

## **Index File**

**UP-825-13**

**Patrice Janene (Jan) Wiener**

**Assessor's Parcel Nos. 30A-4-1**

Request for a Special Use Permit, pursuant to Section 24.1-306 (Category 3, No. 2) of the York County Zoning Ordinance, to authorize the establishment of home crafts sales with customer contact in conjunction with an existing single-family detached home on a 2.25-acre parcel located at 101 Old Dare Road (Route 644) and further identified as Assessor's Parcel No. 30A-4-1. The property is zoned R20 (Medium Density Single-Family Residential) and is designated Medium Density Residential in the Comprehensive Plan.

### **Attachments:**

- Staff Report
- Zoning Map
- Sketch Plan
- Narrative
- Proposed Resolution No. PC13-8

# COUNTY OF YORK

## MEMORANDUM

**DATE:** May 1, 2013 (PC Mtg. 5/8/13)  
**TO:** York County Planning Commission  
**FROM:** Earl W. Anderson, Planner  
**SUBJECT:** Application No. UP-825-13; Patrice Janene (Jan) Wiener

### ISSUE

Request for a Special Use Permit, pursuant to Section 24.1-283(b) of the York County Zoning Ordinance, to authorize home craft sales as a home occupation with on-premises customer/client contact on a 2.25-acre parcel located at 101 Old Dare Road (Route 644) and further identified as Assessor's Parcel No. 30A-4-1.

### DESCRIPTION

- Property Owners: Mark F. Wiener Etux
- Location: 101 Old Dare Road (Route 644)
- Area: 2.25 acres
- Frontage: Approximately 200 feet on Old Dare Road
- Utilities: Public water and septic
- Topography: Flat
- 2025 Land Use Map Designation: Medium Density Residential
- Zoning Classification: R20 – Medium density single-family residential
- Existing Development: Single-family detached home, storage shed, greenhouse, potting shed, and above-ground pool
- Surrounding Development:
  - North: Undeveloped parcel and single-family detached home on Old Dare Road
  - East: Single-family detached home on Old Dare Road
  - South: Single-family detached home on Whispering Pine Drive
  - West: Single-family detached home on Dare Road
- Proposed Development: Home craft sales (yard art and landscape plants) as a home occupation with on-premises customer/client contact

## **CONSIDERATIONS/CONCLUSIONS**

1. The subject parcel is located on the southern side of Old Dare Road, adjacent to five single-family detached homes and to the north an undeveloped parcel. The property is occupied by a single-family detached home, storage shed, greenhouse, potting shed and above-ground pool, and the applicant has many landscape plantings and yard art throughout the front and side yards. "Yard art" is not defined in the Zoning Ordinance but is generally considered to consist of various types of artwork including but not limited to sculptures, statuettes, and other freestanding or attached works, whether for decoration or otherwise. The 2.25-acre parcel and the surrounding area are zoned R20 (Medium density single-family residential) and are designated Medium Density Residential in the Comprehensive Plan.
2. The applicant is a York County Master Gardener and creates yard art for her sole use. She desires to sell some of the plantings she has grown in her yard and the yard art she has created. The plants and yard art she has cultivated and created are currently on located throughout her front and side yards. She is proposing to use an area (approximately 400 square feet in area) between her existing greenhouse and potting shed and the existing above ground pool to display plants for sale, while the yard art to be sold would be stored in the potting shed. According to her narrative description, she desires to serve no more than five to ten customers at one time. She also indicates that she will encourage customers to schedule appointments; however, some could drop by without prior appointments.

The applicant proposes that any of the plants or yard art located throughout her property would actually be available for purchase. However, from a technical standpoint, this could be considered to create a larger display area than would be allowed per the home occupation limitations (25% of the residence floor area or 400 square feet). However, since both plants/landscaping and yard art are permissible features on a residential property, staff is of the opinion that the total area of the applicant's yard need not be considered to be subject to the 25% / 400 square foot limitation as long as the items are not identified by sales price tags or labels.

3. Section 24.1-281 of the Zoning Ordinance specifies a series of performance standards that apply to home occupations in general, and Section 24.1-283(b) sets forth additional standards that apply specifically to those home occupations for which a use permit is required. In accordance with these standards, home occupations are not permitted to occupy more than 25% of the floor area of a residence or 400 square feet, whichever is less, unless the Board authorizes a greater floor area in conjunction with a use permit application. According to County Assessor's records, the applicant's home has approximately 2,188 square feet of floor area. The sketch plan submitted by the applicant (copy attached) indicates that the area proposed for the display of extra planting materials is approximately 400 square feet, or approximately 18% of the total area of the home. Though the intent of this provision relates more to floor area than outdoor display area, the area is within the prescribed size limits.

The Zoning Ordinance also limits all customer/client contact to the period between 8:00 AM and 8:00 PM, Monday through Saturday, unless otherwise specified by the Board through a use permit condition. The applicant has proposed hours of operation to be no more than two (2) days per week between March 1 and October 31 between the hours of 10:00 am and 2:00 pm. The applicant has proposed to serve as many as five to ten customers at any one time; however, staff feels this number of people on the site is unprecedented in comparison with other approved home occupations. Having five to ten people visiting the site at one time would be inconsistent with the residential nature of the property as well as the premise that home occupations are to be an incidental, accessory, and essentially unapparent use of a residential property. Therefore, the staff proposes limiting the total number of customers on site to no more than two at one time and by appointment-only.

4. In accordance with Zoning Ordinance Section 24.1-283(b)(3), off-street parking must meet standards for commercial and business uses, and must be in addition to spaces otherwise required for the residential use on the property (two spaces). The applicant's dwelling has an existing 40' x 24' parking area, which can accommodate the parking of three vehicles in addition to the two spaces required for the residence. Additionally, the applicant's circular driveway has an area of 20' x 30' that can accommodate another two cars. Therefore, staff is proposing an approval condition limiting parking for customers to no more than two on-site spaces. This would also effectively limit the number of customers on-site at any one time.
5. The amount of traffic that would be generated by a retail home occupation such as this is difficult to predict; however, there would be no AM or PM peak-hour trips since the hours are limited to the period between 10:00 am and 2:00 pm. It should be noted that the Board has approved several use permits for home barber/beauty shops and antique sales with more extensive hours of operation. None of these home occupations has generated any reported problems or complaints from surrounding neighbors with regard to traffic or any other aspects of their operation. Based on this history and the limited hours of operation, staff does not believe the proposed home occupation would have a significant impact on traffic in the neighborhood.
6. The Building Code Official has indicated that the applicant will be required to comply with applicable Virginia Uniform Statewide Building Code requirements relative to providing accessible parking facilities and a public toilet facility. The applicant will be required to install a van-accessible parking space with required markings and signage and an accessible public toilet facility no further than 500 feet in travel distance from the sales area.
7. The subject parcel does not fall under the jurisdiction of an established homeowners' association. Regardless of any covenants that may be deeded, the County must evaluate the home occupation use within the context of the Zoning Ordinance and its standards. The County cannot be a party to the enforcement of private covenants, and approval of a Special Use Permit will not relieve the applicant of any responsibilities for compliance with any such covenants.

## **RECOMMENDATION**

Staff believes the proposed home occupation, provided that it is operated in the manner described by the applicant and the supplementary conditions proposed by staff, would be comparable to several other approved home occupations in terms of the type and intensity of activity and would not likely have any adverse impacts on the surrounding area. Parking would be limited to the existing parking area and driveway, and the display area is located behind existing buildings on the property. Staff believes that the proposed conditions are sufficient to ensure that it remains a small-scale operation, consistent with the intent of the home occupation provisions of the Zoning Ordinance. Therefore, based on the considerations and conclusions as noted, staff recommends that the Commission forward this application to the Board of Supervisors with a recommendation of approval subject to the conditions contained in proposed Resolution No. PC13-8.

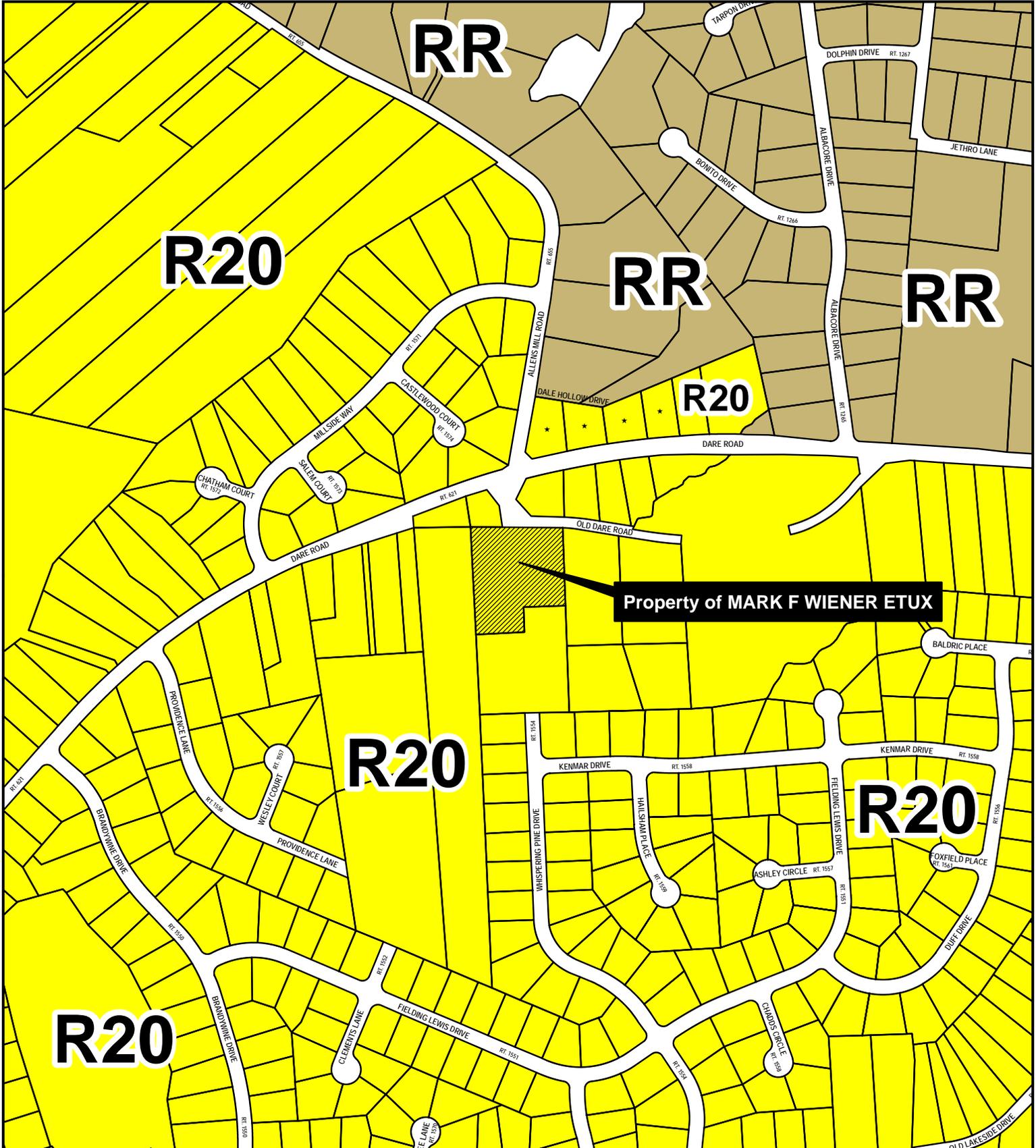
### Attachments:

- Zoning Map
- Sketch Plan
- Narrative
- Proposed Resolution No. PC13-8

**APPLICANT** Patrice Janene "Jan" Wiener  
Special Use Permit request to establish home crafts sales with customer contact in conjunction with an existing single-family detached home  
101 OLD DARE RD

# ZONING MAP

**APPLICATION NUMBER:** UP-825-13



★ = Conditional Zoning  
0 225 450 900 Feet  
Printed on April 15, 2013



SOURCE: YORK COUNTY GIS PARCEL DATA and ZONING COVERAGE  
THIS IS NOT A LEGAL PLAT. This map should be used for information purposes only. It is not suitable for detailed site planning.



Existing Greenhouse

Existing Potting Shed

Proposed Display Area

Existing Above Ground Pool

Existing Surfaced Parking Area:  
Current: (2) spaces  
Proposed: Add (1) for (3) spaces

Residence

Existing Storage Shed

101 Old Dare Rd, Yorktown, VA 23692, USA

Google earth

Imagery Date: 4/6/2010 37°10'05.60" N 76°26'43.29" W elev 13 ft eye alt 233 ft

**CONTACT INFORMATION:**

Patrice Janene (Jan) Wiener  
H: 757-874-1951  
C: 757-634-9265

Prepared 3/27/2013

**NOTES:**

- a) The highlighted area in the lower left quadrant of the diagram is an existing surfaced (rock/#57 stone) parking area that currently accommodates (2) additional parking spaces directly off the asphalt paved driveway. Proposed modification would be to add (1) additional space directly in line with the others. All spaces would then be bordered/screened as per requirement(s) noted in 24.1-281 (c).
- b) The highlighted area in the upper left quadrant is an area directly in front of the greenhouse where landscaping/foliage items for sale will be set for display.
- c) No additional building/structure modifications to the property will occur as a result of the home occupation. All necessary storage will be addressed through existing storage building(s).

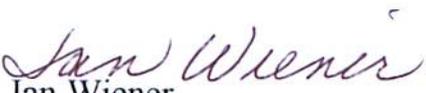
I have been a York County resident for over 12 years at 101 Old Dare Rd. Since living here, my desire for growing flowers and ornamental plants has grown into a passion. My yard now consists of hundreds of plants and shrubbery that is the highlight of Old Dare Road and the surrounding community. I have received many accolades from my neighbors and friends and have been on two garden tours (Hampton and York County Master Gardeners). In the last few years, I have included lawn art (painted chairs, wine bottles, pergolas and an assortment of hand-painted items) into my passion.

I am looking to incorporate my passion into a part-time business called Bloomin' Art. My intention is to make this into a small home occupation that will not be intrusive to the neighbors nor the community. I plan to operate the business only 2 days a week from 10 am to 2 pm, with no openings on holidays and will be closed during the timeframe of November through February. I anticipate no more than 5 – 10 customers each day and will encourage “by appointments only”. I currently am able to accommodate 5 to 10 parking spaces, which will not be intrusive to the neighbors or impact any traffic on Old Dare Rd. I have spoken with my neighbors and have their full support in this endeavor. Additionally, I invited Mr. George Hrichak for an on-site assessment of my property and have received his full support.

The flowers, plants and shrubbery sold will come from the existing vegetation on my property. There will be no nursery or greenhouse operations used to support the business and any yard art will be made inside the existing home. My intent of the business is to improve York County beautification through the sale of plants and yard art and to share my passion for plants with my neighbors.

I honorably request your support of a Special Use Permit to conduct a home occupation business within the premises at 101 Old Dare Rd. Thank you very much for your time and consideration.

Respectfully,

  
Jan Wiener  
101 Old Dare Rd  
Yorktown, VA 23692-2911  
(757) 874-1951

PLANNING  
York County

MAR 29 2013

Planning Division

PLANNING COMMISSION  
COUNTY OF YORK  
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Planning Commission held in the Board Room, York Hall, Yorktown, Virginia, on the \_\_\_\_ day of \_\_\_\_\_, 2013:

\_\_\_\_\_

Present

Vote

Richard M. Myer, Jr., Chair  
Mark B. Suiter, Vice Chair  
Alexander T. Hamilton  
Christopher A. Abel  
Timothy D. McCulloch  
Todd H. Mathes  
Melissa S. Magowan

\_\_\_\_\_

On motion of \_\_\_\_\_, which carried \_\_\_\_, the following resolution was adopted:

**A RESOLUTION TO RECOMMEND APPROVAL OF AN APPLICATION TO AUTHORIZE HOME CRAFT SALES AS A HOME OCCUPATION WITH CUSTOMER/CLIENT CONTACT AT 101 OLD DARE ROAD**

WHEREAS, Patrice Janene (Jan) Wiener has submitted Application No. UP-825-13 requesting a Special Use Permit, pursuant to Section 24.1-283(b) of the York County Zoning Ordinance, to authorize the establishment of home craft sales as a home occupation with customer/client contact in a single-family detached home on a 2.25-acre parcel located at 101 Old Dare Road (Route 644) and further identified as Assessor’s Parcel No. 30A-4-1 (GPIN T07c-1476-1209); and

WHEREAS, said application has been transmitted to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the \_\_\_ day of \_\_\_\_\_, 2013, that Application No. UP-825-13 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to authorize a Special Use Permit, pursuant to Section 24.1-283(b) of the York County Zoning Ordinance, to authorize the establishment of home craft sales as a home occupation with customer/client contact in a single-family detached home on a 2.25-acre parcel located at 101 Old Dare Road (Route 644) and further identified as Assessor's Parcel No. 30A-4-1 (GPIN T07c-1476-1209), subject to the following conditions:

1. This use permit shall authorize home craft sales (yard art and landscape plants) as a home occupation with customer/client contact in a single-family detached home on a 2.25-acre parcel located at 101 Old Dare Road (Route 644) and further identified as Assessor's Parcel No. 30A-4-1 (GPIN T07c-1476-1209).
2. The home occupation shall be conducted in accordance with the provisions of the York County Zoning Ordinance, Sections 24.1-281 and 24.1-283(b), except as modified herein.
3. Any storage of yard art and retail sales shall be confined to the existing potting shed and the display area of the yard art and landscape plants shall not exceed four hundred (400) square feet. All shall be located as depicted on the sketch plan received by the Planning Division on March 29, 2013, a copy of which shall remain on file in the office of the Planning Division. While yard art and landscape plantings may be located throughout the remainder of the residential property, none located outside of the "display" area noted above shall be identified with a sales price tag, label or sign.
4. No more than two (2) customers/clients, by appointment only, shall be served at any one time. A maximum of two (2) off-street parking spaces, in accordance with all applicable Zoning Ordinance standards and limitations, shall be provided on the premises (i.e., off-street) to accommodate customers/clients. These spaces shall be in addition to the two (2) spaces that are otherwise required for the single-family residence.
5. The days and hours of operation shall be limited to no more than two (2) days per week between March 1 and October 31 between the hours of 10:00 am and 2:00 pm. The applicant's appointment book shall be made available for inspection by the Zoning Enforcement Officer, upon request, in order to verify compliance with the days of the week and customer contact conditions.
6. Prior to establishing the home occupation, the applicant shall demonstrate compliance with the applicable minimum standards of the Virginia Uniform Statewide Building Code, subject to the approval of the Building Code Official.

7. Approval of this Special Use Permit shall not be construed to supersede or negate the effect and application of any private covenants that may be applicable to the proposed use/activity nor the authority of any property owners' association to enforce compliance with any applicable covenants.
8. In accordance with Section 24.1-115(b)(7) of the York County Zoning Ordinance, a certified copy of the resolution authorizing this Special Use Permit shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court prior to issuance of a Certificate of Compliance and Occupancy for the home office use.

BE IT FURTHER RESOLVED that this Special Use Permit is not severable, and invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.