

BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA

O-13-08

At the regular meeting of the Board of Supervisors of the County of New Kent, in the Boardroom of the Administration Building in New Kent, Virginia, on the 8th day of September, 2008:

Present:	Vote:
Stran L. Trout	Aye
W. R. Davis, Jr.	Abstain
Thomas W. Evelyn	Aye
David M. Sparks	Aye
James H. Burrell	Aye

Motion was made by Mr. Trout, which carried 4:0:1, to adopt the following ordinance:

**AN ORDINANCE TO REZONE 119.27 ACRES OF LAND
IN THE WEIR CREEK MAGISTERIAL DISTRICT FROM A-1,
AGRICULTURAL TO R-1, SINGLE-FAMILY RESIDENTIAL**

WHEREAS, Lamont Myers of Mid-Atlantic Communities, LLC, and the property owner, Ms. Ada Isabel Davis White, have submitted a "Rezoning/Ordinance Change Application" dated 10 June 2008; and

WHEREAS, said application requests the rezoning of approximately 119.27 acres identified on the New Kent County digital map as GPIN # L31-1845-1168 (Tax Parcel 28-5); and

WHEREAS, the stated purpose of this rezoning request is to develop the property, along with three other properties already zoned R-1 (GPIN #'s L31-2762-0191, L31-3392-0509, and L31-3359-0473), into a 24-lot cluster subdivision dispersed around a 21-acre lake; and

WHEREAS, said application was formally referred to the New Kent County Planning Commission (the "Planning Commission") in accordance with applicable procedures; and

WHEREAS, within the timeframes established by the Code of Virginia and the New Kent County Code, the Planning Commission scheduled and conducted a formal and duly advertised public hearing on 21 July 2008, and carefully considered the application; and

WHEREAS, the Planning Commission voted 7:1:1 to forward the subject application to the New Kent County Board of Supervisors ("the Board of Supervisors") with a favorable recommendation; and

WHEREAS, the rezoning application has been advertised for public hearing before the Board of Supervisors in full accord with applicable provisions of the Code of Virginia; and

WHEREAS, approval of the rezoning request through the adoption of this Ordinance will further the public necessity, convenience, general welfare and good zoning practices in the County of New Kent; and

WHEREAS, the Board of Supervisors has found the following, with regard to this application:

- The proposed use is not prejudicial to the character of the neighborhood.
- The proposed use will not adversely affect the general plans for the physical development of the County as embodied in the Comprehensive Plan.
- The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood, nor will it impair the value of buildings or property in surrounding areas.
- The application is generally in conformance with the New Kent County Comprehensive Plan, "Vision 2020".
- The proposed rezoning would provide for the long-range development of the subject property in a coordinated and well planned fashion.
- Approval of the subject application would further the health, safety and general welfare of the citizens of New Kent County and support the implementation of good zoning practice within the County.

NOW THEREFORE BE IT ORDAINED this, the 8th day of September 2008, by the New Kent County Board of Supervisors, that application ZM-04-08 be, and it hereby is, approved by amending the New Kent County Zoning Map to rezone GPIN # L31-1845-1168, consisting of 119.27 acres to R-1, Single-Family Residential.

BE IT FURTHER ORDAINED that the proffers voluntarily offered by the applicant as evidenced by the revised proffer statement dated 11 August 2008 and incorporated by reference herein and made a part hereof are accepted and shall be fully binding upon the applicant; and

BE IT FURTHER ORDAINED that with the approval of Rezoning Application ZM-04-08, that the Vision 2020 Comprehensive Plan be amended to remove the above property from the Eltham Public Utility Service Area.

BE IT FURTHER ORDAINED that the County Administrator be, and he is hereby, directed to have a fully executed copy of this Ordinance and the proffers associated with it, recorded upon the Land Records of the County in the office of the Clerk of the Circuit Court.



John A. Budesky
County Administrator



James H. Burrell
Chairman

STATE OF VIRGINIA
County of New Kent, to-wit:

Subscribed to before me, the undersigned Notary Public, by John A. Budesky, County Administrator, and James H. Burrell, Chairman, on the 10th day of September, 2008, in New Kent County, Virginia.

My commission expires May 31, 2012.



Notary Public



RECEIVED
AUG 11 2008

BY: ZM-04-08
REVISED

**PROFFERS
LAKE CHRISTOPHER**

THESE PROFFERS are made this 11 day of August, 2008, by and among:

MID-ATLANTIC COMMUNITIES, LLC, a Virginia limited liability company ("Mid-Atlantic") (to be indexed as grantor);

ADA ISABEL DAVIS WHITE, an individual ("White") (to be indexed as grantor);

NEW KENT COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia ("County") (to be indexed as grantee).

RECITALS

R-1. White is the owner of certain real property located in New Kent County, Virginia, shown and depicted as "Parcels B, C and D" on the attached exhibit plat dated June 2, 2008 and entitled, "Exhibit Plat of Proposed Lake Christopher" (the "Exhibit Plat") attached hereto and made a part hereof.

R-2. Mid-Atlantic is the owner of the property shown and depicted as Parcel A on the Exhibit Plat (the "Property") and the contract purchaser of the property shown and depicted as Parcels B, C and D on the Property.

R-3. Mid-Atlantic has filed an Application for rezoning (the "Application") of the Property, and White has consented to the Application as evidenced by her duly authorized signature on the Application. The Application has been designated by the County as Case No. ZM-04-08.

R-4. In the Application, Mid-Atlantic, in its capacity as the Applicant and contract purchaser, has requested that the zoning of the Property be changed from R-1 and A-1 to Conditional R-1 (Cluster) as described in Section 98-291 et seq. of the County's zoning ordinance in effect on the date hereof (the "Zoning Ordinance") in order to permit certain residential development. White as the record owner (the "Owner") of the Property has consented to such change of zoning.

R-5. A conceptual plan of development ("Plan") entitled "Lake Christopher" dated May 28, 2008, revised August 11, 2008, prepared by C. E. Newbaker Surveying and Planning, Inc., has been submitted to the County Planning Division for review by the County in connection with the Application. The Plan is on file with the Community Development Planning Division.

R-6. A community impact statement ("Community Impact Statement") entitled "Lake Christopher, New Kent County" dated May, 2008, prepared by The Wessex Group, Ltd., has been submitted to the County Planning Division for review by the County in connection with the

Application. The Community Impact Statement is on file with the Community Development Planning Division.

R-7. Mid-Atlantic and its collective successors and assigns to Mid-Atlantic's right to purchase the Property and any subsequent purchasers of any portion of the Property are collectively referred to herein as "Contract Purchaser."

R-8. The provisions of the Zoning Ordinance may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, the Owner and Contract Purchaser, in furtherance of the Application of rezoning, desire to proffer certain conditions which are limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the provisions of Section 15.2-2296, et seq. of the Code of Virginia (1950), as amended (the "Virginia Code") and Section 98-781 of the New Kent County Zoning Ordinance.

R-9. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the County of the Application, and pursuant to Section 15.2-2296, et seq., of the Virginia Code and Section 98-781 of the New Kent County Code ("County Code"), the Owner and Contract Purchaser hereby agree that if the Application is approved and the Board of Supervisors of New Kent County rezones the Property from R-1 and A-1 to Conditional R-1 (Cluster), then any subsequent development of the Property shall be in strict accordance with the conditions set forth in this submission.

PROFFERS:

1. Plan of Development. The Property shall be developed substantially in conformance with the Plan. The Plan is a conceptual plan for proposed development on the Property and provides only for the general location of lots, common areas, proposed streets, drainage facilities, areas of open space, and buffer areas. Upon approval of the Application, any site plan, subdivision plat or development plan thereafter submitted for the development of the Property shall be in substantial conformance with all proffered conditions in accordance with Section 98-786 of the County Code.

2. Property Owners Association(s). A property owners association shall be established pursuant to and in accordance with the Virginia Property Owners Association Act, § 55-508 et seq. of the Virginia Code (hereinafter, such association shall be referred to as the "Owners Association"), in which all owners of lots within the Property shall be members of such Owners Association by virtue of their property ownership. The Owners Association will own and maintain the lake and other common areas depicted on the Plan. The articles of incorporation and bylaws of such Owners Association and declaration of covenants enforceable by such Owners Association (collectively, the "Governing Documents") shall be submitted to and reviewed by the County Attorney for consistency with this proffer in accordance with Section 91-53 of the County Code prior to final site plan approval. The declaration of covenants will include, without limitation, protective covenants which address:

- a. Minimum square footage of the homes to be constructed on the lots depicted on the Plan
- b. Prohibition against future re-subdivision of any lots in the subdivision
- c. Acceptable exterior building and foundation materials of residential dwelling units
- d. Construction standards for accessory buildings and fences, with a specific prohibition against chain link and stockade fences.
- e. Outside storage
- f. Maintenance of property and grounds
- g. Underground utilities
- h. Removal of inoperable vehicles
- i. Prohibition against use of gasoline or diesel-powered watercraft on the lake.

3. Cash Contributions for Additional Community Impacts. A one-time contribution to the County of \$6,000.00 for each residential dwelling unit constructed on the Property will be paid to the County at the time of issuance of a building permit for each such residential dwelling unit. Such contributions shall be used by the County for school and other public infrastructure uses as deemed necessary by the County..

4. Successors and Assigns. These Proffers shall run with the title to the Property and shall be binding on the parties hereto and their respective successors and assigns; provided, however, once a party ceases to own all or any portion of the Property, such party shall have no personal liability hereunder.

5. Severability. In the event that any clause, sentence, paragraph, subparagraph, section or subsection of these Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, subparagraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, subparagraph, section or provision hereof.

6. Headings. All paragraph and subparagraph headings of the Proffers herein are for convenience only and are not a part of these Proffers.

7. Conflicts. In the event that there is any conflict between these proffers and the Zoning Ordinance, the conflict shall be resolved by the County's Zoning Administrator subject to the appeal process to the Board of Zoning Appeals and the Courts or as otherwise provided by law.

8. Void if Application not Approved. In the event that the Application is not approved by the County, these Proffers and the Plan shall be null and void.

9. Incorporation of Recitals. The Recitals set forth above shall be included and read as a part of these Proffers and are incorporated herein by reference.

BOOK 534 PAGE 819

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

WITNESS the following signatures, thereunto duly authorized:

MID-ATLANTIC COMMUNITIES, LLC

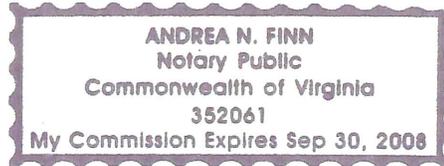
By: *Lamont D. Myers*
Lamont D. Myers,
Manager

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF New Kent, to wit:

The foregoing instrument was acknowledged before me this 11 day of August, 2008 by Lamont D. Myers as Manager of Mid-Atlantic Communities, LLC, a Virginia limited liability company, on its behalf.

Andrea N. Finn
NOTARY PUBLIC

My commission expires: 09/30/2008
Registration No.: 352061



ADA ISABEL DAVIS WHITE,
an individual

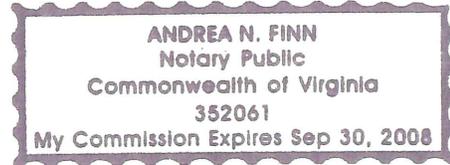
By: Ada Isabel Davis White
Ada Isabel Davis White

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF New Kent, to wit:

The foregoing instrument was acknowledged before me this 11 day of August, 2008 by Ada Isabel Davis White an individual.

Andrea N. Finn
NOTARY PUBLIC

My commission expires: 09/30/2008
Registration No.: 352061



#4347070v2

INSTRUMENT #080003435
RECORDED IN THE CLERK'S OFFICE OF
NEW KENT COUNTY ON
SEPTEMBER 12, 2008 AT 04:14PM

KAREN A. BUTLER, CLERK
RECORDED BY: TMK