

S E SYKES, BOURDON,
A M AHERN & LEVY, P.C.

The Honorable William D. Sessions, Jr.
Vice Mayor Louis Jones
Members of City Council
July 2, 2009
Page 2

With best regards, I am

Very truly yours,



R. Edward Bourdon, Jr.

REBjr/arhm
cc: Jack Whitney, Director, Department of Planning
Karen Frochilo, Department of Planning
Radhakrishna Renukunta
Robert S. Miller, III, MSA, P.C.
ConditionalRezone/EndeavorEnterprises/VillagCenter/Sessions_Ltr6-02-09

**S B SYKES, BOURDON,
A L AHERN & LEVY, P.C.**

ATTORNEYS AND COUNSELORS AT LAW

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MICHAEL J. LEVY
HOWARD R. SYKES, JR.

July 2, 2009

Via Hand Delivery and Email

The Honorable William D. Sessoms, Jr.
Vice Mayor Louis Jones
Members of City Council
c/o Ruth Hodges Fraser, City Clerk
Office of the City Clerk
City Hall Building #1, Room 281
Municipal Center
Virginia Beach, Virginia 23456

Re: Application of Endeavor Enterprises, LLC for Change of Zoning District Classification from AG-1/AG-2 Agricultural District to Conditional B-1A Limited Community Business District and P-1 Preservation District on 3 assembled parcels totaling 19.94 acres in the Princess Anne District (east side of Holland Road, south of Chestnut Oak Way and north of Sugar Maple Drive)

Dear Mayor Sessoms, Vice Mayor Jones and Members of City Council:

On behalf of the principals of Endeavor Enterprises, LLC, I am writing to formally request the pending rezoning application which is scheduled for public hearing on Tuesday, July 14, 2009 be deferred until your Tuesday, August 11, 2009 public hearing.

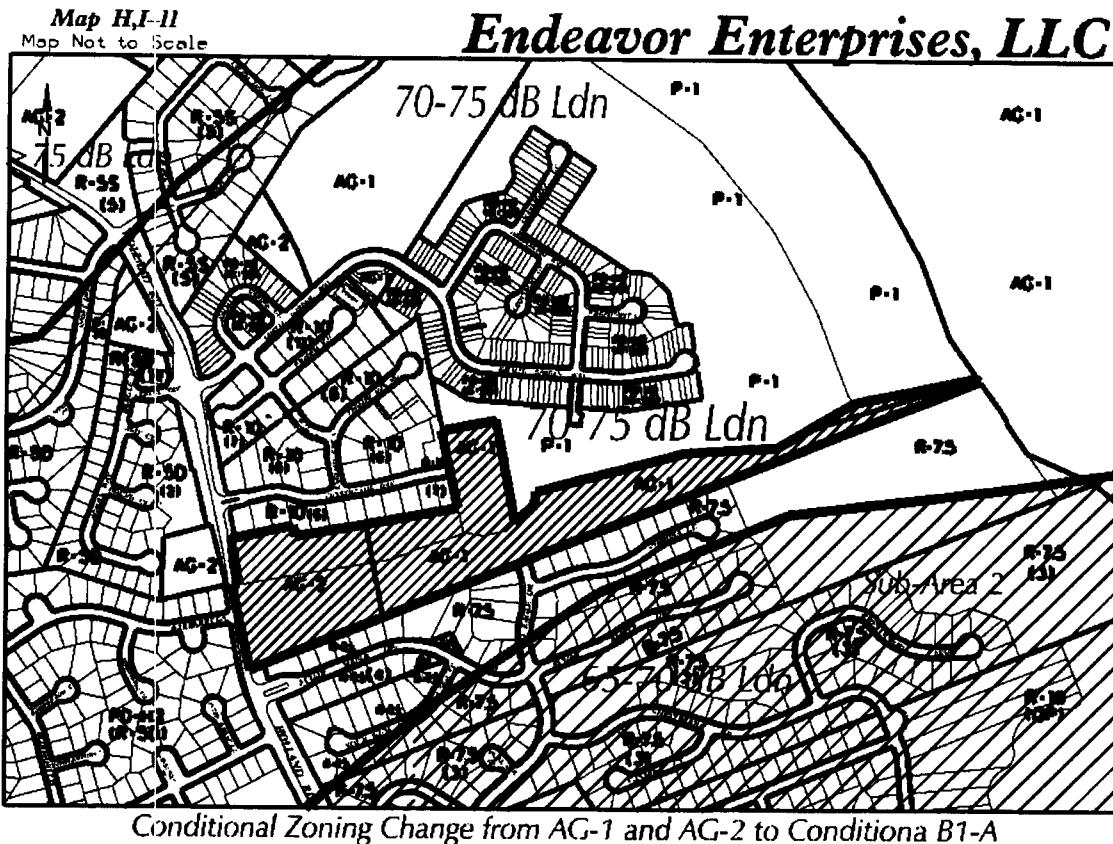
The purpose for the deferral is to provide additional time for my clients to finalize their financing commitments. I can report that substantial progress has been made, and that my clients assure me that no additional deferrals will be requested.

As I expressed in my June 2, 2009 correspondence, given the uncertainties in the financial markets and the significant amount of infrastructure improvements associated with this proposed conditional rezoning, it would be imprudent on my clients' part to proceed to a final vote on the rezoning without an acceptable financing commitment in hand.

As was the case with our first deferral request, we are advising our neighbors today of this deferral request, in order to minimize any inconvenience.

Should any of you have any questions or concerns regarding this request or this application in general, please do not hesitate to contact me.

ENDEAVOR ENTERPRISES



Relevant Information:

- Princess Anne District
- The applicant proposes to rezone a portion of properties zoned AG for community-oriented commercial uses and a natural area to be dedicated to the City of Virginia Beach.
- The development consists of 9,315 SF of day care, 20,000 SF of retail, 26,000 SF of office and personal services, and 5,000 SF of restaurant space.
- The project is in two phases, with the phases tied to the future widening of Holland Road.

Evaluation and Recommendation:

- Planning Staff recommended denial
- Planning Commission recommends approval (8-1)
- There was opposition.



CITY OF VIRGINIA BEACH AGENDA ITEM

ITEM: ENDEAVOR ENTERPRISES, L.L.C., Change of Zoning District Classification, AG-1 and AG-2 Agricultural Districts to Conditional B-1A Limited Business District and P-1 Preservation District, east side of Holland Road, approximately 120 feet south of Chestnut Oak Way. PRINCESS ANNE DISTRICT.

MEETING DATE: August 11, 2009

■ **Background:**

The applicant proposes to change the zoning of a 19.94-acre site currently zoned Agricultural to Conditional B-1A Limited Business District and P-1 Preservation District. The purpose of the rezoning is to develop a commercial center and a child care facility on 14.76 acres of the site, with the remaining 5.18 acres being dedicated to the City of Virginia Beach for natural area preservation.

The City Council deferred this application at the request of the applicant on June 9 and July 7.

■ **Considerations:**

The proposal depicts four buildings in two phases with a combination of professional offices, retail, and a stand-alone daycare. The first phase will include two one-story buildings, one of which will consist of a mix of retail and office and the second, a daycare facility. The second phase of the development will include a one-story retail building and a two-story office building.

The buildings are located such that two buildings are toward the front of the property, an office building is positioned adjacent to an adjoining neighboring park, and the daycare is in a recessed portion of the site to the north. Where possible, existing trees will be retained, and additional infill landscape planting will be provided to buffer adjacent neighborhoods.

The Comprehensive Plan states that where residential and commercial uses adjoin one another, the preferred land use relationship should reflect higher density residential and lower intensity commercial uses (p 90). Land uses proposed for infill sites as well as their density, material, height, setback, yard area and other design considerations should complement and reinforce the predominant physical character of the surrounding area (p 91).

In the past, the site may have been suitable for rezoning that would have allowed development of single-family residential development consistent with the adjoining neighborhoods. Under current Comprehensive Plan and Zoning Ordinance provisions pertaining to AICUZ constraints, however, such development is no longer acceptable; any residential development would have to be at the density allowed by the existing Agricultural zoning. The unsuitability of the applicant's property for residential development at a density consistent with the adjoining neighborhoods is demonstrated by City Council's 2006 denial of the applicant's request to rezone the portion of the site at the existing terminus of Chestnut Oak Way for five single-family lots.

Based on this constraint, Staff finds the applicant's desire to provide a non-residential use intended to serve the surrounding area is appropriate; however, Staff cannot support the intensity of the non-residential development proposed by the applicant. Neighborhood serving uses such as daycare, office, personal services, and a limited range of retail businesses are acceptable, but the intensity of the applicant's proposal, in Staff's opinion, is such that it is incompatible with the surrounding residential area. The proposed intensity is more suited to a larger commercial area, not a long, narrow site between two existing residential neighborhoods.

Staff cannot support this application at the currently proposed intensity of proposed uses.

■ **Recommendations:**

The Planning Commission passed a motion by a recorded vote of 8-1 to approve this request as proffered.

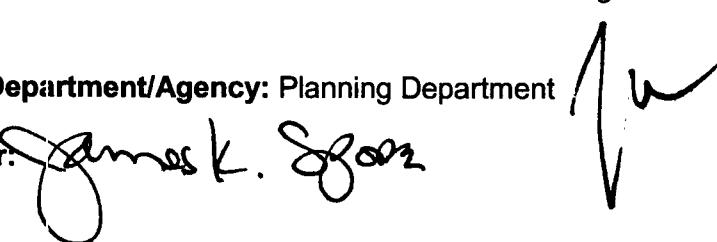
■ **Attachments:**

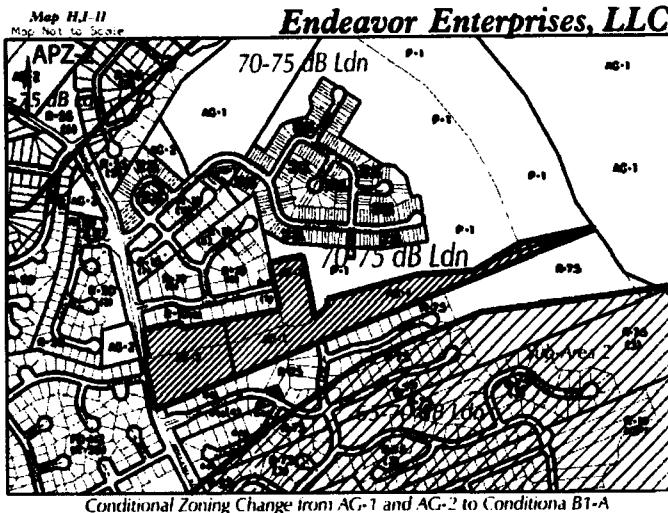
Staff Review and Disclosure Statement
Planning Commission Minutes
Location Map and Summary

Recommended Action: Staff recommends denial. Planning Commission recommends approval.

Submitting Department/Agency: Planning Department

City Manager:





ENDEAVOR ENTERPRISES, LLC

Agenda Item 22

May 13, 2009 Public Hearing

STAFF PLANNER:
Karen Prochilo

REQUEST:

Change of Zoning District Classification from AG-1 and AG-2 Agricultural Districts to Conditional B-1A Limited Community Business District and P-1 Preservation District.

ADDRESS / DESCRIPTION: Property located on the east side of Holland Road approximately 120 feet south of Chestnut Oak Way.

GPIN:
14954173360000
14955195180000 portion
of
14955126960000

ELECTION DISTRICT:
PRINCESS ANNE

SITE SIZE:
Total site: 19.94 acres
Proposed B-1A site:
14.76 acres
Proposed P-1 site:
5.18 acres

AICUZ:
70 to 75 dB Ldn

SUMMARY OF REQUEST

The applicant proposes to rezone a portion of existing agricultural properties for community-oriented commercial uses and to rezone the remaining portion for natural area preservation, dedicating that area to the City of Virginia Beach. The property is one of the few infill properties remaining in the area and is surrounded by suburban neighborhoods constructed in the past 15 years. One of the parcels involved in this rezoning had been before Planning Commission and City Council for a Conditional Rezoning request for five (5) single family lots in a 70 -75 dB DNL AICUZ. As residential structures within this AICUZ are designated as 'not compatible' with Navy flight operations associated with NAS Oceana, the City Council denied the rezoning request on June 27, 2006. The applicant then appealed the decision of the City Council to the Circuit Court, which upheld the Council's decision.

The applicant has met with the adjacent neighborhoods for input on three occasions. The applicant's current proposal incorporates input from the neighborhood and staff. The proposal depicts four buildings in two phases: with a combination of professional offices, retail, and a stand-alone daycare. The first phase will include two buildings of one single story with a mix of retail and office. The second building is a single-story daycare. The second phase of the development will include a single-story retail building and a two-story office building. Additionally, the applicant has agreed to road improvements along Holland Road.

There is a creek running through the length of the site and the applicant's plan uses the creek as an amenity, placing a multipurpose trail along one side and the access road on the other side in a cleared area. Building placement consists of two buildings toward the front of the property, an office building positioned adjacent to an adjoining neighboring park, and daycare in a recessed portion of the site to the north. Where possible, existing trees will be retained, and additional infill landscape planting will be provided to buffer adjacent neighborhoods.

The designs of the four proposed buildings are similar in materials and style. The building design integrates traditional elements with a European accent. The exterior façade incorporates a cultured stone base with an exterior insulation finish system (EIFS) applied above the stone. The use of metal hip roofs and flat roofs capped with an EIFS molded crown accent the buildings. The predominant building material colors consist of neutral tones.

LAND USE AND ZONING INFORMATION

EXISTING LAND USE: Undeveloped wooded vacant site

SURROUNDING LAND USE AND ZONING:	North:	• Residential single-family subdivision, open space / R-10 Residential District, P-1 Preservation District
	South:	• Residential single-family subdivision / R-7.5 Residential District
	East:	• Undeveloped property / AG-1 Agricultural District
	West:	• Across Holland Road, a single-family subdivision / R-5D Residential District w/ PD-H2 overlay

NATURAL RESOURCE AND CULTURAL FEATURES:

The site is undeveloped with large stands of trees. There is a branch of West Neck Creek flowing down the middle of the site from Holland Road to West Neck Creek. There is a Southern Watershed buffer on either side of the ditch. A portion of the site along one side of the ditch (in the buffer area) has been cleared by the City to access the waterway for cleaning and maintenance.

IMPACT ON CITY SERVICES

MASTER TRANSPORTATION PLAN (MTP) / CAPITAL IMPROVEMENT PROGRAM (CIP): Holland Road in the vicinity of this application is a narrow two-lane undivided minor suburban arterial. This section of roadway is shown on the Master Transportation Plan as a divided roadway within a 125-foot right-of-way. The Holland Road Phase VI roadway project will widen Holland Road to a four-lane divided roadway along the front of the proposed development. This VDOT administered project is currently in the right-of-way acquisition stage. Due to reduced state funding, the construction start date has been moved beyond VDOT's current Six-Year Plan.

<u>TRAFFIC:</u>	Street Name	Present Volume	Present Capacity	Generated Traffic
	Holland Road	17,300 ADT ¹ (2007)	15,000 ADT ¹ (Level of Service "D") -	Existing Land Use ² – 20 ADT
		16,500 ADT ¹ (2008)	16,200 ADT ¹ (Level of Service "E")	Proposed Land Use ³ – 4,337 ADT

¹ Average Daily Trips
² as defined by AG-2 zoning
³ as defined by 10,000 SF day care center, 40,000 SF office, 20,900 SF retail & 5,000 SF restaurant

It is important to note that the Holland Road Phase VI project does not include a median crossover on Holland Road at the proposed access point for the proposed Village Centre at Holland Creek, opposite Barberry Lane. The current arrangement of median crossovers included on the Holland Road plans would prevent the City of Virginia Beach from adding a median crossover at the Village Centre access point, meaning that when the Holland Road project is eventually completed as a divided roadway, the Village Centre development will be served with a right-in/right-out access arrangement. Traffic from the north on Holland Road bound for this development would have to make a U-turn at Sugar Maple Drive to return north towards the site. Traffic leaving the development headed southbound on Holland Road would be required to travel north on Holland Road, 1000 feet to Saville Garden Way to make a U-turn to access southbound Holland Road.

Public Works Engineering/Project Management Comments

The proposed development will impact the Holland Road Phase VI roadway project. A right-of-way, temporary slope easement, and utility easement are needed for the completion of the project. These areas are not shown in the conceptual plan. As per the VDOT right-of-way section, parcels 060 (Endeavor Enterprises) and 061 (George McCoy) right-of-way for Holland Phase IV project were already acquired. For further coordination, developer to contact the City of Virginia Beach Holland Road Phase VI project manager, Alex Paragas at 385-4131.

Public Works Engineering/Traffic Engineering Comments

Traffic Engineering has reviewed the Traffic Impact Study (TIS) dated November 14, 2008 and the Conceptual Right-of-Way Improvements Plan dated December 10, 2008 for the Village Centre at Holland Creek development and is conditionally approving the Conclusions of the TIS with the following comments/exceptions:

1. The TIS incorrectly states that the daily traffic volume on this section of Holland Road was 12,800 vehicles per day (vpd) in 2007. The correct daily traffic count on this portion of Holland Road was 17,300 vpd in 2007 and recently completed traffic counts showed 16,500 vpd for 2008.

2. The TIS concludes that a traffic signal will be warranted at the access point on Holland Road at approximately 70% site build out. Traffic Engineering cannot support that conclusion because the traffic signal warrants analysis is incomplete. While we can agree that the one hour warrant will be met, the data presented in the TIS was not sufficient to determine that the eight hour and four hour warrants are met. Traffic Engineering believes that a complete traffic signal warrants analysis would show that only the one hour traffic signal warrant would be met, and therefore a traffic signal would not be considered based on projected traffic volumes. Traffic Engineering will however require the developer to post a traffic signal bond during the site plan stage to cover the full cost of a traffic signal if it is warranted based on actual traffic volumes.
3. The TIS reports the future level of service at the access point intersection with Holland Road and Barberry Lane as a signalized intersection, but does not include the level of service as an unsignalized intersection. Traffic Engineering has run the unsignalized intersection analysis for the intersection based on full development of the site and Holland Road still as a two-lane undivided roadway. This analysis shows that in 2012, the left turn movement out of the development onto southbound Holland Road will operate at a Level of Service (LOS) F in the AM and PM peak hours. The Barberry Lane approach to the intersection will also operate at a LOS F in the AM and PM peak hours. The Barberry Lane approach would operate at a LOS D in the AM and PM in 2012 as a three legged intersection if the Village Centre development was not built.

Public Works Engineering / Stormwater Comments

Stormwater management facilities appear to be too small to accommodate the total development. If infiltration type facilities are to be used, soil analysis and boring should be done to ensure adequate permeability and separation from the seasonal high groundwater table. Wetlands delineation is to be performed to prevent impacts to wetlands. Coordinate the stormwater management plan with the Holland Road Phase VI project.

WATER: This site must connect to City water. There is a 16-inch City water main in Holland Road fronting the site.

SEWER: This site must connect to City sanitary sewer. City sanitary sewer does not front the proposed parcel. Plans and bonds will be required for any construction extensions of the City sanitary sewer system. An engineering hydraulic analysis of Pump Station #571 and the sanitary sewer collection system is required to ensure future flows can be accommodated. There is an 8-inch City gravity sanitary sewer main in a public utility easement crossing a portion of the property. There is an 8-inch City gravity sanitary sewer main in Bald Eagle Road. There is an 8-inch City gravity sanitary sewer main in Sugar Maple Drive.

FIRE: No Fire Department comments at this time. Comments will be provided during site plan review.

EMS: A turn lane is encouraged for this proposal. Additional comments may be included at site plan review.

Recommendation:
Staff recommends denial.

EVALUATION AND RECOMMENDATION

Comprehensive Plan:

The Comprehensive Plan states that where residential and commercial uses adjoin one another, the preferred land use relationship should reflect higher density residential and lower intensity commercial uses (p 90). Land uses proposed for infill sites as well as their density, material, height, setback, yard area and other design considerations should complement and reinforce the predominant physical character of the surrounding area (p 91).

Evaluation:

This applicant has attempted to combine a balanced network of buildings, parking, and open space. The layout has established buffers around the creek bed, as well as buffering around the perimeter of the development against the residential neighborhoods. The applicant's intent is to provide a limited commercial development that can support the needs of the nearby residential neighborhoods without impacting adjacent uses.

The site is one of the few remaining infill parcels along this portion of Holland Road. At some point in the past, the site may have been suitable for single-family residential development consistent with the adjoining neighborhoods. Under current Comprehensive Plan and Zoning Ordinance provisions pertaining to AICUZ constraints, however, such development is no longer acceptable. The unsuitability of the applicant's property for residential development is demonstrated by City Council's 2006 denial of the applicant's request to rezone a portion of the site for five single-family lots.

Based on this constraint, Staff finds the applicant's desire to provide non-residential uses intended to serve the surrounding area is appropriate; however, Staff cannot support the intensity of the non-residential development proposed by the applicant. Neighborhood serving uses such as daycare, office, personal services, and a limited range of retail businesses are acceptable, but the intensity of the applicant's proposal, in Staff's opinion, is such that it is incompatible with the surrounding residential area.

Staff cannot support this application at the currently proposed intensity of proposed uses.

PROFFERS

The following are proffers submitted by the applicant as part of a Conditional Zoning Agreement (CZA). The applicant, consistent with Section 107(h) of the City Zoning Ordinance, has voluntarily submitted these proffers in an attempt to "offset identified problems to the extent that the proposed rezoning is acceptable," (§107(h)(1)). Should this application be approved, the proffers will be recorded at the Circuit Court and serve as conditions restricting the use of the property as proposed with this change of zoning.

PROFFER 1:

When the portion of the Property zoned B-1A is developed, it shall be developed and landscaped substantially as shown on the exhibit entitled "CONCEPTUAL SITE LAYOUT & LANDSCAPE PLAN OF VILLAGE CENTER AT HOLLADN CREEK," prepared by Ionic Dezign Studios and MSA, P.C., dated 03/06/09, which has been exhibited to the Virginia Beach City Council and is on file with the Virginia Beach Department of Planning (hereinafter "Conceptual Site Plan").

PROFFER 2:

When the property is developed, the exterior building materials, colors and architectural design elements of the four (4) buildings designated on the Conceptual Site Plan shall be substantially as depicted on the exhibits entitled "VILLAGE CENTER AT HOLLAND CREEK – TYPICAL RETAIL BUILDING ELEVATION;

VILLAGE CENTER AT HOLLAND CREEK – DAYCARE ELEVATION; VILLAGE CENTER AT HOLLAND CREEK – OFFICE BUILDING ELEVATION" dated 03/04/09, prepared by Ionic Dezign Studios, which have been exhibited to the Virginia Beach City Council and is on file with the Virginia Beach Department of Planning (hereinafter "Building Elevations").

PROFFER 3:

When the Property is developed, the Grantor shall make those road improvements to Holland Road as depicted on the exhibit entitled "Conceptual Right of Way Improvement Plan for Village Center at Holland Creek", dated 12/09/08, prepared by MSA, P.C., which has been exhibited to the Virginia Beach City Council and is on file with the Virginia Beach Department of Planning (hereinafter "Right of Way Improvements").

PROFFER 4:

When the Property is developed, if the improvement and widening of Holland Road to four (4) through lanes of vehicular capacity from its intersection with Dam Neck Road, south to its intersection with Crestwood Drive has not commenced, only the buildings designated #1, Single Story Daycare and #2, Single Story Retail / Office on the Conceptual Site Plan may be developed. No occupancy of the buildings designated #3, Single Story Retail and #4, 2-Story Office on the Conceptual Site Plan shall be permitted until improvement and widening of Holland Road to four (4) through lanes of vehicular capacity from Dam Neck Road to its intersection with Crestwood Drive has been completed.

PROFFER 5:

The Building designated #2, Single Story Retail / Office on the Conceptual Site Plan shall have no more than 16,000 square feet of space occupied by retail and restaurant uses. The remaining space in Building #2 shall be occupied by office or personal service uses.

PROFFER 6:

Prior to submittal of a Site Development Plan for the Buildings designated as #3, single Story Retail and #4, 2-story Office (i.e. Phase II), Grantor shall prepare and submit a "Supplemental Traffic Impact Study" to the Director of the Virginia Beach Department of Planning.

PROFFER 7:

In addition to the limited list of permitted uses in the B-1A Limited Community Business District, the Grantor further proffers that Building #4, 2-Story Office shall not be used for any retail or restaurant uses; Building #1, Single Story Daycare shall only be used for an educational / child daycare or office use, no convenience store use shall be permitted on the Property; no establishment shall be permitted to sell alcohol for off premises consumption; and no restaurant shall be permitted to sell alcohol after 11:00 p.m.

PROFFER 8:

When the Property is developed, only one (1) freestanding monument style sign may be erected on the Property, constructed with a base matching the material and predominant color of the buildings as depicted on the Conceptual Site Plan. All building mounted signage shall be channel letters on a raceway (i.e. no block signs) and only the lettering may be illuminated.

PROFFER 9:

When the Property is developed, the dumpsters depicted on the Conceptual Site Plan shall be screened / housed in a masonry structure (3 sides) with the exterior surface matching the building material and color. Dumpsters shall not be tipped /emptied before 8:30 a.m. nor after 8:30 p.m.

PROFFER 10:

The hours of daily operation for any educational /child daycare use in the building designated #1, Single Story Daycare on the Conceptual Site Plan shall not commence prior to 6:00 a.m. nor conclude subsequent to 7:00 p.m.

PROFFER 11:

All outdoor lighting shall be shielded, deflected, shaded and focused to direct light down onto the premises and away from the adjoining property. The development shall use "The Largent "lighting fixtures and a complete photometric plan shall be submitted to the Planning Department for review and approval during detailed site plan review.

PROFFER 12:

When the Property is developed, the Grantor shall install and maintain an 8' wide multi-purpose trail from Holland Road through the open space within the developed portion of the property, through the open space at the eastern end of the center and terminating at the 5.18 acres of land to be zoned P-1 Preservation District substantially as depicted on the Conceptual Site Plan. The Grantor shall dedicate to the Grantee a pedestrian access easement over the multi-purpose trail and create a second pedestrian walkway from the multi-purpose trail to the small City owned park which abuts the southern boundary of the Property, as depicted on the Conceptual Site Plan.

PROFFER 13:

Prior to issuance of a Certificate of Occupancy for any building on the Property, the Grantor shall dedicate to the Grantee, the 5.18 acre portion of the property to be zoned P-1 Preservation District.

PROFFER 14:

Further conditions may be required by the Grantee during detailed Site Plan review and administration of applicable City Codes by all cognizant City Agencies and departments to meet all applicable City Code requirements.

STAFF COMMENTS: *The proffers listed above are acceptable in respect to the level of quality of the project. Staff, however, still finds the proposal too intense as depicted.*

The City Attorney's Office has reviewed the proffer agreement dated March 12, 2009, and found it to be legally sufficient and in acceptable legal form.

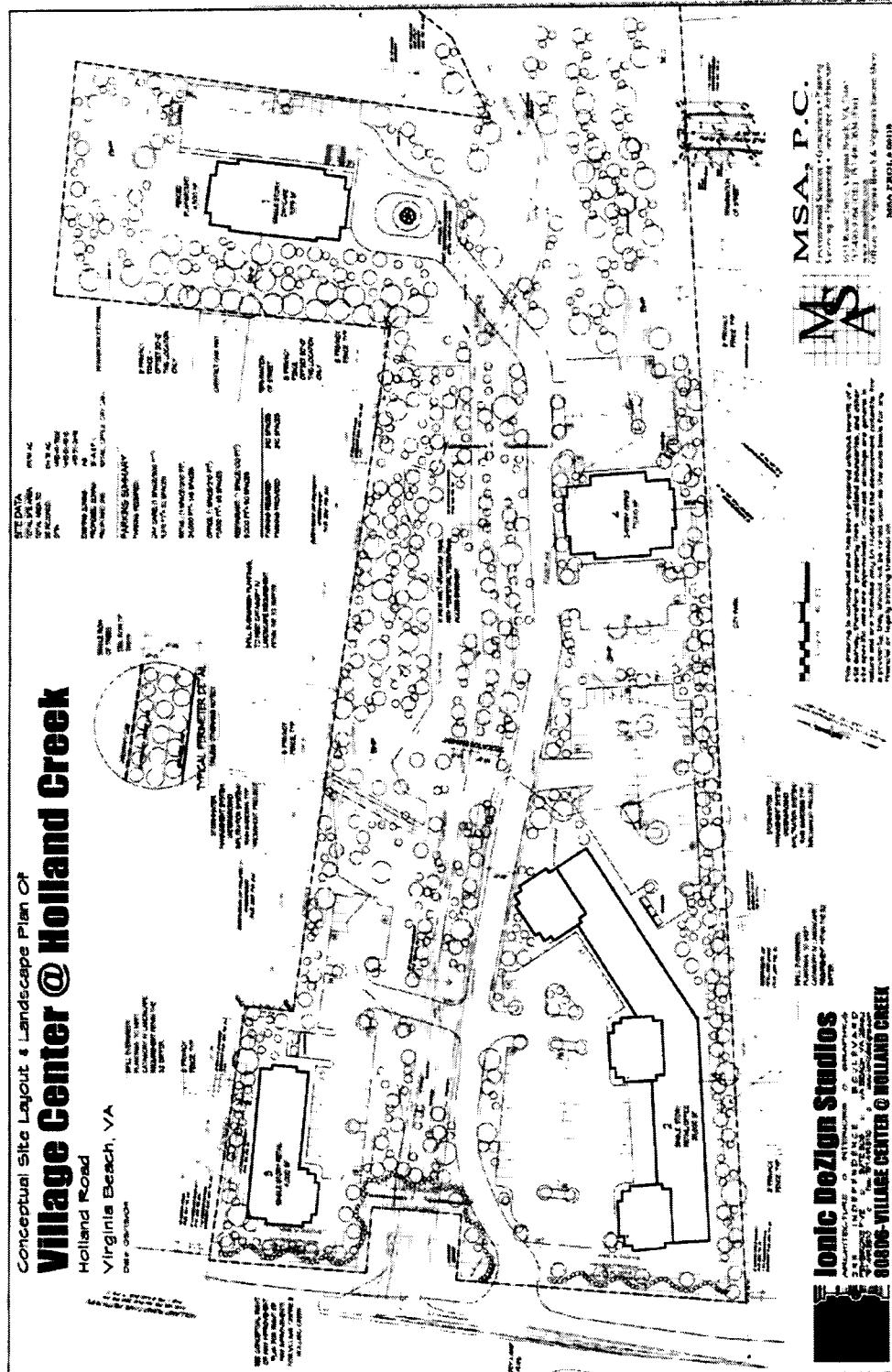
NOTE: *Further conditions may be required during the administration of applicable City Ordinances. Plans submitted with this rezoning application may require revision during detailed site plan review to meet all applicable City Codes and Standards.*

The applicant is encouraged to contact and work with the Crime Prevention Office within the Police Department for crime prevention techniques and Crime Prevention Through Environmental Design (CPTED) concepts and strategies as they pertain to this site.



AERIAL OF SITE LOCATION

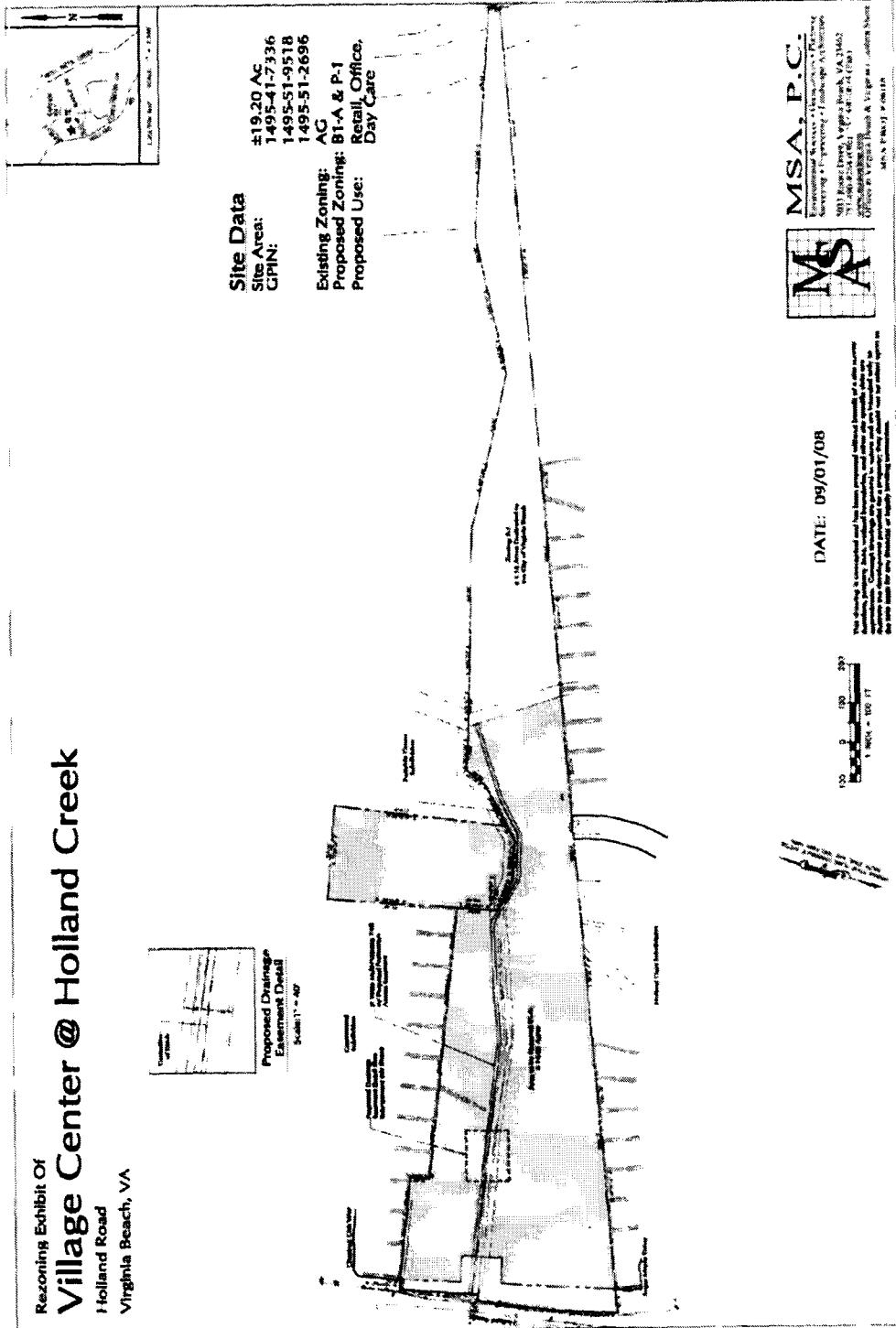
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PROPOSED SITE PLAN

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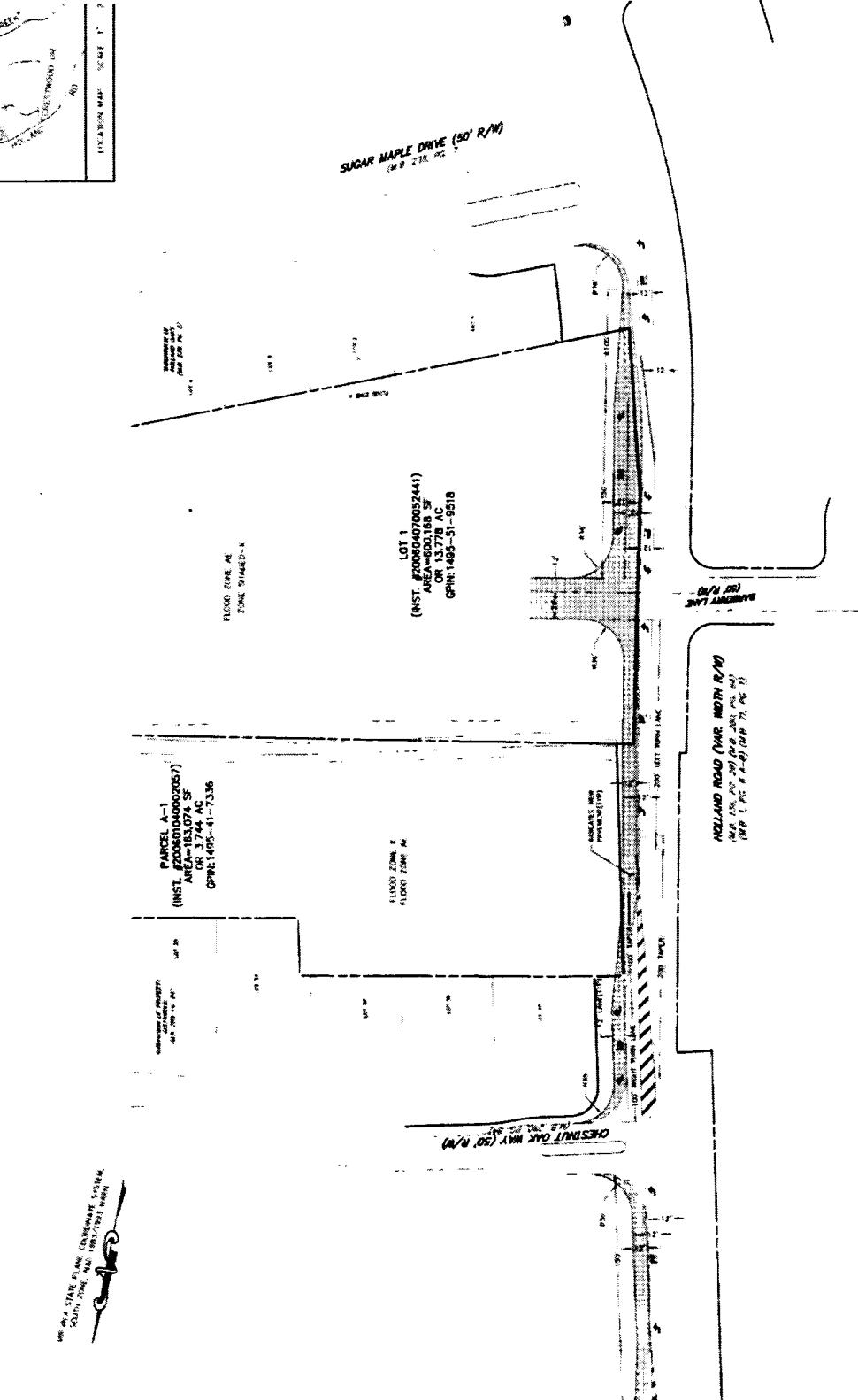
Rezoning Exhibit Of
Village Center @ Holland Creek
Holland Road
Virginia Beach, VA



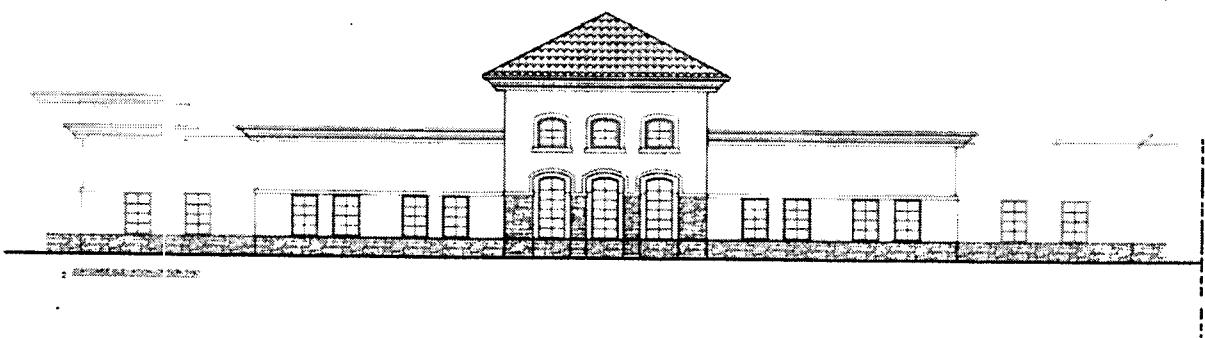
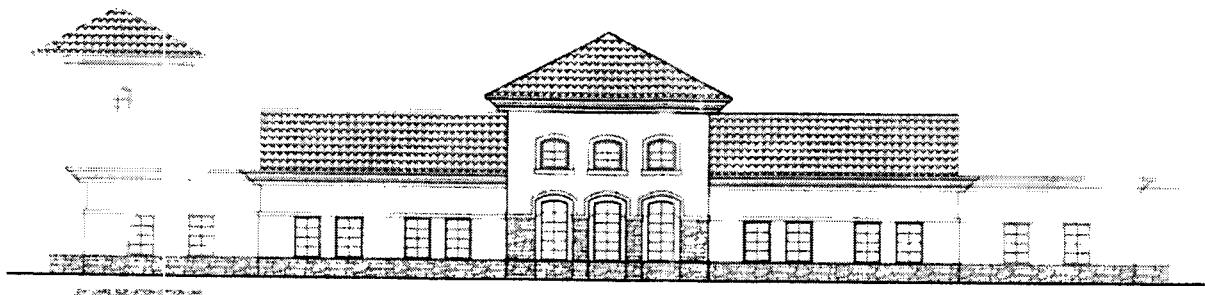
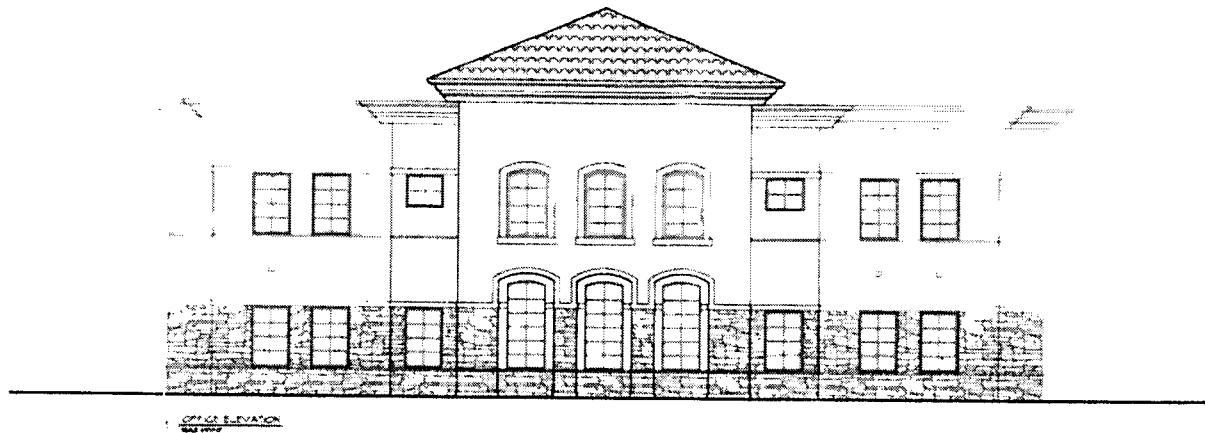
REZONING EXHIBIT

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1990 STATE PLANE
SOUTH ZONE, 1983
TRANSVERSE SYSTEM



HOLLAND ROAD IMPROVEMENTS EXHIBIT



PROPOSED BUILDING ELEVATIONS

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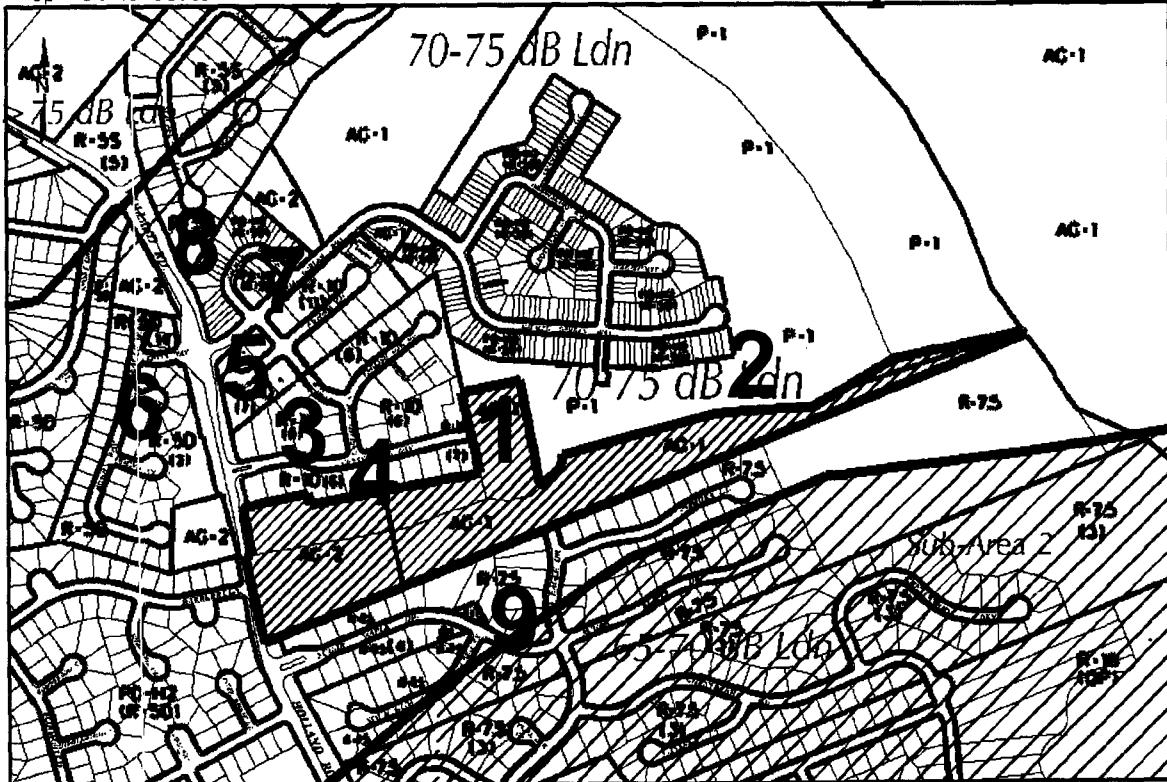


PROPOSED BUILDING ELEVATIONS

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Endeavor Enterprises, LLC

Map H,I-II
Map Not to Scale



Conditional Zoning Change from AG-1 and AG-2 to Conditiona B1-A

1	06/27/06	Conditional Rezoning from AG-1 to R-10	Denied
2	12/10/91	Conditional Rezoning from R-5D w/ PD-H2 to P-1	Granted
3	09/03/98	Conditional Rezoning from AG-1& AG-2 to R-10	Granted
4	03/09/99	Subdivision Variance	Granted
5	04/10/01	Conditional Rezoning from AG-1& AG-2 to R-10	Granted
6	05/13/03	Conditional Rezoning from AG-1& AG-2 to R-5D	Granted
7	04/10/01	Conditional Rezoning from AG-1& AG-2 to R-10	Granted
8	10/22/84	Conditional Rezoning from R-8 to R-5D w/ PD-H2	Granted
9	11/02/87	Conditional Rezoning from AG-1to R-6	Granted

ZONING HISTORY

CONDITIONAL REZONING APPLICATION

DISCLOSURE STATEMENT

APPLICANT DISCLOSURE

If the applicant is a corporation, partnership, firm, business, or other unincorporated organization, complete the following:

1. List the applicant name followed by the names of all officers, members, trustees, partners, etc. below: *(Attach list if necessary)*

Endeavor Enterprises, L.L.C.: Vishnu Sappati, Member; Radhakrishna Renukunta, Member

2. List all businesses that have a parent-subsidiary¹ or affiliated business entity² relationship with the applicant: *(Attach list if necessary)*

Check here if the applicant is **NOT** a corporation, partnership, firm, business, or other unincorporated organization.

PROPERTY OWNER DISCLOSURE

Complete this section only if property owner is different from applicant.

If the property owner is a corporation, partnership, firm, business, or other unincorporated organization, complete the following:

1. List the property owner name followed by the names of all officers, members, trustees, partners, etc. below: *(Attach list if necessary)*

New Endeavors, L.C.: Vishnu Sappati, Member; Dr. Suhas Deshmukh, Member; Radhakrishna Renukunta, Member

2. List all businesses that have a parent-subsidiary¹ or affiliated business entity² relationship with the applicant: *(Attach list if necessary)*

Check here if the property owner is **NOT** a corporation, partnership, firm, business, or other unincorporated organization.

¹ & ² See next page for footnotes

CONDITIONAL REZONING APPLICATION

DISCLOSURE STATEMENT

ADDITIONAL DISCLOSURES

List all known contractors or businesses that have or will provide services with respect to the requested property use, including but not limited to the providers of architectural services, real estate services, financial services, accounting services, and legal services: (Attach list if necessary)

Engineering Services, Inc.
Sykes, Bourdon, Ahern & Levy, P.C.

¹ "Parent-subsidiary relationship" means "a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

² "Affiliated business entity relationship" means "a relationship, other than parent-subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that should be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person own or manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a close working relationship between the entities." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

CERTIFICATION: I certify that the information contained herein is true and accurate. I understand that, upon receipt of notification (postcard) that the application has been scheduled for public hearing, I am responsible for obtaining and posting the required sign on the subject property at least 30 days prior to the scheduled public hearing according to the instructions in this package.

Endeavor Enterprises, L.L.C.

By: Vishnu Sappati _____

Applicant's Signature

New Endeavor Enterprises, L.L.C.

By: Vishnu Sappati _____

Property Owner's Signature (if different than applicant)

Vishnu Sappati, Member
Print Name

Vishnu Sappati, Member
Print Name

Conditional Rezoning Application
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of retail on this if he did this all office. I think he has tried to cut it back. And it looks like. We saw a number of different iterations of this site, and it looks there has been a lot of attempt to reduce the intensity. I think the intensity is reasonable personally. I'm going to support it.

Janice Anderson: Go ahead Don.

Donald Horsley: Okay. There are two or three things that I want to mention. One is the intensity thing. I appreciate staff's comment about the intensity but you know, I agree with the folks that have spoken and said they can kind of go along with the intensity, and I think I can too. The thing that I disagree with, and whoever came up with the figure of 3,000 extra cars, I don't think we're going to see 3,000 extra cars on Holland Road because of this. A lot of the people that are going to patronizing these businesses are going to be regular traffic that goes down Holland Road anyway. And it may provide some of their trips shorter if it the use is there they can get without having to drive further, and they will cut in there and live in that area, I think they will support that. So, I don't see the extra 3,000. I'm not a Trafficologist or whatever the new terminology I heard on the TV about some of these people ought to become traffic experts. But, I just don't see that happening. I kind of feel like the improvements that the applicant is going to make to Holland Road I consider it low intensity for this site. I think the neighborhood in the long run is what Joe or somebody said, I think in the long run they won't realize the fear they have now. So, I plan to support the application also.

Janice Anderson: Thank you. Go ahead Dave.

David Redmond: I move approval of the application.

Janice Anderson: A motion by Dave Redmond. We have a second by Phil Russo.

	AYE 8	NAY 1	ABSENT 0	ABSENT 2
ANDERSON	AYE			
BERNAS		NAY		
CRABTREE				ABSENT
HENLEY	AYE			
HORSLEY	AYE			
KATSIAS				ABSENT
LIVAS	AYE			
REDMOND	AYE			
RIPLEY	AYE			
RUSSO	AYE			
STRANGE	AYE			

Ed Weeden: By a vote of 8-1, the application of Endeavor Enterprises, L.L.C. had been approved.

Janice Anderson: Thank you all for coming down. We're going to conclude the meeting. Thank you.



CITY OF VIRGINIA BEACH
INTER-OFFICE CORRESPONDENCE

In Reply Refer To Our File No. DF6518

DATE: July 29, 2009

TO: Mark D. Stiles
FROM: B. Kay Wilson *BKW*
RE: Conditional Zoning Application; Endeavor Enterprises, L.L.C.

DEPT: City Attorney
DEPT: City Attorney

The above-referenced conditional zoning application is scheduled to be heard by the City Council on August 11, 2009. I have reviewed the subject proffer agreement, dated March 12, 2009 and have determined it to be legally sufficient and in proper legal form. A copy of the agreement is attached.

Please feel free to call me if you have any questions or wish to discuss this matter further.

BKW/ka
Enclosure

cc: Kathleen Hassen

ENDEAVOR ENTERPRISES, L.L.C., a Virginia limited liability company
RADHAKRISHNA RENUKUNTA and KAVITHA VURIMINDI a/k/a KAVITHI
VURIMINDI, husband and wife
NEW ENDEAVOR ENTERPRISES, L.C., a Virginia limited liability company

TO (PROFFERED COVENANTS, RESTRICTIONS AND CONDITIONS)

CITY OF VIRGINIA BEACH, a municipal corporation of the Commonwealth of Virginia

THIS AGREEMENT, made this 12th day of March, 2009, by and between ENDEAVOR ENTERPRISES, L.L.C., a Virginia limited liability company, party of the first part, Grantor; RADHAKRISHNA RENUKUNTA and KAVITHA VURIMINDI a/k/a KAVITHI VURIMINDI, husband and wife, parties of the second part, Grantors; NEW ENDEAVOR ENTERPRISES, L.C., a Virginia limited liability company, party of the third part, Grantor; and THE CITY OF VIRGINIA BEACH, a municipal corporation of the Commonwealth of Virginia, party of the fourth part, Grantee.

WITNESSETH:

WHEREAS, the parties of the second part are the owners of two (2) parcels of property located in the Princess Anne District of the City of Virginia Beach, containing a total of approximately 6.158 acres as more particularly described as Parcel 1 and Parcel 2 in Exhibit "A" attached hereto and incorporated herein by reference, which parcels along with Parcel 3 is hereinafter referred to as the "Property"; and

WHEREAS, the party of the third part is the owner of a parcel of property located in the Princess Anne District of the City of Virginia Beach, containing a total of approximately 13.77 acres as more particularly described as Parcel 3 in Exhibit "A" attached hereto and incorporated herein by reference, which parcel along with Parcels 1 and 2 are hereinafter referred to as the "Property"; and

GPIN: 1495-41-7336
1495-51-2696
1495-51-9518

Prepared By:

R. Edward Bourdon, Jr., Esquire
Sykes, Bourdon, Ahern & Levy, P.C.
281 Independence Blvd.
Pembroke One, Fifth Floor
Virginia Beach, Virginia 23462

PREPARED BY:

S&B SYKES, BOURDON,
A&L AHERN & LEVY, P.C.

WHEREAS, the party of the first part as the contract purchaser of Parcels 1, 2 and 3 has initiated a conditional amendment to the Zoning Map of the City of Virginia Beach, Virginia, by petition addressed to the Grantee, so as to change the Zoning Classification of the Property from AG-1 and AG-2 Agricultural District to Conditional B-1A Commercial District and P-1 Preservation District; and

WHEREAS, the Grantee's policy is to provide only for the orderly development of land for various purposes through zoning and other land development legislation; and

WHEREAS, the Grantors acknowledge that the competing and sometimes incompatible development of various types of uses conflict and that in order to permit differing types of uses on and in the area of the Property and at the same time to recognize the effects of change that will be created by the Grantors' proposed rezoning, certain reasonable conditions governing the use of the Property for the protection of the community that are not generally applicable to land similarly zoned are needed to resolve the situation to which the Grantors' rezoning application gives rise; and

WHEREAS, the Grantors have voluntarily proffered, in writing, in advance of and prior to the public hearing before the Grantee, as a part of the proposed amendment to the Zoning Map with respect to the Property, the following reasonable conditions related to the physical development, operation, and use of the Property to be adopted as a part of said amendment to the Zoning Map relative and applicable to the Property, which have a reasonable relation to the rezoning and the need for which is generated by the rezoning.

NOW, THEREFORE, the Grantors, their successors, personal representatives, assigns, grantees, and other successors in title or interest, voluntarily and without any requirement by or exaction from the Grantee or its governing body and without any element of compulsion or quid pro quo for zoning, rezoning, site plan, building permit, or subdivision approval, hereby makes the following declaration of conditions and restrictions which shall restrict and govern the physical development, operation, and use of the Property and hereby covenant and agree that this declaration shall constitute covenants running with the Property, which shall be binding upon the Property and upon all parties and persons claiming under or through the Grantors, their successors, personal representatives, assigns, grantees, and other successors in interest or title:

1. When the portion of the Property zoned B-1A is developed, it shall be developed and landscaped substantially as shown on the exhibit entitled "CONCEPTUAL SITE LAYOUT & LANDSCAPE PLAN OF VILLAGE CENTER at HOLLAND CREEK",

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S B SYKES, BOURDON,
A L AHERN & LEVY, P.C.

prepared by Ionic DeZign Studios and MSA, P.C., dated 03/06/09, which has been exhibited to the Virginia Beach City Council and is on file with the Virginia Beach Department of Planning (hereinafter "Conceptual Site Plan").

2. When the Property is developed, the exterior building materials, colors and architectural design elements of the four (4) buildings designated on the Conceptual Site Plan shall be substantially as depicted on the exhibits entitled "VILLAGE CENTER AT HOLLAND CREEK – TYPICAL RETAIL BUILDING ELEVATION; VILLAGE CENTER AT HOLLAND CREEK – DAYCARE ELEVATION; and VILLAGE CENTER AT HOLLAND CREEK – OFFICE BUILDING ELEVATION", dated 03/04/09, prepared by Ionic Dezign Studios, which have been exhibited to the Virginia Beach City Council and are on file with the Virginia Beach Department of Planning (hereinafter "Building Elevations").

3. When the Property is developed, the Grantor shall make those road improvements to Holland Road as depicted on the exhibit entitled "Conceptual Right of Way Improvement Plan For Village Center at Holland Creek", dated 12/9/08, prepared by MSA, P.C., which has been exhibited to the Virginia Beach City Council and is on file with the Virginia Beach Department of Planning (hereinafter "Right of Way Improvements").

4. When the Property is developed, if the improvement and widening of Holland Road to four (4) through lanes of vehicular capacity from its intersection with Dam Neck Road, south to its intersection with Crestwood Drive has not commenced, only the buildings designated #1, Single Story Daycare and #2, Single Story Retail/Office on the Conceptual Site Plan may be developed. No occupancy of the buildings designated #3, Single Story Retail and #4, 2-Story Office on the Conceptual Site Plan shall be permitted until the improvement and widening of Holland Road to four (4) through lanes of vehicular capacity from Dam Neck Road to its intersection with Crestwood Drive has been completed.

5. The Building designated #2, Single Story Retail/Office on the Conceptual Site Plan shall have no more than 16,000 square feet of space occupied by retail and restaurant uses. The remaining space in Building #2 shall be occupied by office or personal service uses.

6. Prior to submittal of a Site Development Plan for the Buildings designated #3, Single Story Retail and #4, 2-Story Office (i.e. Phase II), Grantor shall prepare and submit a "Supplemental Traffic Impact Study" to the Director of the Virginia Beach Department of Planning.

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AHERN & LEVY, P.C.

7. In addition to the limited list of permitted commercial uses in the B-1A Limited Community Business District, the Grantor further proffers that Building #4, 2-Story Office shall not be used for any retail or restaurant uses; Building #1, Single Story Daycare shall only be used for an educational/child daycare or office use; no convenience store use shall be permitted on the Property; no establishment shall be permitted to sell alcohol for off premises consumption; and, no restaurant shall be permitted to sell alcohol after 11:00 PM.

8. When the Property is developed, only one (1) freestanding monument style sign may be erected on the Property, constructed with a base matching the material and predominant color of the buildings as depicted on the Conceptual Site Plan. All building mounted signage shall be channel letters on a raceway (i.e. no block signs) and only the lettering may be illuminated.

9. When the Property is developed, the dumpsters depicted on the Conceptual Site Plan shall be screened/housed in a masonry structure (3 sides) with the exterior surface matching the building material and color. Dumpsters shall not be tipped/emptied before 8:30 AM nor after 8:30 PM.

10. The hours of daily operation for any educational/child daycare use in the building designated #1, Single Story Daycare on the Conceptual Sit Plan shall not commence prior to 6:00 AM nor conclude subsequent to 7:00 PM.

11. All outdoor lighting shall be shielded, deflected, shaded and focused to direct light down onto the premises and away from adjoining property. The development shall use "The Largent" lighting fixtures and a complete photometric plan shall be submitted to the Planning Department for review and approval during detailed site plan review.

12. When the Property is developed, the Grantor shall install and maintain an 8' wide multi-purpose trail from Holland Road through the open space within the developed portion of the property, through the open space at the eastern end of the center and terminating at the 5.18 acres of land to be zoned P-1 Preservation District substantially as depicted on the Conceptual Site Plan. The Grantor shall dedicate to the Grantee a pedestrian access easement over the multi-purpose trail and create a second pedestrian walkway from the multi-purpose trail to the small City owned park which abuts the southern boundary of the Property, as depicted on the Conceptual Site Plan.

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AHERN & LEVY, P.C.

13. Prior to the issuance of a Certificate of Occupancy for any building on the Property, the Grantor shall dedicate to the Grantee, the 5.18 acre portion of the property to be zoned P-1 Preservation District.

14. Further conditions may be required by the Grantee during detailed Site Plan review and administration of applicable City codes by all cognizant City agencies and departments to meet all applicable City code requirements.

All references hereinabove to B-1A and P-1 Districts and to the requirements and regulations applicable thereto refer to the Comprehensive Zoning Ordinance and Subdivision Ordinance of the City of Virginia Beach, Virginia, in force as of the date of approval of this Agreement by City Council, which are by this reference incorporated herein.

The above conditions, having been proffered by the Grantor and allowed and accepted by the Grantee as part of the amendment to the Zoning Ordinance, shall continue in full force and effect until a subsequent amendment changes the zoning of the Property and specifically repeals such conditions. Such conditions shall continue despite a subsequent amendment to the Zoning Ordinance even if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised Zoning Ordinance until specifically repealed. The conditions, however, may be repealed, amended, or varied by written instrument recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, and executed by the record owner of the Property at the time of recordation of such instrument, provided that said instrument is consented to by the Grantee in writing as evidenced by a certified copy of an ordinance or a resolution adopted by the governing body of the Grantee, after a public hearing before the Grantee which was advertised pursuant to the provisions of Section 15.2-2204 of the Code of Virginia, 1950, as amended. Said ordinance or resolution shall be recorded along with said instrument as conclusive evidence of such consent, and if not so recorded, said instrument shall be void.

The Grantor covenants and agrees that:

(1) The Zoning Administrator of the City of Virginia Beach, Virginia, shall be vested with all necessary authority, on behalf of the governing body of the City of Virginia Beach, Virginia, to administer and enforce the foregoing conditions and restrictions, including the authority (a) to order, in writing, that any noncompliance with such conditions be remedied; and (b) to bring legal action or suit to insure compliance with

PREPARED BY:

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such conditions, including mandatory or prohibitory injunction, abatement, damages, or other appropriate action, suit, or proceeding;

(2) The failure to meet all conditions and restrictions shall constitute cause to deny the issuance of any of the required building or occupancy permits as may be appropriate;

(3) If aggrieved by any decision of the Zoning Administrator, made pursuant to these provisions, the Grantor shall petition the governing body for the review thereof prior to instituting proceedings in court; and

(4) The Zoning Map may show by an appropriate symbol on the map the existence of conditions attaching to the zoning of the Property, and the ordinances and the conditions may be made readily available and accessible for public inspection in the office of the Zoning Administrator and in the Planning Department, and they shall be recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, and indexed in the names of the Grantor and the Grantee.

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S.B SYKES, BOURDON,
A&L AHERN & LEVY, P.C.

WITNESS the following signature and seal:

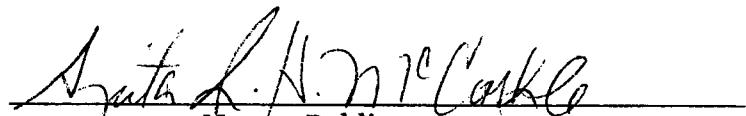
Grantor:

Endeavor Enterprises, L.L.C.,
a Virginia limited liability company

By: _____ (SEAL)
Radhakrishna Renukunta, Managing Member

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me this 24th day of March, 2009, by Radhakrishna Renukunta, Managing Member, of Endeavor Enterprises, L.L.C., a Virginia limited liability company, Grantor.



Notary Public

My Commission Expires: August 31, 2010
Notary Registration No.: 192628

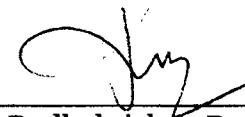


PREPARED BY:

S.B. SYKES, BOURDON,
A&L AHERN & LEVY, P.C.

WITNESS the following signatures and seals:

Grantors:



(SEAL)

Radhakrishna Renukunta



(SEAL)

Kavitha Vurimindi a/k/a Kavithi Vurimindi

STATE OF VIRGINIA

CITY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me this 24th day of March, 2009, by Radhakrishna Renukunta and Kavitha Vurimindi a/k/a Kavithi Vurimindi, husband and wife, Grantors.



Anita R. H. McCorkle
Notary Public

My Commission Expires: August 31, 2010
Notary Registration No.: 192628



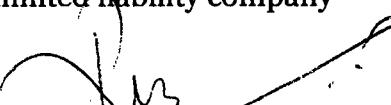
PREPARED BY:

S.B. SYKES, BOURDON,
AHERN & LEVY, P.C.

WITNESS the following signature and seal:

Grantor:

New Endeavor Enterprises, L.L.C.,
a Virginia limited liability company

By: 
(SEAL)
Radhakrishna Renukunta, Managing Member

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me this 24th day of March, 2009, by Radhakrishna Renukunta, Managing Member, of New Endeavor Enterprises, L.L.C., a Virginia limited liability company, Grantor.


Anita R. H. McCorkle
Notary Public

My Commission Expires: August 31, 2010
Notary Registration No.: 192628



PREPARED BY:

S.B. SYKES, BOURDON,
A.T. AHERN & LEVY, P.C.