

**A. REVISION OF CONDITIONAL USE PERMIT  
O. R. McCLENNY, JR. FOR WILLIAM/JOANN GRIGGS**

OPENING STATEMENT

This public hearing is held pursuant to § 15.2-2204, Code of Virginia, 1950, as amended to receive public comment on the application of Oscar R. McClenny, Jr., for William and Joann Griggs for revision of a conditional use permit. The request seeks to revise conditions associated with Conditional Use Permit #09082005:03, granted in November 2005, to remove the requirement that requires "townhouses to be sold by the developer, not rented". The parcel is located on Jerusalem Road at William Court, and is also known as Tax Parcel 75-34F. The property is approximately 2.21 acres in size, and is in the Jerusalem Magisterial District and the Jerusalem Voting District.

The notice of this public hearing was published in the Tidewater News on March 7 and March 14, 2010 and all adjacent property owners were notified in writing by first class mail as required by law. Following its public hearing on February 11, 2010, the Southampton County Planning Commission voted unanimously to recommend denial of the request.

After conclusion of this public hearing, the Board of Supervisors will consider the comments offered this evening and may act upon the application or defer action until such time as it deems appropriate.

Mrs. Beth Lewis, our Principal Planner and Secretary to the Planning Commission will provide introductory remarks after which all interested parties are invited to come forward and express their views.

**MOTION REQUIRED:** If the Board is so inclined, a motion is required to accept the Planning Commission recommendation and deny the request to amend the conditional use permit.

## CUP 2010:01

Oscar R. McClenny, Jr., for William and Joann Griggs, owners

Application Request: Conditional Use Permit amendment

### **IDENTIFICATION AND LOCATION INFORMATION**

Comprehensive  
Plan designation: Commercial

Zoning designation: R-2, Residential

Acreage: 2.21 acres

Current Use: Single family attached residential (townhomes)

Tax Map No.: Tax Map 75, Parcel 34F

Location: East side of Jerusalem Road (Rte. 58 Business) at William Court

Magisterial District: Jerusalem

Voting District: Jerusalem

Adjacent Zoning: North: B-2  
South: B-1  
East: A-1  
West: R-1

Adjacent Land Use: North: Vacant  
South: Pino's Restaurant  
East: Agriculture  
West: Residential

### **PROJECT ANALYSIS**

#### Overview

In November of 2005, the Board of Supervisors approved a Conditional Use Permit (CUP 090082005:03) for the development of a sixteen unit townhome property. The R-2 zoning designation required that a Conditional Use Permit be approved to facilitate townhome development. The Zoning Ordinance, Sec. 18-166, lists fourteen (14) items that all two-family and townhouse dwellings are required to address, including density, lot size, building dimensions and common areas. All of these requirements were met by the site plan provided for the development in 2005. In addition to the requirements of the ordinance, a number of conditions for this site in particular were approved in the

Conditional use Permit in 2005. The conditions that apply to this site alone as approved in 2005 included:

- Screening of water pump house to include decorative fencing and brick façade
- Use of architectural shingles
- Use of high quality building materials
- Fencing to buffer property from adjoining commercial use
- Creation of a homeowners' association to maintain common areas
- Townhouses to be sold by developer, not rented

A site plan for the project was approved and subsequently four units were built, two units in each of two buildings.

The applicant has complied with all of the site-specific conditions imposed except the final condition, the condition that prohibits the developer from renting the units. Two of the units have been sold and are occupied. The other two units have not been sold and remain vacant and the applicant seeks to amend the conditions imposed in 2005 to permit him to rent the units while they are for sale. Per the current application, "Due to present decline of home sales, we feel it would be advantageous to the County and the developer to allow units to be rented while still on the market for sale".

The use of the property, as a residential property constructed as townhomes, remains unchanged regardless of the ownership of the individual units. A homeowners' association maintains the common area regardless of the ownership of the individual units. Since the construction of four units is complete, the building materials and screening of the site remain unchanged regardless of the ownership of the individual units. Whether the units are occupied by renters or by owners, the outward appearance and the use of the property remain unchanged.

Note that this request includes the two units that have been constructed and are still vacant, as well as any future units that have yet to be constructed. The list of conditions regarding materials/screening/buffering applied to the site as a whole, so the deletion of this condition under review will apply to the site as a whole as well, not just the two units that have been built but not yet sold. Since the other two constructed units have been sold by the developer, the rental exclusion does not apply to those units.

#### Community Comments

None received

#### **CONCLUSION**

#### Strengths of application:

- The use of the property, as a residential development developed with town homes as well as the aesthetic conditions imposed on the property remain unchanged with this request.
- Permitting the units to be occupied by renters may increase the opportunity for the units to be sold to the renters themselves or to other buyers who can see the property in use. Permitting the units to become occupied helps the development

to appear more complete, increasing its attractiveness to potential buyers and the community.

- Permitting the units to be rented provides housing to potential residents of Southampton County. Whether a resident is a homeowner or a renter, they become part of the community, they spend money in the County, and they help grow the economic base of the County.

Weaknesses of application:

- None noted.

**SUPPORT INFORMATION AND ATTACHMENTS**

- 1) Staff Analysis
- 2) Application
- 3) Original Conditional Use Permit approval letter
- 4) Adjacent property owner notification

**PLANNING COMMISSION RECOMMENDATION**

The Planning Commission held a public hearing and discussion at the February 11, 2010 meeting. The approved minutes and recommendation follows:

Chairman Edwards announced that the first public hearing was to consider the following:

Request by Oscar R. "Tom" McClenny, Jr., for William and Joann Griggs for a Conditional Use Permit. The request seeks to revise conditions associated with Conditional Use Permit # 09082005:03, granted in November 2005, to remove the requirement that requires "townhouses to be sold by the developer, not rented." The parcel is located on Jerusalem Road at William Court, and is also known as Tax Parcel 75-34F. The property is approximately 2.21 acres in size, and is in the Jerusalem Magisterial District and the Jerusalem Voting District.

Commissioner Drake informed that due to a business venture with Mr. William Griggs, owner, he was removing himself from the panel to avoid any potential conflict of interest.

Mr. Don Lee spoke. He advised that his permanent home was at Smith Mountain Lake, but he was a part-time resident of Courtland – he purchased one of the townhouses from Mr. Griggs a year and a half ago. He likely would have never purchased it if he had known that the development could possibly be turned into rental property. He thought he was misrepresented. He noted that he did not have any problems personally with Mr. Tom McClenny, applicant/developer.

Mr. Carl Grey spoke. He advised that he resided on Greens Drive in Courtland across from the subject property. It was approved a few years ago for nice townhouses which would be sold. The requirement of a homeowner's association was added in to try and keep the property looking nice and maintained. At the time, the prices of the townhouses were such that you would likely not have any problems with the appearance of the property anyway. He would hate to see the property turned into rental property, which would mean the possibility of the remaining property being developed with apartment-type buildings.

Mr. Tom McClenney, applicant/developer, spoke. He clarified that Mr. Griggs' intention was not to turn it into rental property. They still intended to sell the townhouses – they wanted to rent them at this time, but never take them off the market for sale. It would be advantageous for them and for the County for revenue. They were not living in the same world they were living in when they started this project. They were just trying to survive.

Mr. James Green spoke. He advised that he lived on Greens Drive in Courtland across from the subject property. Several years ago, when they (he and his wife and his daughter and her husband) came before them to get permission to build their homes on Greens Drive back off the road, they had a lot of restrictions to build to a certain quality and maintain the property. They had done so and wanted to see it continued in that area.

Mr. Glenn Updike spoke. He stated that he was not directly or indirectly involved in this application. However, he did not see how the Planning Commission or Board of Supervisors could have any credibility if they approved this drastic change, especially so soon after approving the original project.

*(Note: Chairman Jones came in at this time, 7:39 PM.)*

Mrs. Beth Lewis, Secretary, addressed some concerns that had been mentioned. She clarified that the approved plan was for townhouse-style buildings, so any future buildings built there would be townhouse-style and would look just like those there now – apartment-style buildings were not permitted. She clarified that the definition of this type of use was residential, whether the people who lived there owned or rented the buildings – the use, which was single-family attached residential, would not change. The ownership of the property may change, but localities were generally not given the authority to regulate ownership, only use. The state statute indicated that, “zoning applied in each area and district of regulation concerning building and structure design, placement, and uses to which land, buildings, and structures within such designated areas and districts may be put.” She emphasized that the use of the property as residential would be the same.

Chairman Edwards closed the public hearing.

Chairman Edwards stated that per the October 6, 2005 minutes, when this application first came before them, the only two items that generated any major discussion were 1) that there be no rentals, suggested by Attorney Railey, and 2) that there be a homeowner's association to ensure the property was maintained, suggested by Commissioner Chesson. The “meat” of the conditional use permit was concerning those two items. In his opinion, they needed to leave it as it was – they did not need to lower their standards due to the economy.

Commissioners Jones and Parker indicated that they agreed with Chairman Edwards.

Secretary Lewis clarified for Commissioner Mann that the condition stated that the *developer* could not rent the townhouses. As a result, once the developer sold them, the new owners could indeed rent them out.

Commissioner Chesson indicated that part of him was inclined to approve the applicant's request.

Chairman Edwards reminded Commissioner Chesson that when the original application came before them in 2005, he was adamant that a homeowner's association be required

in order to ensure that the property was kept aesthetically pleasing. If the townhouses were rented, the renters would not be buying into the homeowner's association.

Chairman Edwards moved, seconded by Commissioners Harrell and Jones, to recommend denial of the request. All were in favor.

Current zoning R-2  
Current UOP Com



Southampton County  
Post Office Box 400  
Courtland, Virginia 23837  
757-653-3015

APPLICATION FOR:

REZONING

COMPREHENSIVE PLAN AMENDMENT

CONDITIONAL USE PERMIT

**CONTACT INFORMATION**

Applicant or Representative Name: Oscar R. McCleny Jr.

Address: P.O. Box 1127, 139 Bobulite Ln.

City, State, Zip: Franklin, Va. 23851

Phone: Day (757) 641-8158 Evening (757) 641-8158 Mobile (757) 641-8158

Owner Name: William & Joann Griggs

Address: 315 Ingleside Drive

City, State, Zip: Fredericksburg, Va. 22405

Phone: Day (703) 280-7276 Evening (540) 371-5370 Mobile (703) 362-9479

**PROPERTY INFORMATION**

Address or Location: Jerusalem Road, Route #58, Courtland, Va. 23837

Tax Parcel Number: 75-34F

Total Acreage of Parcel: 2.21

Amount of above acreage to be considered: 2.21

Current Use of property: Residential Townhouses

Rezoning request from NA to NA

Comprehensive Plan request from NA to NA

Conditional Use request: Section 18-511 of the Southampton County Code

Give a brief description of the application request (attach additional sheets if necessary):

Due to present decline of home sales, we  
feel it would be advantageous to the county  
and the developer to allow units to be  
rented while still on the market for sale.

Required Items to be submitted with application:

- NA Application Form
- ✓ Application Fee of \$ 500.00
- NA Cover Letter
- NA Site Plan / Exhibit
- NA Proffer Statement (if applicable)
- NA Other (To be determined by agent)

**Note:** If applicant is anyone other than the fee simple owner, written authorization of the fee simple owner designating the applicant as the authorized agent for all matters concerning this application shall be filed with the agent. A Special Limited Power of Attorney form is available upon request.

The undersigned  Owner  Applicant authorizes the entry of Southampton County personnel onto the property in order to perform their duties with regard to this request.

1/7/10  
Date

[Handwritten Signature]  
Signature

\_\_\_\_\_  
Signature

**OFFICE USE ONLY**

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Received By: \_\_\_\_\_

Date: \_\_\_\_\_

Post Sign By: \_\_\_\_\_

PC Agenda Date: \_\_\_\_\_

BOS Agenda Date: \_\_\_\_\_

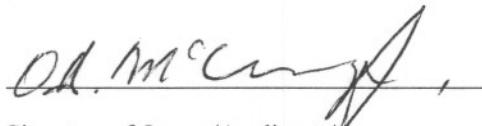
**PROFFERS FOR CONDITIONAL REZONING**

NA Original

NA Amended

Pursuant to Section 18-546 (b) of the Southampton County Code, the owner or duly authorized agent hereby voluntarily proffers the following conditions which shall be applicable to the property, if rezoned:

I (we) hereby proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission:

  
Signature of Owner/Applicant \*

1/7/10  
Date

\* If applicant is someone other than the owner, a Special Limited Power of Attorney Form must be submitted with this application.

# SOUTHAMPTON COUNTY

26022 Administration Ctr. Dr.  
P.O. Box 400  
Courtland, Virginia 23837



757-653-3015  
Fax: 757-653-0227

December 2, 2005

William Griggs  
315 Ingleside Drive  
Fredericksburg, Virginia 22405

**Re: Conditional Use Permit Application #09082005:03  
Jerusalem Road (Route 58 Business)  
Tax Parcel No. 75-34F**

Dear Mr. Griggs:

The Southampton County Board of Supervisors, at their meeting on November 28, 2005, voted to approve a conditional use permit application on the above referenced tax parcel in order to construct sixteen (16) townhouses subject to the following conditions:

- Screening of water pump house to include decorative fencing and brick facade
- Use of architectural shingles
- Use of high quality building materials
- Fencing to buffer property from adjoining commercial use
- Creation of homeowner's association to maintain common areas
- Townhouses to be sold by developer, not rented

I look forward to assisting you with the site plan development review process and if you should have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

James A. Randolph  
Assistant County Administrator

Cc: O.R. McClenny, Jr.

**AFFIDAVIT**

I, Susan H. Wright, hereby certify that I have sent by first class mail one copy each of the attached notices of public hearings to all adjacent property owners listed hereinbelow pursuant to Section 15.2-2204, Code of Virginia, 1950 as amended.

**STATE OF VIRGINIA**

**COUNTY OF SOUTHAMPTON, to-wit:**

This day, Susan Wright appeared before me, Julia G. Williams, a Notary Public for the County of Southampton and being duly sworn, deposed and said that the above certification is true and correct.

Taken, subscribed and sworn to me this 15th day of March 2010.

My Commission Expires: November 30 2010.

Julia G. Williams  
Notary Public

Tax Map/Parcel #

Name/Address of Adjacent Property Owner

See attached



**Adjoining Property Owners  
Board of Supervisors – 03/22/10**

**March 2010**

**CUP 2010:01**

**McClenny Jr. for Griggs**

**Owner**

William and Joann Griggs  
315 Ingleside Drive  
Fredricksburg, VA 22405  
TP 75 34F

**Applicant**

Oscar R. McClenny, Jr.  
P.O. Box 1127  
139 Bobwhite Lane  
Franklin, VA 23851

**Adjoining property owners**

1207 Properties LLC  
P.O. Box 743  
Franklin, VA 23851  
TP 75 34D

Donald and Rebecca Lee  
445 Lands End Circle  
Union Hall, VA 24176  
TP 75 35C

Giuseppe and Giuseppino Volo  
23319 Jerusalem Road  
Courtland, VA 23837  
TP 75 34A

Donald and David Simmons  
20489 River Road  
Courtland, VA 23827  
TP 75 34L

Jimmy Willis and Curtis Johnson  
5200 Bennetts Pasture Road  
Suffolk, VA 23435  
TP 76 15

Claude Phillipy and E.W. Beale  
P.O. Box 67  
Courtland, VA 23837  
TP 75 34B

Romaine King  
15 Oakview Avenue  
Maplewood, NJ 07040  
TP 75 32A

George Floyd, Jr.  
23292 Jerusalem Road  
Courtland, VA 23837  
TP 75 1 4

James and Faye Green  
27000 Greens Drive  
Courtland, VA 23837  
TP 75 1 3 and 75 1 2

Wyatt Ruffin, Jr.  
3940 Airline Boulevard, Suite 114  
Chesapeake, VA 23321  
TP 75C 1 BK H-1

**SOUTHAMPTON COUNTY**  
**Board of Supervisors**  
**Notice of Public Hearing**

Notice is hereby given pursuant to Section 15.2-2204 of the Code of Virginia, 1950, as amended that the Southampton County Board of Supervisors will hold a public hearing on Monday, March 22, 2010 at 7:00 PM in the Board Room of the Southampton County Office Center at 26022 Administration Center Drive in Courtland, Virginia to consider the following:

- 1) Request by Oscar R. McClenny, Jr., for William and Joann Griggs for a Conditional Use Permit. The request seeks to revise conditions associated with Conditional Use Permit #09082005:03, granted in November 2005, to remove the requirement that requires "townhouses to be sold by the developer, not rented". The parcel is located on Jerusalem Road at William Court, and is also known as Tax Parcel 75-34F. The property is approximately 2.21 acres in size, and is in the Jerusalem Magisterial District and the Jerusalem Voting District.
- 2) Public review and comment with regard to the proposed Capital Improvements Plan for FY 2011-2016.
- 3) Advance citizen comment regarding the Fiscal Year 2010-2011 annual budget. This hearing is intended to provide interested citizens an opportunity to make their views known prior to preparation of the county administrator's draft budget. Interested citizens are invited to offer their comments and recommendations on any and all fiscal matters. A second public hearing will be scheduled for Monday, May 17, 2010 to provide all citizens an opportunity to comment on the final draft of the proposed budget.

Any persons desiring to speak in favor of or opposition to the above referenced application(s) are encouraged to appear and be heard at the aforementioned time and place. Any persons wishing to attend this hearing who may require auxiliary aids should contact Michael W. Johnson, County Administrator at (757) 653-3015 (voice) or (757) 653-3013 (TDD), preferably seven days prior to the hearing.

Southampton County Board of Supervisors  
Michael W. Johnson, Clerk