

Town of Lovettsville

Town Council and Planning Commission Minutes of Joint Public Hearing April 28, 2011

JOINT PUBLIC HEARING

The Joint Public Hearing of the Lovettsville Town Council and the Lovettsville Planning Commission on LVRZ 2010-0002: Lovettsville Retirement Village/Heritage Highlands was called to order by Vice Mayor Robert Zoldos at 7:34 PM at the Lovettsville Town Hall, 6 East Pennsylvania Avenue, Lovettsville, VA 20180.

Welcomes and Introductions

Vice Mayor Zoldos read the public notice of this Public Hearing as it appeared in the *Purcellville Gazette* (Attachment I).

Vice Mayor Zoldos welcomed the citizens attending the meeting. He introduced Council Members Tiffany Carder, Charlotte Coleman, Michael Senate, Tim Sparbanie, and Shaun Staley. He then introduced Planning Commission Chairwoman Mari Bushway. Chairwoman Bushway introduced Planning Commissioners Lorraine Bauer, Jack Burden, Rodney Gray, and Joseph Mueller. She also introduced Town Manager Keith Markel, Town Attorney Elizabeth Whiting, Zoning Administrator Steve McGregor, and Town Clerk Judy Kromholz.

Commissioner Aaron Kahn arrived at 7:42 PM.

Absent

Mayor Elaine Walker
Commissioner Elaine Fischer

Explanation of Procedures and Opening of the Hearing

Councilman Staley read the procedures for speaking at the public hearing.

Presentation

Zoning Administrator McGregor made a presentation of the history of the project (Attachment II: Staff Report).

Ms. Kimberlee Welsh-Cummings submitted the Affidavit of Public Notice and the signed proffers to Clerk Kromholz on behalf of the applicants. She then made a presentation highlighting the proposed changes in the proffers for the Lovettsville Retirement Village.

Zoning Administrator McGregor resumed his presentation and discussed outstanding issues. He stated that staff recommends approval of the rezoning as presented in its current form.

Public Speakers

Vice Mayor Zoldos introduced each speaker in the order in which they had signed up to speak (Attachment III)

- 1 Jack Burden
Heritage Highlands
 - a) Mr. Burden stated that he is speaking as an individual owner/applicant, not as a Planning Commissioner.
 - b) He stated that all of the current Heritage Highlands residents support and have signed these proffers.
 - c) The current residents all believe that these proffers are in the best interests of the applicants, the developer and the Town itself.
 - d) Speaking for the residents of Heritage Highlands, they respectfully request that the Commission and Council pass this rezoning tonight.
- 2 Elizabeth Barbee
 - a) Ms. Barbee has lived in Heritage Highlands for approximately 1 ½ years

Heritage Highlands

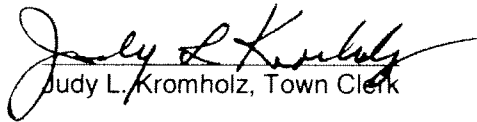
- and agrees with Mr. Burden's statement.
- b) She is afraid that if this is postponed, Lennar will give up trying to continue development for this year.
 - c) She stated that she believes the homeowners and Lennar are on the same page but the two of them are not in synch with the Town Council

Vice Mayor Zoldos asked if there were any further speakers. There were none.

Declaration to Close the Public Hearing

There being no further speakers, Vice Mayor Zoldos declared this Public Hearing closed at 7:55 PM.

Respectfully submitted,



Judy L. Kromholz, Town Clerk

Date Approved:

Planning Commission: June 1, 2011

Town Council: May 26, 2011

Attachments:

- I. *Purcellville Gazette* Public Hearing Notice
- II. Staff Report: LVRZ 2010-0002: Lovettsville Retirement Village/Heritage Highlands
- III. Speaker Sign in Sheet

**Notice of Public Hearing
Town of Lovettsville**

The Lovettsville Mayor and Town Council and Planning Commission will hold a joint Public Hearing on the following item at the Town Council meeting on April 28, 2011 at 7:30PM at the Lovettsville Town Hall, 6 East Pennsylvania Avenue, LVRZ 2010-0002, Lovettsville Retirement Village/Heritage Highlands Rezoning and Proffer Modifications. Consider a request to rezone Lovettsville Retirement Village/Heritage Highlands from R-1, Residential, to R-C, Retirement Community with modifications to the existing proffers. The development consists of approximately 22 acres, as follows:

Address	PIN	Owner
1 Harpers Mill Way	370-19-0979	Jack Roy & Alice Ruth Wilson, Trustees Wilson Family Trust
7 Harpers Mill Way	370-19-0980	Beverly B. Schrader, Trustee
10 Harpers Mill Way	370-19-1196	Eleanor Guarion & P & T Guarino
11 Harpers Mill Way	370-18-9685	Elizabeth V. Barbee
12 Harpers Mill Way	370-19-1700	Wendy E. Burke
15 Harpers Mill Way	370-18-9390	Tamara Mohyla
16 Harpers Mill Way	370-19-1305	John R. Burden Sr. & Jean E. Burden
43A & 46 Harpers Mill Way	371-49-0966 & 370-19-2276	Villas at Lovettsville HOA
19 Harpers Mill Way	370-18-8995	Joseph T. Evans
5 Harpers Mill Way	370-19-0584	Ashraf & Rana Ghishan & Z. Ghishan
2 Harpers Mill Way	370-19-1886	Mary L. Baker
20 Harpers Mill Way	370-19-1009	Ronald L. & Helen Cricks
22 Harpers Mill Way	370-19-0110	Kenneth & Vera Shipman
8 Harpers Mill Way	370-19-2095	Oliver D. Johnson, Trustee
23 Harpers Mill Way	370-18-8600	Marie T. Musante
26 Harpers Mill Way	370-18-9815	Ramona L. Lewis
27 Harpers Mill Way	370-18-8305	Richard C. & Jeannette M. Sullivan
6 Harpers Mill Way	370-19-1491	Mary A. & Adel Y. Salem
3 Harpers Mill Way	370-19-0375	Patricia Ann Fleagle, Trustee
9 Harpers Mill Way	370-19-0289	Jacoba P. Warrington, Trustee
1 Fox Mill Way	370-19-2181	Kenneth R. & Patricia G. Dant
43 Harpers Mill Way	370-18-6924	Patriot Homes of Virginia Inc.
39 Harpers Mill Way	370-18-7219	Patriot Homes of Virginia Inc.
41 Harpers Mill Way	370-18-7528	Patriot Homes of Virginia Inc.
35 Harpers Mill Way	370-18-7614	Patriot Homes of Virginia Inc.
47 Harpers Mill Way	370-18-7655	Patriot Homes of Virginia Inc.
37 Harpers Mill Way	370-18-7823	Patriot Homes of Virginia Inc.
31 Harpers Mill Way	370-18-7909	Patriot Homes of Virginia Inc.
45 Harpers Mill Way	370-18-8049	Patriot Homes of Virginia Inc.
51 Harpers Mill Way	370-18-8159	Patriot Homes of Virginia Inc.
33 Harpers Mill Way	370-18-8218	Patriot Homes of Virginia Inc.
29 Harpers Mill Way	370-18-8513	Patriot Homes of Virginia Inc.
49 Harpers Mill Way	370-18-8553	Patriot Homes of Virginia Inc.
55 Harpers Mill Way	370-18-8662	Patriot Homes of Virginia Inc.
25 Harpers Mill Way	370-18-8809	Patriot Homes of Virginia Inc.
53 Harpers Mill Way	370-18-9056	Patriot Homes of Virginia Inc.
59 Harpers Mill Way	370-18-9165	Patriot Homes of Virginia Inc.
21 Harpers Mill Way	370-18-9204	Patriot Homes of Virginia Inc.
30 Harpers Mill Way	370-18-9420	Patriot Homes of Virginia Inc.
57 Harpers Mill Way	370-18-9560	Patriot Homes of Virginia Inc.
17 Harpers Mill Way	370-18-9599	Patriot Homes of Virginia Inc.
54 Harpers Mill Way	370-18-9647	Patriot Homes of Virginia Inc.
63 Harpers Mill Way	370-18-9669	Patriot Homes of Virginia Inc.
13 Harpers Mill Way	370-18-9894	Patriot Homes of Virginia Inc.
32 Harpers Mill Way	370-19-0024	Patriot Homes of Virginia Inc.
56 Harpers Mill Way	370-19-0041	Patriot Homes of Virginia Inc.
61 Harpers Mill Way	370-19-0063	Patriot Homes of Virginia Inc.
28 Harpers Mill Way	370-19-0250	Patriot Homes of Virginia Inc.
28 Harpers Mill Way	370-19-0319	Patriot Homes of Virginia Inc.
18 Harpers Mill Way	370-19-0405	Patriot Homes of Virginia Inc.
65 Harpers Mill Way	370-19-0566	Patriot Homes of Virginia Inc.
60 Harpers Mill Way	370-19-0644	Patriot Homes of Virginia Inc.
62 Harpers Mill Way	370-19-0654	Patriot Homes of Virginia Inc.
24 Harpers Mill Way	370-19-0714	Patriot Homes of Virginia Inc.
14 Harpers Mill Way	370-19-0801	Patriot Homes of Virginia Inc.
64 Harpers Mill Way	370-19-1048	Patriot Homes of Virginia Inc.
69 Harpers Mill Way	370-19-1070	Patriot Homes of Virginia Inc.
66 Harpers Mill Way	370-19-1157	Patriot Homes of Virginia Inc.
68 Harpers Mill Way	370-19-1551	Patriot Homes of Virginia Inc.
70 Harpers Mill Way	370-19-1660	Patriot Homes of Virginia Inc.
72 Harpers Mill Way	370-19-2055	Patriot Homes of Virginia Inc.
74 Harpers Mill Way	370-19-2164	Patriot Homes of Virginia Inc.
4 Harpers Mill Way	370-19-2490	Patriot Homes of Virginia Inc.
76 Harpers Mill Way	370-19-2558	Patriot Homes of Virginia Inc.
78 Harpers Mill Way	370-19-2667	Patriot Homes of Virginia Inc.

Address	PIN	Owner
3 Fox Mill Way	370-19-2785	Patriot Homes of Virginia Inc
80 Harpers Mill Way	370-19-3061	Patriot Homes of Virginia Inc
82 Harpers Mill Way	370-19-3171	Patriot Homes of Virginia Inc
84 Harpers Mill Way	370-19-3565	Patriot Homes of Virginia Inc
67 Harpers Mill Way	370-29-0172	Patriot Homes of Virginia Inc
71 Harpers Mill Way	370-29-0675	Patriot Homes of Virginia Inc
73 Harpers Mill Way	370-29-1179	Patriot Homes of Virginia Inc
79 Harpers Mill Way	370-29-1573	Patriot Homes of Virginia Inc
77 Harpers Mill Way	370-29-1976	Patriot Homes of Virginia Inc
83 Harpers Mill Way	370-29-2086	Patriot Homes of Virginia Inc
81 Harpers Mill Way	370-29-2480	Patriot Homes of Virginia Inc
87 Harpers Mill Way	370-29-2589	Patriot Homes of Virginia Inc
85 Harpers Mill Way	370-29-2983	Patriot Homes of Virginia Inc
91 Harpers Mill Way	370-29-3092	Patriot Homes of Virginia Inc
89 Harpers Mill Way	370-29-3487	Patriot Homes of Virginia Inc

The application being considered is available for review at the Town Hall between the hours of 9AM and 3PM weekdays or by special appointment, holidays excepted. Call 540-822-5788 for more information or visit www.lovettsvilleva.gov.

VAABC

Retail License Application

Hunters Run Wine Barn LLC, trading as Hunters Run at 40325 Charlestown Pike, Hamilton, Loudoun County, Virginia 20158-3217. The above establishment is applying to the VIRGINIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL for a Farm Winery license to sell or manufacture alcoholic beverages.

Catherine Nolan, owner

April 15 & 22, 2011

ATTORNEY DISCIPLINE

On March 28, 2011, ALAN WILLIAM KOEHLER, Attorney, Reregistration No. 0034606, last known business address in Purcellville, Virginia, was suspended from the practice of law in the state of Ohio for an interim period with the matter referred of Disciplinary Counsel for investigation and commencement of disciplinary proceedings. See the Supreme Courts entry in *In re Koehler*, 2011-Ohio-1022, for additional information.

**PUBLIC HEARING NOTICE
TOWN OF PURCELLVILLE**

The Purcellville Planning Commission will hold a public hearing in the Council Chambers at 130 East Main Street, Purcellville, Virginia on Thursday, April 21, 2011 at 7:00PM for the purpose of receiving comments on the following item:

- 1. CPA 11-01 Town Initiated Comprehensive Plan Amendment** – a Town initiated application to amend the Planned Land Use Map of the Comprehensive Plan to designate a 3-acre parcel of land annexed into the Town located at 38038 West Colonial Highway to be appropriate for “Mixed Use Commercial” uses. The property is further identified by Loudoun County Tax Map Number /36/////72/ and PIN 453-38-7305-000.
- 2. SLP 11-01 Special Use Permit application** – Deborah Krenzer (DBA The Accomplished Child) is requesting to operate a child day care center of up to 40 children ages 3 through 5th grade at 211 South 20th Street (known as the old Rescue Squad Building) further identified by Loudoun County Tax Map Number /55A13/////1/ and PIN: 488-27-8461-000.

Additional information regarding the proposed amendment and special use permit application is available for review at the Town Hall located at 130 East Main Street, Purcellville, Virginia from 8:00 AM to 5:00 PM, Monday-Friday, holidays excepted.

Hearing assistance is available for meetings in the Town Council Chambers. If you require any type of reasonable accommodation, as a result of a physical, sensory or mental disability, to participate in this meeting, contact the Department of Planning at 540-338-2304. Please provide three days notice.

Dennis D. Besse, Chairman
Purcellville Planning Commission

April 8 & 15, 2011

Town of Lovettsville

STAFF REPORT

TOWN COUNCIL and PLANNING COMMISSION

PUBLIC HEARING	
ITEM IDENTIFICATION	LVRZ 2010-0002 Lovettsville Retirement Village/Heritage Highlands
TYPE OF ITEM	Rezoning from R-1 Zoning District to Retirement Community R-C (with proffers) Zoning District
DATE OF HEARING	April 28, 2011
APPLICANT	US Homes / Lennar & current land owners within the Heritage Highlands development

BACKGROUND and APPLICANT PROPOSAL: Lovettsville Retirement Village is a twenty-seven acre parcel that was approved in 2004 for a combination of age restricted independent living and assisted living residential development located at the intersection of Lutheran Church Road and Berlin Pike on the west side of Berlin Pike at the southern end of Lovettsville. This rezoning item is based on an application filed December 2, 2010 by the applicant, US Homes / Lennar and current land owners within the independent living portion of the Lovettsville Retirement Village development, which is known as Heritage Highlands. The 2010 application was for the entire twenty-seven acres of the Lovettsville Retirement Village. The application requested the proffers originally approved with the rezoning to R-1 (with a conditional use permit) be amended to allow a third person in the independent living units (Heritage Highlands), whose age could be younger than currently approved. The Town Attorney determined the approved proffers and conditions could not be amended because after the original 2004 rezoning the Retirement Community use was removed as a conditionally permitted use from the R-1 district in the Zoning Ordinance. In the revision of the Town Zoning Ordinance in 2006 the Retirement Community R-C Zoning District was created for age restricted and ancillary uses with various related regulations. Therefore, the 2010 application was amended to a rezoning request to the Retirement Community R-C district.

The Planning Commission considered the rezoning application and held a public hearing, February 2, 2011. On February 16, 2011 The Commission recommended approval of the rezoning application with proffers to the Town Council without including a final recommendation on the sewer availability policy, which was understood to be the Council's responsibility to establish.

Certain text modifications to the Retirement Community R-C Zoning District were needed in order to allow the proposed occupancy changes in the Lovettsville Retirement Village approved proffers. The Town Attorney also determined that the R-C regulations were narrower than state law allowed and needed to be changed for that reason. These changes were approved in the Retirement Community R-C Zoning District by the Town Council, March 10, 2011.

A Town Council public hearing on the rezoning was also scheduled for March 10, 2011. However the co-applicant for the five-acre assisted living portion of the project was unwilling to sign the draft proffers. The application was ruled incomplete and the public hearing was cancelled.

The Town Council had discussions about an appropriate sewer availability policy for the Lovettsville Retirement Village if a third person were allowed in independent living units and came to no conclusions. The Council agreed that the occupancy proffers should expire once the residents of the independent living units were in control of the homeowners association so they would have administration and enforcement authority. The applicant revised the application to remove the five-acre parcel approved for an assisted living facility. The Zoning Administrator determined that the applicant is correct in asserting that they have satisfied by alternative performance accepted by the Town Council, the 2004 proffer in which the applicant promised to pay the Town \$250,000 as a contribution to the Town's water system needs.

DISCUSSION: The following changes in the approved 2004 proffers were requested in the rezoning application revised following the March 10, 2011 meeting after discussions with the Town. The draft proffers are dated, April 19, 2011. All the changes in the application refer only to the independent living units, not the approved assisted living facility, which is no longer part of this application.

1. The developer will offer a second building design that would increase the footprint of each independent living unit (there are two in each duplex building) will increase by 100 square feet to 1,450 square feet, which does not include additional garage space and other non-living areas.
2. The new building option includes a two car garage instead of the current one car garage model.
3. Change the age requirements of the two primary occupants so that 80 percent of the independent living units the requirements remain the same (one occupant at least 55 years or older and one may be 45 years or older) but for 20 percent of the independent living units the two primary occupants may be 45 years or older.
4. A third person may reside in independent living units if they are 25 years or older and are handicapped or provides assistance in Activities of Daily Living for at least one of the other residents.
5. Units do not have to be primary residence for owners, as now required.
6. Overnight guests may reside in independent units for up to 90 days per calendar year.

7. The community center for the independent living units would be operational at the time the 40th independent living unit was issued its zoning permit.
8. The interior floor plan for independent units is eliminated from the proffers.
9. The applicants would abide by whatever sewer availability policy the Town has established regarding the development.
10. Ten specific independent living units adjacent to existing units will have the same architectural elevations, 1,350 square feet footprint (not including garage) and single garage space as the existing units.
11. The proffers regarding independent living unit occupancy requirements would be dissolved when the HOA is turned over to the residents.
12. The proffer to provide the Town with \$250,000 for the Town's water system is removed because it has been satisfied.
13. The proffers that apply to the land associated with the approved assisted living facility will not be changed as part of this rezoning.

In order for Lennar to build the remaining ten single-family detached independent living units the R-C Zoning District will have to be modified again to allow the lot size for this type of unit that is shown on the proposed revised concept plan. This can be done after action is taken on this rezoning.

CONCLUSIONS: The draft proffers revised as of April 19, 2011 satisfy the concerns raised by the Planning Commission and Town Council regarding this application. The rezoning can proceed to Town Council action as proffered even though no changes in the Town's sewer availability policy regarding the Lovettsville Retirement Community have been made by the Town Council. Given the fact that the applicant-developer wishes to proceed with the marketing changes that would be allowed by the proffered rezoning, the Town Council is advised to make any appropriate changes to the sewer availability policy for the Lovettsville Retirement Community as soon as possible after it takes action on the rezoning.

The R-C Zoning District can be modified to allow the lot size for the single-family detached units that are shown on the proposed revised concept plan after this rezoning is acted upon. There are over forty additional duplex units that can be built under the rezoning.

RECOMMENDATION: The Town Council should approve the rezoning LVRA 2010-0002 as proffered, April 19, 2011. Amended proffers include written proffers, building elevations and a concept plan.

DRAFT PLANNING COMMISSION MOTION: "I move that the Planning Commission recommend approval of LVRZ 2010-0002 Lovettsville Retirement Village/Heritage Highlands to rezone a portion of the Lovettsville Retirement Village to the Retirement Community R-C Zoning District as shown in this item, which includes draft proffers dated April 19, 2011."

DRAFT TOWN COUNCIL MOTION: “I move that the Town Council approve the attached draft enacting Ordinance approving the rezoning of the subject property from the R-1 Zoning District to the Retirement Community R-C Zoning District with proffers dated April 19, 2011.”

ATTACHMENTS:

- 1) Revised draft proffers, US Homes / Lennar and the current land owners within the Heritage Highlands development, April 19, 2011.
- 2) Draft enactment ordinance for approval of the rezoning with proffers dated April 19, 2011.

PROFFER STATEMENT
LOVETTSVILLE RETIREMENT VILLAGE
HERITAGE HIGHLANDS
TOWN OF LOVETTSVILLE
REZONING APPLICATION
LVRZ 2010-0002
Draft August 13, 2010
Revised Draft November 17, 2010
Revised February 22, 2011
Revised April 19, 2011

Pursuant to Va. Code Ann. §§15.2-2299 through 15.2-2303 and 10-8 of the Zoning Ordinance of the Town of Lovettsville, Virginia (2006), as amended, U.S. Home Corporation, a Delaware corporation, d/b/a Lennar (the “Applicant”), successor-in-interest to Patriot Homes of Virginia, Inc. owner of property described in Exhibit A to these Proffers), The Villa’s at Lovettsville Homeowners Association, Inc., who is the record owner of land described as Loudoun County Tax Map 9A421, Parcels A & B (MCPI ##370-19-2276 and 371-49-0966) and the Heritage Highlands Homeowners Association, Inc., the successor in interest to certain obligations of The Villa’s at Lovettsville Homeowners Association, Inc., (individually and collectively the “HOA”); Patricia A. Fleagle, Trustee of the Patricia Ann Fleagle Revocable Trust under Agreement dated July 30, 2008, who is the record owner of the land described as Loudoun County Tax Map 9A421, Parcel 1 (MCPI #370-19-0375); Jack Roy Wilson and Alice Ruth Wilson, Trustees of the Wilson Family Trust dated September 16, 2002, as restated and amended on July 14, 2009, who are the record owners of land described as Loudoun County Tax Map 9A421, Parcel 2 (MCPI #370-19-0979); Beverly B. Schrader, Trustee under the Revocable Trust of Beverly B. Schrader dated April 3, 2009, who is the record owner of land described as Loudoun County Tax Map 9A421, Parcel 3 (MCPI #370-19-9980); Ashraf Ghishan, Rana Ghishan and Zaki K. Ghishan, who are the record owners of land described as Loudoun County Tax Map 9A421, Parcel 4 (MCPI #370-19-0584); Elizabeth V. Barbee, who is the record owner of land described as Loudoun County Tax Map 9A421, Parcel 5 (MCPI #370-18-9685); Jacoba P. Warringa, Trustee under the Jacoba P. Warringa Trust, dated September 27, 1995, who is the record owner of land described as Loudoun County Tax Map 9A421, Parcel 6 (MCPI #370-19-0289); Tamara Mohyla, who is the record owner of land described as Loudoun County Tax Map 9A421, Parcel 7 (MCPI #370-18-9390); Joseph T. Evans, who is the record owner of land described as Loudoun County Tax Map 9A421, Parcel 9 (MCPI #370-18-8995); Marie T. Musante, who is the record owner of land described as Loudoun County Tax Map 9A421, Parcel 11 (MCPI #370-18-8600); Richard C. Sullivan and Jeanetta M. Sullivan, who are the record owners of land described as Loudoun County Tax Map 9A421, Parcel 13 (MCPI #370-18-8305); Kenneth R. Dant and Patricia G. Dant are the record owners of land described as Loudoun County Tax Map 9A421, Parcel 23 (MCPI #370-19-2181); Mary L. Baker, who is the record owner of land described as Loudoun County Tax Map 9A421, Parcel 25 (MCPI #370-19-1886); Mary A. Salem, who is the record owner of land described as Loudoun County Tax Map 9A421, Parcel 27 (MCPI #370-19-1491); Olive D. Johnson, Trustee of the Olive D. Johnson Trust dated November 5, 2001, who is the record owner of land described as Loudoun County Tax

Map 9A421, Parcel 28 (MCPI #370-19-2095); Eleanor C. Guarino, Peter A. Guarino and Taina G. Guarino, who are the record owners of land described as Loudoun County Tax Map 9A421, Parcel 29 (MCPI #370-19-1196); Wendy E. Burke who is the record owner of land described as Loudoun County Tax Map 9A421, Parcel 30 (MCPI #370-19-1700); John R. Burden, Sr. and Jean E. Burden, who are record owners of land described as Loudoun County Tax Map 9A421, Parcel 32 (MCPI #370-19-1305); Ronald L. Cricks and Helen Cricks, who are the record owners of land described as Loudoun County Tax Map 9A421, Parcel 34 (MCPI #370-19-1009); Kenneth Shipman and Vera Shipman, who are record owners of land described as Loudoun County Tax Map 9A421, Parcel 35 (MCPI #370-19-0110); and Ramona L. Lewis, who is the record owner of land described as Loudoun County Tax Map 9A421, Parcel 37 (MCPI #370-18-9815) (collectively the “Co-Applicants” or “Property Owners”) hereby submit the following voluntary proffers on the above-referenced parcels, consisting of approximately 22 acres (collectively the “Subject Property”).

The Applicant and Co-Applicants are seeking approval by the Town of Lovettsville, (the “Town”) of a zoning map amendment to rezone the Subject Property from the Residential District R-1 (“R-1”) zoning district to the Retirement Community R-C (“R-C”) zoning district. In the event the Lovettsville Town Council approves this rezoning; these Proffers will supersede and replace all previously approved proffers included in “Proffers: 287 Joint Venture,” dated August 30, 2001, as further amended by Letter of Clarification dated April 24, 2003 (collectively the “Previously Approved Proffers”), except that the Previously Approved Proffers associated with the land described as Loudoun County Tax Map 9, Parcel 45C (MCPI #370-19-5365) consisting of 4.97 acres, (known as the “Assisted Living Property”) shall remain in full force and effect.

The Applicant and Co-Applicants do hereby submit the following voluntary Proffers which are contingent upon approval by the Lovettsville Town Council of the rezoning of the Subject Property. Thereafter, these Proffers shall govern and shall be the only ones applicable to the Subject Property.

The Subject Property may only be used for a “Retirement Community” consisting of no more than 80 independent living units, which will be developed in one or more phases. Subject to final design to accommodate engineering, the Subject Property will be developed to be in substantial conformance with the Concept Plan (the “Concept Plan”) identified as Sheets 1 through 4 of the plan set titled “Lovettsville Retirement Village Heritage Highlands Zoning Map Amendment Application”, dated June 2010 and revised April 19, 2011, prepared by Stantec Consulting Services, Inc., “Lovettsville Retirement Village Concept Elevation Primary Drive” and “Lovettsville Retirement Village Concept Elevation Secondary Drive,” dated March 5, 2003 and prepared by Lessard Architectural Group, Inc., and “Front Elevation” and “Rear Elevation”, prepared by Middleburg Architectural Services, LLC, dated May 6, 2010, all of which are incorporated herein and attached and attached as Exhibit B to these Proffers.

The Applicant reserves the right to adjust the location of the lot lines, street alignments and improvements depicted on the Concept Plan based on the requirements of the Virginia Department of Transportation (“VDOT”), wetland permits, and final engineering considerations as determined during site plan or subdivision review; however, general layout, scale, design and architectural details and materials shall be generally as depicted in Exhibit B to these Proffers. The internal roadway serving the independent living units shall be designed, dedicated and constructed for acceptance for maintenance by VDOT.

1. Pursuant to Va. Code Ann. §36-96.7, the Applicant shall provide housing for persons 55 years of age or older in compliance with the Virginia Fair Housing Law for each independent living unit as follows:

Independent Living Units:

- a. The building footprint of each independent living unit (excluding uninhabitable areas, such as garage, patio, and front entry) will not exceed 1,450 square feet.
- b. The Applicant shall provide in the Declaration of Covenants, Conditions and Restrictions that occupancy in each independent living unit:
 - i. shall be limited to two persons: in 80 percent of the units the first occupant shall be at least 55 years of age or older (the “Age Qualified Resident”) and the second occupant shall be at least 45 years of age or older (the “Qualifying Resident” or “Qualifying Residents”). In 20 percent of the units both occupants shall be Qualifying residents;
 - ii. may permit a third person to reside in a unit if that person is a handicapped family member or providing assistance in Activities of Daily Living (“ADL”) and/or medical assistance, provided that the third occupant is no less than 25 years of age; and
 - iii. shall be limited to guests staying overnight no more than 90 calendar days in a calendar year. Overnight guests are not subject to age restrictions.

Except as otherwise restricted by classification as Retirement Community District R-C, upon conveyance of the last (80th) independent living unit for first-time occupancy, the foregoing Proffer 1.b.i. through Proffer 1.b.iii., shall lapse as zoning-imposed conditions restricting use of the independent living units on the Subject Property. Thereafter, the HOA or its successors in interest, shall be responsible for enforcement of the aforementioned restrictions listed in Proffer 1.b.i. through Proffer 1.b.iii. and the

declarations governing use, occupancy and governance of the independent living units shall be appropriately amended as necessary to require enforcement of the HOA. Upon request by the Town documentation of the same shall be provided by the HOA.

2. The Applicant shall complete construction and open a community facility for the use of residents in the independent living units not later than issuance of the 40th Occupancy Permit for the independent living units.
3. The Applicant concurrent with the submission of the first Subdivision or Site Plan for the independent living units shall submit a landscaping plan and a lighting plan to the Town for review. All building-mounted and parking lot lighting fixtures will be designed to mitigate against off-site light spillage and shall be outfitted with appropriate shrouds and/or automatic cut-off features.
4. All private on-site roads and parking areas on the Subject Property shall be maintained by the HOA at no cost to the Town. Maintenance activities related to these private streets and parking areas shall include, but are not limited to, snow removal, asphalt sealing, leaf removal and paint striping. Additionally, the HOA shall provide snow removal and maintenance services to all trails and/or sidewalks built upon the Subject Property.
5. The Applicant shall improve Route 676 (Lutheran Church Road) to a GS-3 (Rural Collector Road System) standard along the Subject Property frontage as a bonded improvement that shall be completed concurrent with the first phase of Subdivision or Site Plan development.
6. At time of the issuance of individual Occupancy Permits for the independent living units that have been constructed on the Subject Property, the Applicant shall contribute to the Lovettsville Volunteer Fire & Rescue Company, a cash sum of three hundred dollars (\$300.00) per independent living unit.
7. The Applicant shall install sanitary sewer and public water lateral service lines from the Subject Property to the property of the Lovettsville Fire & Rescue Company to allow the Town of Lovettsville to provide utility services to the Lovettsville Fire & Rescue Company site. The Applicant agrees to install a water hydrant at the Lovettsville Fire & Rescue Company site as part of the water line improvement required by this Proffer.
8. By acceptance of these Proffers, the Town Council has deemed that occupancy of each independent living unit in the Retirement Community by two adult occupants each is the equivalent of one-half a standard single family residence for purposes of allocating sewer taps. This determination is based upon the number of residents in each independent living unit (maximum two per independent living unit), the number of plumbing fixtures (no more than two full bathrooms and one half-bathroom per independent living unit), and

the water usage patterns of senior residents, who consume less than the pattern of a standard single family residence.

In the event occupancy by a third person occurs for any unit in accordance with Proffer 1.b.ii., if required by the Town, the unit's respective property owner shall pay an additional sewer tap fee to the Town, in accordance with the Town's schedule of sewer rates in effect at the time of such third occupancy. Such fee shall be levied against the unit only one time, shall run with the unit in perpetuity, and may not be transferred to any other unit. Following payment no refund may be claimed or allowed, regardless of whether such unit shall thereafter be occupied by a lesser number of occupants.

9. As a bonded improvement to be constructed during the first development phase, the Applicant shall construct pedestrian and bicycle trails on the Subject Property as shown on the Concept Plan. The Applicant shall also construct within the VDOT right-of-way for Berlin Pike (Route 287), a pedestrian and bicycle trail from the southern terminus of the presently-approved trail to the corner of Lutheran Church Road for addition to the approved "Pathway Plan" of the Town of Lovettsville, and shall obtain all required approvals therefore from any applicable review agencies. The Applicant agrees to dedicate easements as necessary in connection with the portion of the trails to be constructed by Applicant and will convey the aforesaid trails to the Town free of liens, without further consideration, after completion and acceptance.
10. The Town agrees that it will permit the Applicant to furnish, install and construct at the Applicant's sole expense a drilled well public water supply facility that has sufficient capacity to serve the Subject Property and that is compatible with the Town's water system (the "Water Facilities"), and the Applicant is granted the option, in its sole discretion, to provide said water capacity to serve the Subject Property. By acceptance of these Proffers, the Town further agrees that the Applicant shall not be charged a water availability (tap) fee for the capacity generated by the Water Facilities to serve the Subject Property. The Town agrees to not unreasonably withhold its permission for the Applicant to install and construct any of the Water Facilities within the rights of way or easements that the Town owns or has a right to use. The Water Facilities shall adhere to the following requirements:
 - a. The Water Facilities shall include a well lot, all-weather (black top) access road, well house/filter building, piping extending to the Town's sanitary sewer system without additional sewer connection charges, and all other facilities required to serve the Subject Property.
 - b. The Water Facilities must be designed and constructed in accordance with the Virginia Waterworks Regulations, Loudoun County Water

Distribution System—Standards and Extensions, and are subject to approval of the Town (which review shall be limited to ensuring compliance with such standards and regulations) and the Virginia Department of Health.

- c. The Applicant acknowledges that the Town may require a minimum well yield of 0.5 gallons per minute per independent living unit.
- d. The Applicant will install the 8” diameter well casing and supply an approximately sized pump to maximize the estimated 300 to 400 gallon-per-minute capacity of the Water Facilities.
- e. The Water Facilities shall be constructed and conveyed to the Town not later than issuance of an Occupancy Permit for the 1st independent living unit.
- f. The Applicant agrees to convey, without further consideration, the Water Facilities free of debts, liens, and/or legal encumbrances to the Town by proper deed satisfactory in form to the Town Attorney. After conveyance to the Town (and the expiration of any warranty period), the Water Facilities shall be and remain the property of the Town, and the Applicant shall have no further obligations regarding operating and maintaining the said facilities.
- g. The Applicant shall also convey to the Town, without cost, all easements and rights of way necessary for the installation of the Water Facilities and for the free and unobstructed and uninterrupted right of access thereto, and for the inspections, operation, maintenance and replacement, and extension of the Water Facilities. It is agreed that title to such easements will be free of all liens and encumbrances and that all expenses incident to the obtaining thereof, including examination of title and conveyance, shall be at the cost of the Applicant
- h. Notwithstanding the acceptance of the Water Facilities as provided in Proffer 10.e. above, in the event the Water Facilities shall become contaminated or otherwise unusable, for any reason other than the act or failure to act by the Town or its authorized agents, at any time before one year after completion of construction of the project approved upon the Subject Property as authorized by the approval of this rezoning application, then in such event, the Applicant shall develop, construct and convey replacement Water Facilities meeting all of the requirements of this Proffer.

11. The homes to be constructed on Lots 8, 10, 12, 14, 24, 26, 31, 33, 36 and 38 (Tax Map 9A421, Parcels 8, 10, 12, 14, 24, 26, 31, 33, 36 and 38; MCPI #s:

370-18-9894; 370-18-9599; 370-18-9204; 370-18-8809; 370-19-2785; 370-19-2490; 370-19-0801; 370-19-0405, 370-19-0714 and 370-19-0319) shall be designed and constructed using similar architectural elevations to those of the existing homes on the immediately adjacent lots as shown in “Lovettsville Retirement Village Concept Elevation Primary Drive and Lovettsville Retirement Village Concept Elevation Secondary Drive dated March 5, 2003 and prepared by Lessard Architectural Group” dated March 5, 2003 and prepared by Lessard Architectural Group, Inc. contained in Exhibit B to these Proffers.

The undersigned owners of the Subject Property do hereby voluntarily proffer the conditions stated above which conditions shall be binding on the Subject Property which is subject to this rezoning application and shall have the effect specified in Va. Code Ann §15.2-2203. These Proffers shall be binding upon the heirs, executors, administrators, assigns and successor in interest in the Subject Property have signed the Proffers, that he/she has full authority to bind the Subject Property to these conditions and that the Proffers are entered into voluntarily. The undersigned are the authorized signatures of the Applicant, the HOA, and the Property Owners of the Subject Property, which are subject to this rezoning application.

EXHIBITS A & B ATTACHED HERETO

[SIGNATURE PAGES FOLLOW THIS PAGE]

PROFFER EXHIBIT A
LOVETTSVILLE RETIREMENT VILLAGE/HERITAGE HIGHLANDS
REZONING APPLICATION LVRZ 2010-0002
PROPERTIES OWNED BY PATRIOT HOMES OF VIRGINIA, INC.

County Tax Map & Parcel Number	MCPI #	County Tax Map & Parcel Number	MCPI #	County Tax Map & Parcel Number	MCPI #
//9A421////8/	370-18-9894	//9A421////42/	370-18-8049	//9A421////63/	370-29-3092
//9A421////10/	370-18-9599	//9A421////43/	370-18-8159	//9A421////64/	370-29-3487
//9A421////12/	370-18-9204	//9A421////44/	370-18-8553	//9A421////65/	370-18-9647
//9A421////14/	370-18-8809	//9A421////45/	370-18-8662	//9A421////66/	370-19-0041
//9A421////15/	370-18-7909	//9A421////46/	370-18-9056	//9A421////67/	370-19-0250
//9A421////16/	370-18-8513	//9A421////47/	370-18-9165	//9A421////68/	370-19-0644
//9A421////17/	370-18-7614	//9A421////48/	370-18-9560	//9A421////69/	370-19-0654
//9A421////18/	370-18-8218	//9A421////49/	370-18-9669	//9A421////70/	370-19-1048
//9A421////19/	370-18-7219	//9A421////50/	370-19-0063	//9A421////71/	370-19-1157
//9A421////20/	370-18-7823	//9A421////51/	370-29-0172	//9A421////72/	370-19-1551
//9A421////21/	370-18-6924	//9A421////52/	370-19-0566	//9A421////73/	370-19-1660
//9A421////22/	370-18-7528	//9A421////53/	370-29-0675	//9A421////74/	370-19-2055
//9A421////24/	370-19-2785	//9A421////54/	370-19-1070	//9A421////75/	370-19-2164
//9A421////26/	370-19-2490	//9A421////55/	370-29-1179	//9A421////76/	370-19-2558
//9A421////31/	370-19-0801	//9A421////56/	370-29-1573	//9A421////77/	370-19-2667
//9A421////33/	370-19-0405	//9A421////57/	370-29-1582	//9A421////78/	370-19-3061
//9A421////36/	370-19-0714	//9A421////58/	370-29-1976	//9A421////79/	370-19-3171
//9A421////38/	370-19-0319	//9A421////59/	370-29-2086	//9A421////80/	370-19-3565
//9A421////39/	370-18-9420	//9A421////60/	370-29-2480		
//9A421////40/	370-19-0024	//9A421////61/	370-29-2589		
//9A421////41/	370-18-7655	//9A421////62/	370-29-2983		

PROFFER EXHIBIT B
LOVETTSVILLE RETIREMENT VILLAGE
HERITAGE HIGHLANDS
REZONING APPLICATION
LVRZ 2010-0002

Concept Plans titled “Lovettsville Retirement Village Heritage Highlands Zoning Map Amendment Application” dated June 2010 and revised April 19, 2010, prepared by Stantec Consulting Services, Inc., consisting of Sheets 1 through 4;

“Lovettsville Retirement Village Concept Elevation Primary Drive” and “Lovettsville Retirement Village Concept Elevation Secondary Drive” dated March 5, 2003 and prepared by Lessard Architectural Group, Inc.; and

“Front Elevation” and “Rear Elevation” dated May 6, 2010, prepared by Middleburg Architectural Services, LLC

DRAFT
Ordinance No. 2011-__-__
APPROVE LVZA 2010-0002: HERITAGE HIGHLANDS--ZONING MAP
AMENDMENTS AND ACCEPT PROFFERED CONDITIONS

MOTION:

SECOND:

WHEREAS, the owners of all properties approved for independent living units within the project originally approved as the Lovettsville Retirement Village, being the parties identified in and signing the proffer statement dated “Draft August 13, 2010”, and revised through April 19, 2011, (“the Applicants”) seeking revisions to the zoning map amendment, as proffered, and conditional use permit approved April 24, 2003, (i) to rezone the property to the R-C Retirement Community District, with proffers; (ii) to amend the age restrictions applicable to the independent living and assistant living portions of the property to match the requirements of the Virginia Fair Housing Law, specifically to Section 36-96.7 of the Code of Virginia (1950); (iii) to increase the maximum square footage allowed for the independent living units; (iv) to increase the number of persons who may reside in the units and allow residency by a person either providing care to or receiving care from another occupant of the independent living residence; (v) to lengthen the time that guests may occupy the independent living residence; and (vi) to eliminate the requirement that independent living units be the primary residence of the occupants; and

WHEREAS, the Lovettsville Planning Commission and Lovettsville Town Council conducted a joint public hearing on the application April 28, 2011, pursuant to notice given in accordance with the requirements of Va. Code section 15.2-2204; and

WHEREAS, the Planning Commission on April 28, 2011, recommended approval of the application as proffered; and

WHEREAS, the Town Council has determined that approval of the application and acceptance of the proffered conditions will promote the health, safety and welfare of the Town’s citizens and are consistent with good zoning practice.

NOW, THEREFORE, BE IT ORDAINED by the Lovettsville Town Council that the application by the Applicants is hereby approved, subject to the conditions as voluntarily proffered in Proffer Statement dated “Draft August 13, 2010” and revised through April 19, 2011, (i) rezone the property to the R-C Retirement Community District, with proffers; (ii) to amend the age restrictions applicable to the independent living and assistant living portions of the property to match the requirements of the Virginia Fair Housing Law, specifically to Section 36-96.7 of the Code of Virginia (1950); (iii) to increase the maximum square footage allowed for the independent living units; (iv) to increase the number of persons who may reside in the units and allow residency by a person either providing care to or receiving care from another occupant of the independent living residence; (v) to lengthen the time that guests may occupy the independent living residence; and (vi) to eliminate the requirement that independent living units be the primary residence of the occupants; and

BE IT FURTHER ORDAINED that the foregoing approvals are subject to the conditions, voluntarily proffered by the applicants pursuant to Va. Code section 15.2-2303 attached hereto.

ATTACHMENTS: Original Proffer Statement dated “Draft August 13, 2010”, revised through April 19, 2011, together with EXHIBITS A and B, ATTACHED HERETO.

VOTE:

Ayes:

Nays:

Abstentions:

Absent for vote:

APPROVED _____, 2011

ELAINE WALKER, MAYOR

JUDY KROMHOLZ. TOWN CLERK

DRAFT

Town of Lovettsville

Speaker Sign - Up Sheet

Joint Public Hearing, Town Council Regular Meeting - April 28, 2011

Please Print.

Name and Association	Address	Topic	Email Address (Optional) ¹
JACK BURDEN	16 HARRIS MILK	PROFFER	
HOWARD WILLIAMS	12609 Lutheran Church Rd.	Town Council - Pub. Com	
T.C. Michael Loeigle	14 East Broadway	Teenagers	orntrugs@aol.com
T.C. Elizabeth Barber	11 Harpers Mill	Proffer	ELBARBER@T.COM
T.C. Cheloy Baker	1 N. Light St.	Teenagers	e.baker@comcast.net
T.C. Bibig Lam	2 Risen Town	Public Comment	
T.C. Jason Hage	3 N. Light St	teens	chahage@msu.com

Each speaker will be limited to no more than three (3) minutes at the beginning of the meeting, or no more than five (5) minutes at the end of the meeting.

¹ If you provide your email address, you will be added to the Town Council & Planning Commission Meetings Notification List.