ECS proposed a site characterization program that included advancement of five borings, screening soil samples for volatile organic compounds, and collection of soil and groundwater samples for laboratory analyses. The areas of concern included the location where an in-ground hydraulic vehicle lift is located, the location where an in-ground sump is located, the location where seven above ground oil storage tanks are located, and the area located at the southeasterly corner of the property boundary where uncontrolled fill and waste material were found. The scope of services also included site reconnaissance to determine the current conditions based on visual inspection, review of geologic and hydrogeologic information of the site, review of historical information of the site, and a file review at the Virginia Department of Environmental Quality - Tidewater Regional Office (DEQ-TRO).

Soil samples were obtained continuously from the surface to the termination depth of the borings. Each sample was screened in the field using an organic vapor analyzer (OVA). The collected soil samples were also visually/olfactory screened for evidence of petroleum impacts by the on-site engineer/geologist. The soil samples exhibiting the highest degree of petroleum impact or those samples collected closest to the soil/groundwater interface were submitted to the contract laboratory for analysis for the presence and concentrations of volatile organic compounds (VOCs) via EPA Methods 8260 (analysis of 66 compounds), semi-volatile organic compounds respectively (SVOCs) via U.S. Environmental Protection Agency (EPA) Method 8270 (analysis of 56 compounds), and eight metals (arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver). Groundwater was also encountered within the borings.

Based on this assessment, there was no evidence of the presence of an underground storage tank at the site, insignificant concentrations of VOC were found during the field screening activities, and concentrations of representative individual VOC, SVOC, arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver acetone in the soil and groundwater samples were significantly lower than the corresponding Tier III DEQ Voluntary Remediation Project (VRP) screening levels and the corresponding EPA toxicity characteristic concentration levels.

Therefore, subsurface soil and groundwater at the subject site do not appear to be impacted by the past activities, in-ground hydraulic lift, in-ground sump, above ground oil storage tanks, and the fill area. As such, it is our opinion that no further environmental investigation, sampling, or testing is warranted for the subject site.



**SUBSURFACE EXPLORATION AND
PRELIMINARY GEOTECHNICAL ENGINEERING REPORT**

**SECOND STREET PROPERTY
WILLIAMSBURG, VIRGINIA**

ECS PROJECT NO. 07:10380

For

**Jamestown Management Corporation, LLC,
ITS AFFILIATES & SUBSIDIARIES & THEIR SUCCESSORS, ASSIGNS, &
GRANTEES**

**ATTN: Mr. Jim Bennett
213 Ingram Road
Williamsburg, Virginia 23188**

December 29, 2010

EXECUTIVE SUMMARY

This preliminary report contains the results of our subsurface exploration and geotechnical engineering analysis for the proposed development, which is planned to be constructed on a site located along the east side of Penniman Road and South of Second Street in Williamsburg, Virginia.

We understand that the proposed project will consist of six (6) attached 1-story commercial buildings totaling 13,466 sf located along the front portions of the project site, six (6) townhouse buildings with 29 total units located along the back portions of the project site, associated parking areas, a underground storm water facility, and a park/playground area. We were provided with a conceptual plan illustrating the development.

At the time of our field investigation the majority of the site was cleared with low lying vegetation, with up to 20 ft of fill located across the site and predominantly located to the East Side of the property. The site elevations are generally level, with the exception of a few stockpiles of soil scattered across the site. A deep ravine is located at the east end of the property

Surface cover encountered at the boring locations included approximately 4 to 5 inches of topsoil/rootmat at boring locations B-6 and B-8, 2 to 4 inches of gravel at boring locations B-1, B-2, B-7, B-14, and B-15, and FILL to depths of 2 to 18 ft bgs was encountered at Boring locations B-1, B-2, B-5 through B-18,. The fill generally contains a mixture of Sandy Clay and Clayey Sand with Organics, and construction debris (concrete, gravel, wood, etc).

Underlying the near surface topsoil, or fill we encountered Stratum I at boring locations B-2 through B-6, B-8, B-11, B-12, B-14 though B-18. Stratum I consisted of mixed deposits of Sandy CLAY (CL and CH) and Clayey SAND (SC). Occasionally a interbedded layer of Silty SAND (SM) was encountered. The coloring of this stratum ranged from gray to variations of brown. The stratum extended to boring termination depths of 6 ft to 15 feet, bgs. SPT N-values in this stratum ranged from 2 to 27 blows per foot (bpf), which corresponds to very loose to medium dense density and very soft to very stiff consistency.

Underlying Stratum I, we encountered Stratum II at boring locations B-16, B-17, and B-18. Stratum II consisted of mixed deposits of Sandy Clay (CL), and Silty and Clayey SAND (SM, SC) both with varying amounts of marine shell fragments. The coloring of this stratum ranged from variations of gray to variations of brown. The stratum extended to boring termination depths of 6 ft to 15 feet, bgs. SPT N-values in this stratum ranged from 3 to 13 bpf, which corresponds to very loose to medium dense density and very soft to stiff consistency. Boring logs describing soil conditions encountered are included in Appendix II of this report.

The data developed during this study indicate that the subsoil and groundwater conditions at the site are generally suitable for support of the proposed building and pavement construction provided the recommendations in this report are followed. Shallow foundations can be used to support the proposed structures if fill is removed from beneath them as recommended below. In deeper areas where FILL was encountered, we recommend a deep foundation system be utilized such as Timber Piles or Helical Anchors. Details are discussed below. The FILL composition is largely unknown and therefore the recommendations provided here are preliminary and subject to further exploration via test pits to verify deep foundation elements can be installed without damage. A follow up study and addendum report must be completed prior to construction of this project.

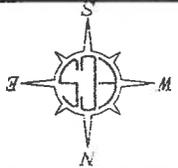
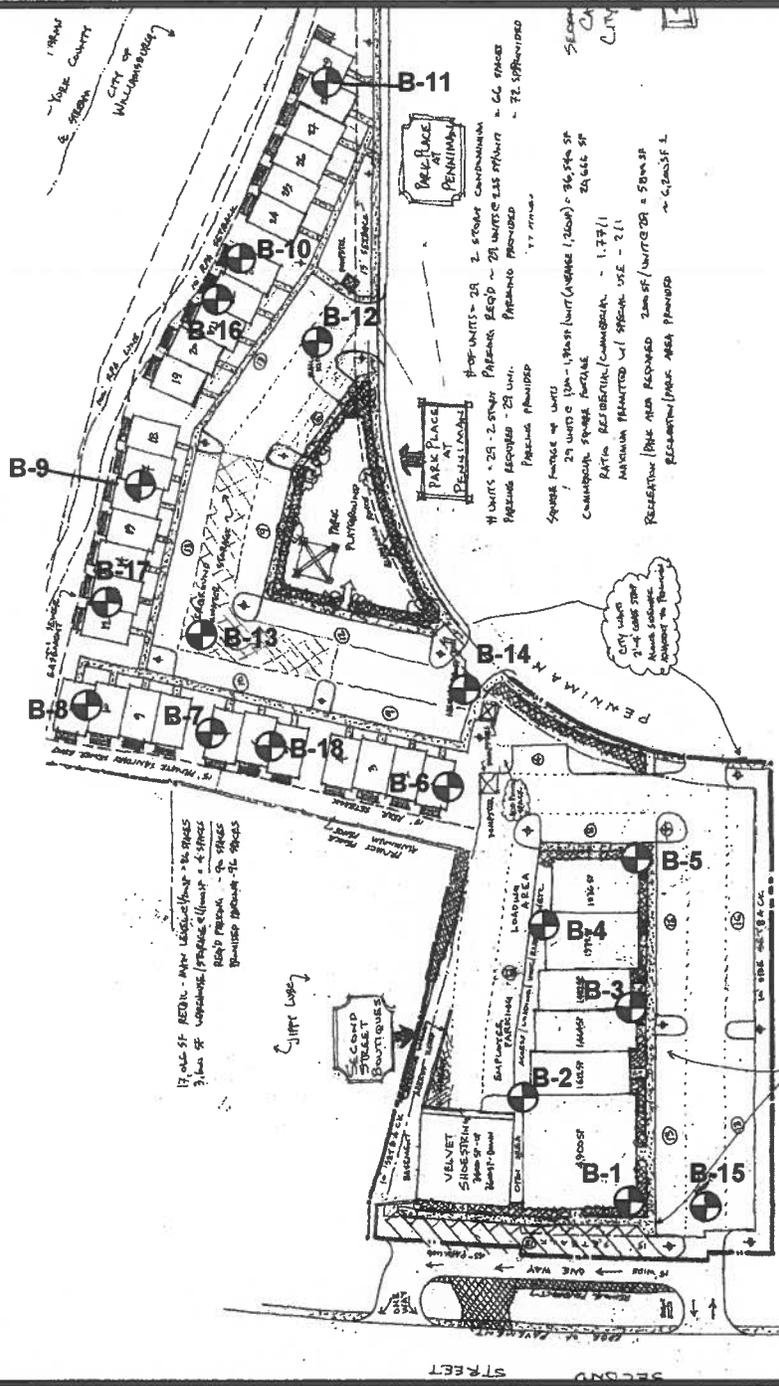
Provided the recommendations regarding removal of existing deleterious FILL are followed, the proposed buildings can be supported on a shallow spread footing foundation systems, bearing on suitable undisturbed natural soils or on properly placed and compacted Engineered Fill. For planning purposes, a net allowable soil bearing pressure of 2,000 pounds per square foot (psf) can be used, assuming the minimum widths and embedment depth recommended herein are employed. In order to achieve this soil bearing pressure and limit foundation settlements to one inch or less, all existing FILL should be undercut from below 5-foot expanded building limits such that footings bear directly in approved natural subgrades or compacted and documented Engineered Fill. Detailed preliminary foundation design recommendations are provided in this report.

The first floor can be supported as a slab-on-grade bearing on approved natural soils or compacted and documented Engineered Fill. Test pits have been recommended to determine the content and extent of the FILL present on site. All existing FILL may need to be removed from the expanded 5-foot building limits and be replaced with compacted and documented Engineered Fill. Detailed floor slab-on-grade design recommendations are provided in this report. However, pending the results of the test pit program and if the subgrades pass a proofroll test, the FILL may be able to remain below the slab on grades.

Based on the results of our soil test borings, it appears that the soils that will be exposed as pavement subgrades will consist mainly of Clayey SAND (SC). Laboratory testing of 7 bulk samples recovered from between 1 and 3 feet below existing grades indicated soaked CBR values ranging from 3.7 to 10.1. Using VDOT design standards, a design CBR of 4 can be employed for this project. This reduction in CBR value helps to account for typical variations and weaknesses in the soils across the site. Pavement design recommendations are included in this report.

Further information regarding the subsurface exploration procedures used; soil and groundwater conditions observed; recommended earthwork specifications; and design and construction recommendations for foundations, slabs-on-grade, and pavements is included in the text of this report.

This summary briefly discusses some of the major topics mentioned in the attached report. Accordingly, this report should be read in its entirety to thoroughly evaluate the contents.



LEGEND

⊕ - Approximate Boring Location

SCALE

NTS

SOURCE

AES Consulting Engineers, Inc.

DATED:
8/31/2010



FIGURE 1

BORING LOCATION PLAN
Second Street Development
Williamsburg, VIRGINIA

ECS PROJECT NO. 07:10380



June 17, 2011

Mr. Jim Bennett
Jamestown Management Corporation, LLC.
213 Ingram Road
Williamsburg, Virginia 23188

ECS Project No.: 07:10380

Reference: Test Pit Observation Letter
Second Street Property
Williamsburg, Virginia

Dear Mr. Bennett:

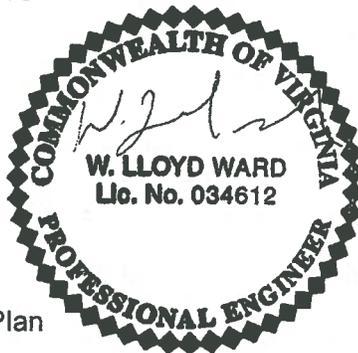
ECS Mid-Atlantic, LLC completed the Subsurface Exploration and Preliminary Geotechnical Engineering Report for the Second Street Property project on December 29, 2010. Our report stated that test pits should be performed prior to construction activities in order to evaluate the composition of the FILL materials. Approximately five (5) test pits were performed on June 14, 2011 across the project site. A test pit location plan and test pit logs are included as attachments.

Based on our test pit observations, the top 3- to 4-feet of FILL materials across the project site were comprised of SAND type soils containing large sized pieces of debris, specifically concrete. Below the top 3- to 4-feet and extending to the maximum FILL depth observed of 16-feet, the FILL materials were comprised of varying soil types with small pieces of debris (gravel, organics, brick and concrete fragments, etc.). Based on our field observations, it generally appears that helical piles can be installed properly if the top 3- to 4-feet of FILL materials, including large debris, are removed. It is noted that this is based on the information gained at the test pit locations and subsurface conditions may vary at other locations. Obstructions may be encountered and need to be removed to deeper depths than those shown in the test pits at other locations.

We appreciate the opportunity to provide consulting services to Jamestown Management, LLC during the design phase of this project. If you should have any questions regarding the information and recommendations contained in the accompanying report or if we can be of further assistance, please do not hesitate to contact us.

Respectfully,
ECS Mid-Atlantic, LLC

Sara B. Phillips
Sara Phillips
Project Geologist



W. Lloyd Ward
W. Lloyd Ward, P. E.
Principal Engineer

Attachments: Test Pit Location Plan
Test Pit Logs

Cc: Mr. Marc Bennett (mbennett@aesva.com)

Carolyn MURPHY - ARB#11-040~PCR#11-015

From: "David Tyrer" <ddt2007@gmail.com>
To: <cmurphy@williamsburgva.gov>
Date: 7/12/2011 6:41 PM
Subject: ARB#11-040~PCR#11-015
CC: "Carol Tyrer" <circacrm@yahoo.com>

Carolyn,

Thanks for giving me and my wife Carol the opportunity to review the plans for the architectural conceptual review and the upcoming special use permit request.

As adjoining residents, we are happy to see interest in creating an attractive useful area such as is designed. We would like to think that such development will help to revitalize the neighborhood a bit and improve everyone's quality of life in the area, as well as to promote some growth and business. To that end, I have some suggestions to the City and developers toward being a good neighbor and encouraging interest in their undertaking.

1. Partner with York County for the purpose of continuing walkways and bike paths along Penniman that terminate at the City of Williamsburg boundary line (also our property line). (This would potentially join nicely with the planned future Rt 60 redevelopment concept).
2. Require due diligence with respect to the illegal landfill on which part of this development is planned. Everyone that I've talked to in our neighborhood feels that the City of Williamsburg has long overlooked the possible hazards of this illegal landfill and or possible risks to human health or impact to the Chesapeake Bay that its contents may pose. A proper environmental sampling program should be done at the site to determine the nature and extent of any contaminants that could be leaching from the site. This needs to be transparent to nearby residents and future buyers who are stakeholders (as being possible receptors for potential hazards to human health). There have been tires, discarded oil tanks visible on the surface of the landfill over the years. (It was only several months ago that metal scrappers removed metal that had value from the embankment. Virginia DEQ should be involved with this process to validate the sampling program. Soil that was removed from alongside the former machine shop was deposited on the site. The potential contaminants in that soil alone are enough to require an environmental survey. Likewise, it may be the City of Williamsburg's responsibility under the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC 1101) to report releases from this site.
3. Storm water runoff: The creek into which most all runoff in the area west of 2nd street goes flows across our property and all of the adjacent properties in Middletown Farms. It has been severely scoured over the years due to very little control in the development of surface cover around the area. Every effort should be made in the area to reduce the CFS in that natural drainage. By the plans admission, the post development impervious cover nearly doubles the present flow. This is not as obvious in the 1 and 2 year flood plan, but is most pronounced in the 10 and 100 year plans. From our experience, it is 10 year floods that do the most damage to this natural stream channel. An underground storm water impoundment is planned to reduce the velocity, but repair of existing downstream natural drainage on the property of others is required to even begin to remedy the existing problem. York County has documented a serious mosquito problem in the area, some study needs to be referenced as to the effects of an underground storm water impoundment on the mosquito population. Increasing the impervious surface only exacerbates the problem. Though the stormwater management plan might meet minimum requirements, I would question if that is enough in this particular area that already has an acute problem.
4. The neighborly answer to items #2 and #3 is to investigate the extents of the landfill, remove the

- overburden and hazard as determined by the environmental survey, restore the streambed using the Riparian Buffer Tax credit or some such means and create a useable greenway for area residents, tourists, bicyclists in which a quality of life will be promoted to encourage interest in investment of this area.
5. The proposed elevation of the residential units on the finished filled land height, dwarves the existing houses in Middletown Farms. Likewise, the rear elevation as depicted in the drawings looks unattractive and a potential vinyl clad monolith. This is the sight that adjoining residents in Middletown Farms will be seeing and will have some determination on the attractiveness and value of their own properties. The rear elevation needs to be enhanced to look more like the front elevation. A similar situation happened as an unforeseen problem when the lot was developed for parking by the Ford dealership. When overhead lights were put on the lot, they were so high above the houses in Middletown Farms that they were blinding and disturbing to residents particularly in Winter, and discouraged the natural passage of wildlife in the area. I would hope that some consideration would be made for light pollution emanating from floodlights and overheads in the rear of the proposed condominiums.
 6. This development adds three entrances to Penniman, all on a dangerous blind curve and in close proximity to each other. One proposed entrance is essentially another cut-through to 2nd Street. There are already at least 2 cut-throughs between Penniman and 2nd Street (plus Parkway Drive and Capitol Landing) another is not needed and will potentially increase the likelihood of accidents. Two Penniman entrances should be enough, one of the three can be combined with another to lower the hazard and impervious surface area.
 7. Thanks for allowing me to air my concerns, I think most of us are truly interested in seeing the area developed nicely, but we most certainly want some consideration to our past and present issues. Some of those concerns have gone unnoticed since Middletown Farms is a York County subdivision, but now is a chance to create something meaningful and to promote our community. (After all, we all have Williamsburg addresses, and get some of our shared services from the City of Williamsburg). Also, thanks for taking note to have AES recheck the boundary as displayed in the plan against our plat.

David Tyrer
475 Burnham Road
Williamsburg, VA 23185