

// A special meeting of the Council of the City of Lynchburg, recessed from November 27, was held on the 11th day of December, 2007, at 1:00 p.m., Council Chamber, City Hall, Joan F. Foster, President, presiding. The purpose of the meeting was to conduct a work session regarding several items. The following Members were present:

Present: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster

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Absent:

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// Representatives of Brown, Edwards, LLC, the City's external auditor, presented a brief overview regarding the City's Comprehensive Annual Financial Report (CAFR) for fiscal year ending June 30, 2007.

// Linda Jones and Blair Smith, Dominion Seven Architects, presented information regarding Leadership in Energy and Environmental Design (LEED) certification for the Sandusky Middle School. Ms. Jones explained that although the project will cost an additional \$1.1 million, the Schools should expect to recoup the additional funds through operational savings in the first 15 to 20 years. Ms. Jones went on to say that the Schools should also see some immediate operational savings due to the building being more environmental friendly and energy efficient. Ms. Jones also noted that the building would last longer. Ms. Jones explained that the original construction schedule also had to be revised from 18 months to 24 months which would mean that the school would open Fall 2010 instead of Fall 2009. Some Council Members expressed concern with the delay in the opening of the new school for an additional year. In response to questioning, Mr. Smith explained that the LEED certification was not a factor in extending the timeline, but that the original timeline was too aggressive and would have added additional costs to the project. Some Council Members commented that the additional funding for the LEED certification would require other capital projects to be deferred, including the Heritage High School project. Other Council Members noted that the facility should be a "green" facility and that the additional funds would be recouped via a longer lasting and more energy efficient facility. Following discussion, City Manager Kimball Payne stated that staff would need to look at the Capital Improvements Program (CIP) to determine how the additional funding would affect other capital projects and come back to Council at a later date.

// City Manager Kimball Payne stated that after discussion during its last work session, City Council directed that the section of Tourism Program Governance Option be placed on its December work session agenda for action. Mr. Payne explained that City Council has two fundamentally different options before it -- continue the City's relationship with the Chamber of Commerce or establish the tourism program as an independent organization and that documents previously provided to Council have included analysis and thinking points about the options. Mr. Payne went on to say that the selection of either option will require taking a number of steps to implement Council's decision and that any steps necessary to implement the decision will have to be completed in a timely manner as the current arrangement with the Chamber expires on June 30, 2008. Mr. Payne outlined the steps needed to implement either option:

Independent Organization

- Determine the structure, make up, and responsibilities of the organization. For example, would the organization be established under the enabling legislation as recommended by the Tourism Task Force or under some other format?
- Solicit, consider, and appoint members of the governing body for the program.
- Determine program goals and plan of work.
- Decide issues of operations and accountability, particularly the relationship of the organization to the City Administration and City Council.
- Recruit and hire a director for the program.
- Determine where the program will be housed.

Chamber Administered

- Negotiate a new contract with the Chamber. Issues to be addressed in a new contract would include mutual responsibilities, the amount of funding provided, financial reporting, accountability, transparency, the establishment of a governance procedure, the makeup and responsibilities of an advisory or policy board, benchmarks/performance measures, and definition of how funding in support of the Chamber's administration is determined including an adjustment when the Chamber moves into a new building.
- Solicit, consider and appoint members to the tourism board.
- Determine program goals and plan of work.
- Proceed with the recruitment of a tourism program director. The City Manager should have a role in hiring the tourism program director and there should be some accountability of the director to City Council through the City Manager. This relationship should be spelled out in the contract document.

Mr. Payne explained that funding the Tourism Program, under any governance structure, at the \$1.1 million budget level would increase the percentage of revenues from the Transient Occupancy Tax dedicated to tourism from 36% to approximately 72% and that the impact on the General Fund would be about \$550,000. Mr. Payne stated that Council may want to consider leaving the funding at its current level with a gradual increase to \$1.1 million as the program develops. During the discussion, several Council Members expressed support for the City Manager to negotiate a new contract with the Chamber to manage the Tourism Program, which would include the components previously outlined by the City Manager and a gradual increase in the funding of the program. Council Member Gillette reiterated earlier concerns regarding gaps in previous financial information provided by the Chamber to the City, including a failure to fully explain how some of the operational costs paid to the Chamber for managing and housing the program had been arrived at to determine if the City is paying a reasonable cost. Mr. Payne stated

that the new contract with the Chamber would include benchmarks/performance measures and the definition of how funding in support of the Chamber's administration is determined. Mr. Payne went on to say that the final contract would need to be voted on by City Council and that the funding of the program would be included as a budget item during the upcoming budget process. Following discussion, and on motion of Council Member Helgeson, seconded by Vice Mayor Dodson, Council by the following recorded vote authorized staff to negotiate a contract with the Lynchburg Regional Chamber of Commerce for the continued operation of the City's tourism program subject to appropriate oversight, accountability, and performance measurements as previously outlined:

Ayes: Dodson, Garrett, Helgeson, Johnson, Seiffert, Foster

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Noes: Gillette

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// City Manager Kimball Payne explained that an historic tour operator has expressed concern regarding the accumulation of brush and bulk in the neighborhoods through which the tours travel, and that in response to this concern, Director of Public Works Dave Owen was asked to explore options for addressing this concern as well as a concern that increased activity in the downtown area in general may require additional resources to ensure the cleanliness and attractiveness of downtown and the historic neighborhoods that are nearby. Director of Public Works Dave Owen outlined some issues or concerns expressed by City residents about bulk and brush collection:

- Materials set out and not called in for a scheduled pickup may sit for a period of time before being collected. This problem seems to predominate near rental properties, in certain neighborhoods, and at certain times of the year (for example, after the colleges let out for the summer).
- The length of time between scheduling a stop and the actual pick up of that material during peak times of the year, especially late spring and early summer, may approach three weeks.
- Brush and bulk that is not called in for a pick up by the responsible party remains in place until a complaint is made by a third party and then pick up is scheduled.

Mr. Owen went on to say that providing better, more proactive service in brush and bulk collection will require additional resources in terms of one or more knuckleboom trucks and crew and that further examination of this issue is warranted so that specific proposals, with cost implications, can be considered during the budget process.

Mr. Owen did note that depending on the option/enhancement selected to be implemented, the cost of an additional vehicle and crew is \$190,000 in the first year and \$90,000 on an ongoing basis. During the discussion, some Council Members commented that the problem is not just confined to the downtown areas and that the problem seems to be more with trash and not just bulk items being placed in the right of way. Following discussion, Mr. Payne stated that a proposal to address this issue would be presented for Council consideration during the upcoming budget process.

// Parks and Recreation Director Kay Frazier explained that during the FY 2007 Budget process Parks and Recreation was asked to identify approximately \$70,000 in budget cuts to the department's requested operating budget and that these cuts included reducing the aquatics budget by approximately \$13,000.

Ms. Frazier stated that this reduction resulted in changing the season for Miller Park pool to coincide with the Lynchburg City School's calendar. Ms. Frazier did note that historically the season for Miller Park pool ran from Memorial Day weekend through Labor Day weekend with the pool opening only on weekends while Lynchburg City Schools were in session and opening seven days a week during weeks that schools were not in session and that the change in schedule was offered for a number of reasons as part of the overall department's reduction...

- staffing the pool for the beginning and end of the season is costly in terms of overall pool operations;
- it is a challenge to staff the pool with lifeguards in the early and late seasons as the guards, ranging in age from 15 to early 20's, are high school and college students;
- the guards are generally not available to work in the early and late seasons because of school and family obligations;
- it is also costly to maintain the water quality during the weeks when the pool is not open Monday-Friday; and
- that attendance and revenues drop significantly beginning mid-August through Labor Day.

Ms. Frazier went on to say that Council requested that staff analyze the 2007 summer season and make recommendations for future seasons and that staff is offering the following recommendations for Council consideration:

- Develop and implement a Miller Park Pool Junior Lifeguard Program. This program will be modeled after the United States Lifesaving Association Junior Lifeguard Program and the American Red Cross Guardstart Program. The program will train and mentor five (5) City youth per year, ages 14-15, to prepare them to work as lifeguards at Miller Park pool. The teens will be recruited from teens participating in the neighborhood community center programs, teens enrolled in swimming lessons and/or teens that spend considerable time at the pool and show an interest in aquatics. The Junior Lifeguard Program will mentor teenagers and create a job opportunity while supporting efforts to increase the number of available guards to work at the pool. The program will provide weekly instruction and conditioning to prepare participants for the lifeguard certification classes. The cost of this program is \$750.00 annually.
- Open Memorial Day, May 25, as a ticketed special event. A limited number of tickets (400) would be pre-sold for the day's event. By pre-selling tickets the crowd can be controlled and a better experience offered to visitors to the pool. In past years the pool has filled to capacity within one or two hours of opening which has contributed to large crowds gathering at the front entrance to the pool.
- Open the weekends of May 31 - June 1 and June 6 - June 7. Increase marketing of the pool for private rentals during the weekdays during the early season.

- Open the pool for seven days a week from June 15 - August 24 (based on a tentative date of August 25 as the first day of classes for Lynchburg City Schools).
- Do not open for Labor Day. It is particularly difficult to staff the pool for this weekend and attendance is historically low.

Budget Ramifications:

- The cost of the Junior Lifeguard Program is estimated at \$750.00 annually.
- The estimated cost of opening for early season weekends, beginning Memorial Day, and weekday maintenance of the pool is an additional \$9,350 annually.
- A third quarter adjustment of \$9,600 for FY 08 will be needed to fully fund the recommendations.
- Parks and Recreation will also submit a budget request of \$10,100 to fully fund the recommendations for FY 2009.

During the discussion, it was suggested that Community Development Block Grant funds might be one source of funding for the special event. Following discussion, and on motion of Council Member Johnson, seconded by Council Member Seiffert, Council by the following recorded vote endorsed staff's recommendations regarding the operation of the Miller Park Pool:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster

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Noes:

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// Director of Community Development Charlene Montford outlined some proposed changes and updates that City Council might want to consider regarding the Community Development Block Grant (CDBG) and HOME Program, i.e., explore options for enhancing the Citizens Participation Plan, explore goals that will result in better utilization of the City's CDBG funds for projects and activities that the City desires, and explore the appropriate mix of funding operations versus capital expenses. Ms. Montford explained the purpose of the Citizens Participation Plan, which was adopted by City Council in December 1995, and stated that the Plan needs to be updated and that any amendments to the Plan must be approved by City Council following an advertised public hearing. Ms. Montford also reviewed the role of the Community Development Advisory Committee, which is to make recommendations to City Council regarding projects and plans for the CDBG and HOME programs and to act in an advisory capacity to City Council regarding programs and related project activities. Following the presentation, City Council asked Council Member Gillette, Chair, and Council Member Jeff Helgeson, Vice Chair, of the Community Development Advisory Committee to review the recommendations and draft a proposal for City Council to consider at a later date.

// City Attorney Walter Erwin provided an overview regarding the purpose of eminent domain and its usefulness to localities in acquiring property for public purposes, i.e., roads, parks, water/sewer lines. Mr. Erwin explained that eminent domain can also be used to get clear title to a piece of property.

// City Manager Kimball Payne provided information regarding City Council salaries, explaining that a Council Member requested that this item be added to the agenda for discussion. Mr. Payne stated that

Section 15.2-1414.6 of the Code of Virginia states that no increase in the salary of a member of Council shall take effect until July 1 after the next regularly scheduled general election of Council Members. Mr. Payne went on to say that the Code further states that every proposed increase in the salary of members of Council shall be adopted at least four months prior to the date of the next municipal election except in the case of a newly consolidated city when the proposed increase shall be adopted at least two months prior to the date of its municipal election. Mr. Payne explained that according to the Code of Virginia cities within the 35,000 to 74,599 population bracket shall be allowed to set salaries for mayors, which include presidents of council and council members not to exceed \$20,000 for the Mayor and \$18,000 for Council and that with a municipal election in May, Council would need to take action on a proposed increase prior to January 6, 2008. Mr. Payne did note that the market average salary for a Council Member is \$13,000 and \$15,000 for the Mayor. Council Members discussed the enormous time commitment that comes with being on Council, the possibility that lower income residents could be priced out of taking public office, as well as the fact that Council Members who are self employed may very well lose business by being on Council. Vice Mayor Dodson stated that this is a 25-percent increase for Council Members and a 20-percent increase for the Mayor. Council Member Gillette, whose seat is one of four that will be up for election next May, stated that although he supports the raise he would not personally accept the extra money should he decide to run for another term and win. Council Member Gillette also expressed concern that if there is no increase in the salary, people who cannot afford to sit on City Council may not be able to participate and that has a chilling effect on democracy. Council Member Garrett commented that in last year's election, 12 people ran for three seats, including those who were not "independently wealthy" and that he did not believe that the amount of money you get or don't get is the determining factor in whether someone will run for City Council. Following discussion, Council Member Johnson made a motion, seconded by Council Member Gillette, to accept the market average salary of \$13,000 per annum for Council Members and \$15,000 per annum for the Mayor. Council Member Seiffert made a substitute motion, seconded by Council Member Gillette, to set the salary for Council Members at \$10,000 per annum and the salary for Mayor at \$12,000 per annum, and Council by the following recorded vote adopted Ordinance #O-07-157 amending Section 2-16.1 of the City Code to set the salary of each Council Member at \$10,000 per annum and the salary of Mayor at \$12,000 per annum:

Ayes: Gillette, Helgeson, Johnson, Seiffert, Foster

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Noes: Dodson, Garrett

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// Human Resources Director Margaret Schmitt provided a brief update regarding the Community Dialogue on Race and Racism. Ms. Schmitt stated that the Community-wide kickoff is scheduled for January 17, 2008.

// During roll call, Council Member Seiffert expressed interest in exploring a citizen volunteer program whereby citizens would be the "eyes and ears" of the City by informing City staff of problems around the City, i.e., soil and erosion problems after a rain storm, trash dump sites, dilapidated housing, etc. Council Member Seiffert said that the idea came about as a result of a meeting he had with residents who had

expressed concerns regarding stormwater runoff into the lake off of Leesville Road. Council Member Seiffert stated that they could take pictures of problem areas and then get the information to City staff. Council Member Johnson informed that Mayor Foster was recently honored as being a community champion. Mayor Foster stated that Council Member Johnson also received this honor. In response to Vice Mayor Dodson's question, City Manager Kimball Payne stated that he did invite Senator Newman to the December 11 Council meeting to review the legislative agenda with City Council. Vice Mayor Dodson expressed concern that Senator Newman was not able to meet with the full Council to discuss the legislative agenda. Mr. Payne did note that Senator Newman has indicated that he has a very busy schedule during the next month but that he would be willing to meet during the day with a small group, i.e., Mayor, Vice Mayor and himself to discuss the legislative agenda. Mr. Payne also noted that he has had several discussions with Senator Newman regarding issues in the legislative agenda. Several Council Members commented regarding the Senator's willingness to carry forward Lynchburg's legislative issues, such as funding of the combined sewer overflow program.

// On motion of Council Member Garrett, seconded by Council Member Gillette, Council by the following recorded vote elected to hold a closed meeting concerning the acquisition of real property for a public purpose because discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body pursuant to Section 2.2-3711(A)(3) of the Code of Virginia, 1950, as amended:

Ayes: Dodson, Garrett, Gillette, Seiffert, Foster

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Noes: Helgeson, Johnson

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// The meeting was re-opened to the public.

// Council Member Johnson made the following motion:

WHEREAS, the Council of the City of Lynchburg has convened a closed meeting on this date, pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by City Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Lynchburg certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by Council.

The Motion was seconded by Council Member Seiffert, and Council by the following recorded vote adopted the motion:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster

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Noes:

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// The meeting was adjourned at 5:43 p.m.

Clerk of Council

// A regular meeting of the Council of the City of Lynchburg was held on the 11th day of December, 2007, at 7:30 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. Council Member Garrett gave the Invocation, followed by the Pledge of Allegiance. The following Members were present:

Present: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Absent: 0

// Mayor Foster recognized Lindsay Shaughnessy, a member of the Mayor's Youth Council.

// Copies of the minutes of the November 27 (two meetings), 2007 meetings, having been previously furnished Council, reading was dispensed with. Mayor Foster stated that she is going to abstain from voting on the minutes since she was unable to attend the November 27 meetings. On motion of Council Member Garrett, seconded by Council Member Johnson, Council by the following recorded vote approved the minutes as presented:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert 6

Noes: 0

Abstention: Foster 1

// In the matter of Central VA Mental Health, City Council received the list of candidates interested in serving on the Central Virginia Community Services Board.

// In the matter of Public Works – Street Vacations, a public hearing was held regarding City Council Report #3 regarding vacating 0.183 acre of public right of way and authorizing the execution of a deed to convey the City's interest in said vacated right of way to Wards Road Corridor, LLC, in exchange of 0.033 acre of right of way to construct a hammer head cul-de-sac to the Hilton Garden Inn on Delta Street. City Engineer Lee Newland provided a brief summary regarding the request. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Johnson, seconded by Council Member Helgeson, Council by the following recorded vote adopted Ordinance #O-07-158, as presented, vacating 0.183 acre of public right of way off of Delta Street and adopted Resolution #R-07-159, as presented, authorizing the execution of a deed to convey the City's interest in said vacated right of way to Wards Road Corridor, LLC, in exchange of 0.033 acre of right of way to construct a hammer head cul-de-sac to the Hilton Garden Inn on Delta Street:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of Community Planning - Zoning Amendments, a public hearing was held regarding City Council Report #4 outlining the petition of Anderson Mediation Services to rezone 2.3 acres from R-4, Medium-High Density Multi-Family Residential District to B-1C, Limited Business District (Conditional) and for a Conditional Use Permit for a Cluster Commercial Development to allow the construction of an office complex at 434 Graves Mill Road. City Planner Tom Martin provided a brief summary regarding the petition. Mr. Trent Warner, Guffey Warner & Associates, representing the petitioner, outlined the request and asked for approval. The petitioner, Mike Anderson, was present and responded to questions regarding the project. There was no one else present who wished to speak to this item, and the public

hearing was closed. On motion of Council Member Helgeson, seconded by Council Member Garrett, Council by the following recorded vote adopted Ordinance #0-07-160, as presented, granting the rezoning request:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster	7
Noes:	0

On motion of Council Member Seiffert, seconded by Council Member Johnson, Council by the following vote adopted Resolution #R-07-161, as presented, granting the Conditional Use Permit:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster	7
Noes:	0

// In the matter of Community Planning - Zoning Amendments, Mayor Foster announced that the public hearing regarding the petition of Wellington Residential, LLC to rezone 4.13 acres from I-2, Light Industrial District to R-3C, Medium Density, Two-Family Residential District and for a Conditional Use Permit to allow the construction of 40 townhouses (for sale) with associated parking and amenities at 3107 Swan Place and 3043 Bonsack Street has been withdrawn.

// In the matter of Community Planning – Zoning Amendments, a public hearing was held regarding City Council Report #6 regarding adopting Section 35.1-43.2:1, Fifth Street Revitalization Corridor Overlay District (FSC), as part of the Zoning Ordinance which will establish the Fifth Street Revitalization Corridor and rezoning properties located within the boundaries of the Corridor from B-1, Limited Business District, and B-5, General Business District to R-2, Low-Medium Density, Single-Family Residential District R-3, Medium Density, Two-Family Residential District, R-4, Medium-High Density Multi-Family Residential District & B-6, Riverfront District, including the rezoning of certain properties located outside the Fifth Street Revitalization Corridor, namely 412, 414, 415 Harrison Street, 412, 413 Madison Street and 501 Fifth Street. City Planner Tom Martin provided a brief summary regarding the request. Mr. Martin stated that (e) (1) of Section 35.1-43.2:1 should be changed to read..."Residential uses fronting Fifth Street shall require a conditional use permit (CUP) unless they are part of a mixed use development." Frances Calhoun, representing the Garland Hill Neighborhood Association, presented a petition signed by individuals in the Garland Hill Historic District in support of the Fifth Street Revitalization Corridor, but requested that 412 Madison Street, 413 Madison Street, 412 Harrison Street, and 415 Harrison Street be rezoned to R-2 to be consistent with the rest of the Garland Hill Historic District. Dan Murphy, 413 Madison Street, asked that the properties in question in the Garland Hill Historic District be rezoned to R-2. Dabney McCain, President of the Fifth Street CDC, along with Scott Smith, David New, Teresa Jorgenson, representing Lynchburg Neighborhood Development Foundation, Jim Vernon and Tommy Brooks spoke in support of the Fifth Street Revitalization Corridor Overlay District and the proposed rezoning of properties. Irma Seiferth, Executive Director, Lynchburg Covenant Fellowship, asked that 412 Madison Street be rezoned to B-6 or remain B-5, but not be rezoned to R-2. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Member Helgeson stated that he had some concerns regarding the proposed setback and parking requirements in the B-6

zoning district and stated that he would like to have more time to study the proposal and suggested that this matter be referred to a future work session. Some Council Members commented that the proposal has been discussed at length by the neighborhood group and during several meetings by the Planning Commission and stated that they were comfortable with voting on the request tonight. Council Member Johnson made a motion, seconded by Vice Mayor Dodson, to approve the Fifth Street Revitalization Corridor Overlay District. Council Member Helgeson stated that he would like more time to study the proposal before voting on the matter. Council Members continued to discuss whether or not a work session was needed, and following discussion Vice Mayor Dodson made a motion, seconded by Council Member Johnson, to close the debate, and Council by the following recorded vote defeated the motion:

Ayes: Dodson, Johnson, Foster 3

Noes: Garrett, Gillette, Helgeson, Seiffert 4

Council Member Helgeson continued to express concerns regarding the setback and parking requirements and urged City Council to schedule this matter for discussion at a future work session. Upon completion of the discussion, the question was called on the motion, and Council by the following recorded vote adopted Ordinance #O-07-162, as amended, amending the City Code by adopting Sec. 35.1-43.2:1, Fifth Street Revitalization Corridor Overlay District (FSC), as part of the Zoning Ordinance:

Ayes: Dodson, Garrett, Gillette, Johnson, Seiffert, Foster 6

Noes: Helgeson 1

Council Members discussed at length whether to rezone 412 Madison Street. Council Member Gillette made a motion, seconded by Council Member Johnson, to rezone all properties except 412 Madison Street, and Council by the following recorded vote adopted Ordinance #O-07-163, as amended, rezoning properties located within the boundaries of the Fifth Street Revitalization Corridor, from B-1, Limited Business District, & B-5, General Business District to R-2, Low-Medium Density, Single-Family Residential District R-3, Medium Density, Two-Family Residential District, R-4, Medium-High Density Multi-Family Residential District & B-6, Riverfront District, including the rezoning of 412, 414, 415 Harrison Street, 413 Madison Street and 501 Fifth Street:

Ayes: Dodson, Garrett, Gillette, Johnson, Seiffert, Foster 6

Noes: Helgeson 1

Council Member Seiffert made a motion, seconded by Council Member Garrett, to rezone 412 Madison Street to B-6. Council Member Johnson made a substitute motion, seconded by Council Member Gillette, that 412 Madison Street remains at its current B-5 zoning. City Attorney Walter Erwin advised that the legal notice advertising tonight's public hearing would not allow the property to be rezoned to B-6, therefore the original motion and second was withdrawn. The vote was called on the substitute motion, and Council by the following recorded vote approved the motion that 412 Madison Street retain its current B-5 zoning:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of Public Works - Refuse, a public hearing was held regarding City Council Report #7 regarding adopting a Resolution approving the City of Lynchburg's Solid Waste Management Plan update. Public Works Director Dave Owen provided a brief summary regarding the request. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Gillette, seconded by Vice Mayor Dodson, Council by the following recorded vote adopted Resolution #R-07-164, as presented, approving the City of Lynchburg's Solid Waste Management Plan update:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster

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Noes:

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// In the matter of Community Development - General, a public hearing was held to add Greenview Drive as an Urban Project to the Virginia Department of Transportation's (VDOT) Six Year Improvement Program. City Traffic Engineer Gerry Harter explained that the City proposes to widen Greenview Drive from the current two-lane facility to a four-lane facility with curb and gutter, sidewalks, and a raised median with landscaping. Mr. Harter informed that Phase 1 will be a City project and will go from Frederick Drive to Hermitage Drive and that Phase 2 is being requested to be an Urban Project that will go from Hermitage to Leesville Road (including improvements to the intersection of Leesville Road and Greenview Drive), and that the purpose of this public hearing is to request VDOT to add Phase 2 as an Urban Project. Mr. Harter went on to say that the current cost estimate for this project is \$10,500,000--Phase 1 will be \$4,500,000 and fully funded using local funds, and Phase 2 will cost approximately \$6,000,000 and will be a combination of local funds, urban funds, state reconciliation funds, and revenue sharing grant funds. Ms. Lynn Watson, 1409 Greenview Drive, asked that the City move forward with the project. There was no one else present who wished to speak to this item. Mr. Harter explained that since this item had been inadvertently left off the published agenda, that tonight's public hearing would need to be continued to January 8 in order to allow more time for citizens to comment regarding the request. In response to Council questioning, Mr. Harter explained that Phase 2 will be delayed approximately 1 year with an estimated completion date late 2010. Following discussion, City Council agreed to continue this public hearing until January 8 to allow more time for public comment.

// In the matter of City Council, Dina Michel-Wiggins, representing "Producers for Public Access," stated that the producers for public access have all received notices from Comcast that December 31, 2007, will be the last day that they will be able to use the studio facilities downtown to produce their public access programs. Ms. Michel-Wiggins explained that under the current franchise with the City, Comcast is obligated to provide the same services to producers until a new franchise agreement has been reached. In response to Council questioning, City Attorney Walter Erwin stated that the current franchise agreement requires Comcast to provide three channels, i.e., education, government and public access, and that it is his understanding that Comcast will continue to provide the channel but not the support needed to produce the programs. Information Technology Director Mike Goetz informed that the City is very close to a new franchise agreement with Comcast and that he has notified Comcast that they need to continue support of the public access programs until a new contract has been approved.

// In the matter of Parking Authority, City Council Report #9 regarding endorsement of the Strategic Parking Plan was considered. City Manager Kimball Payne stated that Council received a presentation on the Strategic Parking Plan at its last work session and that in deference to the Mayor's absence, action was postponed until tonight's meeting. Mr. Payne explained that Council's endorsement of the report would allow the process of discussing and implementing the plan to proceed. Mr. Payne went on to say that human resources would be needed to determine a process for plan discussion, to establish priorities, to determine the tasks necessary for implementation and related costs, to develop a timeline, and to manage the implementation (procure equipment, work with stakeholders, establish protocols, etc.). Mr. Payne explained that if an individual is added to City staff, the position would be titled "Parking Project Manager" and would be temporary until implementation was completed, but that the position could evolve into a permanent position if necessary for sustained management of parking downtown. Mr. Payne did note that an alternative would be to hire a private parking management consultant to perform the tasks listed above, however, there would still need to be some support from City staff and furthermore, consultant costs for this phase would probably be greater than those for a City staff position and that the preference would be to hire a Parking Project Manager as a City staff position. Melinda Tennis, who owns a business downtown, stated that some downtown property owners are opposed to the City installing parking meters downtown which the Plan recommends. Dennis Howard, Parking Authority Chair, explained that public forums would be held with stakeholders during the implementation of the Plan, including the use of parking meters. Following discussion, and on motion of Council Member Seiffert, seconded by Council Member Johnson, Council by the following recorded vote adopted Resolution #R-07-165, as presented, endorsing the Parking Authority's approach to implementation of the Strategic Parking Plan, including authorization of a new position to work with stake holders and manage plan implementation:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster

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Noes:

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// In the matter of Community Planning - General, City Council Report #10 regarding the Planning Division's determination that a proposal of JBO, LLC to modify the sketch plan (Cornerstone "Traditional Neighborhood Development Plan" dated April 24, 2006) for the Cornerstone Traditional Neighborhood Development to create and name three new streets and to dedicate Ridgeline Lane as a public street is in keeping with the intent of the conditional use permit adopted by City Council on June 27, 2006, was considered. City Planner Tom Martin provided a brief summary regarding the request and asked that City Council concur with the Planning Division's determination in this regard. Mr. Martin explained that City planning staff, which has already approved the new roads, contends this is a minor change that keeps the project in "substantial compliance" with the terms of the conditional use permit. City Attorney Walter Erwin informed that the Windsor Hills Neighborhood Association has submitted an appeal to the Lynchburg Board of Zoning Appeals (BZA) and that the petition cannot go forward until the pending BZA appeal has been resolved. Mr. Erwin explained that in its appeal, the Windsor Hills Neighborhood Association is

seeking to halt the name approval with a ruling that the streets are major changes that must be taken to a public hearing before they can be endorsed. Council Members discussed the request and whether the changes were significant enough to require the developers to go through the formal amendment process. Following discussion, and on motion of Vice Mayor Dodson, seconded by Council Member Johnson, Council by the following recorded vote adopted Resolution #R-07-166, as presented, to reverse the decision of the Planning Division that the proposal of JBO, LLC to modify the sketch plan (Cornerstone "Traditional Neighborhood Development Plan" dated April 24, 2006) for the Cornerstone Traditional Neighborhood Development to create and name three new streets, to be known as Foundation Street, Meridian Street and Ridgeline Lane, and to dedicate Ridgeline Lane as a public street, is in keeping with the intent of the conditional use permit resolution adopted by City Council on June 27, 2007 for Cornerstone, and finds that the proposal to modify the sketch plan to create and name the three new streets in question is not in keeping with the intent of the conditional use permit resolution adopted by City Council on June 27, 2007 for Cornerstone and the proposal to modify the sketch plan is hereby disapproved:

Ayes: Dodson, Garrett, Helgeson, Johnson, Seiffert, Foster 6

Noes: Gillette 1

// In the matter of Community Planning - General, City Council Report #11 was considered. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote adopted Resolution #R-07-167, as presented, approving the extension and dedication of an existing public street known as Belle Terre Drive:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of Registrar, City Council Report #12 was considered. On motion of Council Member Seiffert, seconded by Council Member Garrett, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-07-168, as presented, amending the FY 2008 General Fund budget and appropriating \$17,860 to cover the local costs of the statewide Democratic and Republican Presidential Primary on February 12, 2008:

Ayes: Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 6

Noes: Dodson 1

// In the matter of Taxes, City Council Report #13 was considered. On motion of Council Member Seiffert, seconded by Council Member Garrett, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-07-169, as presented, amending the FY 2008 General Fund budget and appropriating \$88,530.66 to refund an overpayment by Banker Steel Company LLC of business licenses and business personal property taxes for calendar years 2004, 2005 and 2006:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// On motion of Council Member Johnson, seconded by Council Member Gillette, Council by the following recorded vote elected to hold a closed meeting to consider appointments to Council-appointed Boards and Commissions pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, 1950, as amended:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// The meeting was re-opened to the public.

// Council Member Gillette made the following motion:

WHEREAS, the Council of the City of Lynchburg has convened a closed meeting on this date, pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by City Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Lynchburg certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by Council.

The Motion was seconded by Council Member Johnson, and Council by the following recorded vote adopted the motion:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of Appointments, and on nomination of Council Member Gillette, Council by the following recorded vote re-appointed Jesse Adams-Doolittle, Council Member Michael Gillette (Chair), Council Member Jeff Helgeson (Vice Chair), Celilia Hull, and Karrie Wilson to serve on the Community Development Advisory Committee for terms to expire December 31, 2008:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

On nomination of Council Member Gillette, Council by the following recorded vote appointed Walter M. Fore, Jr., to serve on the Community Development Advisory Committee for a term to expire December 31, 2008:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

On nomination of Council Member Gillette, Council by the following recorded vote re-appointed Richard D. Barnes to serve on the Planning Commission for a term to expire December 31, 2010:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

On nomination of Council Member Gillette, Council by the following recorded vote appointed Marjette Glass, Economic Development Director, to serve on the Lynchburg Business Development Centre Board for an indefinite term:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

On nomination of Council Member Gillette, Council by the following recorded vote appointed Traci Blido to serve on the Lynchburg Business Development Centre Board for a term to expire September 30, 2010:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

On nomination of Council Member Gillette, Council by the following recorded vote re-appointed Council Member Scott Garrett, Council Member Michael Gillette, Council Member Ceasor Johnson, and Council Member Joseph Seiffert to serve on the Lynchburg Community Action Board for terms to expire December 31, 2010:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

On nomination of Council Member Gillette, Council by the following recorded vote re-appointed Tom Gerdy to serve on the Lynchburg Parking Authority for a term to expire October 30, 2012:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

On nomination of Council Member Gillette, Council by the following recorded vote appointed Angela Hamilton, Lynch's Landing Executive Director, to serve on the Lynchburg Parking Authority to fill an unexpired term ending October 30, 2010:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

On nomination of Council Member Gillette, Council by the following recorded vote appointed Lyons Davidson to serve on the Lynchburg Parking Authority for a term to expire October 30, 2012:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

On nomination of Council Member Gillette, Council by the following recorded vote re-appointed R. David Laurrell, Richard W. Loving and Jones H. Stanley to serve on the Lynchburg Regional Airport Commission for terms to expire December 31, 2010:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// The meeting was adjourned at 11:12 P.M.

Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: January 8, 2008		AGENDA ITEM NO.: 3
CONSENT:	REGULAR: X	CLOSED SESSION:
ACTION: X	INFORMATION:	(Confidential)
<u>ITEM TITLE:</u> Public Hearing to Add Greenview Drive to the Six Year Improvement Program (SYIP)		

RECOMMENDATION: Approve adding Greenview Drive as an Urban Project to the Virginia Department of Transportation's Six Year Improvement Program.

SUMMARY: This matter remains open for public comment to correct an oversight that resulted in its being left off of the December 11, 2007 agenda.

The City proposes to widen Greenview Drive from the current two-lane facility to a four-lane facility with curb and gutter, sidewalks, and a raised median with landscaping. Phase 1 will be a City project and will go from Frederick Drive to Hermitage Drive. Phase 2 is being requested to be an Urban Project that will go from Hermitage to Leesville Road (including improvements to the intersection of Leesville Road and Greenview Drive). The purpose of this Public Hearing is to request VDOT to add Phase 2 as an Urban Project. The current cost estimate for this project is \$10,500,000. Phase 1 will be \$4,500,000 and fully funded using local funds. Phase 2 will cost approximately \$6,000,000 and will be a combination of local funds, urban funds, state reconciliation funds, and revenue sharing grant funds.

PRIOR ACTION(S): The addition of this roadway to the Metropolitan Planning Organization's (MPO) Long Range Transportation Plan and the Statewide Transportation Improvement Program (STIP) was approved by the MPO Board on December 10, 2007; Initial public hearing before City Council held December 11, 2007 at which one citizen spoke in favor of the project. Because of an oversight, the matter was not on the public agenda, although it had been properly advertised.

FISCAL IMPACT: Increased maintenance costs, increased maintenance funding from State.

CONTACT(S):
Gerry Harter – 455-3935
Lee Newland – 455-3947

ATTACHMENT(S): Resolution

REVIEWED BY: lkp

PROJECT PROGRAMMING RESOLUTION

WHEREAS, in accordance with Virginia Department of Transportation construction allocations procedures, it is necessary that a request by Council resolution be made in order that the Department program an urban highway project in the Six Year Improvement Program in the City of Lynchburg;

NOW THEREFORE BE IT RESOLVED, that the Council of the City of Lynchburg; Virginia, requests the Virginia Department of Transportation to establish an urban system highway project for the improvement of Greenview Drive from Hermitage Road to Leesville Road, a distance of approximately .45 miles from a two-lane facility to a four-lane facility with medians, curb and gutter and sidewalks. This project also includes intersection improvements to the intersection of Greenview Drive/Airport Road/Leesville Road.

BE IT FURTHER RESOLVED, that the Council of the City Lynchburg hereby agrees to pay its share of the total cost for preliminary engineering, right-of-way and construction of this project in accordance with Section 33.1-44 of the Code of Virginia, and that, if the City of Lynchburg subsequently elects to cancel this project, the City of Lynchburg hereby agrees to reimburse the Virginia Department of Transportation for the total amount of the costs expended by the Department through the date the Department is notified of such cancellation.

Adopted:

Certified:

Clerk of Council

004L

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **January 8, 2008**

AGENDA ITEM NO.: 4

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **CONDITIONAL USE PERMIT (CUP) – Planned Unit Development, Grand Oaks at Boonsboro, 2016, 2020 and 2028 Mimosa Drive**

RECOMMENDATION: Approval of the requested conditional use permit petition.

SUMMARY: Systematic Concepts, LLC, is petitioning for the approval of a conditional use permit to allow a Planned Unit Development (PUD) that would include the construction of seven (7) single-family detached homes and twenty-four (24) single-family attached homes with landscaping and pedestrian features. The Planning Commission recommended approval of the petition because:

- The *Comprehensive Plan* recommends Low Density Residential uses for this area. The project includes a combination of residential units which will provide single-family detached homes along Mimosa Drive to fit with the character of the existing neighborhood and single-family attached homes in the core of the project to cater to another aspect of the housing market. The density is within the range of Low Density Residential and the submitted location, height and proposed look of the homes would not be out of character with the style and type of the housing in the area. Therefore, the proposed PUD is appropriate for the Low Density Residential use designated for this area and an amendment to the *Future Land Use Map* is not recommended for this development.
- Petition agrees with the *Zoning Ordinance* in that a Planned Unit Development is a use permitted in an R-1, Low-Density Single-Family Residential District with approval of a conditional use permit (CUP) by City Council.
- The Design Review Board determined that the proposal meets the objectives of Section 35.1-42.5b(3) of the *Zoning Ordinance*.
- The City's Transportation Engineer has determined that the project does not meet the warrants for the installation of a left turn lane to serve the project.
- The project originally proposed the construction of eight (8) single-family detached homes and twenty-four (24) single-family attached homes. Following the November 14th Planning Commission public hearing, the petitioner revised the plan to
 - (i) convey approximately sixty (60) feet and provide for the planting of a vegetative buffer adjacent to the neighboring property
 - (ii) remove one (1), single-family detached home along Mimosa Drive to allow for a fifteen (15) foot side yard between the units that front on Mimosa (instead of the eight (8) foot side yard proposed on the original conceptual layout)
 - (iii) include a minimal number of on-street guest parking spaces in front of the units adjacent to Mimosa Drive.

PRIOR ACTION(S):

November 8, 2007: The Design Review Board determined that the proposed PUD plan met the objectives of the *Zoning Ordinance*. These objectives include:

- a. Aesthetic and architectural relationships with the surrounding communities;
- b. Conclusions regarding on-site amenities and improvements;
- c. On-site arrangement of improvements and structures;

November 14, 2007: The Planning Division recommended approval of the conditional use permit.

Planning Commission deferred the project to a December 12th work session to allow the applicant time to identify and address concerns that were voiced during the public hearing.

December 12, 2007: Planning Commission recommended approval (7-0) of the CUP with the following conditions:

1. The property shall be developed in substantial compliance with the site plan dated November 2, 2007, revised November 30, 2007 and received by the Department of Community Development on December 5, 2007.
2. The homes will be developed in substantial compliance with the photos and architectural renderings for the four (4) residential homes received by the Department of Community Development on November 5, 2007. Exterior building materials for the homes will include a combination of brick, vinyl and stone.
3. Any exterior lighting will be glare-shielded and non-directional to prevent direct illumination across the property line.
4. The existing cemetery and the large oak trees in this area will be preserved and incorporated into the design of the development.
5. The petitioner will field locate the existing maple and the two (2) existing pine trees at the front of the development; significant efforts will be made to preserve these trees in the design phase of the development.
6. The City's Transportation Engineer will conduct a left-turn survey for the proposed development. If the survey warrants the installation of a turn lane for the project, the feature will be designed and installed at the owner's expense.

FISCAL IMPACT: N/A

CONTACTS: Charlene Montford/ 455-3902; Tom Martin/ 455-3909

ATTACHMENT(S):

Resolution
PC Work Session Memorandum
Petitioner's Response Memo to Planning Commission
Revised Site Plan – November 30, 2007
PC Report
PC Minutes
Vicinity Zoning Pattern
Vicinity Proposed Land Use
Watershed Location Map
Original Site Plan – November 2, 2007
Architectural Renderings/Photos
Petition
Speaker Sign-Up sheet

REVIEWED BY: lkp

RESOLUTION:

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO SYSTEMATIC CONCEPTS, LLC GROUP TO ALLOW THE CONSTRUCTION OF A PLANNED UNIT DEVELOPMENT IN A R-1, LOW-DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT LOCATED AT 2016, 2020 AND 2028 MIMOSA DRIVE.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that in order to promote the public necessity, convenience, general welfare, and good zoning practice, the petition of Systematic Concepts, LLC for a Conditional Use Permit for use of the property at 2016, 2020 and 2028 Mimosa Drive to construct a Planned Unit Development that would include seven (7) single-family detached homes and twenty-four (24) single-family attached homes with landscaping and pedestrian features in a R-1, Low-Density Single-Family Residential District be, and the same is hereby, approved subject to the following conditions:

1. The property shall be developed in substantial compliance with the site plan dated November 2, 2007, revised November 30, 2007 and received by the Department of Community Development on December 5, 2007.
2. The homes will be developed in substantial compliance with the photos and architectural renderings for the four (4) residential homes received by the Department of Community Development on November 5, 2007. Exterior building materials for the homes will include a combination of brick, vinyl and stone.
3. Any exterior lighting will be glare-shielded and non-directional to prevent direct illumination across the property line.
4. The existing cemetery and the large oak trees in this area will be preserved and incorporated into the design of the development.
5. The petitioner will field locate the existing maple and the two (2) existing pine trees at the front of the development; significant efforts will be made to preserve these trees in the design phase of the development.
6. The City's Transportation Engineer will conduct a left-turn survey for the proposed development. If the survey warrants the installation of a turn lane for the project, the feature will be designed and installed at the owner's expense.

Adopted:

Certified:

Clerk of Council

003L

The Department of Community Development
City Hall, Lynchburg, VA 24504 434-455-3900

To: Planning Commission
From: Planning Division
Date: November 14, 2007
Re: **CONDITIONAL USE PERMIT (CUP): Planned Unit Development – Grand Oaks at Boonsboro, 2016, 2020 and 2028 Mimosa Drive.**

I. PETITIONER

Systematic Concepts, LLC, P.O. Box 10773, Lynchburg, VA 24506

Representative: Tom Guffey, Guffey Warner & Associates, 21 Timberoak Court – Suite B, Lynchburg, VA 24502

II. LOCATION

The subject properties include three (3) tracts totaling approximately eight and nine tenths (8.9) acres at 2016, 2020 and 2028 Mimosa Drive.

Property Owner: Systematic Concepts, LLC, P.O. Box 10773, Lynchburg, VA 24506

III. PURPOSE

The purpose of this petition is to allow the use of the properties as a Planned Unit Development [PUD] in an R-1, Low Density, Single-Family Residential District. The PUD would include eight (8) single-family detached and twenty-four (24) single-family attached homes, as well as private streets, amenities and open space.

IV. SUMMARY

- The petition agrees with the *Comprehensive Plan* which recommends a Low Density Residential use for this area.
- The petition agrees with the *Zoning Ordinance* in that a Planned Unit Development is a use permitted in an R-1, Low Density Single-Family Residential District with approval of a CUP by City Council.
- The Design Review Board determined that the proposal meets the objectives of Section 35.1-43.5b of the *Zoning Ordinance*.

The Planning Division recommends approval of the CUP petition.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The Lynchburg *Comprehensive Plan* recommends Low Density Residential uses in this area. Low Density Residential uses are dominated by single-family detached housing at densities of up to four (4) dwellings per acre. **[page 5.5]** The proposed development would have a density of approximately three and fifty-nine hundredths (3.59) units per acre.

Since the Low Density Residential use outlined in the *Future Land Use Map* designates these properties be “dominated by single-family detached homes”, staff had to evaluate the applicability of this designation to the proposed PUD. The Neighborhoods and Housing chapter of the *Comprehensive Plan* establishes a goal for the City to “promote the construction of new housing and rehabilitation of existing housing to satisfy the demands of an increasingly diverse local and regional housing market”. The Plan also emphasizes the need to “encourage the construction of new, sensitively designed [infill] housing that blends into mature neighborhoods.” **[page 10.12]** The petitioner has designed the project to include a combination of residential units which will provide single-family detached homes along Mimosa Drive to fit with the character of the existing neighborhood and single-family attached homes in the core of the project to cater to another aspect of the housing market. Staff reviewed the proposed density and determined that the density is well within the range of Low Density Residential. Staff also surveyed the neighborhood and determined that the submitted location, height and proposed look of the homes would not be out of character with the style

and type of the housing in the area. Following its review, it is staff's opinion that, given adjacent land use patterns, the proposed PUD is appropriate for the Low Density Residential use designated for this area and an amendment to the *Future Land Use Map* would not be required for this development.

2. **Zoning.** The subject property was annexed into the City in 1958. The existing R-1, Low Density Single-Family Residential District was established in 1978 with the adoption of the current Zoning Ordinance.

3. **Design Review Board.** Section 35.1-42.5, Planned Unit Development: Application and Review requires that the proposed development be reviewed by the City's Design Review Board. The Design Review Board must determine if the proposed PUD plan meets the following objectives of the PUD Ordinance as outlined in Section 35.1-42.5.(3).a. of the *Zoning Ordinance*:

- a. Aesthetic and architectural relationships with the surrounding communities;
- b. Conclusions regarding on-site amenities and improvements;
- c. On-site arrangement of improvements and structures;
- d. Consistency with the Housing Assistance Plan for federal and/or state funded projects.

The Design Review Board reviewed the proposed development on November 8, 2007 and determined that all objectives of the Section 35.1-42.5.(3).a. had been met. The Board recommended that the petitioner consider clustering similar styles of the single-family attached units within the complex while providing for a number of different housing styles in the single family detached units along Mimosa Drive.

4. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances will be needed for the development of the property as proposed.

5. **Surrounding Area.** There have been several items requiring City Council approval in the immediate area:

- On May 28, 2002, City Council approved Peakland United Methodist Church's CUP petition to allow the construction of an educational building, columbarium and a parking lot at 4434 Boonsboro Road.
- On April 8, 1997, City Council approved C.F.W. Communications CUP petition to allow the installation of telecommunications equipment at 4715 Boonsboro Road.
- On August 13, 1996, City Council approved Peakland United Methodist Church's CUP petition to allow the construction of twenty-six (26) parking spaces at 4434 Boonsboro Road.
- On November 14, 1995, City Council approved Lynchburg City Schools' CUP petition to retain an existing administratively approved Bedford Hills Elementary classroom at 4330 Morningside Drive.
- On February 9, 1993, City Council approved Peakland Swim & Tennis Club, Inc.'s CUP petition to allow the construction of tennis court restrooms, a beach volleyball court and the addition of twenty (20) parking spaces at 2149 Burnt Bridge Road.
- On February 11, 1992, City Council approved Lynchburg City Schools' CUP petition to restore an existing damaged Bedford Hills Elementary classroom and construct eight (8) additional classrooms at 4330 Morningside Drive.
- On May 14, 1991, City Council approved Lynchburg City Schools' CUP petition to allow the construction of Bedford Hills Elementary modular classrooms at 4330 Morningside Drive.
- On October 9, 1990, City Council approved St. Barnabas Episcopal Church's CUP petition to allow the construction of a porch entry way at 2025 Mimosa Drive.
- November 13, 1979, City Council approved Peakland Swim Club's CUP petition to allow the construction of tennis courts at 2149 Burnt Bridge Road.

6. **Site Description.** The subject properties are currently vacant, with only one (1) abandoned brick structure (formerly a radio station) on the 2020 Mimosa Drive site. The properties are bound to the north by single-family homes, to the east by single-family homes and vacant residential land, to the

south by single-family residential homes and an institutional use (Bedford Hills School) and to the west by a combination of single-family homes and an institutional use (St. Barnabas Episcopal Church).

7. **Proposed Use of Property.** The PUD would provide for thirty-two (32) residential units on eight and nine tenths (8.9) acres off of Mimosa Drive near its intersection with Burnt Bridge Road and Indian Hill Road. The development would include the construction of eight (8) single-family detached and twenty-four (24) single-family attached homes that would be marketed to upper, middle-income residential buyers. The development is centrally located and provides access to grocery stores, restaurants, banks and medical facilities – all of which are within a three-quarter ($\frac{3}{4}$) mile radius of the project. Emergency fire and rescue services are stationed on Boonsboro Road, less than one-half ($\frac{1}{2}$) mile away.

Building materials would include a combination of stone brick and vinyl with a consistent architectural style throughout the community. All units will incorporate an attached one-(1) or two-(2) car garage loaded from a rear alleyway or private street. The site would be served by City water and sewer while refuse collection will be handled by a private provider. Landscaping for the site will comply with the requirements of the City's *Zoning Ordinance*, with additional buffering (not required by the ordinance) provided around the perimeter of the entire site. Community amenities would include a landscaped courtyard with sitting areas as well as gazebos, arbors and walking trails. Lawn and landscape care, snow removal and private road/common area maintenance will be provided through a homeowner's association.

The petitioner has also incorporated the existing cemetery and several large trees into the design of the site. The petitioner has noted that the cemetery has had very little maintenance over the years and has agreed to clean the area and "right" the headstones that have fallen. This area will ultimately become the focal point of the development with a gazebo, additional landscaping, a courtyard and the preservation of the large oak trees within the area. The petitioner has also opted to field locate the existing maple and the two (2) existing pine trees at the front of the development and make every effort to preserve these trees in the design phase of the development.

8. **Traffic, Parking and Public Transit.** The City's Transportation Engineer requested that the petitioner stake the location of the private street entrance for easy identification, and the City would complete a left-turn survey for the project. He also identified that no future improvements are proposed for Mimosa Drive out to Boonsboro Road. The applicant identified the location of the proposed private street on site and the City's Transportation Engineer is currently compiling the data for the left-turn study and will be available to present this data at the Planning Commission public hearing. The Transportation Engineer recommends that a condition be applied to the development that, if the study findings show that a left turn lane is warranted for the development, the petitioner will design and install the lane at their expense.

Parking requirements for the proposed development are set at two and a half (2.5) spaces per dwelling unit for conventional residential uses by the City's *Zoning Ordinance*. The project proposes a total of thirty-two (32) homes which would require eighty (80) parking spaces. Ninety-six (96) spaces are provided for the PUD through a variety of (garage, driveway, on-street and alley) parking options, thus meeting the requirement of the *Zoning Ordinance*.

Public transit is accessible through Greater Lynchburg Transit Company's Route 3D at the intersection of Boonsboro Road and Mimosa Drive, approximately one thousand, one hundred (1,100) feet from the site.

9. **Storm Water Management.** The proposed Planned Unit Development would result in an increase in stormwater runoff. Stormwater will be addressed through a low-impact design strategy to address both the quantity and quality of the run-off, using isolated rain gardens and grass lined swales. The rain gardens would be discharged into an adequate channel that is sufficient to handle the stormwater from this facility. The Environmental Planner requested that the petitioner consider revising the layout of the project to provide walk-out basements in the units along the northern property line to limit the grading adjacent to the steep slopes. The designer has incorporated these changes into the revised plan, and the proposed management strategy is acceptable to the City's Environmental Planner.

10. **Emergency Services.** The City's Fire Marshal had no comments regarding the CUP for the proposed Planned Unit Development.

The City Police Department had no comments about the proposed residential project.

11. **Impact.** The proposed Planned Unit Development would allow the construction of residential units, private streets and alleyways as well as pedestrian amenities on a vacant property in an existing residential neighborhood. The design provides for the majority of the single-family detached homes to front along Mimosa Drive to blend the project with the character of the existing neighborhood; the single-family attached units in the core of the project will be connected to the perimeter development by a combination of amenities. The Design Review Board has determined that all objectives of the *Zoning Ordinance* had been met.

The proposed layout of the project will not only provide pedestrian features within the community but access to a variety of services that will help incorporate this community into the surrounding neighborhood. Traffic, parking, stormwater management and emergency services concerns have all been addressed to the satisfaction of City staff through the recommended conditions.

11. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the preliminary site plan on October 23, 2007. Comments related to the proposed use were minor in nature and have or will be addressed by the developer prior to final site plan approval.
-

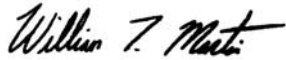
VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of Systematic Concepts, LLC's petition for a Conditional Use Permit (CUP) to allow the construction of a Planned Unit Development at 2016, 2020 and 2028 Mimosa Drive, subject to the following conditions:

- 1. The property shall be developed in substantial compliance with the site plan dated November 2, 2007 and received by the Department of Community Development on November 5, 2007.**
- 2. The homes will be developed in substantial compliance with the photos and architectural renderings for the four (4) residential homes received by the Department of Community Development on November 5, 2007. Exterior building materials for the homes will include a combination of brick, vinyl and stone.**
- 3. Any exterior lighting will be glare-shielded and non-directional to prevent direct illumination across the property line.**
- 4. The existing cemetery and the large oak trees in this area will be preserved and incorporated into the design of the development.**
- 5. The petitioner will field locate the existing maple and the two (2) existing pine trees at the front of the development; significant efforts will be made to preserve these trees in the design phase of the development.**
- 6. The City's Transportation Engineer will conduct a left-turn survey for the proposed development. If the survey warrants the installation of**

a turn lane for the project, the feature will be designed and installed at the owner's expense.

This matter is respectfully offered for your consideration.



William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Charlene B. Montford, Director of Community Development
Mr. J. Lee Newland, City Engineer
Ms. Cynthia L. Kozierow, Lynchburg Police Department
Battalion Chief Greg Wormser, Fire Marshal
Mr. Gerry L. Harter, Traffic Engineer
Mr. Robert Drane, Building Commissioner
Mr. Keith Wright, Zoning Official
Mr. Robert S. Fowler, Zoning Administrator
Mr. Kent L. White, Senior Planner
Mrs. Erin B. Hawkins, Environmental Planner
Mr. Tom Guffey, Representative, Guffey Warner Associates

VII. ATTACHMENTS

- 1. Vicinity Zoning Pattern**
- 2. Vicinity Proposed Land Use**
- 3. Watershed Location Map**
- 4. Site Plan**
- 5. Architectural Renderings/Photos**



MEMORANDUM

The Department of Community Development

Planning Division

455-3900

To: City of Lynchburg Planning Commission
From: Tom Martin, AICP, City Planner
Subject: Grand Oaks at Boonsboro - CUP Petition
Date: December 7, 2007

At its November 14, 2007 meeting, Planning Commission tabled the Grand Oaks at Boonsboro petition until their December 12 meeting to allow the applicant time to identify and address concerns that were voiced during the public hearing. The petitioner originally proposed the construction of thirty-two (32) homes, which included a combination of single-family detached and attached units, on approximately eight and nine tenths (8.9) acres on Mimosa Drive. The petitioner has submitted a revised plan and cover letter as part of their request for approval of a conditional use permit to allow a Planned Unit Development that includes the construction of seven (7) single-family detached homes and twenty-four (24) single-family attached homes with landscaping and pedestrian features. The revised plans provide for:

- The conveyance of approximately sixty (60) feet and the planting of a vegetative buffer adjacent to the neighboring property.
- The removal of one, single-family detached home along Mimosa Drive. The removal of this house would provide for a fifteen (15) foot side yard between the units that front on Mimosa, instead of the eight (8) foot side yard proposed on the original conceptual layout.
- A provision for a minimal number of on-street parking spaces in front of the units that front on Mimosa Drive to allow for guest parking.

I look forward to seeing you at Wednesday's meeting.

Attachments:

Petitioner's Response Letter to Planning Commission

Revised Site Plan – December 5, 2007

Grand Oaks at Boonsboro - Planning Commission Report (with attachments) – November 14, 2007

DEC 05 2007

COMMUNITY
DEVELOPMENT

December 05, 2007

Mr. Kent White- Senior Planner
City of Lynchburg Planning Department
900 City Hall
Lynchburg, Virginia 24501

Re: Grand Oaks at Boonsboro

Dear Mr. White,

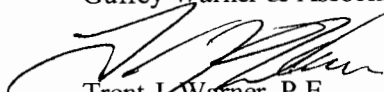
Please find attached 18 copies of the revised conceptual layout addressing comments and concerns presented at the November 28th meeting of the City of Lynchburg Planning Commission. The following paragraphs describe the modifications that were made to the plan as originally submitted.

- 1.) The property line adjacent to the property of Larry and Jennifer Nordick was in proximity to the improvements on that lot. The developers have agreed to convey approximately 60' of road frontage to Mr. and Mrs. Nordick. In an effort to convey as much property as possible, an easement has been retained to provide a 15' strip for planting a vegetative buffer.
- 2.) There appeared to be concerns in reference to the number of proposed dwellings along Mimosa Drive and the spacing between these dwellings. In an effort to address this concern the developers have eliminated one dwelling and provided a 15' side yard for the remaining dwellings to conform with the side line requirements for a "by- right" R1 development.
- 3.) We have received a comment concerning guest parking for the homes along Mimosa Drive. The comment presented the thought that it was not practical for a guest to park in the driveway, located on the rear of the lot, and be forced to enter through the back door. We have talked with Gerry Harter, Traffic Engineer, Jim Talian in Engineering and Tom Martin concerning this solution and they agreed that a minimal number of parking spaces on Mimosa Drive would provide an acceptable solution to the problem.

We feel that we have addressed the concerns presented and hope we have modified the concept in a manner that is acceptable to the neighbors in the area and the members of the Planning Commission.

Sincerely,

Guffey Warner & Associates, Inc



Trent J. Warner, P.E.
Vice President

CC: Mickey Herzing, Systematic Concepts, LLC

21 Timber Oak Ct - Suite B - Oakdale Circle, Lynchburg, VA 24502
Phone: 434-239-6000; Fax: 434-239-6001

MINUTES FROM THE NOVEMBER 14, 2007, PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

c. Petition of Systematic Concepts, LLC for a Conditional Use Permit for a Planned Unit Development to allow for the construction of a combination of 32 single-family attached and single-family detached homes at 2016, 2020 and 2028 Mimosa Drive.

Mr. Martin addressed the commissioners with the following comments. The *Future Land Use Map* recommends low density residential uses for the area. These areas are characterized by single-family detached homes with densities of up to four units per acre. The petition proposes a development of eight single-family detached homes with twenty-four single-family attached homes which would be a density of 3.59 units per acre. The twenty percent requirement for a Planned Unit Development (PUD) is being provided and a PUD is allowed in an R-1 district upon approval of a conditional use permit.

The City's Transportation Engineer has reviewed the proposed development and has determined that no road improvements will be necessary at this time. Stormwater management and quality would be addressed by using low impact designs, rain gardens and grass lined swales. The Design Review Board reviewed the development on November 8, 2007 and determined that the project met the objectives of 35.1-42.5 of the zoning ordinance. The Board did recommend that the developer provide for a number of different styles of structures along Mimosa Drive, while clustering the similar types of housing units within the development.

The Engineering Division has requested that a condition be added that the developer would work with the city to ensure a sanitary sewer service can be extended across the site to serve existing upstream properties. This had been agreed to as part of a prior development proposal for a subdivision plat that has been submitted but not approved. This extension is needed to serve unsewered properties above this development. The Planning Division does recommend approval of the Planned Unit Development.

Mr. Trent Warner came forward to speak on behalf of the petitioner. They designed a previous plan, which was a single-family subdivision of fourteen lots. They did this with the previous owner of the property, so he can answer any type of comparison questions they may have.

They have tried to come up with the classic PUD. They feel like this development is a good alternative to the many townhome developments. To try and fit in the surrounding neighborhood, they have single family homes that are detached along Mimosa Drive. There is one single-family detached home inside the PUD. This is a community within a community, with the driveway and garage in the rear and sidewalk and porch up front. It encourages people to communicate with one another.

As far as stormwater is concerned, the advantage of these being private roads, it gives them avenues to maybe not have the curb and gutter. They can do intermediate rain gardens and intermediate rain ditches. They had the advantage of doing the previous subdivision and knew where the low lying areas.

There are amenities throughout the plan—landscaped courtyards with sitting areas, gazebos, arbors, nature walking trails, sidewalks, access to public transit within walking distance. There will be a homeowners association that will provide all the upkeep. There is some on-street parking within the development.

Chair Hamilton asked for anyone else present to speak in favor of the petition. Ms. Ann Kagy of 2032 Mimosa Drive came forward. She has lived there for forty-eight years and she loves the neighborhood atmosphere. After attending the neighborhood meeting, she was pleased with the project. This project will be more in keeping with the neighborhood, smaller houses rather than large ones. She likes the fact that the landscaping will be taken care of by the homeowners association. She would also appreciate some elderly neighbors, which these homes are likely to attract. She is also pleased that they will be taking care of the cemetery which is on the property. She further appreciates that the old radio station will be demolished.

Ms. Elizabeth Slominski came forward to speak in favor of the petition. She supports it because it seems to fit in with the neighbor very well. She mentioned that they have been promised a barrier by the developer.

Chair Hamilton asked for anyone to speak in opposition to the petition. Ms. Shannon Brennan came forward as a representative for many of the neighbors. She lives at 2009 Mimosa Drive. She has been getting people to sign a petition who oppose the development, and she has fifty signatures. This is a neighborhood where people love to walk. If you look between Boonsboro Road and Indian Hill, there are sixteen houses. They love the neighborhood because the yards are big and the houses are relatively modest. There are lots of trees and elbow room.

She agreed that the development looks nice on paper and they have no problem with PUDs in the proper place. They do not believe that this is the proper place. This project will put too many people in one area to be in conformity with the rest of the neighborhood. They believe that you could put 14 homes there that people will want. There are no duplexes in the neighborhood. Her home is assessed at \$125,000 and these homes will sell for \$275,000 to \$350,000. That doesn't belong in the neighborhood. The neighbors believe that this property should stay at an R-1 density.

This is a very narrow residential street and the thought of sixty-four cars a day seems excessive. Of course, the neighbors would like to see the radio station demolished, but there is no reason to extend the density that is allowed there. A lot of people in this neighborhood had to struggle to buy a home in this area. If she had wanted thirty-two neighbors, she would have stayed at Boonsboro Village apartments.

Another issue is that of noise, both during construction and after the units are sold. She asked the commissioners to think about their own neighborhoods and if they would like thirty-two neighbors across the street from them. Many of the neighbors feel that their investment is at risk.

Mr. Earl Webb of 1909 Indian Hill Road came forward to speak in opposition of the petition. There are only eight detached homes, the rest are duplexes and that is grossly out of character for the neighborhood. He believes that everyone will agree that this project will not improve the area at all. It will cause the area to decline. He also noted in the report that the Design Review Board is to review projects for consistency with the housing assistance plans for federal and/or state funded projects. That is starting to sound like to buy a house, you have to get federal funding. That is by definition low income. The developer could put in the fourteen homes allowed, but they have chosen to cheapen it by putting in duplexes. This project will also be right next door to a nice school. He believes that this project will damage the property values and the living environment.

Ms. Deborah Shank of 2720 Farmington Drive came forward next. Her concern is that she sees these types of units going up all around Lynchburg. But she thinks that Carriage Square is the ideal. They do not look like duplexes and there is a waiting list to get into those units. Those are the kind of units that we need, not the cookie cutter units that are going up all around town.

Mr. Dan Messerschmidt of 1928 Gaymoor Terrace came forward next. He wanted to talk about the very steep slope that abuts his property. It goes down to a stream and is now wooded. Most of the trees will have to be cut down and that will cause an erosion problem. He was also concerned about the cemetery and buildings being built right by a cemetery. Chair Hamilton said the developer would address this later.

Mr. Larry Nordick of 2008 Mimosa Drive came forward to speak next. He lives right next to the radio station. They moved in around four months ago. They were attracted the nice neighborhood with spacious lots and lots of trees. They share the other neighbors' concerns, but if this project is built, the first unit could be in their front yard. They assumed that their property line went over to the driveway of the radio station. They recently had a survey done and found and now know that the property line is in a very different location. He pointed it out in pictures. The southwest corner of their house is only fourteen feet from the property line of the development. The shed is two feet from the property line. They will also lose three beautiful trees.

He also mentioned that they were never contacted by the developer. They contacted the owner themselves and offered to buy a triangle of their property. He came back just this morning with an offer that if they would support this development, they would give them a sliver of land. If the 32 units fell through and the fourteen lots were developed instead, they could perhaps buy the first lot for approximately \$60,000. He feels that the owner has not dealt in good faith and if this goes through, they will likely sell. He feels that this development as having a severe impact on them, the neighborhood in general, and they strongly oppose it.

Mr. Gerald Roberts came forward to speak in opposition to the petition. He lives at 4108 Audubon Place. They use Mimosa Drive as an access to Boonsboro and he and his wife walk every day. He wanted to point that the school busses run there very heavily twice a day, and the traffic is heavy on Sunday morning. The traffic load on that street is way too much to handle another thirty-two residences. He feels that the city will probably have to put a light at Mimosa and Boonsboro Road in order to be able to handle the traffic. He thinks that the road needs to be widened.

Mr. James Thornhill of 2215 Mimosa Drive spoke next. He does not consider himself speaking either for or against. He wanted to talk about the fact that there are no plans for improvements to Mimosa Drive. With 32 more families, that is out of the questions. He also did not think that it is within walking distance of a bus stop on Boonsboro Road for elderly people. He also wanted to know if he could receive all the attachments that are listed on the report. He felt that the neighbors were kept in the blind about this project. Chair Hamilton told him that the Planning Department could get him copies of the attachments.

Mr. Peter Ramsey of 1920 Mimosa Drive spoke next. He has been renovating a 100-year old farmhouse. He and his wife made a decision to put down permanent roots in this neighborhood. When they made this decision, they thought they had good information that the radio station would be demolished and 14 single-family homes would be put on this property. He would ask the commissioners to consider that there are other people in the immediate area that have a significant in the neighborhood. He thought that they also needed to turn a right-turn study in addition to the left-hand study that has been done already.

Mr. Barry Brookman of 2015 Mimosa Drive spoke next. One of his concerns is that the old building will contain asbestos and what will be done to control the environment. He is also concerned about the narrowness of the Mimosa Road. He already has people driving on his property when they try to pass each other. He also pointed out that there is a nature trail through this property and sometimes as many as 20 deer use this trail. He also pointed out that they have had problems with the fresh water supply. The pipes are old and breaking. What will be done to ensure that these additional 32 units will not put a burden on these pipes?

Ms. Rachel Guthrie of 1908 Mimosa Drive spoke next. She has noted ten school busses on Mimosa Drive in the afternoon. Another thing she wanted to point out is that people use Link Road to come through the neighborhood and out Mimosa Drive. She thinks that the traffic will only get worse with this development on Mimosa Drive and Burnt Bridge Road.

Mr. Kevin Page of 2244 Taylor Farm Road came forward next. He has a lot of traffic coming through his road. Mr. Page provided an aerial map of what a typical R-1 neighborhood looks like and then an aerial map of the area around this development. There was a marked difference in the size of the lots in the two maps. He pointed out that there will only be 16 feet between the proposed houses on Mimosa Drive, which is not typical of the other lots on the street.

He pointed out the objectives of the PUD ordinance, as outlined in Section 35.1-42.5.3.a8. "Aesthetic and architectural relationships with the surrounding communities." What they are suggesting does not fit the aesthetic of this part of the neighborhood. It will ruin a focal point of a nice neighborhood. He likes it that this does not feel like a subdivision. He also reiterated that there are no duplexes in the neighborhood, so this proposal does not fit the neighborhood.

His final reservation is the traffic at Boonsboro Road and Mimosa Drive. There is much more pressure from the development on 501. That is a much more difficult corner to navigate now and it will only get worse with this development.

Mr. James Pegram came next. He lives at 4301 Montgomery Road. He feels that once you allow duplexes in the neighborhood, it will only expand.

Ms. Connie Messerschmidt of 1928 Gaymoor Terrace came forward next. One of the questions that she has is the issue of the burial site. She wants to know if they are going to move it or leave it where it is. Chair Hamilton said that it was her understanding that they would be leaving it but the developer will address it. Ms. Messerschmidt pointed out the burial site is at the top of a hill. It is quite steep and fully wooded. It is a major green zone in a city that she thinks is beautiful because it has green zones and we attempt to preserve an environment here that attracts people. Yet we continually make decisions to cut trees and create barren hillsides. This property goes into the Kum Ba Yah camp. The only way this development can be built like the drawing and leave the burial site is to clear the hillside and build significant housing down a very steep hill that feeds into a creek in the Blackwater watershed. She thinks that there are significant environmental issues that have not been adequately addressed.

Chair Hamilton asked for those who were in opposition to the petition to stand or raise their hand and be recognized and approximately 20 people stood or raised their hand.

Chair Hamilton asked Mr. Warner to take three minutes to rebut as many of these comments that he could. He pointed out that it is difficult to put a PUD next to a PUD. They are by nature taking a piece of property and adding more homes to that property. They are usually around single-family type communities. Being around industrial or commercial areas is not an attractive feature and would not help marketing these units.

He pointed out that there signs put up ten days in advance of their neighborhood meeting. They had a meeting at the church before they submitted their plan. There were copies of the plan available at the meeting and around fifty people attended. One of the differences from that plan and the one available today is that the neighbors did not like the distance between the homes. They increased the distance between the homes from ten to twelve to fifteen to twenty feet. They changed the shape of the buildings to accomplish this. Mr. Warner also mentioned that anyone wanting a plan could call his office for one.

As far as the cemetery is concerned, they look at it as an attractive feature of the development. There will be a courtyard. They had received feedback at the meeting that they were improving the cemetery. Right now it is a travesty; it is run down. Their original 14 lot plan did not really address the cemetery; this plan does. The 14 lot subdivision did not work money wise, and if you go back to that plan, the radio station will likely remain. He also pointed out that with that plan, three driveways were coming out of that onto Mimosa Drive. With this plan, it is actually a little safer, since the units are rear loading.

Fill is not expected. The road that goes down behind the cemetery will go downhill. There will be two tiered levels of homes. If that road is up, those outside homes will have basements beneath, the ones along Acorn Ridge nearest the creek. That is to use the building as the last part of grading.

The buildings will be brick, rock and vinyl construction. The prices are not affordable housing. They are not cookie cutter homes. They are around 2,000 square feet.

He is not sure what was told to the Mr. Nordick about the sale of a lot to them. That would stem from what you would lose from not being able to develop a unit there. It is not what he paid for the land. It is fair market value.

Mr. Warner thought that if traffic were a concern, Mr. Harter would have brought that up. There was no need for a light.

He does not think that burden on the pipes is a problem. The same size of pipe will be used for these units as would be used for the 14 lot subdivision with the same type of connection. That was approved through Public Works previously.

Mr. Mickey Herzing, one of the owners of the property, commented that he did not approach Mr. Nordick and does not have a good excuse for that. He was surprised as well about how their lot line cuts in front of his house. They offered him three options to purchase. On the 14 lot plan, it would cost him \$60,000 to \$70,000. He was offered a pie-shaped portion of the lot in the PUD plan if they were able to keep their density and not lose the houses in front. He was also offered under the PUD plan to buy the first lot for \$37,500 and offered to carry the financing. Mr. Herzing did not speak with him directly, but spoke to his wife.

He also clarified that these units are not duplexes. He is a realtor and these are not rental units. This is single-family attaching housing. The pricing will be \$200,000 to \$250,000. He pointed out that two-story homes are going to affect the adjacent neighbors. These are single story and story and a half units.

He has two e-mails from neighbors that are for this development, Mr. John Cardwell of 2117 Mimosa Drive and Mr. Clarkson. He was not sure of Mr. Clarkson's address. He could provide copies of those e-mails to the commissioners.

Mr. Herzing remarked that their design came from Carriage Square. They want it to be like that.

Ms. Jennifer Severn of 2008 Mimosa Drive came forward to discuss her conversation with Mr. Herzing. Her understanding of the conversation was that it would be in her financial benefit to vote for the 32 houses. She was told that if the 14 houses were approved instead, that they would have to buy a whole lot. He said that if they have to go with the lower density, they will give them a "sliver". He never mentioned the \$37,500 offer to her.

A citizen came forward to mention that with regard to the traffic, there was a counter set up on Mimosa Drive, but it was just set for total volume of traffic. No one was out there counting the volume during peak hours, which is really the problem.

Chair Hamilton closed the public hearing portion of the meeting and thanked everyone for their comments.

Chair Hamilton asked Mr. Martin to speak to some of the traffic issues. He said that he could only relay the information provided to him by Mr. Harter. He relayed today by e-mail that he had completed his traffic analysis and determined that there no improvements planned to the existing road network. In terms of the traffic counter, it actually captures, so the Transportation Engineer can tell what the traffic volumes during the a.m. and p.m. peaks.

Commissioner Sale asked Ms. Hawkins to speak about the environment impact of the back wall going into the lower section and the creek. She commented that when the project originally came through, that was one of her concerns. One of the things that she spoke about was that some of the units on that northern side would be walkout basements so they reduce the impact of the grading on that slope. She had wanted to preserve that area and this was a compromise. If the project is approved, they will have the necessary erosion and sediment control and stormwater management measures in place and any of these issues will be addressed before the construction phase. The intent though is to minimize any impacts on that slope and preserve the wooded area long the back side.

Chair Hamilton asked if Mr. Warner's assessment that fill would not necessary was accurate. Since Ms. Hawkins has not seen a grading plan, she is not sure if the site would be able to balance or if they would need fill. She would defer to Mr. Warner for that answer. Mr. Warner said that there would be fill to get the road, but there will not be trucks coming in because fill will not be coming in from off site. Normally they try to have the profile of the road follow the terrain as much as they can and still have adequate grade. They are helped by the fact that it is an alley and is private. He does not have to maintain the same VDOT and the city require. He can go up as high as 15 percent with the grades.

They also want to limit how many trees they clear and how much grading goes on because it is an expense.

As far as preserving the trees, the first thing he would do is put in the alignment for the roads horizontally. Then they try to fit it vertically so that you are going downhill. That sets the elevation of the road. Then you set the elevation of your house. At that point, you fill at that location. You either fill it with a wall or you do it with grading. They are trying to do a wall in between so they are letting the house drop if they happen to be up too high to have an adequate, safe road come down. Then you have your limits of where your fill is, where it comes through and where you can snake it around. They have not done a survey to locate trees. Mr. Herzing will make the effort when surveying for this project that they pick up the trees and the drip lines to see where these trees would be and they would put a safety fence around those trees. Then the contractors will see where those markings are and hopefully will not undercut the trees.

Commissioner Sale asked for clarification that the utilities will be underground and Mr. Warner confirmed that they will be.

Commissioner Swienton asked about the rain gardens and not using curb and gutter. Mr. Warner acknowledge that curb and gutter give a nice, clean edge. It can be an attraction to a neighborhood, but not having it can be a help because you have that area to have a ditch. In the bottom of that ditch, you can put your media to swallow some of the rain water. You put an under drain underneath that and you can treat the low storm events. The high storm events would go through the ditch itself. They can add landscaping amenities into these ditches.

Commissioner Swienton asked Ms. Hawkins to address from her perspective any experience she has with the rain gardens and their functionality. She commented that not having curb and gutter and using the grass line swale is well documented. Some very good test cases around the country have been using these low impact design approaches particularly in subdivision type areas. In her opinion, this type of development would lend itself well to be able to incorporate these low-impact designs into the development. It is acceptable and she thinks it could be implemented well.

Commissioner Swienton asked her if she actually walked the site in her review. She said that she did and is very familiar with it. The first thing she did was find the cemetery to be able to figure out where the lay of the land was and how they were incorporating it. She thinks that this can be fit in well with the relief that is there, not necessarily having to grade it all the way out flat. But she does leave the technical expertise up to them to be able to fit that into the site.

Chair Hamilton asked Mr. Warner how they would minimize the impact of tearing the radio station and the removal of the asbestos. Mr. Herzing has an agreement with the previous property owner that he will have it removed. It will be done by an approved asbestos removal contractor.

Commissioner Sale asked Mr. Warner to speak a little more about the buffer. Mr. Warner commented that the plan shows that they will buffer between the development and the adjoining residences in the same manner. Knowing that they are that close to Mr. Nordick, maybe they can something to fit. Mr. Warner pointed out that the trees Mr. Nordick does not want ripped out would definitely be taken out with the 14 unit plan. With this plan, it is less likely that they will have to rip those trees out, but until they do a survey, he cannot say that they will not rip any of the trees out. As far as the buffer, it will be the same buffer that goes on the south side as the north side. What they have been doing is three types of an evergreen buffer and another planting below that.

Commissioner Sale mentioned that Carriage Square has fencing that shows that it is clearly a contiguous community. Mr. Warner said that they are used to using a vegetative buffer. Mr. Herzing said that it really depends on the property owner and what their preference is.

Commissioner Sale asked what the density of the single-family housing units is across the front of Mimosa, the five that face Mimosa and the one that is around the corner. Commissioner Sales presumes that it will be more than the 3.59 mentioned previously. Commissioner Sale said that the reason he

raises this is because of the neighbors' concern that the homes facing Mimosa Drive will not fit in the neighborhood.

Mr. Martin stated that an R-1 requirement is a 15,000 square foot lots with 100 feet of street frontage, 40 foot front yard setbacks and 15 foot side yards. What they are indicating on their site plan is basically eight units on 1.74 acres. Overall, the entire development may be within the allowable limits, but Commissioner Sale's point is about what is visible from Mimosa Drive. Chair Hamilton asked what the road frontage would have looked like with the 14 unit development. Mr. Warner said that there were four with that plan and now there are six. With that plan, he thought there was thirty feet between the structures, as opposed to the fifteen to twenty feet that is proposed with this plan.

Mr. Warner showed the commissioners the previous plan and how it had three driveways emptying on to Mimosa Drive. He also pointed out where the cemetery is and how they had proposed to get a circular drive around it.

Chair Hamilton asked Mr. Martin to address the utilities and if there were any issues about them from the Technical Review Committee. He said that the only indication they had was that sewer had already been extended to the lot line of this development. The only concerns raised by Engineering were that making sure that we maintain easements across the property to serve properties between the development and Boonsboro Road. Mr. Warner pointed out with the 14 unit plan, they had a sewer line running around the backs of all the homes and a water line running down the middle of the street.

Commissioner Swienton said that he realizes that with PUDs, setback requirements change and are different than those of a by-right development. The proposed plan does not show the setback from the adjoining properties and he wanted Mr. Warner to give him the range of the setbacks to these different parcels. He said that they looked at the other homes and tried to put the homes on Mimosa around the same distance from the street. It looked like that was about fifty feet. Along the bottom of the plan, it is about thirty feet from the rear of the structure. From the east side, it looks to be about sixty feet and from the north side, the smallest one looks to be about ten feet at the furthest corner. The rest of those in that area seem to be almost 100 feet back to 80.

Commissioner Swienton thought that the adjoining property owners in an R-1 area should not be penalized in the setback. On the interior side, he thinks that changes, but on the edge side, he thinks that is very unfair to the adjoining property owners.

Mr. Warner pointed out that with the 14 unit development, there would have been no buffer provided to protect the single-family residences. The home could have been farther away, but you could see the home. Commissioner Swienton said that his personal experience with buffers is that they are inadequate. Mr. Warner acknowledged that in the beginning they are, but you if you wait a few years, they will be adequate. Commissioner Swienton said that one of the citizens had commented about the barrier keeping down noise and dust, and this buffer will not cut down on the dust. Mr. Warner acknowledged that they will not cut down on the dust during construction. Chair Hamilton asked if they would be amenable to fencing if that were something that neighbors wanted, and he said they would be.

Commissioner Swienton remarked that one of his concerns is that one of the houses in the corner by Mrs. Kagy. He is concerned about a future owner because he saw lights coming in there from three directions. When he looks at this private drive, he thinks there will be a fourth source of light coming into that home. Mrs. Kagy may not be concerned about it, but a future homeowner might be. That might correct itself when the buffer grows, but in the interim he is concerned about it. Mr. Warner pointed out that there will only be ten structures on the private drive, so it should not contribute in a significant way to additional light.

Commissioner Swienton said that when he looks at the area in terms of the *Comprehensive Plan* it jumps out at him is that residential areas are dominated by single-family detached housing. He looks at this plan and asks himself if this is dominated by single-family detached housing and his answer is no. He looks at what can be done by right or if nothing is done at all. Commissioner Swienton asked Mr. Martin if someone could come in and start a business in the old radio station. Mr. Martin answered no.

Commissioner Swienton acknowledges that in terms of density, the project agrees with the *Comprehensive Plan*. But in terms of building type, it does not, in his opinion. He thinks that the street scape is not in keeping with the rest of the neighborhood.

Chair Hamilton gave them the perspective of the Design Review Board. The members had felt that in order for the developer to recoup his investment in a 14-unit single-family subdivision, those homes would be large, three-story homes selling for \$300,000 or more. They liked this project because the density was internal and there were no additional curb cuts on Mimosa Drive. They liked it that everything was in and out of one driveway. They liked that the homes that were in view, although more dense, were not out of character with the rest of the neighborhood. They liked it that those in the street scape had different elevations and different materials. They also felt that the internal amenities were a positive attribute of the development. She commented that the part about them reviewing them for consistency with a housing assistance plan for federal or state funded projects was not applicable to this project.

Commissioner Sale said that he saw two things that were still unresolved and he would be inclined to put this into a work session. One is that the developer could get a clearer picture of what buffering the neighbors want and the design of it. Secondly, he is very sensitive to the unresolved negotiations with Mr. Nordick and Ms. Severn. He thinks that it can and should be mediated. He also has a concern with the density of the front houses. For it to fit in, it seems to him that they need to look at it further. He likes some things about the project, particularly the cemetery work that will be done. He hears the concern about duplexes but that it is attached houses and that is different. We are talking about housing that conforms with the prices in the neighborhood, which addresses the issue of property values going down. This has not been the experience of other PUDs like this. If anything, it increases the value of the housing stock around it.

He also remarked that we are moving away from the type of land use that is prevalent in Bedford Hills. We are moving toward more density. It is a more efficient use of property and buildings. This is our future, and these planned neighborhoods are a way of approaching it with a concept use. He is in favor of the concept use, he is in favor of this being an attractive part of Bedford Hills. He sees Carriage Square as an attraction to Boonsboro Road, but there are still some unresolved issues for him.

Chair Hamilton said that she would also appreciate some input with Gerry Harter about whether Boonsboro Road can handle the traffic flow from Mimosa Drive.

Commissioner Swienton asked Mr. Herzing if the homeowners covenant would address that these units will not be rental units. Mr. Herzing said that he would have to check to see if that was legal. He commented that he can't tell a person that they are not allowed to rent it, but he does know as an investor of numerous properties over the years, these properties would not bring in the cash flow for an investor to rent them out. A \$225,00 property would have to bring in a \$1,600 or \$1,700 a month rent.

Commissioner Swienton said that he went to the Poplar Grove website and it is one of their covenants. Mr. Herzing said that they would consider it and that it would be a good selling point. Commissioner Swienton said that there are those who can afford it, especially college students who can split the rent. Mr. Herzing said that the interior design also does not lend itself to rentals. Most of them are two-bedroom with an office/sun room. Without the bedrooms, the rent roll will not be there.

Commissioner Barnes said that his first impression of this project was very positive. This is the kind of thoughtful planned unit infill that we have been encouraging. He agreed with Commissioner Sale that the trend is toward higher density development. He thinks that this development respects the character of the neighborhood. He thinks that the fence of Carriage Square separates it from the rest of the neighborhood and this is an attempt to blend in with the rest of the neighborhood. He was curious about the kinds of concerns that would be raised and he thought there were good questions that for the most part had been answered. He thinks that traffic is still a concern. He would hope that something can be worked with Mr. Nordick and Ms. Severn about not looking at their front window at the back of someone else's house. He is prepared to vote on this tonight with the hope that they work out the remaining controversies.

Commissioner Sale made a motion that this be moved into a work session, which was seconded by Commissioner Swienton. The commissioners wanted a month to allow the time for things to be addressed. Mr. Herzing also wanted a month, so it will be set for December 12, 2007. It passed by the following vote:

AYES:	Barnes, Hamilton, Oglesby, Swienton and Sale	5
NOES:		0
ABSTENTIONS:	Flint	1
ABSENT:	Worthington	1

Chair Hamilton explained to the citizens that they could come back for the work session, but that they would be allowed to speak publicly again, unless there were questions directed to them by the commissioners.

A citizen from the audience asked for clarification as to what is the difference between an attached house and a duplex. Mr. Martin explained that from a zoning standpoint, duplexes are not permitted in R-1 and R-2 districts. They are only permitted beginning in R-3 districts. The main difference is that they cannot be sold because of setback requirements. It is encouraging rental units. The difference with PUDs is that it does away with setback requirements, which allows the adjoining units to be sold as individual properties. It is encouraging ownership by a single family. The citizen asked for clarification if one owner could own both sides of the house. Mr. Herzing said that is not usual because of the cost of two mortgages. Chair Hamilton then asked them to continue this discussion outside as they had another public hearing.

MINUTES FROM THE DECEMBER 12, 2007, PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED. THERE WAS NO MEETING ON DECEMBER 26, 2007.)

Grand Oaks at Boonsboro Work Session:

Mr. Martin reminded the commissioners that they had tabled this request at the November 14, 2007 meeting to allow the applicant time to identify and address concerns that were addressed during that public hearing. The public hearing on this item has been closed. The petitioner originally proposed the construction of thirty-two (32) homes, a combination of single-family detached and attached dwellings. They have come back with an amended plan showing only thirty-one (31) homes, the reduction in the one home is in the single-family detached structures adjacent to Mimosa Drive. They increased the side yard setback to fifteen feet, which is in compliance with a typical R-1 zoning lot. They have also agreed to transfer approximately sixty (60) feet of frontage to an adjoining property owner, retaining a fifteen foot easement to allow the planting of a vegetative buffer. They have also added additional parking spaces in the front of the detached structures on Mimosa Drive.

Mr. Gerry Harter, the Traffic Engineer, came forward to answer questions about the impact on Mimosa Drive and the surrounding neighborhood. Mr. Harter pointed out that there is a quality and a quantity side to traffic. The quantity in this case is approximately thirty-two (32) trips during peak hours, so the quantity is not a huge amount of trips coming in and out of this development. Whenever you add new trips, someone feels it somewhere, but Mimosa Drive towards Boonsboro is an extremely substandard road. The city is not planning to improve that any time soon. It is really too far off site to ask the developer to make improvements there.

Commissioner Barnes thinks that is a problem. He thinks that the narrowness of Mimosa Drive can be dangerous. Chair Hamilton asked Mr. Harter if he is basing low volume on the market they are trying to attract. Mr. Harter said that he ran it as regular single-family units. Chair Hamilton asked for clarification that the retirement market they are trying to attract generally does not make peak hour trips. Mr. Harter said that studies have shown that the retirees will try and travel during the hours of 9:00 a.m. and 3:00 p.m.

Commissioner Sale asked if the traffic problems could be exacerbated by the school traffic during peak hours. Mr. Harter said there could be a mix of traffic during school bus travel times. He pointed out though that an additional thirty-two (32) trips is below their threshold for even doing a traffic study. He did a left turn warrant since he was concerned about left turn traffic going into site and it did not meet the warrant for left-turn lanes.

Mr. Martin commented that regardless of whether this property develops as a normal single-family development or this development is approved, you will have the same stormwater concerns. There are ordinances and measures that are in place to hopefully prevent problems. The good thing about this project is that they are retaining a fairly substantial existing tree line along the side and rear of the property which should help. He mentioned that the Environmental Planner asked them to consider walkout basements on some of the units to reduce the grading which the developer has agreed to do. Mr. Martin mentioned that stormwater will be a concern with any project.

Chair Hamilton asked Mr. Trent Warner to comment on their stormwater management plan. He commented that there are water quality measures that did not used to be in standard projects. He spends over half his time dealing with stormwater and landscaping issues. The issues that are important to the Planning Commissioners are now important to developers.

As far as traffic is concerned, he commented that many of the people who attended their neighborhood meeting were of the same age as the market that is proposed. They felt that traffic was a concern, but that it would be more of a concern if it were developed as a fourteen lot subdivision.

Mr. Warner also addressed the buffer issue that was brought at the public hearing. The developer has directly talked to the neighbors and talked to them about what type of buffer they can expect. It was decided to keep a vegetative buffer, which is what the neighbors want.

Commissioner Barnes brought up the steep slope and how it drops off considerably from the cemetery backward. It is hard to envision what the extent of the necessary will be. Mr. Warner commented that he has a great person on his staff who does the grading plan. They do not put things up against big giant slopes and then have a road that goes around it.

Commissioner Swienton commended the developer for working out the issue with Mr. Nordick and conveying him the road frontage.

Commissioner Swienton still has an issue with the minimum rear yard frontage of fifty feet. He still thinks that an adjoining property owner may have less than fifty feet. He is not opposed to this development but still thinks that there is some fine tuning that needs to be done. Mr. Warner pointed out that there is a part of the *Zoning Ordinance* that allows for Planned Unit Developments (PUDs) and these are the types of developments that are coming in his office. This has been the push for so long. Let's not do sprawl and then when they bring PUDs to Planning Commission, those are turned down. They may be a little closer than fifty feet, but it is what is allowed in the ordinance. Mr. Martin pointed out that if this was strictly R-1, there would be a more substantial rear yard and separation, but there would also be no requirements for a vegetative buffer.

Commissioner Swienton pointed out that on a positive side, he looks at this and asks if he would classify this as infill development because of the existing structures and we are supposed to be promoting infill development.

Commissioner Swienton thought there should be some additional screening on the road going in to cut down on light pollution. He is basing that on some personal experience. Mr. Herzing stated that he has met with those two neighbors and they do not want a fence. They have decided on a three species evergreen type of tree and the neighbors are pleased with that. Commissioner Swienton thanked Mr. Herzing for meeting with them.

Commissioner Swienton commented that the PUD was put in the *Zoning Ordinance* in 1984 and he has searched the *Comprehensive Plan* for any references to PUDs and he cannot find any. He does not have the answer as to why PUDs are not mentioned. He also mentioned that the *Comprehensive Plan* calls for this area to be "dominated by single-family housing" and he wrestles with why was that put in there. He does not have the answer to that. He thinks that on the positive side, the detached housing is on the street.

Commissioner Sale commented that he sees a bending over by the developer to accommodate some of the issues. He thinks that reducing the number of houses on Mimosa Drive enhances the plan. He thinks that the giving of the property to the adjoining property owner was magnanimous. He thinks that the quality of the housing says to him that this is going to be an attractive, well marketed place, similar to other places that we have in the Boonsboro area. The traffic issue is still a concern, however, it is not something to him that would prohibit going forward with this.

Commissioner Barnes agreed with Commissioner Sale's comments. We have said numerous times that we want to encourage denser development. The scale of these houses fits in with the scale of the neighborhood. The developer has taken steps to ease the transition into the denser area. He does think that traffic will be a concern. He is willing to take the assurances that every step will be taken to minimize the grading to protect the quality of the stream.

Commissioner Worthington thinks that this is a great spot for a development like this. He has seen other developments that they have approved and they seem to have no problems with neighbors and it has enhanced the neighborhood. He also commented that people in Lynchburg do not really have a concept of traffic problems. We do not have traffic problems in Lynchburg. We think we do, but we don't.

Commissioner Oglesby likes the development and thinks they have made a good gesture to the adjoining property owner in giving him the sixty feet of property.

Commissioner Barnes commented that he honestly thinks this development will enhance the property values. The other commissioners agreed.

Commissioner Swienton commented that after the last public hearing, he had someone approach him about when this development would be done because they could not find single-family housing like this in Lynchburg. He also thinks that it is very unusual that the three closest neighbors seem to be fine with the development and that the more distant neighbors are the ones with the reservations. He thinks that is different from what they usually see.

Chair Hamilton commented that the developers have made a number of concessions based on what the Design Review Board recommended and what they heard at the public hearing. She is very impressed with their willingness to work with them. She is still concerned with the traffic, but she thinks that the quality of traffic that will be coming out of this development will be better than what might come out of a standard subdivision.

Commissioner Worthington made the following motion, which was seconded by Commissioner Oglesby, and passed by the following vote:

"That the Planning Commission recommends to City Council approval of Systematic Concepts, LLC's petition for a Conditional Use Permit (CUP) to allow the construction of a Planned Unit Development at 2016, 2020 and 2028 Mimosa Drive, subject to the following conditions:

- 1. The property shall be developed in substantial compliance with the site plan dated November 30, 2007 and received by the Department of Community Development on December 5, 2007.**
- 2. The homes will be developed in substantial compliance with the photos and architectural renderings for the four (4) residential homes received by the Department of Community Development on November 5, 2007. Exterior building materials for the homes will include a combination of brick, vinyl and stone.**
- 3. Any exterior lighting will be glare-shielded and non-directional to prevent direct illumination across the property line.**
- 4. The existing cemetery and the large oak trees in this area will be preserved and incorporated into the design of the development.**
- 5. The petitioner will field locate the existing maple and the two (2) existing pine trees at the front of the development; significant efforts will be made to preserve these trees in the design phase of the development.**
- 6. The City's Transportation Engineer will conduct a left-turn survey for the proposed development. If the survey warrants the installation of a turn lane for the project, the feature will be designed and installed at the owner's expense."**

AYES:	Barnes, Hamilton, Oglesby, Sale, Swienton and Worthington	6
NOES:		0
ABSTENTIONS:	Flint	1
ABSENT:		0

RECEIVED

DEC 05 2007

COMMUNITY
DEVELOPMENT

December 05, 2007

Mr. Kent White- Senior Planner
City of Lynchburg Planning Department
900 City Hall
Lynchburg, Virginia 24501

Re: Grand Oaks at Boonsboro

Dear Mr. White,

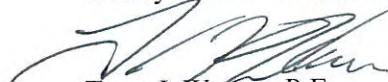
Please find attached 18 copies of the revised conceptual layout addressing comments and concerns presented at the November 28th meeting of the City of Lynchburg Planning Commission. The following paragraphs describe the modifications that were made to the plan as originally submitted.

- 1.) The property line adjacent to the property of Larry and Jennifer Nordick was in proximity to the improvements on that lot. The developers have agreed to convey approximately 60' of road frontage to Mr. and Mrs. Nordick. In an effort to convey as much property as possible, an easement has been retained to provide a 15' strip for planting a vegetative buffer.
- 2.) There appeared to be concerns in reference to the number of proposed dwellings along Mimosa Drive and the spacing between these dwellings. In an effort to address this concern the developers have eliminated one dwelling and provided a 15' side yard for the remaining dwellings to conform with the side line requirements for a "by- right" R1 development.
- 3.) We have received a comment concerning guest parking for the homes along Mimosa Drive. The comment presented the thought that it was not practical for a guest to park in the driveway, located on the rear of the lot, and be forced to enter through the back door. We have talked with Gerry Harter, Traffic Engineer, Jim Talian in Engineering and Tom Martin concerning this solution and they agreed that a minimal number of parking spaces on Mimosa Drive would provide an acceptable solution to the problem.

We feel that we have addressed the concerns presented and hope we have modified the concept in a manner that is acceptable to the neighbors in the area and the members of the Planning Commission.

Sincerely,

Guffey Warner & Associates, Inc



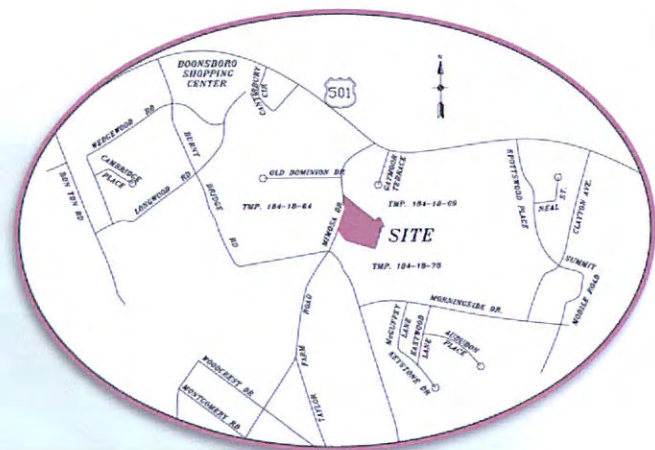
Trent J. Warner, P.E.
Vice President

CC: Mickey Herzing, Systematic Concepts, LLC

21 Timber Oak Ct - Suite B - Oakdale Circle, Lynchburg, VA 24502

Phone: 434-239-6000; Fax: 434-239-6001

Grand Oaks at Boonsboro



THE DEVELOPMENT OF GRAND OAKS AT BOONSBORO

1. THIS PROPERTY CONTAINS 8.9 ACRES AND IS IDENTIFIED AS TMP 184-18-070, 184-18-064, & 184-18-069.
2. THIS PROPERTY IS ZONED R1 AND A CONDITIONAL USE PERMIT IS REQUESTED TO DEVELOP 7 UNITS OF SINGLE FAMILY DETACHED AND 24 UNITS OF SINGLE FAMILY ATTACHED HOMES.
3. SINGLE FAMILY DETACHED HOMES WILL BE BUILT ALONG MIMOSA DRIVE TO STAY IN CHARACTER WITH THE EXISTING NEIGHBORHOOD.
4. ALL UNITS WILL INCORPORATE AN ATTACHED ONE OR TWO CAR GARAGE.
5. STREETS AND ALLEYS WILL BE CONSTRUCTED TO CITY OF LYNCHBURG STANDARDS.
6. ALL UNITS WILL BE SERVED BY PUBLIC WATER AND SEWER.
7. STREET LIGHTING WILL BE PROVIDED AND WILL BE SHIELDED, NON-GLARE IN TYPE.
8. A PROPERTY OWNER'S ASSOCIATION WILL BE CREATED TO MAINTAIN ALL COMMON AREAS AND PRIVATE ROADS.
9. REFUSE COLLECTION WILL BE PROVIDED TO INDIVIDUALS BY A PRIVATE COLLECTION PROVIDER.
10. BASED ON A GRAPHIC DETERMINATION THIS PROPERTY FALLS WITHIN ZONE C OF THE FEMA FLOOD INSURANCE RATE MAP PANEL NUMBER 5100930005 B, DATED SEPTEMBER 1, 1978.
11. DENSITY = 4 UNITS PER ACRE
SINGLE FAMILY DETACHED = 1.68 AC OR 18.87 %
SINGLE FAMILY ATTACHED = 3.17 AC OR 35.64 %
COMMON AREAS = 3.94 AC OR 44.27 %
CONVEYED AREA = 1.05 AC OR 1.22 %
12. AMENITIES
 1. LANDSCAPED COURTYARD WITH SITTING AREAS
 2. GAZEBOS AND ARBORS
 3. NETWORK OF SIDEWALKS FOR WALKING
 4. NATURE WALKING TRAILS
 5. ACCESS TO PUBLIC TRANSPORTATION WITHIN WALKING DISTANCE
 6. HOME OWNER'S ASSOCIATION TO PROVIDE LAWN CARE MAINTENANCE, SNOW REMOVAL FOR PRIVATE ROADS AND COMMON AREAS AND MAINTENANCE OF LANDSCAPED AREAS.

CONTACT INFORMATION

SYSTEMATIC CONCEPTS LLC.
P.O. BOX 10773
LYNCHBURG VIRGINIA 24506

STORMWATER NARRATIVE

STORMWATER WILL BE ADDRESSED THROUGH A LOW-IMPACT DESIGN STRATEGY TO ADDRESS BOTH WATER QUALITY AND DETENTION. THIS WILL BE ACHIEVED BY THE USE OF ISOLATED RAIN GARDENS AND GRASS LINED SWALES. THE DISCHARGE FROM THE RAIN GARDENS WILL BE ROUTED TO AN ADEQUATE CHANNEL, SUFFICIENT TO HANDLE THE STORMWATER FROM THIS FACILITY. THE DESIGN OF THESE MEASURES WILL BE COORDINATED WITH THE CITY OF LYNCHBURG'S ENVIRONMENTAL PLANNER AND FINAL PLANS WILL BE SUBMITTED FOR REVIEW AND APPROVAL.

IF THIS DRAWING IS A REDUCTION
GRAPHIC SCALE MUST BE USED



PROJECT NARRATIVE

THIS PROPERTY IS LOCATED ON THE EAST SIDE OF MIMOSA DRIVE APPROXIMATELY 1000' SOUTH OF BOONSBORO ROAD. THE SITE CONSISTS OF 3 PARCELS OF LAND WHICH WILL BE COMBINED FOR A TOTAL OF 8.9 ACRES. THE SITE IS VACANT WITH THE EXCEPTION OF AN ABANDONED BRICK BUILDING, WHICH WAS, AT ONE TIME, A RADIO STATION. THIS BUILDING WOULD BE DEMOLISHED IN CONJUNCTION WITH PROPOSED IMPROVEMENTS. THE SITE IS SERVED BY PUBLIC WATER AND SEWER. A CONDITIONAL USE PERMIT HAS BEEN APPLIED FOR WHICH WOULD ALLOW FOR A PLANNED UNIT DEVELOPMENT. THIS DEVELOPMENT WOULD INCLUDE 7 SINGLE FAMILY DETACHED AND 24 SINGLE FAMILY ATTACHED UNITS. THE ROAD FRONTAGE ALONG MIMOSA DRIVE WOULD BE DEVELOPED WITH SINGLE FAMILY DETACHED IN AN EFFORT TO COMPLY WITH THE TYPE OF CONSTRUCTION THAT PRESENTLY EXISTS. THE AREA BEHIND THESE STRUCTURES WOULD BE A MIXTURE OF SINGLE FAMILY DETACHED AND SINGLE FAMILY ATTACHED (PATIO HOMES). THESE HOMES WOULD MARKET TO THE UPPER-MIDDLE INCOME BRACKET. A HOMEOWNER'S ASSOCIATION WOULD BE CREATED THAT WOULD PROVIDE LAWN AND LANDSCAPE CARE, SNOW REMOVAL AND MAINTENANCE FOR COMMON AREAS AND PRIVATE ROADS. STORMWATER MANAGEMENT MAINTENANCE WILL ALSO BE PROVIDED BY THE HOME OWNER'S ASSOCIATION. REFUSE COLLECTION WOULD BE PROVIDED AT EACH HOME, BY A PRIVATE COLLECTION PROVIDER. BUFFERING WILL BE PROVIDED TO PRESERVE THE PRIVACY OF THE EXISTING HOME OWNERS. PUBLIC TRANSPORTATION IS WITHIN CLOSE PROXIMITY TO THE PROJECT AND THE SITE IS LOCATED CONVENIENTLY TO RETAIL AND MEDICAL FACILITIES.

APPROXIMATE LIMITS OF CLEARING

MARGARET A.F. KAGEY
DB. 694 PG. 244
DB. 357 PG. 235
TMP. NO. 180-05-10
ZONED: R-1
USE: RESIDENTIAL

ELIZABETH D. SLOMINSKI
DB. 736 PG. 855
TMP. NO. 180-05-09
ZONED: R-1
USE: RESIDENTIAL

NOTE:

HOMES ARE EITHER ONE OR ONE AND ONE HALF STORY HOMES, ALL WITH MAIN FLOOR MASTER BEDROOMS.

PARKING SUMMARY

PARKING REQUIRED = 32 x 2.5 = 80 SPACES
PARKING PROVIDED = ONE CAR GARAGES = 27 SPACES
TWO CAR GARAGES = 8 SPACES
DRIVEWAYS = 31 SPACES
ON-STREET = 21 SPACES
ALLEYS = 12 SPACES

RECEIVED

DEC 05 2007

COMMUNITY
DEVELOPMENT

**GUFFEY
WARNER &
ASSOCIATES**
ENGINEERS & SURVEYORS
21 TIMBER OAK CT - SUITE B
DANVILLE, VA 24502
PHONE: 434-239-6000
FAX: 434-239-6001

DRAWN BY:
GLM
REVIEWED BY:
TJW
PROJECT No.
07069.00
FILE NAME:
C-1.DWG
SCALE:
GRAPHIC

PROJECT:

**GRAND OAKS
AT BOONSBORO**
LYNCHBURG, VIRGINIA

TITLE:

CONCEPTUAL LAYOUT

DATE:
REV. 11-30-07
10-8-07
DRAWING No:
C-1
SHEET NUMBER:
1 OF 1

NO.	REVISION	BY	DATE
2	ADDRESS CITY COMMENTS	GLM	11-30-07
1	ADDRESS TRC COMMENTS	GLM	11-2-07

GRAND OAKS AT BOONSBORO
2016, 2020, 2028 Mimosa Drive
Map # 184-18-0064, 069/070
Conditional Use Permit Request
Petitioner: Systematic Concepts, LLC

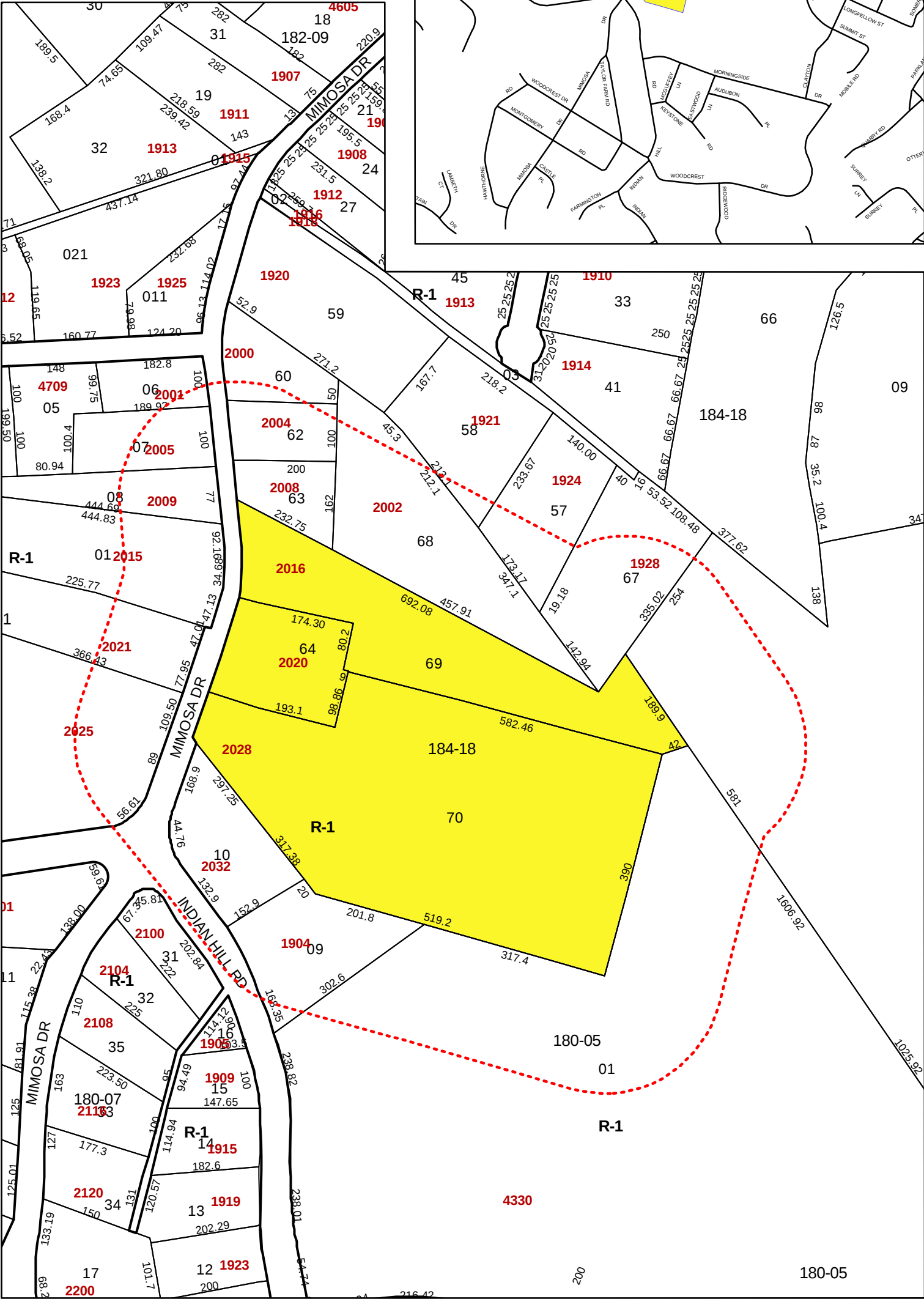
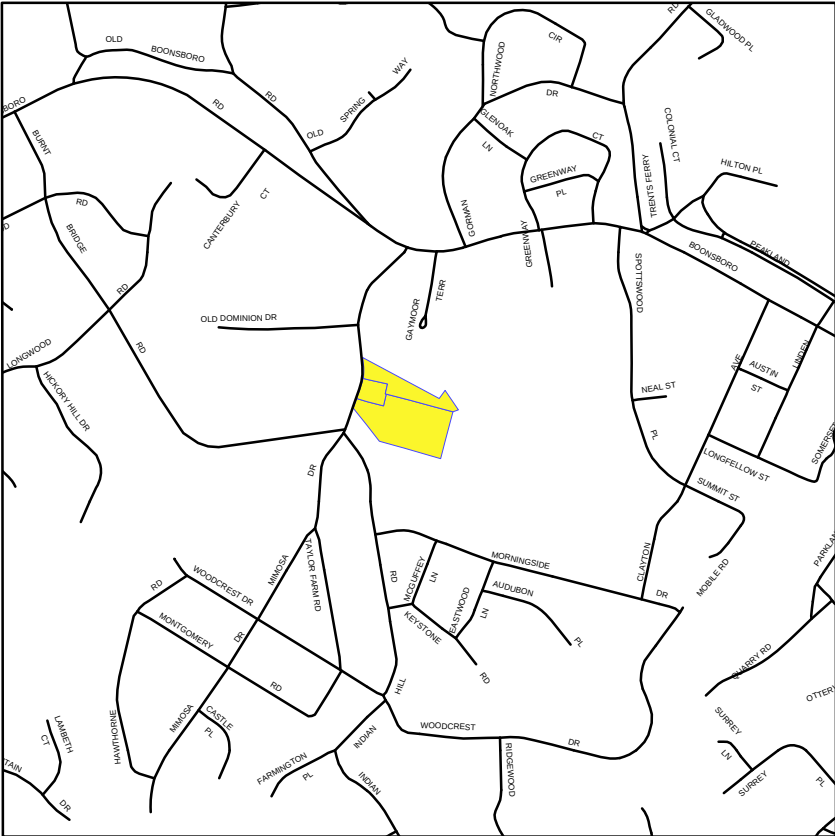
MAP PREPARED BY
THE DEPARTMENT OF COMMUNITY DEVELOPMENT



Subject Property

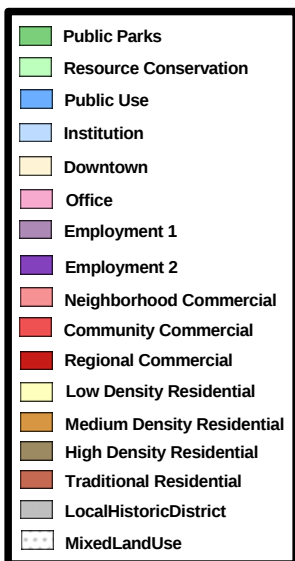
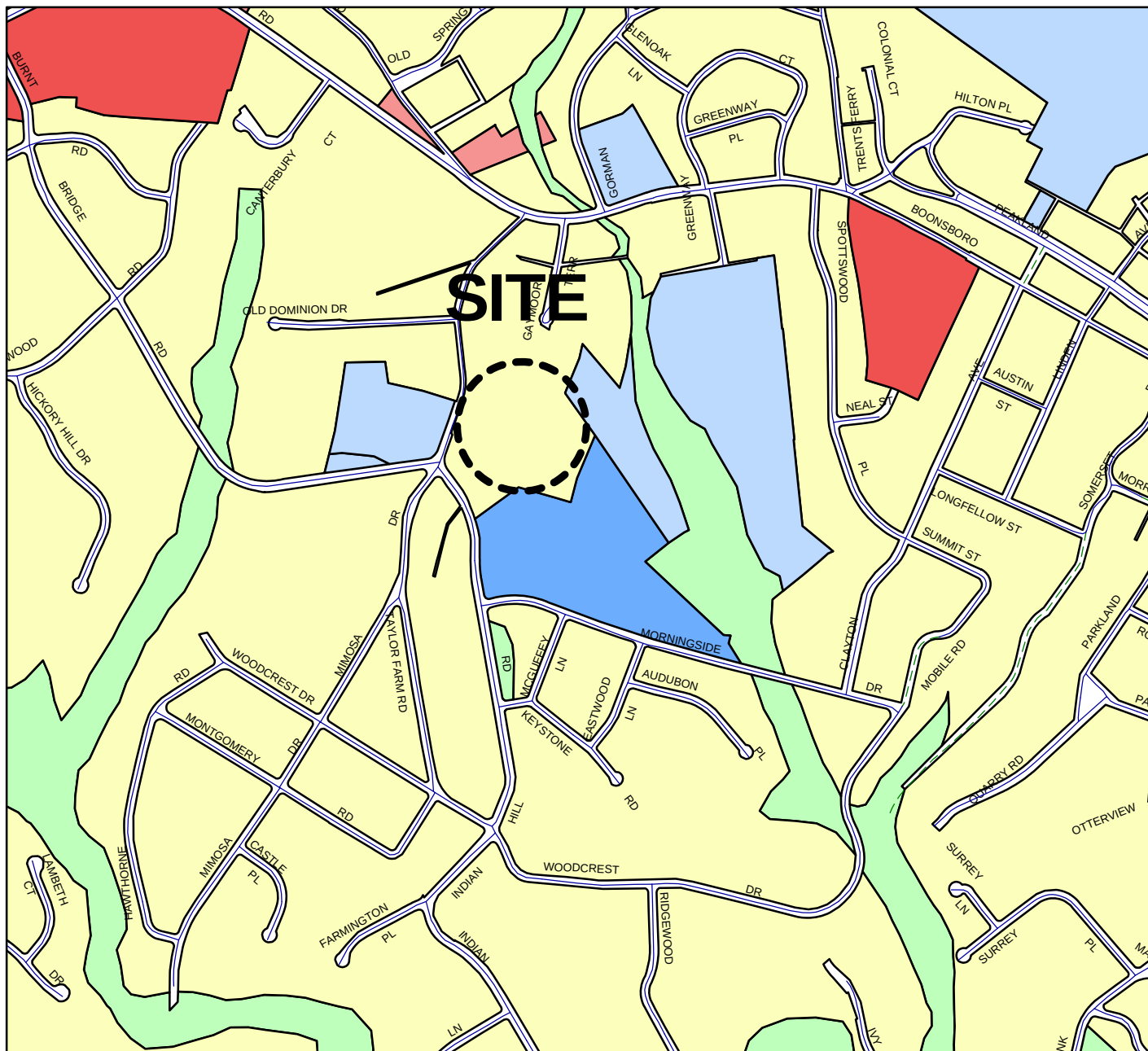


200 ft Radius



GRAND OAKS AT BOONSBORO CUP ADJOINING OWNERS

PIN	OWNER	LOCADDR
18005001	CITY OF LYNCHBURG C/O STEVE LAWSON	4330 MORNINGSIDE DR
18005009	SLOMINSKI ELIZABETH D	1904 INDIAN HILL RD
18005010	KAGEY MARGARET A F	2032 MIMOSA DR
18101001	BROOKMAN BARRY E & PATRICIA L	2015 MIMOSA DR
18101006	WATKINS WALDO C & DOROTHY P	2001 MIMOSA DR
18101007	MATHER CHAD M & JENNY L	2005 MIMOSA DR
18101008	BRENNAN SHANNON W	2009 MIMOSA DR
18101009	ST BARNABAS EPISCOPAL CHURCH	2025 MIMOSA DR
18101013	ST BARNABAS EPISCOPAL CHURCH	2021 MIMOSA DR
18417004	LYNCHBURG COVENANT FELLOWSHIP	4419 BOONSBORO RD
18418057	GOFF LINDA	1924 GAYMOOR TER
18418058	PALMER JOHN K & JULIE B	1921 GAYMOOR TER
18418060	RAMSEY GEORGE P IV	2000 MIMOSA DR
18418062	STROUD GARY A & DIANE T	2004 MIMOSA DR
18418063	NORDICK LARRY F & SEVERN JENNIFER A	2008 MIMOSA DR
18418064	SYSTEMATIC CONCEPTS LLC	2020 MIMOSA DR
18418067	MESSERSCHMIDT DANIEL C & CONNIE A	1928 GAYMOOR TER
18418068	RAMSEY GEORGE P IV	2002 MIMOSA DR
18418069	SYSTEMATIC CONCEPTS LLC	2016 MIMOSA DR
18418070	SYSTEMATIC CONCEPTS LLC	2028 MIMOSA DR
Owner	SYSTEMATIC CONCEPTS LLC	
Petitioner	SYSTEMATIC CONCEPTS LLC	
Representative	TOM GUFFEY/GUFFEY WARNER & ASSOCIATES	



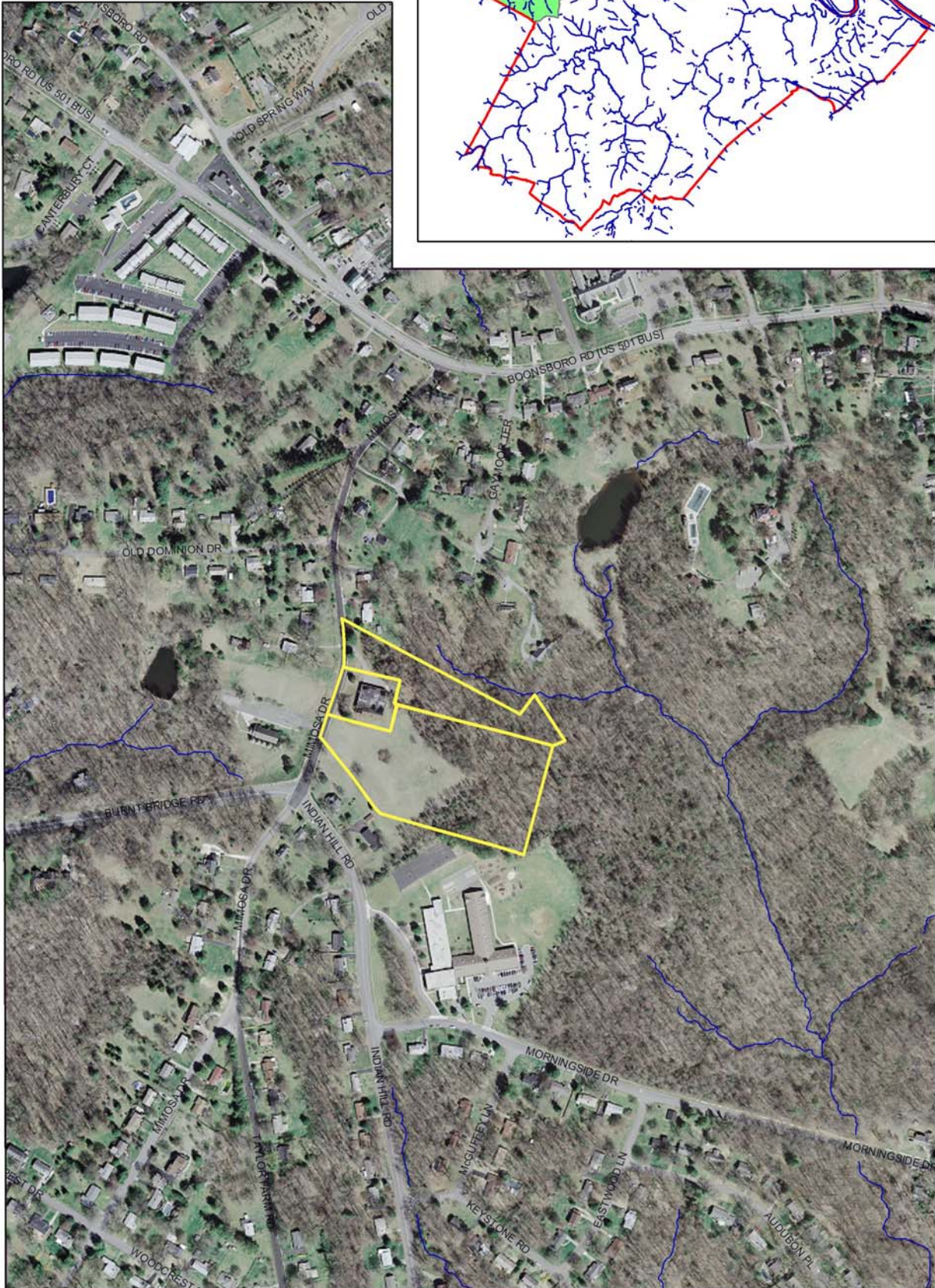
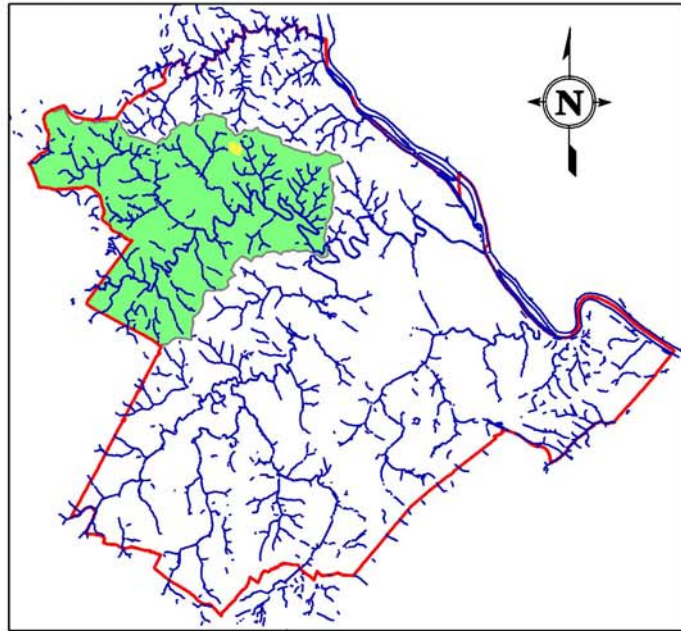
GRAND OAKS AT BOONSBORO **2016, 2020, 2028 MIMOSA DRIVE** **LAND USE PLAN**



Grand Oaks at Boonsboro Watershed Location Map

Legend

-  Project Site
-  Corporate Limit
-  Ivy Creek Watershed



Standard Features:

NEIGHBORHOOD

- A Combination of Single Family and Patio Style Homes (1 and 1 ½ Story)
- Professionally designed and landscaped Front entry way
- Newly Planted Oak Tree on every lot
- Common street Lights throughout the development
- Scenic walking trail
- Under Ground Utilities
- Public water
- Public sewer

EXTERIOR

- Sodded Front lawns
- Individual Irrigation Systems for each home owner
- Easy care Low maintenance Exterior
- Maintenance free Vinyl Siding
- Brick and Stone/Rock Exteriors
- Professionally coordinated exterior elevations and color schemes.
- Basement and slab Foundations
- Garages with all units
- Ridge and Soffit venting
- Different elevation available for different floor plans
- Side lighted and transom front doors
- Front porches on most homes
- Concrete sidewalks and Driveways
- Garage doors with matching elevation windows
- Lighted door bell
- Front Porch light
- Patio area
- Minimum step front entry
- Outdoor outlet
- Hose Bib

INTERIOR

- Open floor plans geared towards older adults and professionals
- Flexible floor plans to accommodate personal tastes
- Abundance of windows to maximize natural sun light
- Entry Foyer Closet(per plan)
- 36" Interior Doors
- Built in Office areas
- Fire Place (Gas Log)
- Laundry Room (per plan)
- Numerous interior door choices
- Telephone Pre-wired
- TV Pre-wired
- High speed broadband Pre-wired
- Ventilated wire shelving in all closets
- Crown and chair rail molding in all dining rooms
- 9' Ceiling
- Vaulted Ceilings
- Heat pump
- Central Aire
- Easy clean tilt in windows
- Ceiling Fan

Grand Oaks

at Pinebluffs

Lynchburg, Virginia

FLOORING

- Real hardwood
- Engineered hardwood
- Laminate
- Ceramic Tile
- Wall to wall carpet
- Vinyl

KITCHEN

- Granite Counter Top
- Maple, Oak and White Cabinets
- Easy reach Superior Design
- Ceramic or Hardwood floor
- Kenmore Microwave
- Kenmore Electric Range
- Kenmore Dishwasher
- Kenmore Microwave Range Hood
- 1/3 hp disposal
- Double Bowl Stainless Steel sink
- Under counter trash slider
- Tilt out sink drawer
- Goose neck facet
- Soap Dispenser

BATH

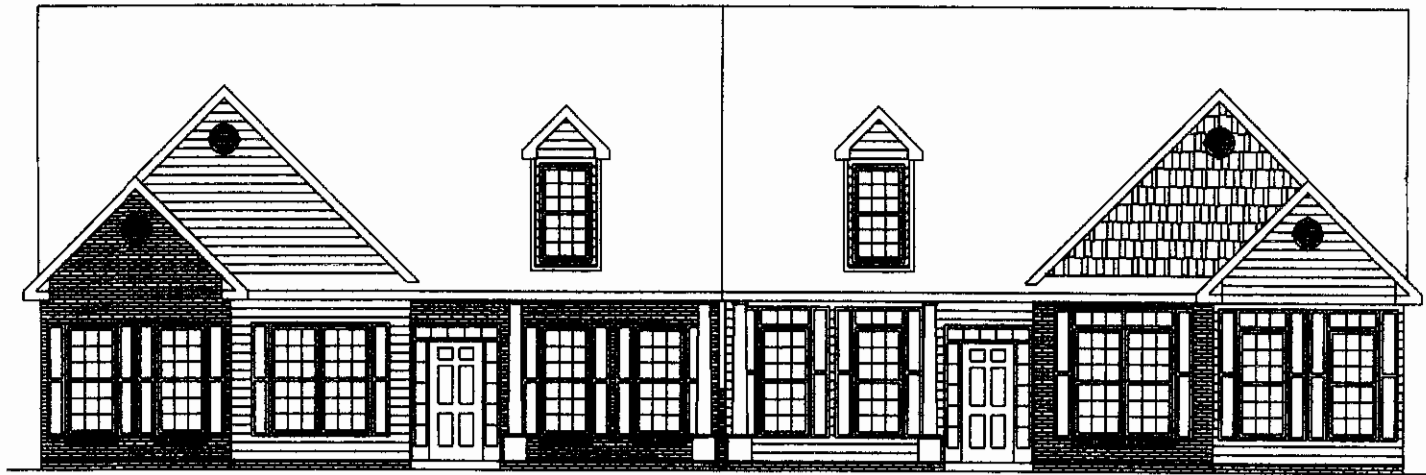
- 4' Walk in Shower
- Cultured Marble Vanity Tops
- Exhaust Fan/Light Combo
- Ceramic Tile Floor
- Vanity Mirror

For more information call or
e-mail: Mickey Herzing
434-660-6032
herzings3@aol.com

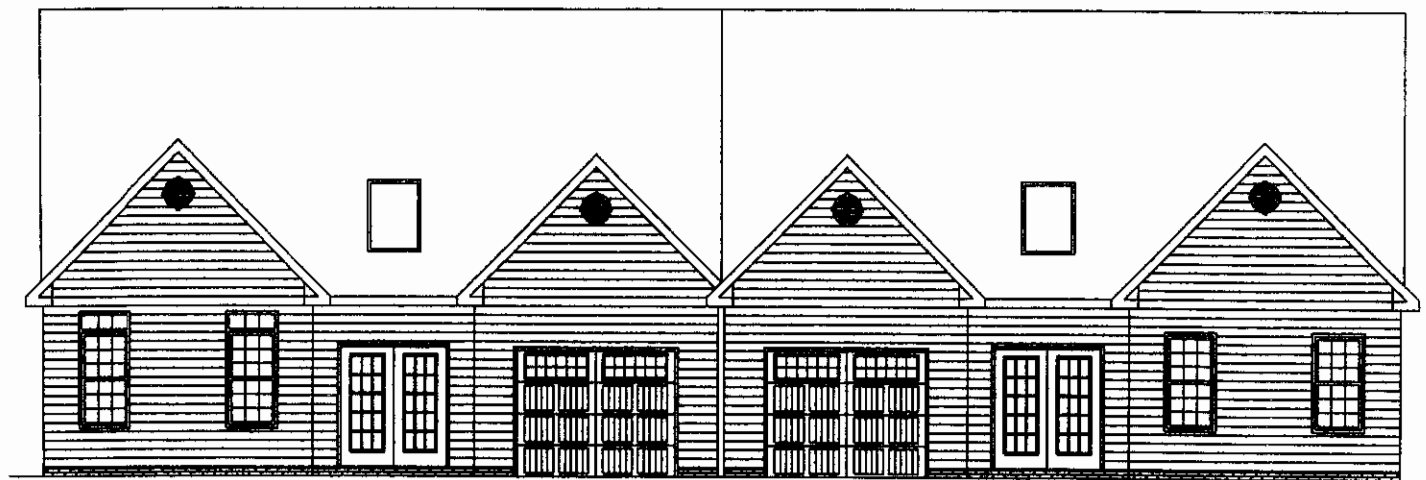
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NOV 05 2007

COMMUNITY
DEVELOPMENT



FRONT ELEVATION



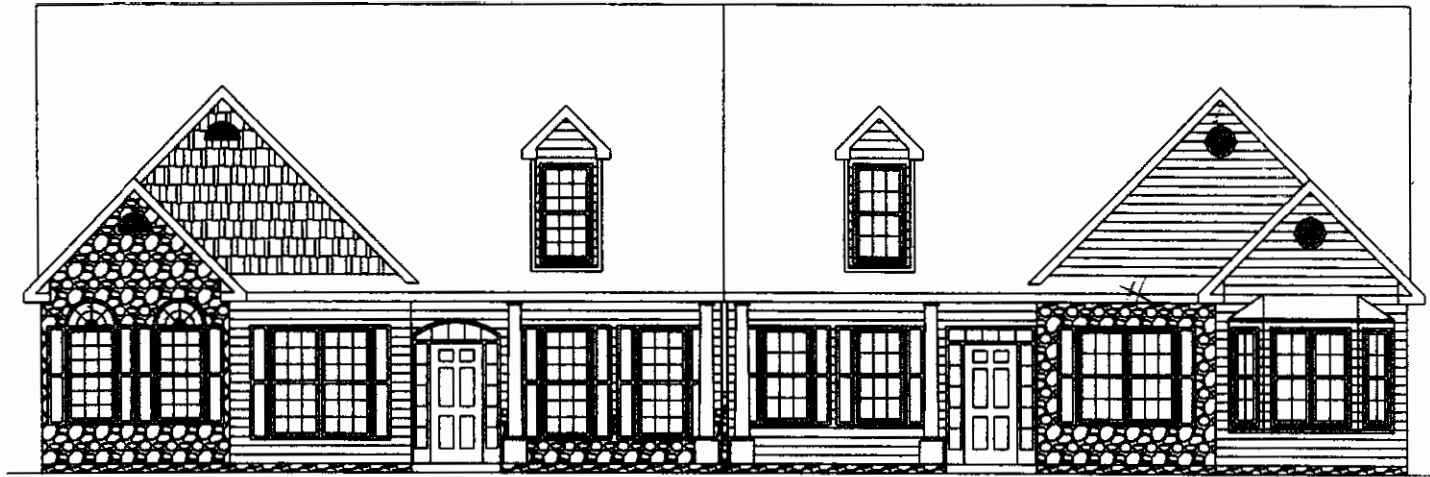
REAR ELEVATION

Combined Unit L1-R1

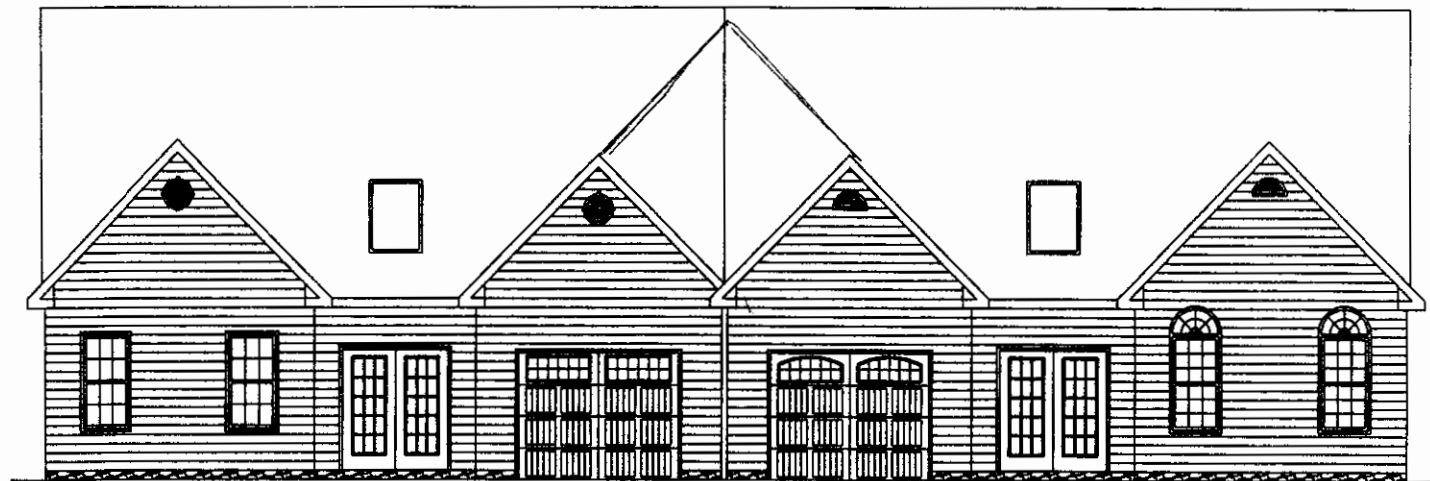
RECEIVED

NOV 6 5 2007

COMMUNITY
DEVELOPMENT



FRONT ELEVATION



REAR ELEVATION

Combined Unit L2-R2

RECEIVED

NOV 14

11:00 AM



RIGHT ELEVATION



LEFT ELEVATION

Combined Unit L1-R1

RECEIVED

NOV 11 1993

COMMUNITY
DEVELOPMENT

RECEIVED

NOV 15 2007

COMMUNITY
DEVELOPMENT



RIGHT ELEVATION

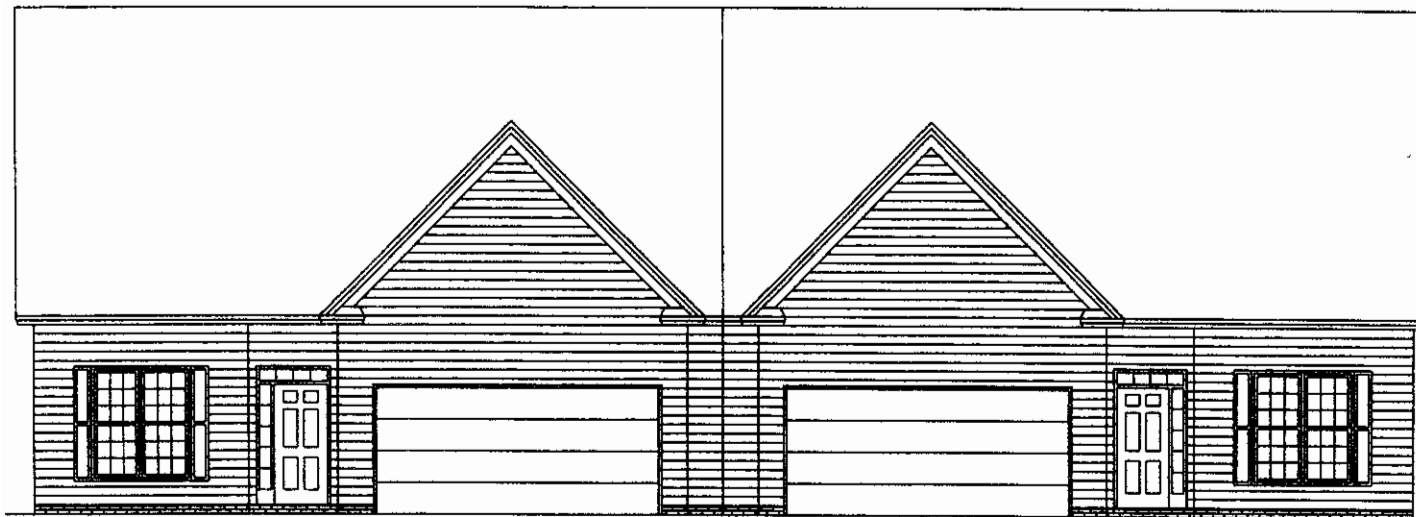


LEFT ELEVATION

Combined Unit L2-R2

RECEIVED

1-10-17
1-10-17



FRONT ELEVATION



REAR ELEVATION

Combined Unit L5-R5

RECEIVED

NOV 15 2007

COMMUNITY
DEVELOPMENT



RIGHT ELEVATION



LEFT ELEVATION

Combined Unit L5-R5



FRONT ELEVATION

RECEIVED

NOV 05 2007

COMMUNITY
DEVELOPMENT



REAR ELEVATION

RECEIVED

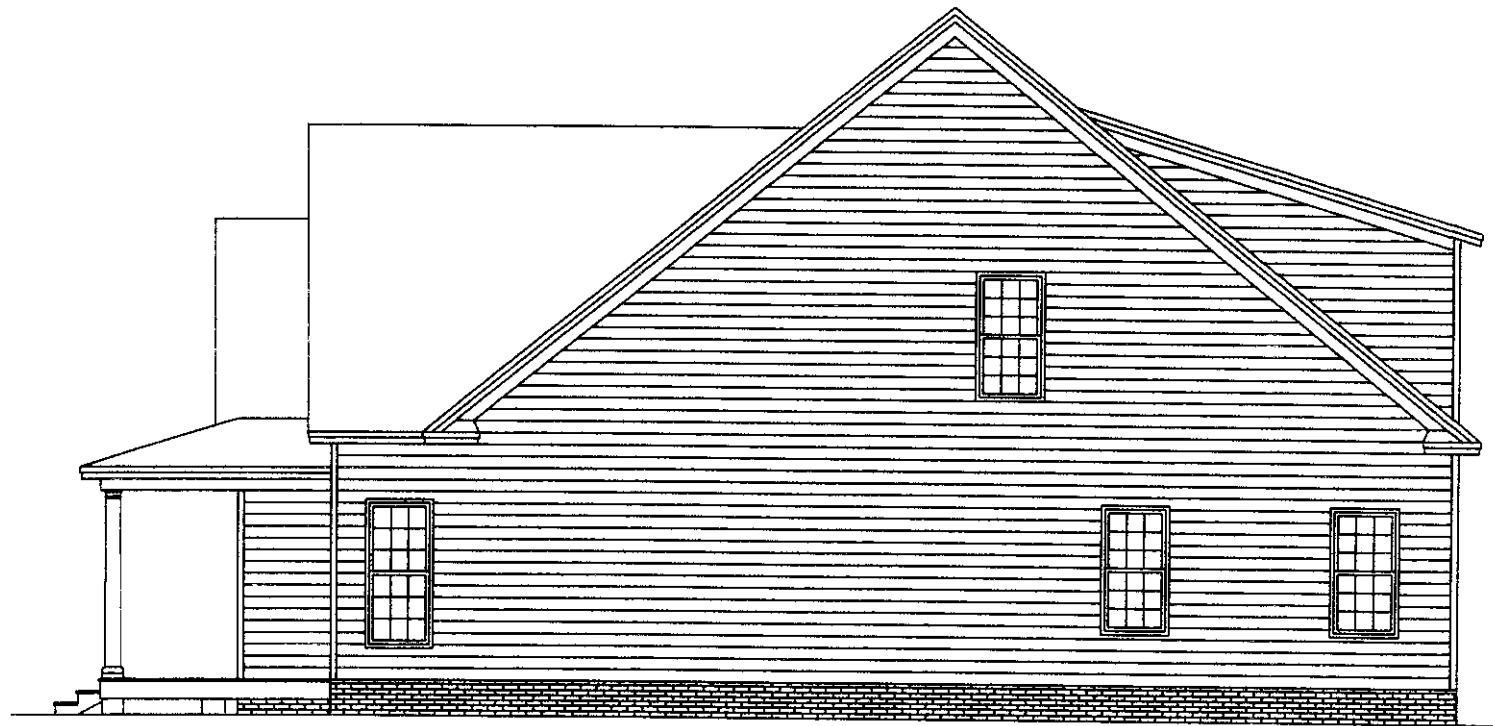
NOV 05 2007

COMMUNITY
DEVELOPMENT

RECEIVED

NOV 10 2007

CONTRACT
DEVELOPMENT



RIGHT ELEVATION

RECEIVED

NOV 19 2007

COMMUNITY
DEVELOPMENT



LEFT ELEVATION

1 CAR REAR
GARAGE

1 STORY

1/2 PATIO

WASHINGTON



RECEIVED

NOV 15 2007

COMMUNITY
DEVELOPMENT

Jefferson

1/2 Patio 1 story

2 Car Front
Garage



RECEIVED

NOV 05 2007

COMMUNITY
DEVELOPMENT

Jefferson

RECEIVED

NOV 05 2007

COMMUNITY
DEVELOPMENT



Roosevelt

SINGLE FAMILY

1 1/2 Story
Rear Garage

RECEIVED

NOV 6 5 2006

COMMUNITY
DEVELOPMENT



Single Family

1 1/2 story

Rear Garage

Truman



RECEIVED

NOV 05 2007

COMMUNITY
DEVELOPMENT

Petition against Grand Oaks At Boonsboro on Mimosa Drive

We, the undersigned, are opposed to the proposed Planned Unit Development on Mimosa Drive called Grand Oaks at Boonsboro. These 32 units would generate far too much traffic for this narrow residential street and are not in keeping with the character of this single family neighborhood, which has been in place since the 1950s. We respectfully ask that the Planning Commission and City Council deny the request for a conditional use permit for this development.

Name	Signature	Address
BARRY BROOKMAN	[Signature]	2015 MIMOSA DR.
Jenny Mather	[Signature]	2005 mimosa Dr
Diane Streud	[Signature]	2004 Mimosa Dr.
M.T. DRIMMELLER	[Signature]	1911 MIMOSA DRIVE
Alison Ramsey	[Signature]	1920 Mimosa Dr
Tandy Fincher	[Signature]	Old Dominion 4109
Gerald E. Roberts	[Signature]	4108 Audubon Pl 03
BARBARA M. ROBERTS	[Signature]	4108 Audubon Pl 03
Kevin Rault	[Signature]	Halcthorne Rd
James W. Patterson, Jr	[Signature]	4301 MONTGOMERY RD
ELLA J. WILLIAMS	[Signature]	4823 OLD DOMINION DR. 03
W.S. WILLIAMS	[Signature]	4823 OLD DOMINION DR. 03
Peter Ramsey	[Signature]	1920 Mimosa Dr.
Donnelly P. Wilkins	[Signature]	2001 Mimosa Dr.
Rachel H. Guthrie	[Signature]	2408 MIMOSA DR
Lee Vukich	[Signature]	2108 MIMOSA DR.
Connie Messerschmidt	[Signature]	1928 Cypress Terrace

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Name

Signature

Address

Shannon Brennan ~~Shannon Brennan~~ 2009 Mimosa Drive 24503

Betty P Pearson Betty Pearson 4313 Montgomery Pl 24503

~~Kevin Page~~ Kevin Page 2244 Taylor Farm 24503

Laura Moore 2305 Woodcrest Dr. 24503

Steve Moore Steve Moore 2505 Woodcrest Dr. 24503

Lizette Padgill Lizette Padgill 2427 Mimosa Dr. 24503

Martina James Arrington ^{MARTHA JANE ARRINGTON} 4124 Audubon Pl 24503

Frances H. Palmer ~~Frances Palmer~~ 4136 Woodside Place

Peter Arrington Peter Arrington 4124 Audubon Pl 24503

Patricia Brookman Patricia Brookman 2015 Mimosa Dr 24503

Shay Cravens Shay Cravens 2208 Mimosa Dr. 24503

Sherman Cravens ~~Shay Cravens~~ 2208 Mimosa Dr 24503

Jan Severn Jan Severn 2008 Mimosa Drive 24503

Larry Nordick Larry Nordick 2015 Mimosa Drive 24503

DOROTHY KENDER Dorothy Kender 1913 Mimosa Dr 24503

GEORGE PABIS ~~George Pabis~~ 2109 MIMOSA DR 24503

PATRICIA A PABIS Patricia Pabis 2109 Mimosa Dr 24503

Petition against Grand Oaks At Boonsboro on Mimosa Drive

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Name	Signature	Address
Jim D Patsell	Jim D Patsell	2424 Hawthorne Rd
John T. Patsell	John T. Patsell	2424 Hawthorne Rd.
Jerry Padgett	Jerry Padgett	2412 Mimosa Dr
Joyce Brookman	Joyce Brookman	2015 Mimosa Dr
Katherine Har	Katherine Har	2211 Mimosa Dr.
Douglas Kinn	Douglas Kinn	2211 Mimosa Dr.
Jessie Sheffield	Jessie Sheffield	2009 Mimosa Dr.
Robert Pennix	Robert Pennix	2025 Woodcrest Dr.
Dolly Clingenpeel	Dolly Clingenpeel	2231 Woodcrest Dr.
Rita Hain	Rita Hain	5226 Wedgewood Rd
Robert Warner	Robert Warner	5313 Hickory Hill Dr
Paula Dubay	Paula Dubay	1904 Gaymoor Ter.
Noel Owen	Noel Owen	4800 Old Dominion Dr
Ronald Elliott	Ronald Elliott	4800 Old Dominion Dr
Genevieve J. Starbuck	Genevieve Starbuck	4800 Old Dominion Dr
Steve Mullen	Steve Mullen	2324 Woodcrest Drive
Thomas Willman	Thomas Willman	2223 Woodcrest Drive

Grand Oaks
Conditional Use Permit

November 14, 2007

PLEASE PRINT

NAME	ADDRESS	PHONE #	IN FAVOR	IN OPPOSITION	NEUTRAL
TRENT WARNER - GWA	21 TIMBER OAK CT SUITE B - LYNCHBURG VA	434 239-6000	✓		
Earl Aschb	1909 Indian Hill Rd	384 8929		✓	
Ann Kage	2032 Mimosa	384-1638	✓		
Elizabeth Blominski	1904 Indian Hill Rd.	384-8947	✓		
Shannon Brennan	2009 Mimosa	384-3332		✓	
Deborah Shark	2720 Farmington	384-6823		✓	
Ran C. Messerschmidt	1928 Gayman Terrace	384-2571		✓	
Long Work	2008 Mimosa	384-2858		✓	
Gerard Roberts	4108 Audubon Pl	384-5947		✓	
JAMES E. THORNHILL	2215 Mimosa	384-1542		✓	
Peter Ramsey	1920 Mimosa	384-8928		✓	
Barry Brockmoe	2015 Mimosa Dr	384-6890		✓	
Rachel Buttrick	1908 Mimosa	384-1844		✓	
Ken Page	2244 Taylor Farm	384-3061		✓	
James PERAN	4301 Mitgumay R	384-8840		✓	
Cornie Messerschmidt	1928 Gayman Terrace	384-2571		✓	
Mickey Herzing	127 Begun Hill Pkwy			✓	
Jon Sauer	2008 Mimosa Drive			✓	

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **January 8, 2008**

AGENDA ITEM NO.: 5

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **REZONING: B-3C, Community Business District (Conditional), to B-3C, Community Business District (Conditional), at 1401, 1405, 1415, 1417 and 1501 Kemper Street
CONDITIONAL USE PERMIT (CUP) –Cluster Commercial Development, Kemper Street Lofts at 1401, 1405, 1415, 1417 and 1501 Kemper Street**

RECOMMENDATION: Approval of the requested rezoning petition and conditional use permit.

SUMMARY: The purpose of the petition is to amend the existing proffers and conditions approved by City Council on August 14, 2007 to allow the construction of a new twenty-four (24) unit, mixed-use residential and commercial building with parking as part of a Cluster Commercial Development [CCD].

The Planning Commission recommended approval of the rezoning because:

- The petition agrees with the *Comprehensive Plan* which recommends a Mixed Use development in this area.
- The petition agrees with the *Zoning Ordinance* in that a Cluster Commercial Development is a use permitted in a B-3, Community Business District upon approval of a conditional use permit (CUP) by City Council.
- The petition agrees with the *Midtown Area Master Plan* that encourages infill development and pedestrian features.
- The Design Review Board reviewed the proposal on December 5, 2007 and determined that the proposal meets the objectives of Section 35.1-43.5b of the *Zoning Ordinance*. Planning Commission referred the proposal to the Design Review Board for their recommendation, following a revision to the elevations and site plan. The Design Review Board approved the revision at their December 19, 2007 meeting.

PRIOR ACTION(S):

December 5, 2007: The Design Review Board determined that the proposed CCD plan met the objectives of the *Zoning Ordinance*. These objectives include:

- a. Aesthetic and architectural relationships with the surrounding communities;
- b. Conclusions regarding on-site amenities and improvements;
- c. On-site arrangement of improvements and structures;
- d. Consistency with the Housing Assistance Plan for Federal and/or State funded projects.

December 12, 2007: Planning Division recommended approval of the rezoning and conditional use permit petitions.

Planning Commission waived the twenty-one (21) day submittal requirement for proffers.

Planning Commission recommended approval (7-0) of the rezoning petition with the following voluntarily submitted proffers:

1. The owner/developer, hereby proffers that all of the necessary engineering designs will meet the City of Lynchburg's requirements.
2. The owner/developer will comply with the site plan as presented as long as there is flexibility as to the location of the buildings, parking spaces,

landscape areas, and common areas, as they may need to be relocated to accommodate the City of Lynchburg storm water retention plans.

3. The owner/developer proffers that this site will allow for pedestrian access along Kemper Street and adjoining buildings in this development.

Planning Commission recommended approval (7-0) of the CUP petition with the following conditions:

1. The building shall be built in substantial compliance with renderings prepared by CJMW Architects dated December 7, 2007, subject to review by the Design Review Board.
2. Private pedestrian connections will be provided throughout the site, subject to the approval of the City Planner, to allow access from the parking area to the buildings and public sidewalks.
3. Fifteenth Street will be vacated and the openings will be closed after vacation.

December 19, 2007: The Design Review Board reviewed the revisions to the elevations and site plan and determined that were referred by Planning Commission and determined that the proposed CCD plan met the objectives of the *Zoning Ordinance*.

FISCAL IMPACT: N/A

CONTACTS:

Charlene Montford/ 455-3902; Tom Martin/ 455-3909

ATTACHMENT(S):

- Ordinance
- Resolution
- PC Report
- PC Minutes
- Vicinity Zoning Pattern
- Vicinity Proposed Land Use
- Watershed Map
- Site Plan
- Architectural Renderings
- Context Study
- Proffer Letter
- Speaker Sign-Up Sheet

REVIEWED BY: lkp

ORDINANCE

REZONE A CERTAIN AREA FROM B-3C, COMMUNITY BUSINESS DISTRICT (CONDITIONAL), TO B-3C, COMMUNITY BUSINESS DISTRICT (CONDITIONAL), TO ALLOW THE CONSTRUCTION OF A NEW TWENTY-FOUR (24) UNIT RESIDENTIAL AND COMMERCIAL BUILDING WITH PARKING, THE AREA CONTAINING APPROXIMATELY 7.403 ACRES LOCATED AT 1401, 1405, 1415, 1417 AND 1501 KEMPER STREET.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG, that in order to promote the public necessity, convenience, general welfare, and good zoning practice that Chapter 35.1-76.____, which section shall read as follows:

Section 35.1-76.____. Change of a certain area located at 1401, 1405, 1415, 1417 and 1501 Kemper Street from B-3C, Community Business District (Conditional), to B-3C, Community Business District (Conditional).

The area embraced within the following boundaries . . .

"Beginning at a point in the asphalt and side walk on the south side of Kemper Street; thence along the Kemper Street right-of-way S 32-23-58 E 114.65' to a point; thence S 32-19-34 E 196.37' to a point; thence S 31-04-13 E 130.10'; thence S 31-34-56 E 30.00'; thence S 30-55-23 E 329.27'; thence leaving Kemper Street along a property line S 58-30-00 W 412.48' to the Norfolk and Southern Rail Road Right-of-way; thence along the Norfolk and Southern Right-of-way along a curve to the left having an Arc Length of 6.58' a Radius of 1540.20', a Delta 0-14-41, a chord distance of 6.58' and a chord bearing of N19-15-34 W to a point; thence along the same right-of-way along a curve to the left having an Arc Length of 135.299 a Radius of 2017.600' a Delta angle of 3-50-32 a chord distance of 135.30' and a chord bearing of N21-38-10 W to a point; thence N 23-33-26 W 84.90'; thence N70-16-26 W 25.00'; thence N 16-55-13 W 119.284; thence N 24-29-47 W 559.311; thence leaving the Norfolk and Southern Rail Road Right-of-way along the right-of-way of a ten foot alley, N 58-29-10 E 292.04' to a point on the south side of Kemper Street; thence along the Kemper Street right-of-way S 32-07-02 E 113.608' to the point of beginning, parcel described contains 7.403 Acres."

. . . is hereby changed from B-3C, Community Business District (Conditional), to B-3C, Community Business District (Conditional), subject to the conditions set out hereinbelow which were voluntarily proffered in writing by the owner, namely: HROK, LLC, to wit:

1. The owner/developer, hereby proffers that all of the necessary engineering designs will meet the City of Lynchburg's requirements.
2. The owner/developer will comply with the site plan as presented as long as there is flexibility as to the location of the buildings, parking spaces, landscape areas, and common areas, as they may need to be relocated to accommodate the City of Lynchburg storm water retention plans.
3. The owner/developer proffers that this site will allow for pedestrian access along Kemper Street and adjoining buildings in this development.

And the Director of Community Planning and Development shall forthwith cause the "Official Zoning Map of Lynchburg, Virginia," referred to in Section 35.1-4 of this chapter to be amended in accordance therewith.

Adopted:

Certified:

Clerk of Council

002L1

RESOLUTION

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO ALLOW THE CONSTRUCTION OF A CLUSTER COMMERCIAL DEVELOPMENT IN A B-3C, COMMUNITY BUSINESS DISTRICT (CONDITIONAL) LOCATED AT 1401, 1405, 1415, 1417 AND 1501 KEMPER STREET.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that in order to promote the public necessity, convenience, general welfare, and good zoning practice, the petition of HROK, LLC for a Conditional Use Permit for use of the property at 1401, 1405, 1415, 1417 and 1501 Kemper Street to construct a Cluster Commercial Development that would include the construction of a new twenty-four (24) unit residential and commercial building with parking in a B-3C, Community Business District (Conditional) be, and the same is hereby, approved subject to the following conditions:

1. The building shall be built in substantial compliance with renderings prepared by CJMW Architects dated December 7, 2007, subject to review by the Design Review Board.
2. Private pedestrian connections will be provided throughout the site, subject to the approval of the City Planner, to allow access from the parking area to the buildings and public sidewalks.
3. Fifteenth Street will be vacated and the openings will be closed after vacation.

Adopted:

Certified: _____
Clerk of Council

002L2

The Department of Community Development
City Hall, Lynchburg, VA 24504 434-455-3900

To: Planning Commission

From: Planning Division

Date: December 12, 2007

**Re: REZONING: B-3C, Community Business District (Conditional), to B-3C, Community Business District (Conditional), at 1401, 1405, 1415, 1417 and 1501 Kemper Street
CONDITIONAL USE PERMIT: Kemper Street Lofts Cluster Commercial Development at 1401, 1405, 1415, 1417 and 1501 Kemper Street**

I. PETITIONER

HROK, LLC, 1117 East Market Street, Charlottesville, VA 22902

Representative: Russell E. Nixon, Nixon Land Surveying, LLC, 1063 Airport Road, Lynchburg, VA 24502

II. LOCATION

The subject property includes five (5) tracts totaling approximately seven and four tenths (7.4) acres at 1401, 1405, 1415, 1417 and 1501 Kemper Street.

Property Owner: HROK, LLC, 1117 East Market Street, Charlottesville, VA 22902

III. PURPOSE

The purpose of the petition is to amend the existing proffers and conditions approved by City Council on August 14, 2007 to allow the construction of a new twenty-four (24) unit, mixed-use residential and commercial building with parking as part of a Cluster Commercial Development [CCD].

IV. SUMMARY

- Petition agrees with the *Comprehensive Plan* which recommends a Mixed Use development in this area.
- Petition agrees with the *Zoning Ordinance* in that a Cluster Commercial Development is a use permitted in a B-3, Community Business District upon approval of a conditional use permit (CUP) by City Council.
- Petition agrees with the *Midtown Area Master Plan* that encourages infill development and pedestrian features.
- The Design Review Board determined that the proposal meets the objectives of Section 35.1-43.5b of the *Zoning Ordinance*.

The Planning Division recommends approval of the rezoning and CUP petitions.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** On August 14, 2007, City Council amended the *Future Land Use Map* from Employment 2 and Community Commercial uses to a Mixed Use for this area. Mixed Use areas do not fit into any single land use category as they are planned for a mix of uses carefully designed so as to mitigate any potential land use conflicts. **[page 5.6]** The Kemper Street Lofts are proposed to be a mix of residential, office, and retail space.

The project incorporates many goals of the *Midtown Area Master Plan* including pedestrian features **[5.3 – Walkable Thoroughfare Design]** and infill development **[6.6 – Neighborhood Revitalization]**. The Kemper Street Lofts will also satisfy the *Midtown Area Master Plan* goal to “create the ability to live, work, shop and have daily needs and services within walking distance.” **[page 3.4]**

2. **Zoning.** The subject property was annexed into the City in 1870. The existing B-3C, Community Business District (Conditional) zoning was established August 14, 2007 with the approval of the rezoning by City Council.
3. **Proffers.** The petitioner voluntarily submitted the following proffer(s) with the rezoning application:
 1. The owner/developer, hereby proffers that all of the necessary engineering designs will meet the City of Lynchburg's requirements.
 2. The owner/developer will comply with the site plan as presented as long as there is flexibility as to the location of the buildings, parking spaces, landscape areas, and common areas, as they may need to be relocated to accommodate the City of Lynchburg storm water retention plans.
 3. The owner/developer proffers that this site will allow for pedestrian access along Kemper Street and adjoining buildings in this development.
4. **Design Review Board.** Section 35.1-43(e), Cluster Commercial Development, Application and Review requires that the proposed development be reviewed by the City's Design Review Board. The Design Review Board must determine if the proposed plan meets the following objectives of the Ordinance as outlined in Section 35.1-42.5.(3).a. of the *Zoning Ordinance*:
 - a. Aesthetic and architectural relationships with the surrounding communities;
 - b. Conclusions regarding on-site amenities and improvements;
 - c. On-site arrangement of improvements and structures;
 - d. Consistency with the Housing Assistance Plan for Federal and/or State funded projects

The Design Review Board reviewed the proposed development on December 5, 2007 and determined that all objectives of the *Zoning Ordinance* had been met. The Design Review Board recommended that the architect and engineer present a more congruent approach to the site. The Design Review Board was concerned that the height of the building with the proposed three (3) stories and sloped roof would seem too tall within the context of the surrounding buildings. The Kemper Street Lofts site is composed of a two (2) story building at 1417 Kemper Street, a single story at 1415 Kemper Street, and four (4) stories at 1401 Kemper Street. The surrounding area consists of two (2) single-story, single-family homes at 1719 Fourteenth Street and 1718 Fifteenth Street, a single-story church at 1400 Kemper Street, a single-story garage at 1409 Buchanan Street, and a single-story warehouse at 1711 Sixteenth Street. The board was concerned that the sloped roof of the proposed development would stand out from the flat roofs of the neighboring buildings. The board also raised concerns regarding the façade of the proposed building, which featured a canopy at the pedestrian level versus the punched-hole windows (windows that appear to be individually punched out of a solid masonry wall) that are featured within the remaining development. The Design Review Board requested that the proposed play area be incorporated into the plan so it is not an island in the midst of the parking lot. They also requested additional landscaping be added around the building and between the parking lot and the building, and the stormwater pond be included into the design as a natural feature.

In the revised site plan, the petitioner has situated the proposed play area closer to the building, added additional landscaping around the building and created a natural feature with the stormwater pond. The applicant has also resubmitted a design which uses a parapet to partially screen the sloped roof and has included similar style windows into the new plan to create a stronger connection with the surrounding community.
5. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances will be needed for the development of the property as proposed.
6. **Surrounding Area.** There have been several items requiring City Council approval in the immediate area:

- On August 14, 2007, City Council approved HROK, LLC's petition to rezone seven and four tenths (7.4) acres at 1401, 1405, 1415, 1417 and 1501 Kemper Street from I-2, Light Industrial District to B-3C, Community Business District (Conditional) and conditional use permit for a Cluster Commercial Development to allow the renovation of three (3) existing buildings for a combination of residential, office, automobile service and retail units.
- On February 13, 2007, City Council approved Lynchburg Neighborhood Development Foundation's petition to rezone eighty-two hundredths (0.82) of an acre at 1402 Fillmore Street from R-4C, Medium-High Density Multi-Family Residential District (Conditional) to R-4C, Medium-High Density Multi-Family Residential District (Conditional) to amend the existing proffers to allow the use of the existing structure as a five (5) unit, apartment building with associated parking.
- On August 8, 2006, City Council approved C.S. Door's petition to rezone twenty-three hundredths (0.23) of an acre at 1000 Miller Park Square from B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) to amend existing proffers and allow the use of an existing building as a door and hardware retail facility.
- On April 9, 2002, City Council approved Christian Chapel's petition for a conditional use permit at 2347 Holliday Street to allow an addition to the existing church.
- On May 9, 2000, City Council approved Greater Lynchburg Habitat for Humanity's conditional use permit petition to allow the construction of a single-family home in a B-5, General Business District at 1209 Campbell Avenue.
- On April 11, 2000, City Council approved Greater Peaceful Zion Baptist Church's conditional use permit petition to allow the construction of additional parking at the 1516-1520 Floyd Street.
- On December 9, 1997, City Council approved Greenstone Original Church of God's conditional use permit petition to allow use of the property at 2261 Campbell Avenue for construction of a sanctuary and parking spaces.
- On December 9, 1997, City Council approved Greenstone Original Church of God's conditional use permit petition to allow the operation of a day care center for up to seventy-five (75) children at 2210 Fourteenth Street.
- On August 8, 1995, City Council approved Virgil Naff Jr's petition to rezone approximately one and eight tenths (1.8) acres at 1805 Twelfth Street from I-2, Light Industrial District to B-5C, General Business District (Conditional) to allow the use of the property for retail sales, storage and repair service.
- On October 25, 1994, City Council approved Christian Chapel's petition for a conditional use permit for an addition to the existing church property and a pavilion at 2347 Holliday Street.
- On February 9, 1993, City Council approved New Life Gospel Assembly's petition for a conditional use permit for the use of property at 2261 Campbell Avenue for an expansion of the existing church building for restrooms, office space, and a nursery.
- On July 14, 1992, City Council approved David and Martha Henley's conditional use permit petition to allow the operation of an adult care center for up to twenty-six (26) individuals at 1402 Fillmore Street.
- On July 11, 1989, City Council approved Smyrna Seventh Day Adventist Church's petition for a temporary conditional use permit to allow the erection of a tent on the property of the Hunton YMCA at Taylor Street between Twelfth and Fourteenth Streets, from July 23 to September 2.
- On November 11, 1989, City Council approved Animal Emergency Clinic of Central Virginia's conditional use permit petition, as well as its petition to rezone approximately twenty-three hundredths (0.23) of an acre at 1000 Miller Park Square from B-1, Limited Business District, to

B-3C, Community Business District (Conditional) to allow the operation of a veterinary hospital with indoor kennels in an existing structure.

- On November 14, 1989, City Council approved Virginia Seminary and College's petition for a conditional use permit for the conversion of an existing structure at 2202 Garfield Avenue to a college bookstore and retail snack bar.
 - On February 9, 1988, City Council approved James E. Shaner, Jr. And Gayle E. Shaner's petition for a conditional use permit for the construction of a parking lot at 1217 Taylor Street and 1223 Taylor Street, for the storage of vehicles to be serviced by the existing garage at 1207 Twelfth Street.
 - On August 11, 1987, City Council approved The Free Clinic of Central Virginia, Inc.'s petition for a conditional use permit to allow the operation of a free health clinic in an existing church building at 1022 Floyd Street.
 - On September 8, 1987, City Council approved Lynchburg Covenant Fellowship's petition to rezone approximately one and a half (1.5) acres at 1402 Fillmore Street from R-3, Medium Density Two-Family Residential District to R-4C, Medium-High Density Multi-Family Residential District (Conditional) and their conditional use permit petition to allow the operation of a thirteen (13) unit residential care center for individuals with mental disabilities.
 - On February 12, 1985, City Council approved Greater Peaceful Zion Baptist Church's conditional use permit petition to allow the construction of a building addition at the corner of Sixteenth Street and Fillmore Street.
 - On November 12, 1985, City Council approved Christian Chapel's petition for a conditional use permit to allow the construction of an addition to the church building and parking lot at 2347 Holliday Street.
7. **Site Description.** The subject property is located in Midtown Lynchburg and bound to the north by a combination of single-family residences, commercial properties and public uses (Greater Lynchburg Transit Company and the Kemper Street trailhead, respectively), to the east by a combination of single-family residences, commercial and industrial buildings, to the south by the Lynchburg Expressway, Norfolk Southern Railroad and industrial uses and to the west by single-family homes and commercial buildings.
8. **Proposed Use of Property.** The Cluster Commercial Development [CCD] approved by City Council on August 14, 2007 allows for the renovation of three (3) existing buildings to provide a combination of office, retail, automobile service, and residential units. The proposed amendment would provide for the construction of a new twenty-four (24) unit residential and commercial building with subject parking as part of that CCD. The site is served by City water and sewer; landscaping for the site will comply with the requirements of the City's *Zoning Ordinance*, which requires parking area landscaping, street trees and foundation plantings.
9. **Traffic, Parking and Public Transit.** The City's Transportation Engineer reviewed the proposed mixed-use development as part of the Technical Review Committee and had two recommendations about the project; these included (1) parking lot driveways need to be consolidated on Old Lot 3 into one (1) driveway and (2) Fifteenth Street needs to be closed after the street is vacated. These comments have been acknowledged by the petitioner and changes have been made to the final site plan to include only one entrance to the parking lot from Kemper Street. The applicant has also filed the necessary paperwork to vacate Fifteenth Street. This petition will be reviewed by City Council at their January 7, 2008 meeting.

Parking requirements for the proposed development are set by the City's *Zoning Ordinance* and vary based on the proposed residential [two and one half (2.5) parking spaces per conventional residential unit], office [one (1) space per three hundred (300) square feet of gross floor area (exclusive of utility area)] and retail [one (1) space per three hundred (300) square feet of gross floor area (exclusive of utility area)].

The CCD currently provides for two hundred and thirty-six (236) spaces, which includes a twenty percent (20%) reduction of the off-street parking requirement granted by Planning Commission on July 25, 2007. The proposed twenty-four (24) residential units require two and a half (2.5) spaces per unit, and the five thousand four hundred and ninety (5,490) square feet of retail require one (1) space per three hundred (300) square feet and one (1) space per three (3) employees. The new building would require an additional sixty (60) spaces for residential and twenty (28) spaces for retail for a total of eighty-eight (88) spaces. The site plan provides for ninety (90) parking spaces, thus meeting the requirement of city code.

Greater Lynchburg Transit Company's Routes 1A & 1B run along Kemper Street with a bus stop directly in front of 1401 Kemper Street, three hundred and forty-eight (348) feet from the site.

10. **Stormwater Management.** New impervious area for the new construction exceeds the one thousand (1,000) square feet; as such, a stormwater management plan to address water quantity and quality will be required for the project. The City of Lynchburg has proposed a stormwater detention pond as part of the *Midtown Corridor Plan* on Lot 1 of the site, which will likely serve as a regional pond that will also address stormwater from this development. The petitioner will follow all of the City of Lynchburg stormwater requirements for quantity and quality in the event that coordination of the design and construction of the proposed stormwater detention basin cannot be achieved.
11. **Emergency Services.** The City's Fire Marshal had no comments regarding the proposed proffer amendment or conditional use permit petition.

The City Police Department had no comments regarding the proposed amendment.
12. **Impact.** The proposed construction of a twenty-four (24) unit residential and commercial building with subject parking as part of a Cluster Commercial Development [CCD] is expected to result in significant positive impacts for the area. It is staff's opinion that this new construction is in keeping with many of the goals of the *Midtown Area Master Plan*. The Design Review Board has also determined that the objectives of the *Zoning Ordinance* have been met. Traffic, parking, stormwater management and emergency services concerns have all been addressed to the satisfaction of City staff and the result is a project that would fit into the fabric of the existing neighborhood.
13. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the conceptual site plan on November 20, 2007. Comments related to the proposed use have or will be addressed by the developer prior to final site plan approval.

VI. PLANNING DIVISION RECOMMENDATION

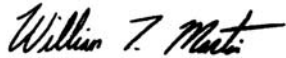
The Planning Commission waives the twenty-one (21) day submittal requirements for proffers.

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of HROK LLC's petition to rezone 1401, 1405, 1415, 1417 and 1501 Kemper Street from B-3C, Community Business District (Conditional), to B-3C, Community Business District (Conditional), to allow the construction of a new twenty-four (24) unit residential and commercial building with parking as part of a Cluster Commercial Development [CCD] on seven and four tenths (7.4) acres.

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of HROK LLC's petition for a conditional use permit (CUP) to allow a Cluster Commercial Development at 1401, 1405, 1415, 1417 and 1501 Kemper Street, subject to the following conditions:

1. The building shall be built in substantial compliance with renderings prepared by CJMW Architects dated December 7, 2007.
2. Private pedestrian connections will be provided throughout the site, subject to the approval of the City Planner, to allow access from the parking area to the buildings and public sidewalks.
3. Fifteenth Street will be vacated and the openings will be closed after vacation.

This matter is respectfully offered for your consideration.



William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Charlene B. Montford, Director of Community Development
Mr. J. Lee Newland, City Engineer
Ms. Cynthia L. Kozzerow, Lynchburg Police Department
Battalion Chief Greg Wormser, Fire Marshal
Mr. Gerry L. Harter, Traffic Engineer
Mr. Robert Drane, Building Commissioner
Mr. Keith Wright, Zoning Official
Mr. Robert S. Fowler, Zoning Administrator
Mr. Kent L. White, Senior Planner
Mrs. Erin B. Hawkins, Environmental Planner
Mr. Russell Nixon, Nixon Land Surveying, LLC, Representative,
Mr. Oliver Kuttner, HROK, LLC, Applicant

VII. ATTACHMENTS

1. Vicinity Zoning Pattern
2. Vicinity Proposed Land Use
3. Watershed Location Map
4. Site Plan
5. Architectural Renderings
6. Proffer Letter

MINUTES FROM THE DECEMBER 12, 2007, PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED. THERE WAS NO MEETING ON DECEMBER 26, 2007.)

a. Petition of HROK, LLC to rezone approximately 8.5 acres from B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) and for a Conditional Use Permit to allow the construction of a new building and parking as part of a Cluster Commercial Development at 1401, 1405, 1415, 1417 and 1501 Kemper Street.

Mr. Martin addressed the commissioners with the following comments. This petition was originally approved by City Council on August 14, 2007. It involved a rezoning and the approval of a conditional use permit to allow a Cluster Commercial Development (CCD). This request is to amend the proffers and the approved CCD plan to allow the construction of a new two-story mixed use building that would contain twenty-four (24) apartment units and approximately five thousand four hundred ninety-eight (5,498) square feet of retail space on the first floor. This building would front Kemper Street and has parking to the sides and rear of the building. The Design Review Board (DRB) did review the petition on December 5, 2007, and determined that it met the objectives of the *Zoning Ordinance* for CCDs, although they did have some comments on the design of the proposed buildings. The petitioner did try to incorporate some of those comments.

The stormwater detention pond that is to the rear of the site will be designed to incorporate the stormwater from this development, and more importantly, will handle the stormwater from the new Midtown Connector and also future CSO projects. The Planning Division does recommend approval of both the rezoning and the amendment to the CCD plan.

Mr. Russ Nixon with Nixon Land Surveying came forward to represent the petitioner. His clients are in contract with Mr. Oliver Kuttner, the owner of this property for this site and are on a very tight deadline to meet certain financial needs.

He pointed out on the site plan that they are proposing to work in conjunction with the Virginia Department of Transportation (VDOT) to design the detention pond that will be handling the stormwater. He pointed that parking requirements have been met for the previous site and this project as well.

Chair Hamilton asked for anyone else present to speak in favor of the petition. No one came forward. She asked for anyone present to speak in opposition to the petition and Ms. Laura Roarty came forward. She is the secretary at Microwave Circuits at 1611 Kemper Street. She stated that they had not been notified or shown any documentation about the plans for the development of this property. It is not that they are against it, but they do not have any information in order to make a judgment. She was wondering if there were any site plans that she could look at to see how it would affect their property. She is for development of the property but is concerned about crime on the street. There have been windows shot out on their property and there are some problems with policing the area. Another one of her questions is whether this will be low-income, moderate income or no restriction on income for this housing. She stated again that she is for development of the area but is concerned with low-income housing not being policed properly.

Mr. Martin put up the zoning map in order for the commissioners to locate 1611 Kemper Street. Mr. Oliver Kuttner then came forward to address some of Ms. Roarty's concerns. He agreed with Ms. Roarty's comments and also commented that he is a little disturbed that Jim Sari, the developer of this project, is not present at this meeting. Mr. Kuttner is excited that there is another developer who would like to spend money in the neighborhood but also agreed that Ms. Roarty's concerns are real. He does not have any real concrete answers and stated that he does not work with government funding projects a great deal. He said that they had previously had a problem with crime on his property but that it does not exist anymore because they have probably been scared away. He also agreed that he did not want a low-income housing project next to his property.

Mr. Kuttner also explained that there is currently no valid contract on this property. There was one but it has expired. It is his understanding that there is government funding available. He thinks that if

spent properly, the money could be of benefit to himself and to the entire neighborhood. It has been explained to him that the type of housing proposed is new urban housing. It is basically residences for people who do have jobs but are not very wealthy. He would not object if this amendment had some covenants with it. But he knows that there are realities on how much can be restricted. Jim Sari assures him that this is some sort of good quality, not particularly expensive, but not low-income housing. He concluded by saying that it is unfortunate that there is such a tight timeline but that he could see three million dollars being spent in the neighborhood in a good positive way.

Ms. Roarty came back with some more comments. She thinks it would be good to have shops and making it more of a planned community with people that have jobs. But if a conglomerate of welfare recipients is there, she has seen this ruin whole neighborhoods. She is wondering if there is a long-range plan to put a methadone clinic there. She thinks this area is too close to the train station and bus station and that it would not be a good location for a clinic like that.

Another issue that she might have is that there is a culvert there and she does not think that this property is dealing with that culvert. If it is, then she would like more information about that.

Chair Hamilton asked Mr. Nixon to come up and answer some of Ms. Roarty's questions. He explained that one of the Housing and Urban Development's (HUD) requirements is that it must be close to a transportation hub. He has been told that this housing will be moderate housing. He was contacted by Mr. Sari in November that a final plat was needed to create the property for this project. Mr. Nixon commented that VDOT and the City are working on the combined sewer overflow (CSO) design. Currently there are designs being done by VDOT to catch the storm sewer water, collect and hold it next to her property. The drainage pipe will have the stormwater routed around the north side of her property. The design of this drainage system should not affect her property.

Mr. Nixon did not have any comment on the crime in the neighborhood. He would expect some type of security to be placed on the building since there will be retail establishments there.

Chair Hamilton asked Ms. Roarty if she had any other questions and Ms. Roarty asked if there was a list of the apartments and how they were broken down. Chair Hamilton commented that Ms. Roarty needed to keep in mind that the law prohibits them from doing any sort of discrimination when it comes to different types of housing. Ms. Roarty said that her reason for asking is that she did not see any facilities for handicapped persons. Chair Hamilton commented that the buildings will have to comply with city code which would ensure that the building is safe and available for all people. Ms. Roarty commented that she did not think that HUD housing needs to be next to a train station. She thought that it just needs to be near a bus stop.

Chair Hamilton asked Mr. Nixon to comment some more on the HUD financing and the market that they are trying to attract. Mr. Nixon said that he did not have all the answers but that he thought Mr. Sari was going for moderate income housing. Mr. Nixon said that there are requirements for the people living there to have jobs.

At this point, Mr. Martin wished to clarify a couple of points. Under Federal fair housing law, there can be no discrimination based on race, religion, creed or income. The income levels of this apartment complex should not be an issue before the Planning Commission.

Secondly, Mr. Martin thought it was inferred that there was a property owner that was not duly notified. There is an affidavit in the file where Ceramtel at 1611 Kemper Street did receive an official notification from the Planning Division and also at 1605 and 1604 Kemper Street. He further explained that what is before the Planning Commission is whether the proffer should be amended to allow the construction of a twenty-four unit apartment building with approximately five thousand feet of retail space with eighty-eight (88) parking spaces. The *Future Land Use Map* for this area was amended in August 2007 to allow mixed use developments, which this proposal is. That is what the Planning Commission is considering, not the income levels of the people that may potentially live here.

Chair Hamilton gave the perspective of the Design Review Board meeting. The original height elevations that the Design Review Board received were very different from the site plan presented today.

The Design Review Board questioned whether they were congruent with Mr. Kuttner's development and the rest of the neighborhood. She feels that the new design elevations presented today are much more congruent with the neighborhood.

Commissioner Flint asked about the number of the apartment units. If he is reading the plan right, there are units on the second floor with two entrances and no kitchen. The same is true of the fourth floor. Commissioner Barnes commented that these are two-floor units. The first and second floor go together and the third and fourth floor go together. Mr. Nixon said that it is almost a townhouse design.

Commissioner Flint also commented that the handicap accessible and ADA requirements are complicated to follow. Mr. Nixon commented that they will have city requirements as well as HUD requirements to follow. The HUD requirements are even more difficult to meet than the city's housing code.

Commissioner Sale said that he was very interested in the design review and congruence as well as looking at this area as a secondary entrance corridor to Lynchburg. He asked for more clarification from Mr. Nixon on the design elevations. He is trying to figure out the visual impact on the neighbors as well as people coming up a very important corridor of Lynchburg. He sees these design elevations as a little blasé. Mr. Nixon commented that they had presented other designs to the Design Review Board, but that the Design Review Board had asked them to make them conform better with the rest of the neighborhood. They had asked for one of the blackout windows to be removed and have less glass in their design. Chair Hamilton commented that their concern had been that it did not fit with Mr. Kuttner's design and the rest of the neighborhood. Commissioner Sale asked Mr. Kuttner if this is more congruent with the design of his building and Mr. Kuttner said that he had never seen this drawing before today.

Mr. Kuttner said that he would also like to see some more windows and that a city scape is made up of a lot of different buildings. He suggested that maybe the proposal should be approved with further design review.

Chair Hamilton reminded the commissioners that the Design Review Board is a recommending body and those on it have a variety of backgrounds. She is not sure if we should nit pick the design other than to decide if it fit with the nature of the neighborhood.

Commissioner Swinton wondered if the Design Review Board took into account the concept of the final look of Mr. Kuttner's property when this was being reviewed. Commissioner Swinton recalled what Mr. Kuttner had said at a previous meeting about his buildings have vibrant colors painted on them and that those colors may change from time to time.

Chair Hamilton commented that the Design Review Board did not like the original height elevations because it had a sloped roof and thought it stood out in terms of height and that the design and character of the building were not congruent with the rest of the neighborhood, particularly Mr. Kuttner's building.

Commissioner Sale commented about the landscaping, since this property is an entrance corridor to the city. He wondered if there would be additional landscaping. Mr. Nixon said that they will follow the city's landscaping ordinance. He pointed out that the plan that has been provided shows a proposed sidewalk along Kemper Street with trees planted with green areas that the city is going to want to get on the site. He will not know the exact number of trees at this point though.

Commissioner Swinton asked Mr. Martin if he recalled the last time there has been major concrete poured in this section of town. Mr. Martin said that the only thing they have looked at recently is the Salvation Army building which is further up the street. Mr. Martin said that there is the potential to breathe a lot of life into this very important entrance corridor into the midtown with the pedestrian oriented design of this project.

Commissioner Swinton commented that this is an important project to consider design wise because there has not been major concrete poured in this area in quite a while. Exceptional rather than just acceptable could make a big difference in this area.

Mr. Nixon commented that Mr. Sari's response to the Design Review Board's recommendations was that he did not want to build a building that looks like a factory. He wants to build a building that appeals to everyone.

Commissioner Sale asked if the Design Review Board had seen these new design elevations. Chair Hamilton commented that the DRB had felt that there was not enough time for them to review them again since the developer was on such a tight schedule. Chair Hamilton said that another question that the DRB had was whether there was a way to ensure that the detention pond that VDOT is proposing is an amenity. There was then some discussion about VDOT's original plans for the detention pond and how the plans have changed.

Commissioner Barnes commented that one of the principles of Crime Prevention Through Environmental Design (CPTED) is that of surveillance. He thinks that as you start to see some of the projects on Kemper Street start to develop and there are more lights on Kemper Street, that the crime issue will hopefully lessen.

Commissioner Barnes also commented that you can take the issue of congruence too far. You don't want to lose the variety of design on a street.

Commissioner Barnes asked about the playground that is on the site plan. Because of its size on the plan, he cannot imagine what would go on there. Mr. Nixon said that he is not sure what will actually go there. Commissioner Barnes said that he hoped that they would work on making this more of an attractive amenity on the site. Since there is a detention pond so close to this playground, he also pointed out that there needs to be some protection around the pond. Mr. Nixon thought that there is supposed to be a fence around it.

Commissioner Swienton commented that there are two neighbors who are seeing this design for the first time and that there is the time issue for the funding. Commissioner Sale wondered if a condition could be placed on this today that the Design Review Board have another look at this. Mr. Martin suggested that it would be acceptable to place a condition on this that before final construction of the building that the Design Review Board have some more input in the architecture of the building. He did not think that we want to get caught up in detailing every architectural element of this building. If you stop and consider the types of buildings that are in this area, you will notice a great variety of architecture. Architecture is also a personal preference and that is why zoning laws in Virginia do not allow us to dictate how buildings look. He thinks that input is one thing but dictating is something else.

Commissioner Worthington commented that he thinks there are still a lot of questions and it bothers him that the developer is not here to answer them. He thinks it makes a lot of sense to have the Design Review Board look at this one more time. He thinks that if we table this, it would give the developer a chance to talk to the two neighbors and have the Design Review Board look at this again.

There was then some discussion about whether this affect the funding. Mr. Nixon commented that the property needs to be in Mr. Sari's name by January 15, 2008 to receive the funding. Mr. Nixon agreed that the commissioners might feel that this is being fast paced, but that this is a big deal in terms of funding going through.

Commissioner Swienton commented that conceptually he really likes this project. He wonders though if this deadline is one of intention. He does not understand why it has taken four months for this to get done. Mr. Kuttner explained that Mr. Sari had tried to get this closed in early November, but that because of the proffer placed in August 2007, it made that impossible. Someone in Richmond noticed this issue early in November. Mr. Kuttner assured the commissioners that this time crunch placed on them is not one of design.

Chair Hamilton thought that it would be shame to kill this project and Commissioner Swienton commented that he wonders how they can make this happen while satisfying the concerns that they have. Chair Hamilton commented that in her opinion the DRB is a good recommending body and they passed it on to the Planning Commission saying that it is a great project. Their only concern was the outward appearance of the building. You could get a hundred elevations in here and we would all have

different opinions. The DRB is just a recommending body. She feels that the developer took the recommendations of the DRB and came back with something that meets those recommendations.

Commissioner Sale said that he still feels like the Design Review Board should look at this one more time unless we table this. He thinks we should recommend approval with the DRB looking at it one more time. Then the parties would have a reason to gather and a reason to come with a visual as well as conceptual presentation.

Ms. Roarty still had some concerns about the culvert and she and Mr. Nixon got into a discussion about it. Chair Hamilton instructed Ms. Roarty to limit the comments from the floor. Ms. Roarty said that there were reasons for her concerns, especially if a restaurant was going to go in there. Chair Hamilton said that city code will address those concerns and the market will drive what goes in there. Chair Hamilton commented that she thought Ms. Roarty's concerns had been addressed.

Commissioner Swienton asked if this goes back to the DRB if they can give their recommendation directly to City Council. Commissioner Sale reiterated that his argument for another look by the DRB is that this a major entrance to the city. There was some discussion as to how to word condition one of the petition and make it include another review by the DRB. Commissioner Swienton wished the minutes to reflect that this requires a special look by City Council because there are some parts that are unknown. We are not giving approval on the design. We are giving approval on the zoning and City Council's input is needed as to whether the final design is something they approve.

Mr. Martin started to go over what the role of the Planning Commission is and whether they had met their role in reviewing this plan. At this point, however, Chair Hamilton interjected that she thought City Council could tell from the minutes that the Planning Commission's biggest concern had been the design. Her feeling is that they should move forward on this project because we agree that it meets the *Future Land Use Map*, we agree that it is a great design location for that area and let City Council recognize that there were concerns by the Design Review Board and by the Planning Commission for a corridor gateway.

Commissioner Barnes made the following motion, which was seconded by Commissioner Flint and passed by the following vote:

"That The Planning Commission waives the twenty-one (21) day submittal requirements for proffers."

AYES:	Barnes, Flint, Hamilton, Oglesby, Sale, Swienton and Worthington	7
NOES:		0
ABSTENTIONS:		0
ABSENT:		0

Commissioner Barnes agreed with Chair Hamilton that the DRB has stated their concerns and that they do not need to see another elevation. City Council will hear all of the concerns and can address the final design of the project. Commissioner Sale thought that having something that the DRB has seen before it goes before Council is important. He thinks that condition one of the petition should have added to it "subject to review by the Design Review Board." He made the following motion, which was seconded by Commissioner Worthington.

"That the Planning Commission recommends to City Council approval of HROK LLC's petition for a conditional use permit (CUP) to allow a Cluster Commercial Development at 1401, 1405, 1415, 1417 and 1501 Kemper Street, subject to the following conditions:

- 1. The building shall be built in substantial compliance with renderings prepared by CJMW Architects dated December 7, 2007, subject to review by the Design Review Board.**

2. Private pedestrian connections will be provided throughout the site, subject to the approval of the City Planner, to allow access from the parking area to the buildings and public sidewalks.

3. Fifteenth Street will be vacated and the openings will be closed after vacation."

Before the vote was taken, there was some discussion about whether or not the DRB could make their recommendation directly to City Council. Mr. Martin thought that they could send it directly to Council because the DRB is supposed to send their recommendation to Mr. Martin and then he forwards it to the Planning Commission. If the Planning Commission is comfortable with it going directly to City Council without seeing it again, Mr. Martin thinks that would fine. He also pointed out the rezoning motion need to be made first. Commissioner Sale made the following motion, which was seconded by Commissioner Worthington and passed by the following vote:

"That the Planning Commission recommends to City Council approval of HROK LLC's petition to rezone 1401, 1405, 1415, 1417 and 1501 Kemper Street from B-3C, Community Business District (Conditional), to B-3C, Community Business District (Conditional), to allow the construction of a new twenty-four (24) unit residential and commercial building with parking as part of a Cluster Commercial Development [CCD] on seven and four tenths (7.4) acres."

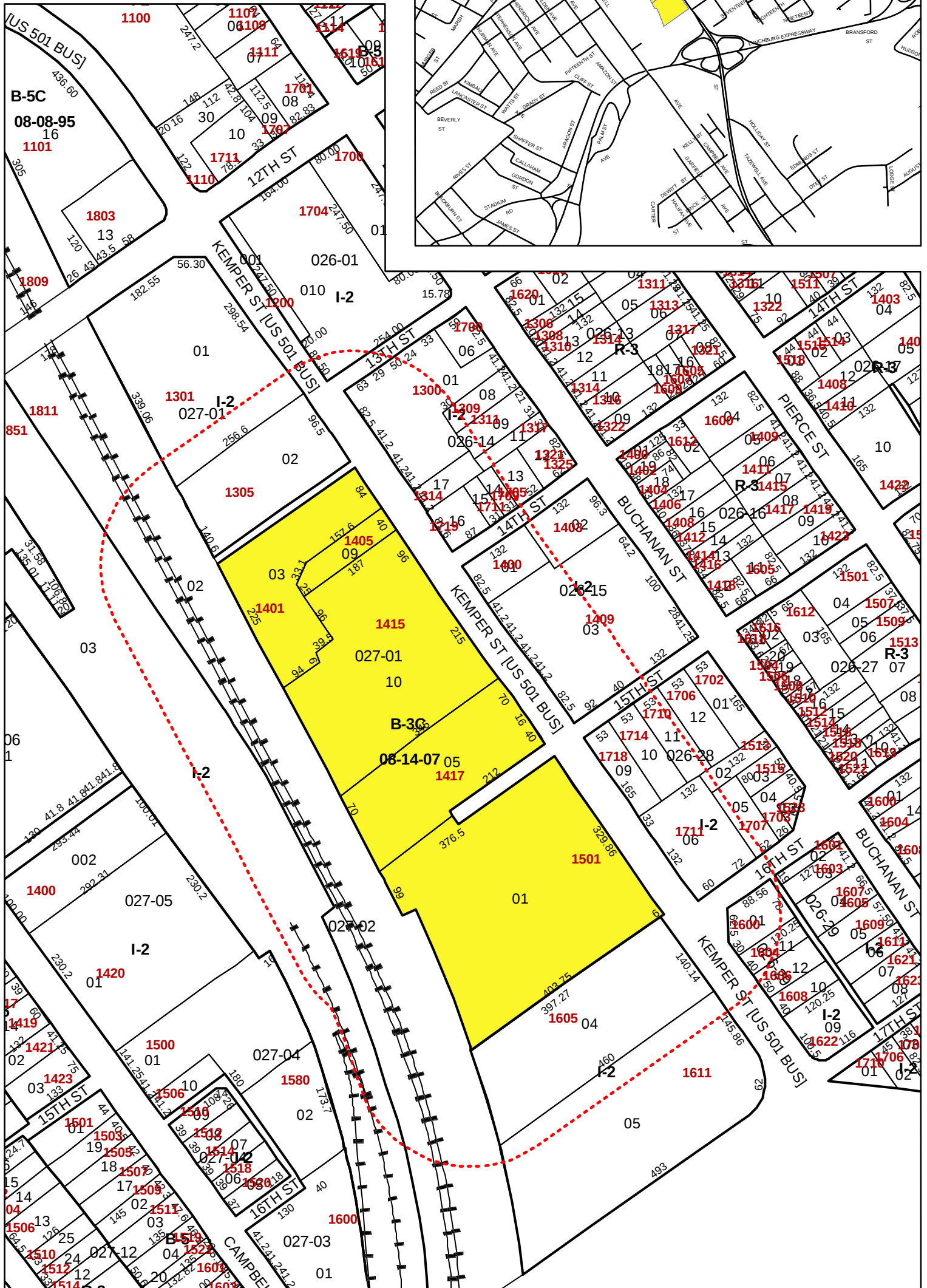
AYES:	Barnes, Flint, Hamilton, Oglesby, Sale, Swienton and Worthington	7
NOES:		0
ABSTENTIONS:		0
ABSENT:		0

The vote was then taken on the conditional use permit:

AYES:	Barnes, Flint, Hamilton, Oglesby, Sale, Swienton and Worthington	7
NOES:		0
ABSTENTIONS:		0
ABSENT:		0

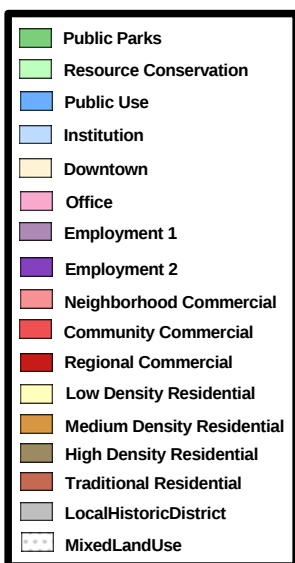
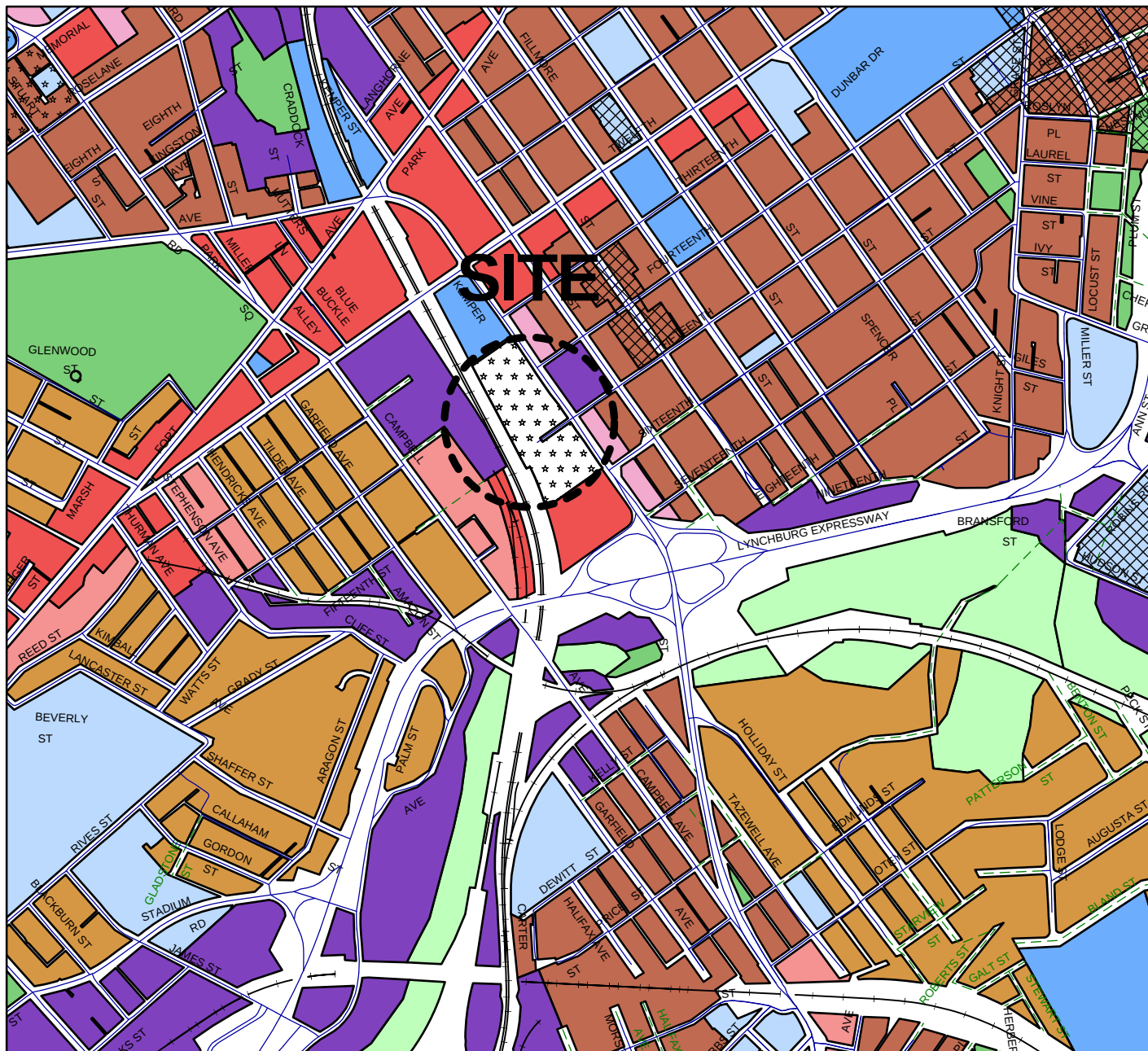
1401, 1405, 1415, 1417, 1501 Kemper Street
Map # 027-01-003, 005, 009/010, 027-02-001
Rezoning from B-3C to B-3C
Conditional Use Permit Request
Petitioner: HROK, LLC

200 ft Radius



KEMPER STREET LOFTS REZONING/CUP ADJOINING OWNERS

PIN	OWNER	LOCADDR
2601010	TRENT GLENN A SR & RIGNEY-TRENT JANE M	1704 12TH ST
2614001	CARPENTER DONALD O & BRENDA T	1300 KEMPER ST
2614008	CARPENTER DONALD O & BRENDA T	1309 BUCHANAN ST
2614009	CARPENTER DONALD O & BRENDA T	1311 BUCHANAN ST
2614011	CARPENTER LAND DEVELOPMENT	1317 BUCHANAN ST
2614013	SLOCUM ADHESIVES CORPORATION	1705 14TH ST
2614014	CAMPBELL H T JR & HELEN C	1709 14TH ST
2614015	FARMER JOYCE	1711 14TH ST
2614016	SMITH MAE L & THOMAS	1719 14TH ST
2614017	HARRIS BESSIE	1314 KEMPER ST
2615001	CENTRAL BAPTIST CHURCH OF LYNCHBURG VA TRUSTESS	1400 KEMPER ST
2615002	SLOCUM ADHESIVES CORPORATION	1403 BUCHANAN ST
2615003	SLOCUM CHEMICAL COMPANY INC	1409 BUCHANAN ST
2628002	HILL CITY WHOLESALE CO INC	1513 BUCHANAN ST
2628005	HILL CITY WHOLESALE COMPANY INC	1707 16TH ST
2628006	HILL CITY WHOLESALE CO INC	1711 16TH ST
2628009	TRIPLE S PROPERTIES LLC	1718 15TH ST
2628010	TRIPLE S PROPERTIES LLC	1714 15TH ST
2628011	TRIPLE S PROPERTIES LLC	1710 15TH ST
2629001	THOMASSON JOHN R & MARGARET S	1600 KEMPER ST
2629011	CERAMTEL LLC	1604 KEMPER ST
2629012	COFFLIN FRANK H JR	1606 KEMPER ST
2701001	GREATER LYNCHBURG TRANSIT CO	1301 KEMPER ST
2701002	GREATER LYNCHBURG TRANSIT CO	1305 KEMPER ST
2701003	HROK LLC	1401 KEMPER ST
2701005	HROK LLC	1417 KEMPER ST
2701009	HROK LLC	1405 KEMPER ST
2701010	HROK LLC	1415 KEMPER ST
2702001	HROK LLC	1501 KEMPER ST
2702002	NORFOLK SOUTHERN CORPORATION ATTN:LLOYD CLINGENPEEL	1811 12TH ST
2702003	NORFOLK SOUTHERN CORPORATION ATTN:LLOYD CLINGENPEEL	1851 12TH ST
2702004	CERAMTEL LLC	1605 KEMPER ST
2702005	CERAMTEL LLC	1611 KEMPER ST
Owner	HROK LLC	
Applicant	HROK LLC	
Representative	RUSSELL NIXON/NIXON LAND SURVEYING	



KEMPER STREET LOFTS

1401, 1405, 1415, 1417, 1501

KEMPER STREET

LAND USE PLAN



Kemper Street Lofts Watershed Location Map

Legend

Project Site

Corporate Limit

Fishing Creek Watershed

This map shows the regional context of the project. The Fishing Creek Watershed is shaded in red. The corporate limit is outlined in red. The project site is marked with a yellow rectangle. A north arrow is located in the top right corner.

This aerial map provides a detailed view of the project area. The project site is highlighted in yellow. The map shows the following streets: CRADDOCK ST, FORT AVE, BLUEBUCKLE AVE, CAMPBELL AVE, GARFIELD AVE, TILDEN AVE, PHENSON AVE, CLIFF ST, BALM ST, ARAGON ST, KEMPER ST, BUCHANAN ST, PIERCE ST, PARK AVE, 10TH ST, 12TH ST, 13TH ST, 14TH ST, 15TH ST, 16TH ST, 17TH ST, 18TH ST, LYNCHBURG EXPY, and TAZEWELL AVE. The map also shows the railroad tracks and the river.

Nixon Land Surveying, L.L.C.
Land Surveying, Planning and
Industrial Consulting Services

1063 Airport Road
Suite C, Lynchburg, VA 24502
434-237-3600 (o)
434-237-0699 (f)

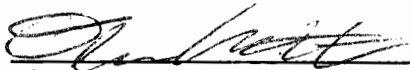
Ref: Proffer's for Site Plan amendment for 1401 Kemper Street

The owner/developer, hereby proffers that all of the necessary engineering designs will meet the City of Lynchburg's requirements.

The owner/developer will comply with the site plan as presented as long as there is flexibility as to the location of the buildings, parking spaces, landscape areas and common areas, as they may need to be relocated to accommodate the City of Lynchburg storm water retention plans.

The owner/developer proffers that this site will allow for pedestrian access along Kemper Street and adjoining buildings in this development.

The zoning will allow by right future development subject to standard site plan and zoning requirements in force at that future time.


Oliver Kuttner (owner) Date 12/3/07

RECEIVED

DEC 03 2007

COMMUNITY
DEVELOPMENT

PLAN OF AMENDMENT FOR THE CURRENT
B3-C PROPERTY AT 1401, 1415, 1417 AND 1501
KEMPER ST. TO SHOW NEW 24 UNIT APARTMENT
AND OFFICE BUILDING ON LOT 2

GENERAL NOTES:

THIS PLAT HAS BEEN PREPARED FROM AN ACTUAL FIELD SURVEY DONE PER DATE OF THIS PLAT AND THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS EXCEPT AS SHOWN HEREON.

THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT, THEREFORE, NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.

THE AREA SHOWN IS LOCATED IN ZONE 'C' AND DOES NOT FALL WITHIN FLOOD HAZARD ZONE 'A' FOR A 100 YEAR FLOOD AS SHOWN ON A MAP BY F.E.M.A.

TOTAL AREA REZONED FROM I-2 TO B-3C: 7.957 AC.±

THE COLOR HATCHED AREAS SHOWN HEREON REPRESENT NEW LOTS 1 THRU 4.

RESTRICTIONS WILL BE RECORDED SIMULTANEOUSLY WITH THE FINAL SURVEY PLAT.

SUBJECT PROPERTIES ARE CURRENTLY ZONED I-2 INDUSTRIAL AND ARE PROPOSED TO BE ZONED B-3C WITH A CUP FOR A CLUSTER COMMERCIAL DISTRICT UNDER SECTION 35.1-43.2 OF THE CITY OF LYNCHBURG ZONING ORDINANCE.

PARKING CALCULATIONS FOR ASSUMED USES WITHIN THIS CLUSTER COMMERCIAL DEVELOPMENT.
100,750 TOTAL SQ. FT. THUS:

40% OFFICES = 40,300 SQFT. / 300 = 134 SPACES

1% AUTO REPAIR = 1007.5 SQFT. = 2 PER 3 EMPLOYEES + 2 PER SERVICE BAY = 4 SPACES

39% RESIDENTIAL = 39292.5 SQFT. OR 31 UNITS X 2.5 SPACES PER UNIT = 78 SPACES

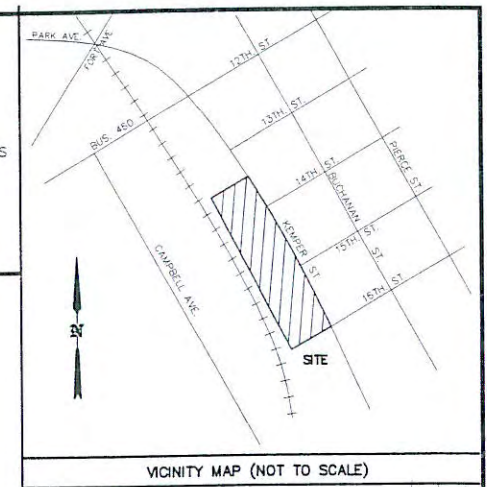
20% RETAIL = 20,150 SQFT. / 300 = 67 + 1 PER 3 EMPLOYEES OR 10 PER 30 THUS 67+10 = 77 SPACES

TOTAL PARKING REQUIRED FOR THE PROJECT - 293 SPACES

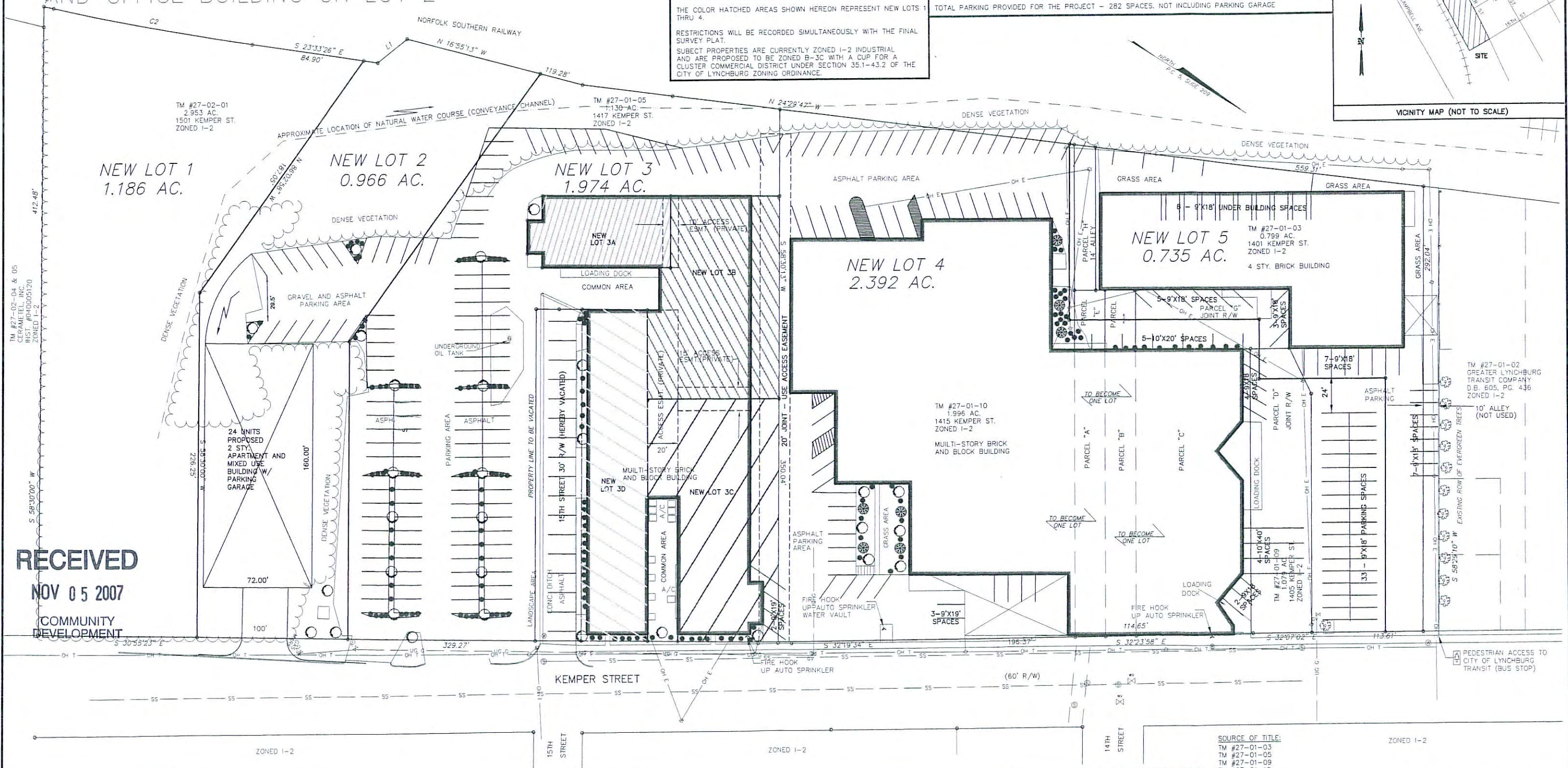
TOTAL PARKING SPACES PROVIDED FOR THIS ASSUMED USAGE = 236

THE OWNER/DEVELOPER IS REQUESTING A 20% REDUCTION IN PARKING BASED ON NON-COINCIDING HOURS OF OPERATION.

TOTAL PARKING PROVIDED FOR THE PROJECT - 282 SPACES, NOT INCLUDING PARKING GARAGE



VICINITY MAP (NOT TO SCALE)



RECEIVED
NOV 05 2007
COMMUNITY
DEVELOPMENT

STORM WATER MANAGEMENT AND WATER QUALITY NOTES:

1. THIS SITE WILL NOT HAVE LAND DISTURBANCE THAT WILL REQUIRE FURTHER STORM WATER MANAGEMENT AT THIS TIME. THE PROPER EROSION AND SEDIMENT CONTROL PLAN MUST BE SUBMITTED TO THE PLANNING DEPARTMENT AND LAND DISTURBANCE PERMITS OBTAINED.
2. THE SITE IS CURRENTLY DRAINING TO AN EXISTING ADEQUATE CHANNEL WHICH RUNS ALONG THE EAST SIDE OF THE EXISTING RAILROAD TRACKS.
3. THE EXISTING DENSE VEGETATION IS THE LIMITS OF THE DEVELOPMENT. THIS DEVELOPMENT WHILE PROPOSING NEW PARKING SPACES AND LANDSCAPE FEATURES WILL NOT BE CREATING ANY FURTHER IMPACT ON THE EXISTING NATURAL WATER COURSE.
4. THE DEVELOPER DOES INTEND TO REPAVE AREA OF THE EXISTING PARKING AREAS AND ASPHALT DRIVEWAYS. NO NEW IMPERVIOUS AREAS WILL BE CREATED.
5. THE LANDSCAPING PROPOSED FOR THIS SITE WHILE DECREASE THE AMOUNT OF IMPERVIOUS AREA.
6. AFTER DISCUSSIONS WITH THE EROSION AND SEDIMENT CONTROL OFFICER FOR THE CITY OF LYNCHBURG IT HAS BEEN DETERMINED THAT NO NEW STORM WATER QUALITY FEATURES ARE NEEDED AT THIS TIME.

FIRE AND RESCUE NOTES:

1. THE CURRENT WATER SPRINKLER SYSTEM IS BEING TESTED FOR COMPLIANCE WITH ALL NEW FIRE FLOW REGULATIONS.
2. A SPRINKLER ANALYSIS REPORT WILL BE GIVEN TO THE FIRE MARSHALLS OFFICE.

WATER AND SEWER NOTES:

1. THE EXISTING BUILDINGS CURRENTLY ARE SERVED BY PUBLIC WATER AND SEWERAGE SYSTEMS.
2. OWNER/DEVELOPER WILL NEED TO FINALIZE WATER AND SEWERAGE PLANS THAT MEET THE CITY OF LYNCHBURG'S ENGINEERING REQUIREMENTS IF INDIVIDUAL WATER AND SEWERAGE SERVICES ARE GOING TO BE USED FOR THE PROPOSED INDIVIDUAL LOTS.

PROPOSED USES FOR PROPERTY:

1. OWNER/DEVELOPER INTENDS TO USE THESE PROPERTIES AS RESIDENTIAL SPACE, RETAIL SPACE OR OFFICE SPACE.
2. PERSONS WANTING TO PURCHASE ANY PORTIONS OF THE BUILDINGS SEPARATED OFF AS INDIVIDUAL LOTS WILL HAVE THE OPTION TO DO SO.
3. A SEPARATE SUBDIVISION PLAT SHOWING THE NEW LOTS WILL HAVE TO BE PRESENTED TO THE PLANNING DEPARTMENT FOR REVIEW, AND A SUBDIVISION PLAT WILL HAVE TO BE RECORDED IN THE CITY OF LYNCHBURG CLERKS OFFICE.
4. CURRENTLY THIS PROPERTY IS MORE SUITED FOR COMMERCIAL USE HOWEVER RENOVATIONS ARE BEING PLANNED BY OTHERS FOR THE CONVERSION OF PORTIONS OF THESE BUILDINGS TO BE USED FOR RESIDENTIAL USE.

5. THE FUTURE LAND USE MAP CURRENTLY RECOMMENDS AN EMPLOYMENT 2 DESIGNATION FOR THIS PROPERTY. OWNER/DEVELOPER REQUESTS THAT THE F.L.U.M. BE AMENDED FOR THE SUBJECT PROPERTY TO MIXED USE.

6. TRASH COLLECTION WILL BE MANAGED BY THE INDIVIDUAL TENANTS OF THE BUILDINGS. NO ON SITE DUMPSTERS ARE PLANNED FOR THIS PROJECT.
7. GREATER LYNCHBURG TRANSIT AUTHORITY HAS A BUS STOP LOCATED AT THE NORTH EAST CORNER OF THE PROPERTY ALONG KEMPER STREET AS SHOWN.
8. DUE TO THE CONFIGURATION OF THIS PROPERTY AND THE EXISTING INFRASTRUCTURES ALL BUILDINGS, PARKING LOTS AND SIDEWALKS CAN HAVE PEDESTRIAN CONNECTIONS TO ADJACENT UNDEVELOPED PROPERTIES WITHIN THIS PROJECT.

SOURCE OF TITLE:

TM #27-01-03
TM #27-01-05
TM #27-01-08
TM #27-01-10
TM #27-02-01
HROK, L.L.C.
INST #060003421
AS RECORDED IN THE CITY OF LYNCHBURG CLERKS OFFICE

SURVEYED FOR: HROK, L.L.C.

Nixon Land
Surveying, L.L.C.
1063C Airport Road
Lynchburg, VA 24502
Phone: (434) 237-3600
Fax: (434) 237-0699
Email: vasurveyor2588@peoplepc.com

AMENDMENT TO THE REZONING PLAN FOR
PROPERTY OF HROK, L.L.C.
1417 KEMPER STREET AND
1501 KEMPER STREET
CITY OF LYNCHBURG, VIRGINIA
COMM. NO.: 2007026
SCALE: 1"=30'
SHEET: 1 OF 1
REVISOR: REN
DATE: 11/30/07
CHK. BY: REN DRW. NME SITE R1

PLAN OF AMENDMENT OF THE ORIGINAL SITE PLAN APPROVED AUGUST 14, 2007.
AMENDMENT SHOWING PROPOSED NEW 24 UNIT RESIDENTIAL BUILDING WITH
RETAIL OR MIXED USE BUILDING AND NEW PARKING LOT

GENERAL NOTES:

THIS PLAT HAS BEEN PREPARED FROM AN ACTUAL FIELD SURVEY DONE PER DATE OF THIS PLAT AND THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS EXCEPT AS SHOWN HEREON.

THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT, THEREFORE, NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.

THE AREA SHOWN IS LOCATED IN ZONE 'C' AND DOES NOT FALL WITHIN FLOOD HAZARD ZONE 'A' FOR A 100 YEAR FLOOD AS SHOWN ON A MAP BY F.E.M.A.

TOTAL AREA REZONED FROM B-3C TO B-3C: 0.949 AC.±

RESTRICTIONS WILL BE RECORDED SIMULTANEOUSLY WITH THE FINAL SURVEY PLAT.

SUBECT PROPERTIES ARE CURRENTLY ZONED B-3C AND ARE PROPOSED TO BE ZONED B-3C WITH A CUP FOR A CLUSTER COMMERCIAL DISTRICT UNDER SECTION 35.1-43.2 OF THE CITY OF LYNCHBURG ZONING ORDINANCE.

PARKING CALCULATIONS AS APPROVED AUGUST 14, 2007 CLUSTER COMMERCIAL DEVELOPMENT ASSUMED USES WITHIN THIS CLUSTER COMMERCIAL DEVELOPMENT.
100,750 TOTAL SQ. FT. THUS:

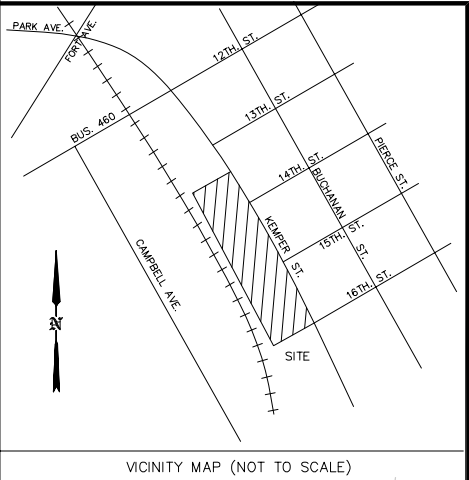
40% OFFICES = 40,300 SQFT. / 300 = 134 SPACES
1% AUTO REPAIR = 1007.5 SQFT. = 2 PER 3 EMPLOYEES + 2 PER SERVICE BAY = 4 SPACES
39% RESIDENTIAL = 39292.5 SQFT. OR 31 UNITS X 2.5 SPACES PER UNIT = 78 SPACES
20% RETAIL = 20,150 SQFT. / 300 = 67 + 1 PER 3 EMPLOYEES OR 10 PER 30 THUS 67+10 = 77 SPACES
TOTAL PARKING REQUIRED FOR THE PROJECT - 293 SPACES

THE OWNER/DEVELOPER HAS BEEN GRANTED A 20% REDUCTION IN PARKING BASED ON NON-COINCIDING HOURS OF OPERATION.

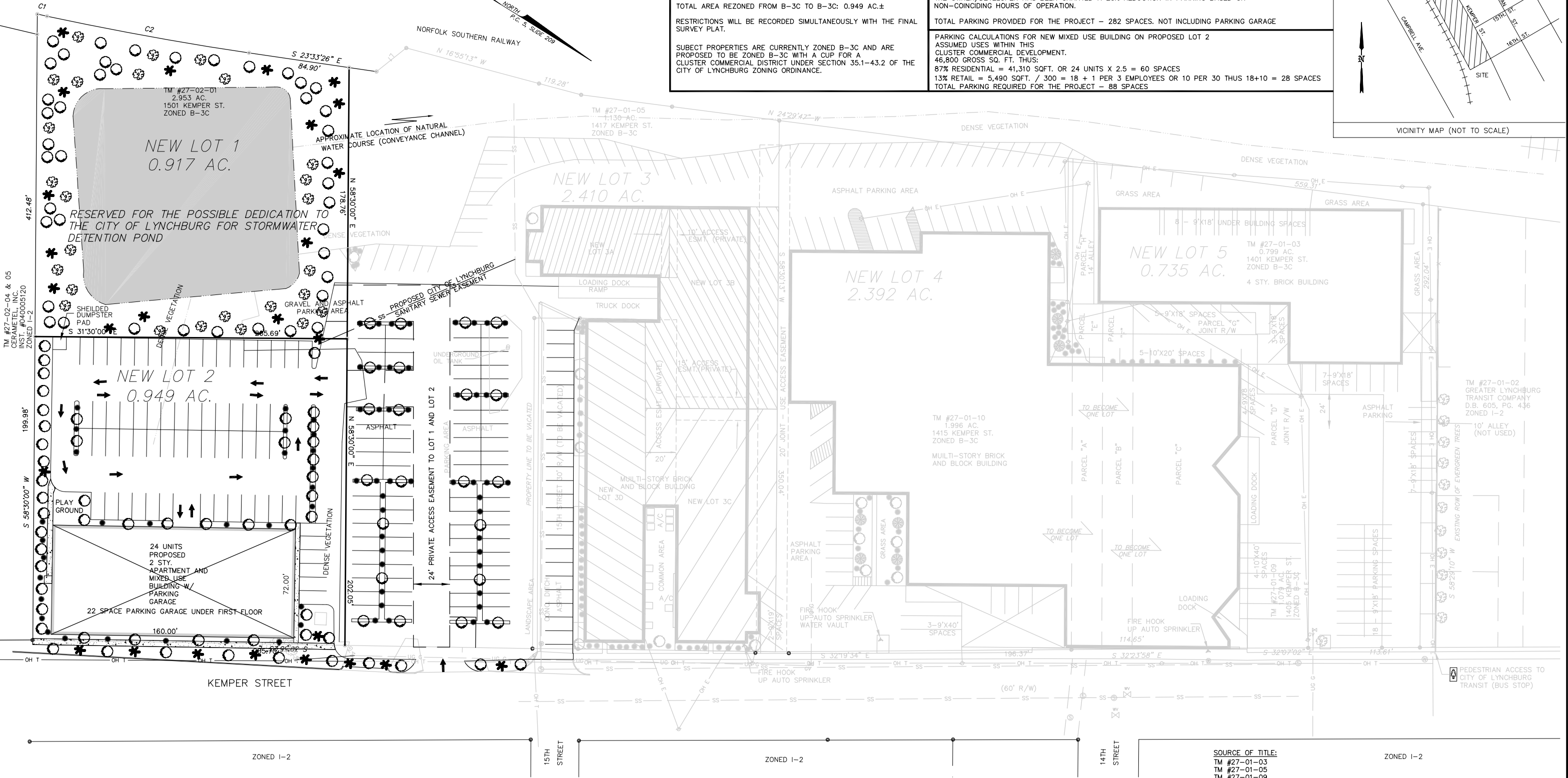
TOTAL PARKING PROVIDED FOR THE PROJECT - 282 SPACES. NOT INCLUDING PARKING GARAGE

PARKING CALCULATIONS FOR NEW MIXED USE BUILDING ON PROPOSED LOT 2

ASSUMED USES WITHIN THIS CLUSTER COMMERCIAL DEVELOPMENT.
46,800 GROSS SQ. FT. THUS:
87% RESIDENTIAL = 41,310 SQFT. OR 24 UNITS X 2.5 = 60 SPACES
13% RETAIL = 5,490 SQFT. / 300 = 18 + 1 PER 3 EMPLOYEES OR 10 PER 30 THUS 18+10 = 28 SPACES
TOTAL PARKING REQUIRED FOR THE PROJECT - 88 SPACES



VICINITY MAP (NOT TO SCALE)



STORM WATER MANAGEMENT AND WATER QUALITY NOTES:

- THIS SITE WILL HAVE LAND DISTURBANCE THAT WILL REQUIRE FURTHER STORM WATER MANAGEMENT. THE PROPER EROSION AND SEDIMENT CONTROL PLAN MUST BE SUBMITTED TO THE PLANNING DEPARTMENT AND LAND DISTURBANCE PERMITS OBTAINED.
- THE SITE IS CURRENTLY DRAINING TO AN EXISTING ADEQUATE CHANNEL WHICH RUNS ALONG THE EAST SIDE OF THE EXISTING RAILROAD TRACKS.
- A COMMUNITY STORM WATER DETENTION BASIN IS PROPOSED BY THE CITY OF LYNCHBURG FOR THIS SITE. THE DESIGNS ARE BEING CREATED BY THE VIRGINIA DEPARTMENT OF TRANSPORTATION. ENGINEER/DESIGNER OF THIS SITE WILL COORDINATE DESIGN EFFORTS WITH THE CITY OF LYNCHBURG / VDOT.
- THE DEVELOPER WILL FOLLOW ALL OF THE CITY OF LYNCHBURG STORMWATER REQUIREMENTS IN THE EVENT THAT COORDINATION OF THE DESIGN AND CONSTRUCTION OF THE PROPOSED STORMWATER DETENTION BASIN IS NOT MET. THE QUALITY AND QUANTITY MEASURES SET BY THE CITY OF LYNCHBURG WILL BE MET.

FIRE AND RESCUE NOTES:

- THE CURRENT WATER SPRINKLER SYSTEM IS BEING TESTED FOR COMPLIANCE WITH ALL NEW FIRE FLOW REGULATIONS.
- A SPRINKLER ANALYSIS REPORT WILL BE GIVEN TO THE FIRE MARSHALLS OFFICE.

WATER AND SEWER NOTES:

- THE EXISTING BUILDINGS CURRENTLY ARE SERVED BY PUBLIC WATER. A SEWER CONNECTION WILL BE DESIGNED FOR THIS SITE.
- OWNER/DEVELOPER WILL NEED TO FINALIZE WATER AND SEWERAGE PLANS THAT MEET THE CITY OF LYNCHBURG'S ENGINEERING REQUIREMENTS FOR THIS SITE.

PROPOSED USES FOR PROPERTY:

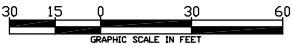
- OWNER/DEVELOPER INTENDS TO USE THESE PROPERTIES AS RESIDENTIAL SPACE, RETAIL SPACE OR OFFICE SPACE.
- A SEPERATE SUBDIVISION PLAT SHOWING THE NEW LOTS WILL HAVE TO BE PRESENTED TO THE PLANNING DEPARTMENT FOR REVIEW, AND A SUBDIVISION PLAT WILL HAVE TO BE RECORDED IN THE CITY OF LYNCHBURG CLERKS OFFICE.
- THE FUTURE LAND USE MAP CURRENTLY SHOWS MIXED USE DESIGNATION FOR THIS PROPERTY.
- TRASH COLLECTION WILL BE MANAGED BY THE OWNER/DEVELOPER. AN AREA WILL BE DESIGNATED AS A SHIELDED DUMPSTER SITE

- GREATER LYNCHBURG TRANSIT AUTHORITY HAS A BUS STOP LOCATED AT THE NORTH EAST CORNER OF THE PROPERTY ALONG KEMPER STREET AS SHOWN.
- DUE TO THE LOCATION OF THE NEW BUILDING AND THE EXISTING INFRASTRUCTURES ALL BUILDINGS, PARKING LOTS AND SIDEWALKS WILL HAVE PEDESTRIAN CONNECTIONS TO ADJACENT UNDEVELOPED PROPERTIES WITHIN THIS PROJECT.

SOURCE OF TITLE:

TM #27-01-03
TM #27-01-05
TM #27-01-09
TM #27-01-10
TM #27-02-01
HROK, L.L.C.
INST #060003421
AS RECORDED IN THE CITY OF LYNCHBURGS CLERKS OFFICE
REVISED 11/21/07

ZONED I-2



SURVEYED FOR: HROK, LLC

Nixon Land Surveying, L.L.C.
1063C Airport Road
Lynchburg, VA 24502
Phone: (434) 237-3600
Fax: (434) 237-0689
Email: vasurveyor2588@peoplepc.com

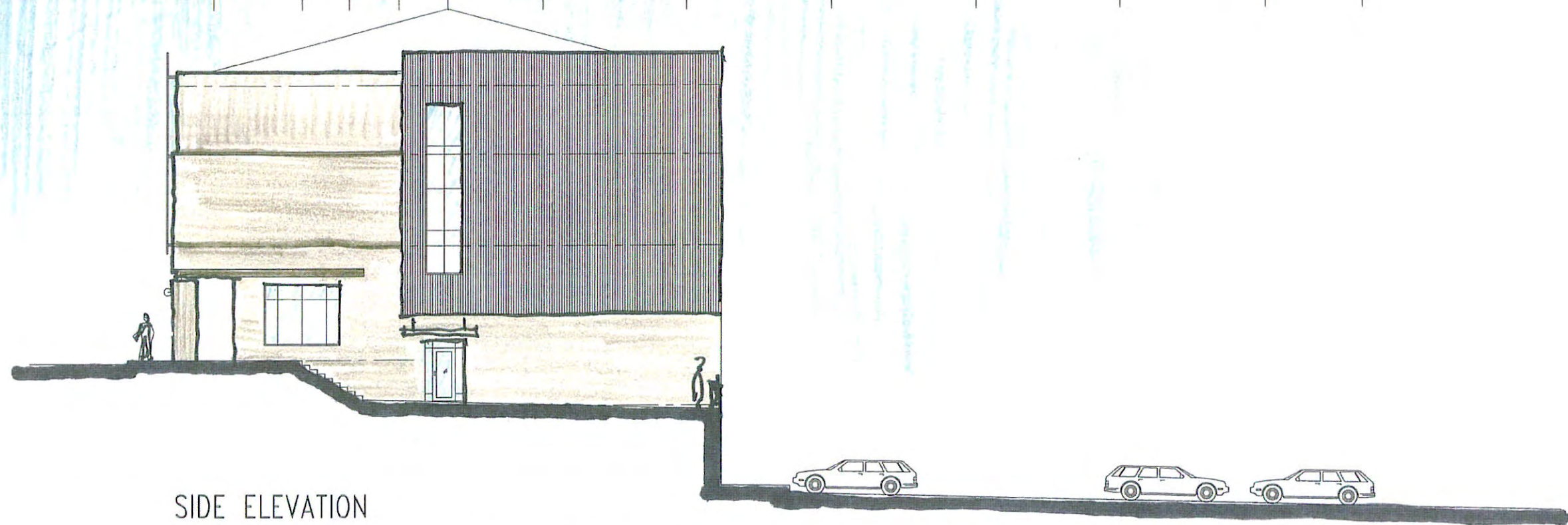
**AMENDMENT TO THE REZONING PLAN FOR
PROPERTY OF HROK, LLC
1417 KEMPER STREET AND
1501 KEMPER STREET
CITY OF LYNCHBURG, VIRGINIA**

COMM. NO.: 2007026 REVISED: 11/19/07

SCALE: 1"=30' DR. BY: REN DATE: 10/30/07

SHEET: 1 OF 1 CHK. BY: REN DWT. NAME SITE R2

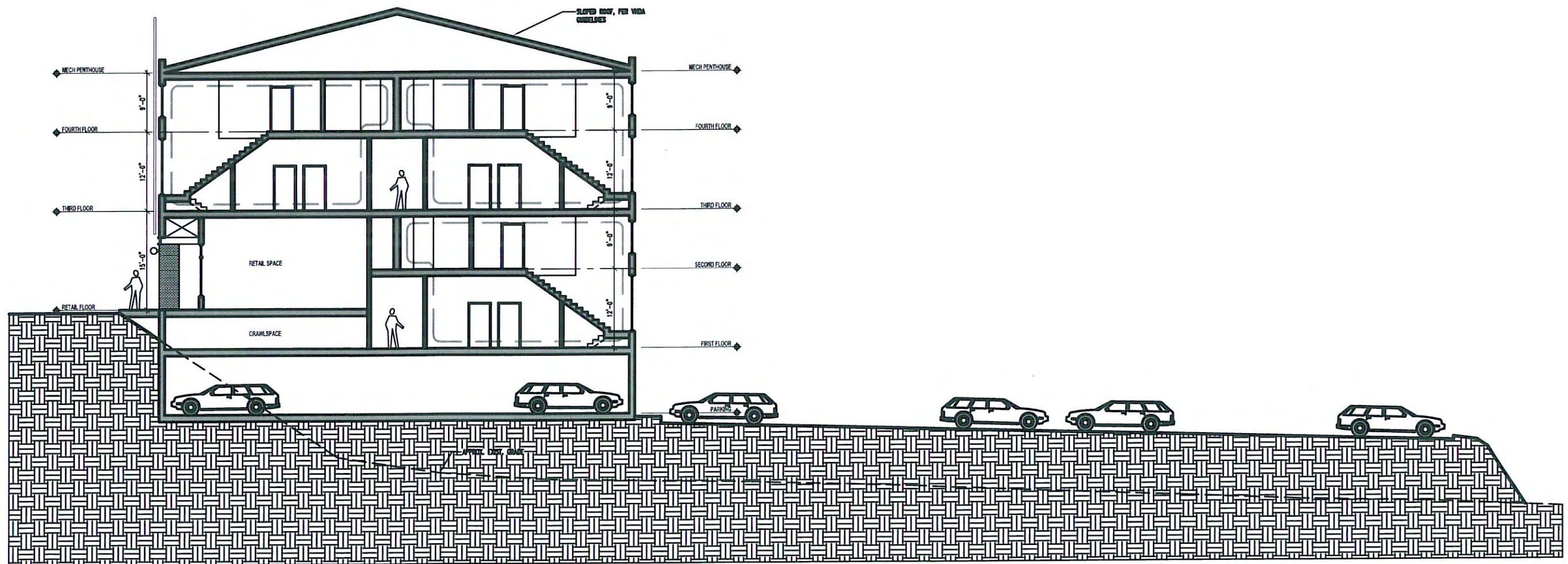
DO NOT MOVE AN ANCIENT BOUNDARY STONE OR ENCROACH ON THE FIELDS OF THE FATHERLESS PROVIDERS ENDS ONLY



NEW CONSTRUCTION

Elevations

1/16"=1'-0"



NEW CONSTRUCTION

Site Section

1/16"=1'-0"

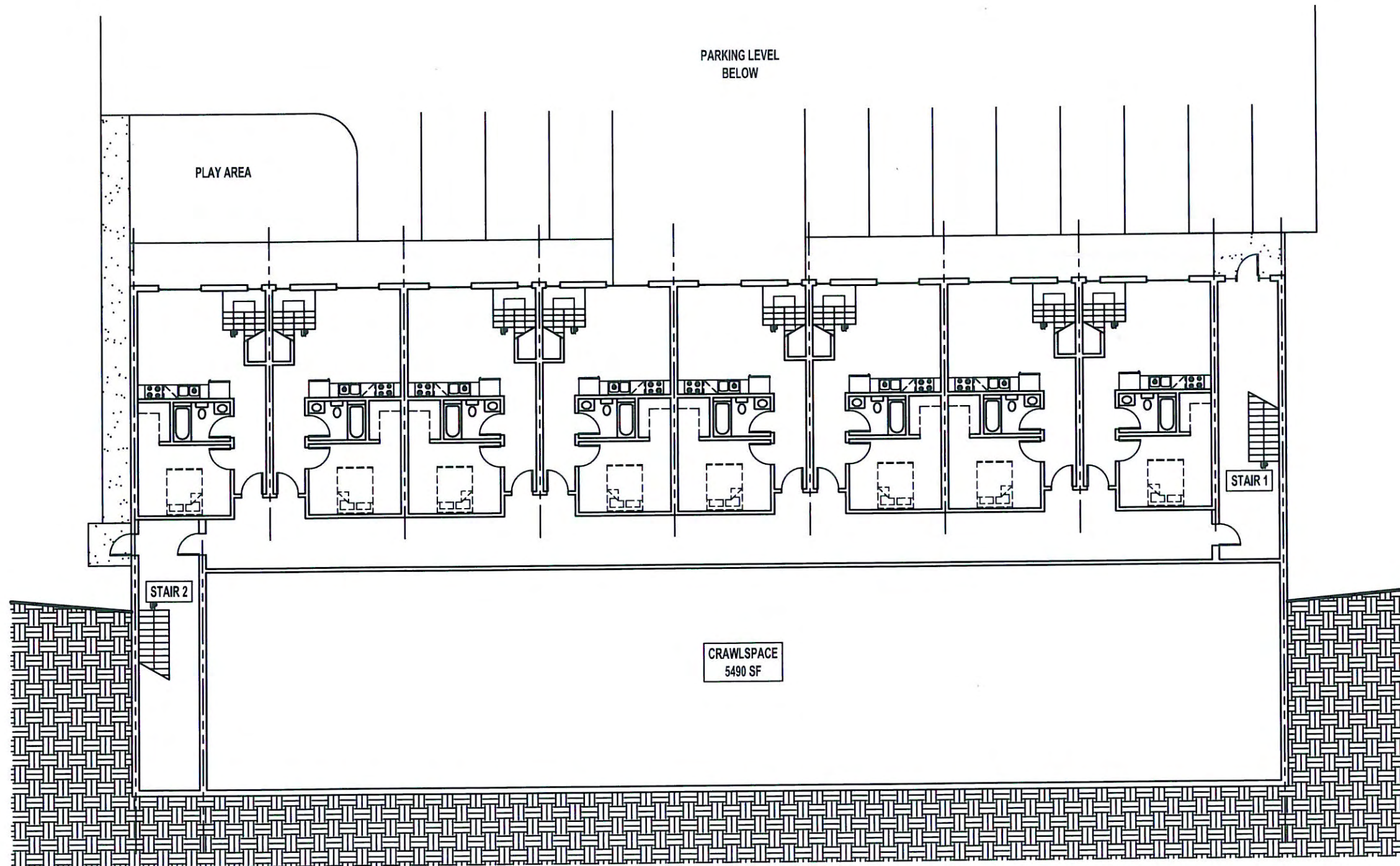


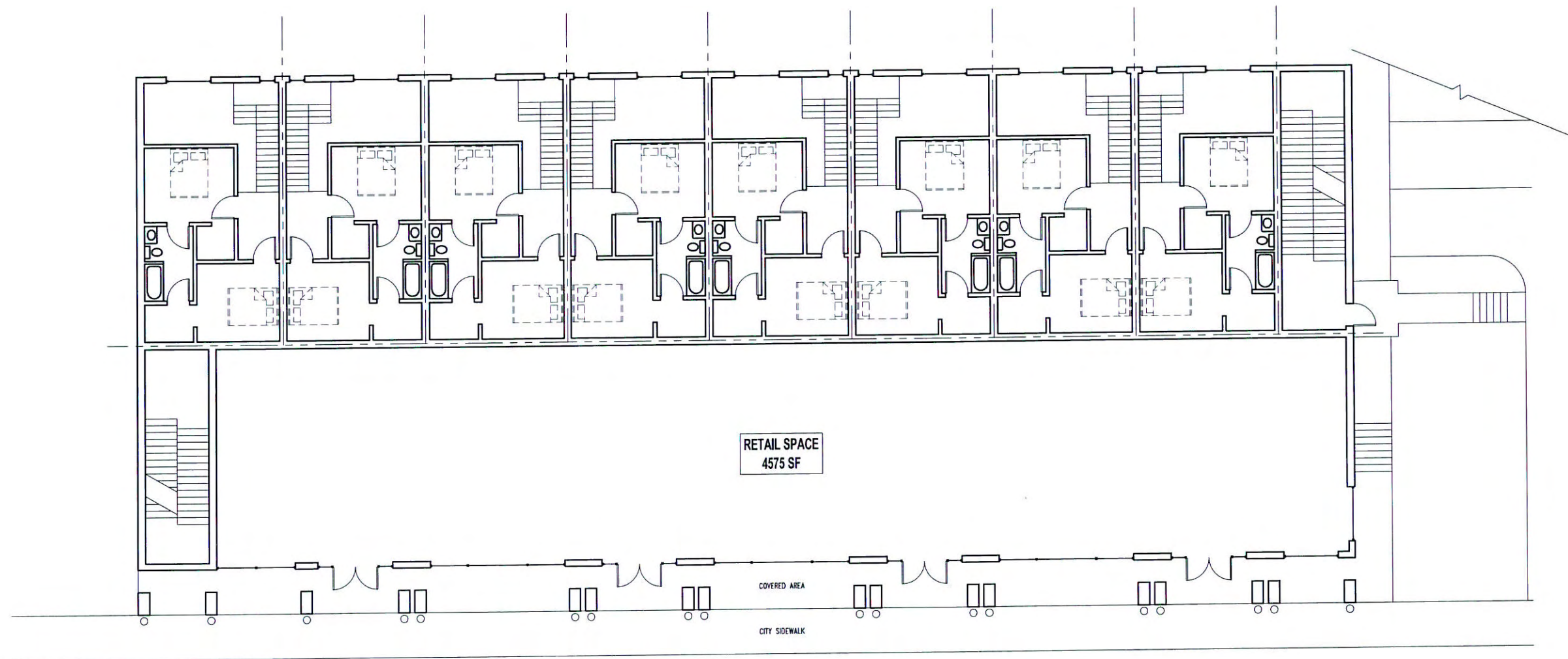
The Landmark Group

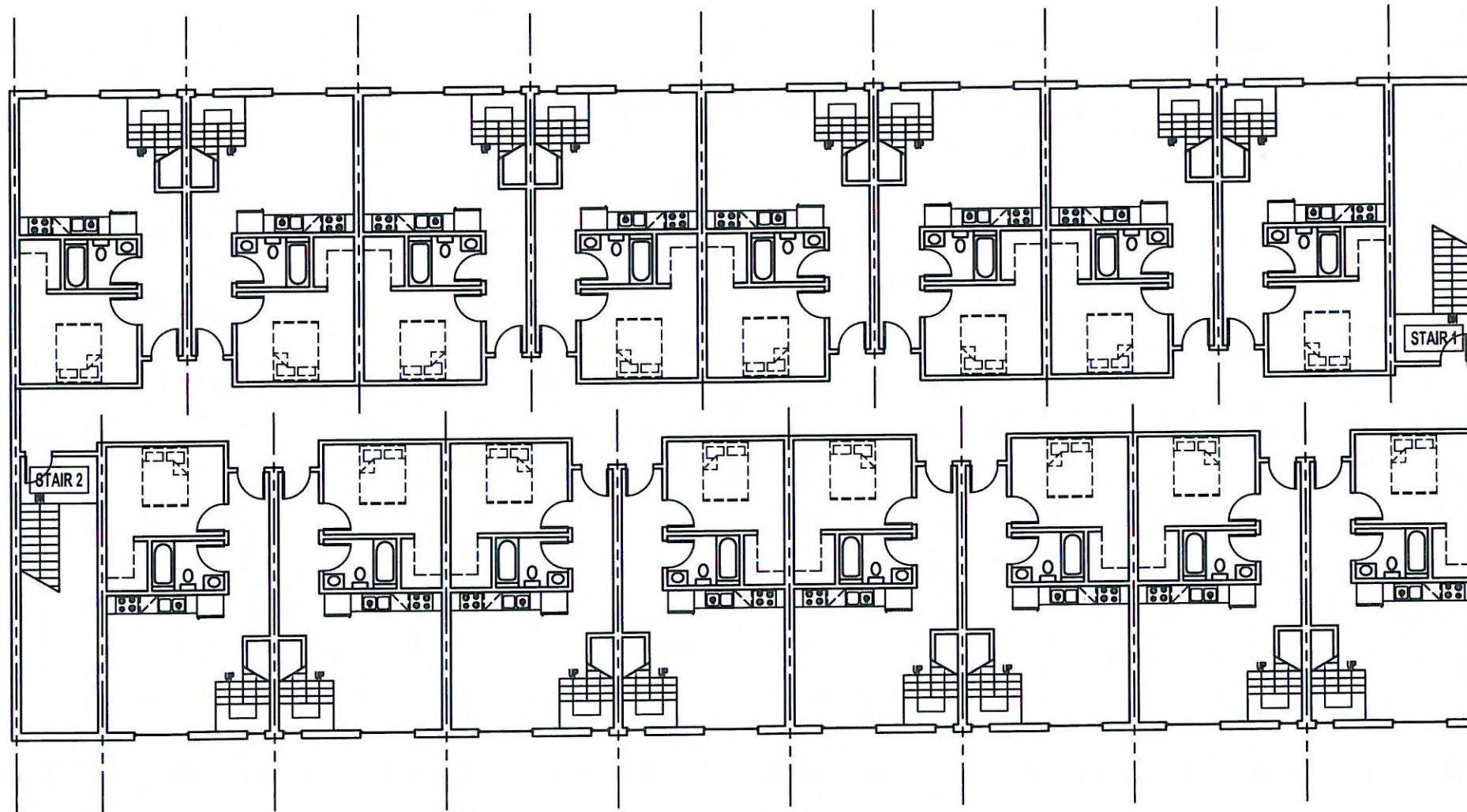
KEMPER LOFTS - Lynchburg, VA

New Construction

November 2007 Scale As Noted





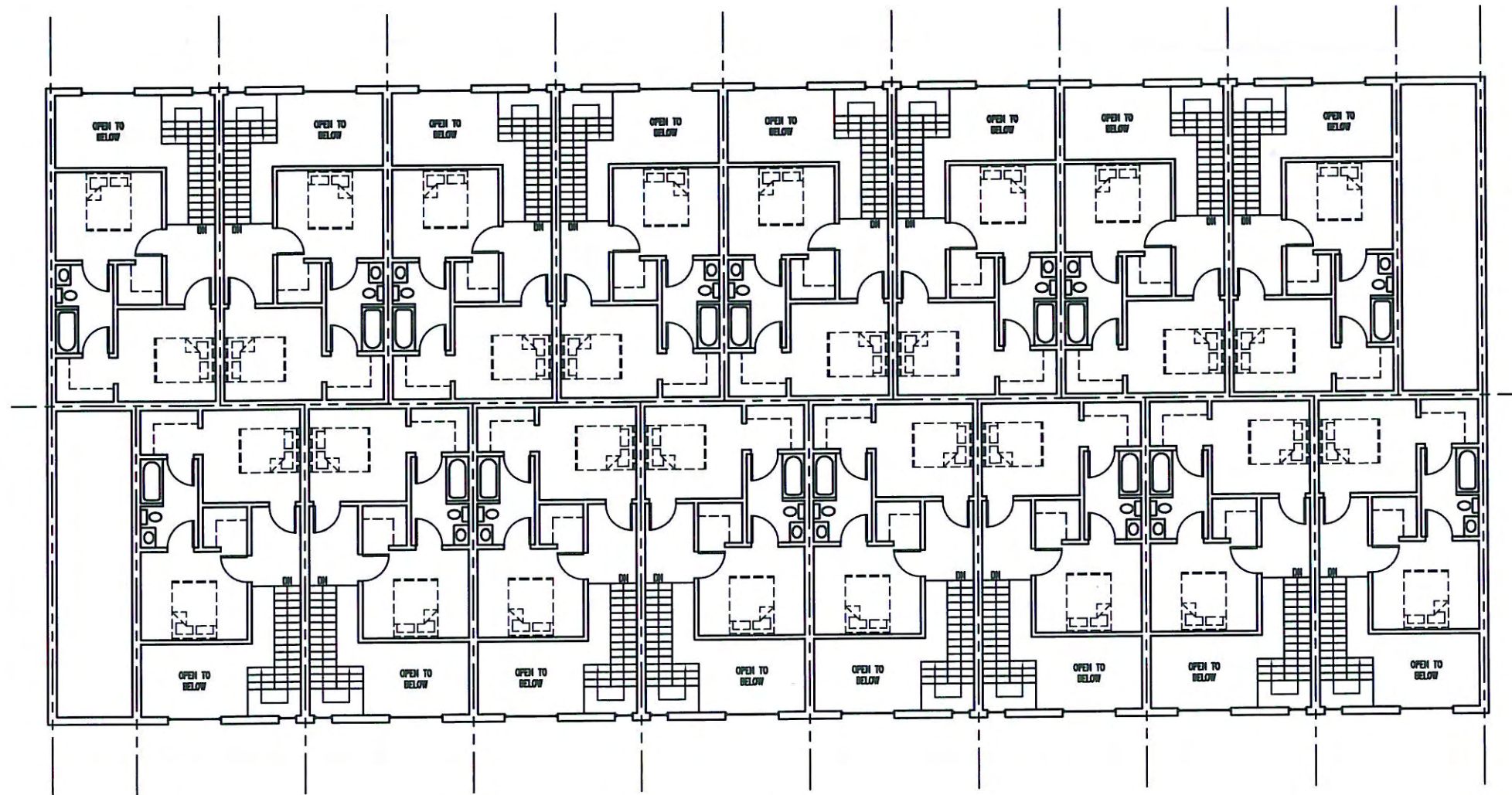


NEW CONSTRUCTION

Third Floor Plan - Residential (Lower)

1/16"=1'-0"





NEW CONSTRUCTION

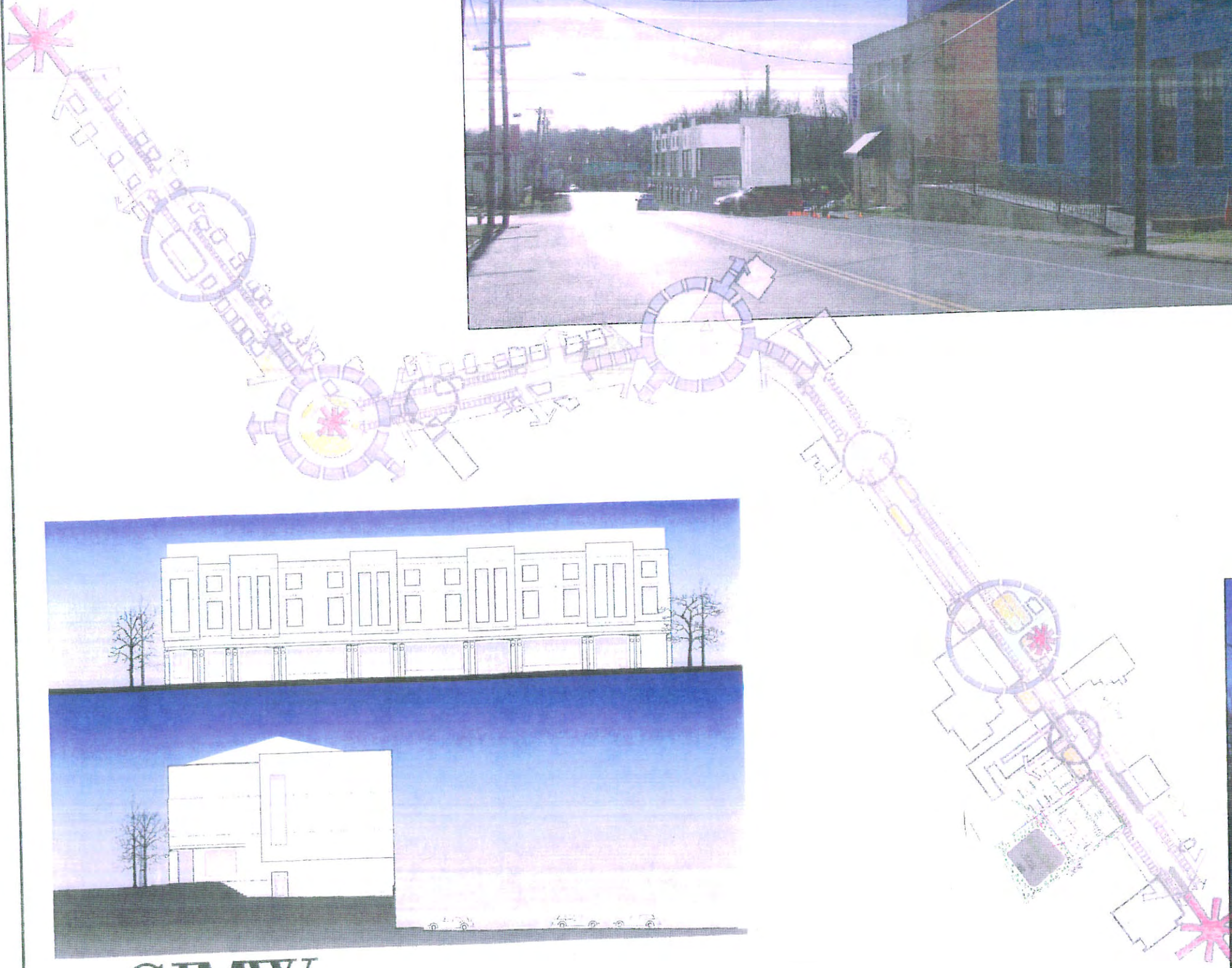
Fourth Floor Plan - Residential (Upper)

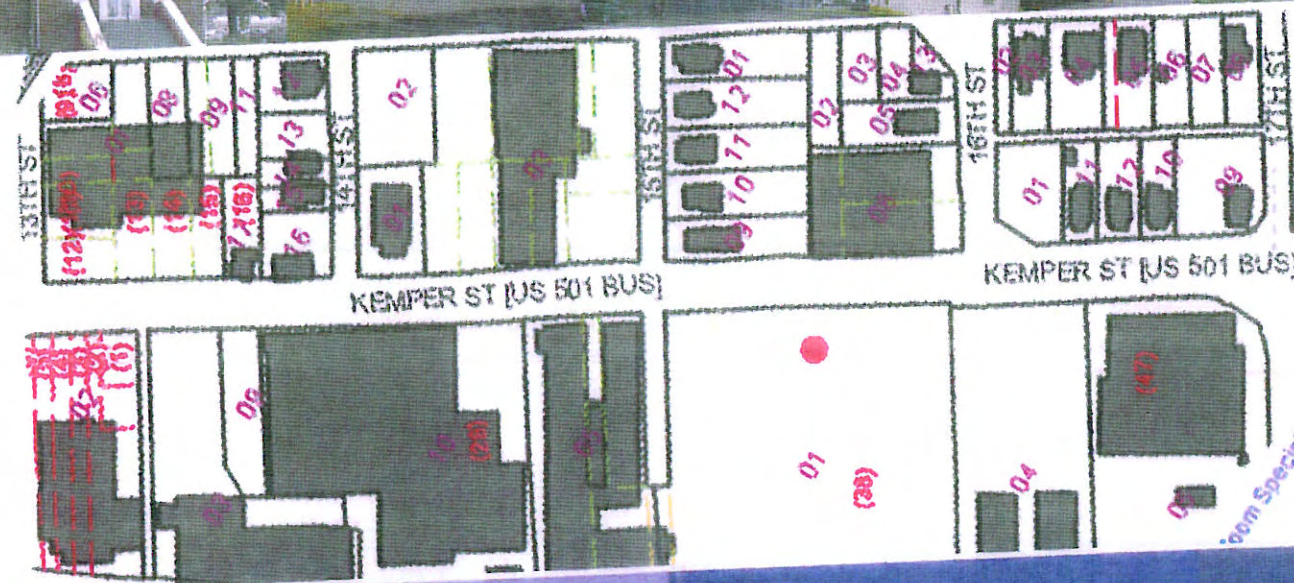
1/16"=1'-0"



Kemper Lofts

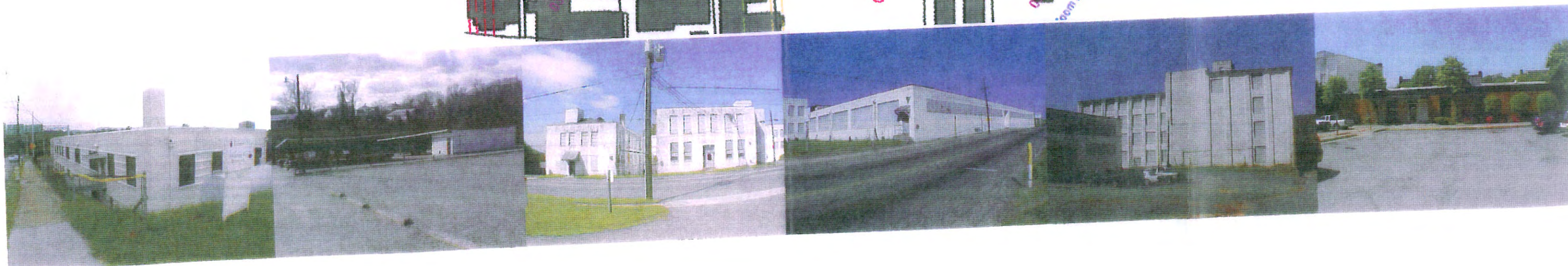
Context Study





KEMPER STREET ELEVATIONS Between Thirteenth and Seventeenth Street

December 19, 2007
photos derived from WebMap 2007



LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: January 8, 2008		AGENDA ITEM NO.: 6
CONSENT:	REGULAR: X	CLOSED SESSION:
ACTION: X	INFORMATION:	(Confidential)
<u>ITEM TITLE:</u> Citizen Request to Appear Before Council on the Issue of Payday Lending		

RECOMMENDATION: Consider a request to adopt a resolution calling for the General Assembly to place a 36% cap on the annual interest rate charged by payday lenders.

SUMMARY: Mr. Jeremy White has requested an opportunity to speak to Council regarding the issue of payday lending. His request and information that he provided are attached.

Council will recall that that this matter came up during consideration of the City's legislative agenda last fall. Council did not include a position on payday lending in its adopted legislative agenda. Subsequently, Linda McMinimy provided some information on the issue. That information has not been forwarded again as it adds little to the position put forth by Mr. White. If any Council member would like to see that information again, please let the office know.

PRIOR ACTION(S): As noted above.

FISCAL IMPACT: N/A

CONTACT(S): Kimball Payne, 455-3990; Walter Erwin, 455-3973; Linda McMinimy, (804) 643-1166

ATTACHMENT(S): Letter, and associated information, from Mr. White.

REVIEWED BY: lkp

December 14, 2007

Ms. Pat Kost
Lynchburg City Council, Clerk
900 Court Street
Lynchburg, Virginia 24504

RE: Council Agenda

Dear Ms. Kost:

I am writing to request that Payday Lending be added to the agenda for the January 8, 2008 Lynchburg City Council meeting. I am an attorney living in Lynchburg and practicing law in Lynchburg at Virginia Legal Aid Society. (My request, however, is made in an individual capacity and not on behalf of our firm). A request will be made for the City Council to consider and pass the "Staunton Resolution" urging the 2008 General Assembly to place a 36% cap on the annual interest charged by payday lenders. Currently, payday lenders can charge up to **780%** annual percentage rate.

Civic groups are actively discussing the issue of payday loans. The news media is providing extensive coverage of this subject. As I have discussed this matter in our community, individuals are appalled that lenders can charge up to **780%** annual percentage rate and commonly ask, "Isn't that illegal?"

The Staunton City Council passed the resolution in September of this year. Subsequently, Staunton sent the resolution to every, city, town and county government in the Commonwealth. As of the writing of this letter, forty-eight (48) localities have passed the "Staunton Resolution" and many others are considering the resolution. These localities represent over 3 million Virginians. In the first part of December, Amherst County unanimously passed the resolution, and in fact, implored the General Assembly to abolish payday lending altogether. The movement is gaining momentum to restore fairness and commonsense in lending.

The impetus for the Staunton Resolution began with the action of the U.S. Congress. Congress capped the annual percentage rate of payday loans to military servicemen and servicewomen at 36%. Congress saw the dangers of this lending and how it traps borrowers into multiple loans. Congress took decisive action. If this cap makes sense for our servicemembers in our nation's military, it makes sense for the citizens of this Commonwealth and the City of Lynchburg.

As background of payday loans, the General Assembly enacted the Payday Loan Act in 2002 which gave an exception to the usury caps in Virginia that allows payday lenders to charge interest up to **780%** annual percentage rate. Since that time, Virginians have paid an average of **390%** annual percentage rate on payday loans. Payday loans are short-term loans, usually for a term of two weeks. All other small loan lenders in Virginia are already limited to charging a 36% annual percentage rate.

From the 2006 report from the Bureau of Financial Institutions and a study by Georgetown University, the Virginia Partnership to Encourage Responsible Lending calculated that borrowers average fourteen (14) loans per year. This data stands in stark contrast to repeated assertions by the payday lending industry that these loans are intended for short-term use and only a few who misuse and abuse the loans get caught in serial loans. According to a recent report from the Center for Responsible Lending, only 1 – 2% of all borrowers take out one loan and do not borrow again that year.¹

In fact, a veteran in Virginia with veteran's benefits and social security benefits called our firm on the date above for help because he had 15 payday loans and owed over \$8000 and wanted assistance getting out of the hole in which he found himself.

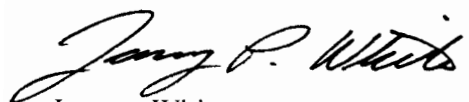
Some individuals may believe that governmental regulation or oversight is unnecessary in a free-market system. One of the bases of a successful free-market system is a level playing field among the competitors. To allow payday lenders to reap an unconscionable interest rate, while all other small loan lenders are limited to 36% disrupts the advantages of a competitive market and injures legitimate lenders. Industry representatives will opine that without payday lending, Virginians will not have lending options. However, the attached document demonstrates that credit unions are one lender involved in making short-term, affordable loans to Virginians.

From Biblical foundations forbidding usury, limits on interest have been commonplace. From 1731, Virginia's legislature has limited rates of interest in lending. It is long-established in the jurisprudence of the Commonwealth and the United States.

Simply from a perspective of fairness and commonsense, interest rates averaging **390%** are unjustifiable. This is a unique opportunity for the Lynchburg City Council to give a voice to the citizens and consumers of the City of Lynchburg.

Attached is a draft of the resolution, taken from the Staunton Resolution, as well as other supporting documents. Thank you for your indulgence and attention to this matter. Feel free to contact me with any questions or if there is other information that I can provide.

Sincerely,



Jeremy White
4715 Boonsboro Road, Apt. 17
Lynchburg, VA 24503
434.258.8975 (cell)

¹ Springing the Debt Trap: Rate Caps are Only Proven Payday Lending Reform, Uriah King and Leslie Parrish, Center for Responsible Lending, p. 7, December 13, 2007, www.responsiblelending.org.

**RESOLUTION
OF
THE COUNCIL OF THE CITY OF LYNCHBURG, VIRGINIA TO REQUEST
THAT THE GENERAL ASSEMBLY AND GOVERNOR OF VIRGINIA TAKE
ACTION TO PREVENT EXPLOITATIVE PAYDAY LENDING PRACTICES IN
THE COMMONWEALTH**

WHEREAS, the Council of the City of LYNCHBURG, Virginia, represents the citizens of the City of LYNCHBURG, Virginia;

WHEREAS, the Council of the City of LYNCHBURG, Virginia, senses from the citizens of the City of LYNCHBURG significant concern over what are perceived to be some exploitative payday lending practices in the City of LYNCHBURG and elsewhere in the Commonwealth, including practices which may exploit dedicated, brave women and men who are called for deployment as part of the armed forces of our Nation both in the United States and various parts of the world in the cause of freedom and security of our Nation;

WHEREAS, the Council of the City of LYNCHBURG, Virginia, shares these same significant concerns and wishes to express the collective sentiments of the People of the City of LYNCHBURG, Virginia, that the General Assembly and Governor of Virginia, ought to take action to prevent further exploitative payday lending practices; and

WHEREAS, it is vital that the General Assembly and the Governor of Virginia give their earnest attention to these matters at the next regular session of the General Assembly and enact laws that will prevent further exploitative payday lending practices.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of LYNCHBURG, Virginia, that the General Assembly and the Governor of the Commonwealth of Virginia are requested to take action in connection with the next regular session of the General Assembly of Virginia to enact laws that will prevent further exploitative payday lending practices, including but not limited to:

1. Enactment of an annual interest rate cap of 36% for any consumer loans made in the Commonwealth of Virginia; 2. Prohibition of the use of a personal check or other method by a creditor to gain access to a consumer's bank account or method to gain title to a consumer's motor vehicle as collateral for a payday loan; and 3. Enactment of supplementary and complementary provisions which mirror the provisions of what is commonly referred to as the Talent-Nelson Amendment (Senate Amendment 4331), entitled "Terms of Consumer Credit Extended To Service Member's Dependent" and referenced on page S6352 of the June 22, 2006 Congressional Record-Senate, a copy of which is annexed to and incorporated by reference in this Resolution.

Adopted this _____ day of _____ 2008

States Code, is amended by striking "a member of the Navy" and all that follows through "in an active status" and inserting "a member of the Navy (including a member on active duty or a member of a reserve component in an active status), a retired member of the Navy, or a former member of the Navy".

(2) TIME FOR EXERCISE OF AUTHORITY.—Subsection (b) of such section is amended—

(A) in paragraph (1), by adding "or" at the end; and

(B) by striking paragraphs (2) and (3) and inserting the following new paragraph (2):

"(2) in the case of any other member of the Navy covered by subsection (a), during such period or periods as the Secretary of Defense may provide in regulations prescribed by the Secretary of Defense."

(3) REPEAL OF TERMINATION OF MODIFIED AUTHORITY.—Paragraph (3) of section 683(b) of the National Defense Authorization Act for Fiscal Year 2006 (119 Stat. 3323; 10 U.S.C. 6161 note) is repealed.

(c) MEMBERS OF THE AIR FORCE.—

(1) COVERAGE OF ALL MEMBERS AND FORMER MEMBERS.—Subsection (a) of section 4837 of title 10, United States Code, is amended by striking "a member of the Air Force" and all that follows through "in an active status" and inserting "a member of the Air Force (including a member on active duty or a member of a reserve component in an active status), a retired member of the Air Force, or a former member of the Air Force".

(2) TIME FOR EXERCISE OF AUTHORITY.—Subsection (b) of such section is amended—

(A) in paragraph (1), by adding "or" at the end; and

(B) by striking paragraphs (2) and (3) and inserting the following new paragraph (2):

"(2) in the case of any other member of the Air Force covered by subsection (a), during such period or periods as the Secretary of Defense may provide in regulations prescribed by the Secretary of Defense."

(3) REPEAL OF TERMINATION OF MODIFIED AUTHORITY.—Paragraph (3) of section 683(c) of the National Defense Authorization Act for Fiscal Year 2006 (119 Stat. 3324; 10 U.S.C. 9837 note) is repealed.

(d) DEADLINE FOR REGULATIONS.—The Secretary of Defense shall prescribe the regulations required for purposes of sections 4837, 6161, and 9837 of title 10, United States Code, as amended by this section, not later than March 1, 2007.

AMENDMENT NO. 4505

(Purpose: To provide an exception for notice to consumer reporting agencies regarding debts or erroneous payments for which a decision to waive or cancel is pending)

At the end of subtitle E of title VI, add the following:

SEC. 662. EXCEPTION FOR NOTICE TO CONSUMER REPORTING AGENCIES REGARDING DEBTS OR ERRONEOUS PAYMENTS PENDING A DECISION TO WAIVE, REMIT, OR CANCEL.

(a) EXCEPTION.—Section 2780(b) of title 10, United States Code, is amended—

(1) by striking "The Secretary" and inserting "(1) Except as provided in paragraph (2), the Secretary"; and

(2) by adding at the end the following new paragraph:

"(2) No disclosure shall be made under paragraph (1) with respect to an indebtedness while a decision regarding waiver of collection is pending under section 2774 of this title, or a decision regarding remission or cancellation is pending under section 4837, 6161, or 9837 of this title, unless the Secretary concerned (as defined in section 101(5) of title 37), or the designee of such Secretary, determines that disclosure under that paragraph pending such decision is in the best interests of the United States."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on March 1, 2007.

(2) APPLICATION TO PRIOR ACTIONS.—Paragraph (2) of section 2780(b) of title 10, United States Code (as added by subsection (a)), shall not be construed to apply to or invalidate any action taken under such section before March 1, 2007.

(c) REPORT.—Not later than March 1, 2007, the Secretary of Defense shall submit to the congressional defense committees a report on the exercise of the authority in section 2780(b) of title 10, United States Code, including—

(1) the total number of members of the Armed Forces who have been reported to consumer reporting agencies under such section;

(2) the circumstances under which such authority has been exercised, or waived (as provided in paragraph (2) of such section (as amended by subsection (a))), and by whom;

(3) the cost of contracts for collection services to recover indebtedness owed to the United States that is delinquent;

(4) an evaluation of whether or not such contracts, and the practice of reporting military debtors to collection agencies, has been effective in reducing indebtedness to the United States; and

(5) such recommendations as the Secretary considers appropriate regarding the continuing use of such authority with respect to members of the Armed Forces.

AMENDMENT NO. 4506

(Purpose: To enhance authority relating to the waiver of claims for overpayment of pay and allowances of members of the Armed Forces)

At the end of subtitle E of title VI, add the following:

SEC. 662. ENHANCEMENT OF AUTHORITY TO WAIVE CLAIMS FOR OVERPAYMENT OF PAY AND ALLOWANCES.

(a) CLARIFICATION OF PAY AND ALLOWANCES.—Subsection (a) of section 2774 of title 10, United States Code, is amended in the matter preceding paragraph (1) by inserting "(including any bonus or special or incentive pay)" after "pay or allowances".

(b) WAIVER BY SECRETARIES CONCERNED.—Paragraph (2) of such subsection is amended—

(1) in the matter preceding subparagraph (A), by inserting "or the designee of such Secretary" after "title 37"; and

(2) in subparagraph (A), by striking "\$1,500" and inserting "\$10,000".

(c) TIME FOR WAIVER.—Subsection (b)(2) of such section is amended by striking "three years" and inserting "five years".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on March 1, 2007.

(e) DEADLINE FOR REVISED STANDARDS.—The Director of the Office of Management and Budget and the Secretary of Defense shall prescribe any modifications to the standards under section 2774 of title 10, United States Code, that are required or authorized by reason of the amendments made by this section not later than March 1, 2007.

AMENDMENT NO. 4331

(Purpose: To establish requirements with respect to the terms of consumer credit extended by a creditor to a servicemember or the dependent of a servicemember, and for other purposes)

At the appropriate place, insert the following:

SEC. TERMS OF CONSUMER CREDIT EXTENDED TO SERVICEMEMBER OR SERVICEMEMBER'S DEPENDENT.

(a) TERMS OF CONSUMER CREDIT.—Title II of the Servicemembers Civil Relief Act (50

U.S.C. App. 521 et seq.) is amended by adding at the end the following new section:

"SEC. 208. TERMS OF CONSUMER CREDIT.

"(a) INTEREST.—A creditor who extends consumer credit to a servicemember or a servicemember's dependent shall not require the servicemember or the servicemember's dependent to pay interest with respect to the extension of such credit, except as—

"(1) agreed to under the terms of the credit agreement or promissory note;

"(2) authorized by applicable State or Federal law; and

"(3) not specifically prohibited by this section.

"(b) ANNUAL PERCENTAGE RATE.—A creditor described in subsection (a) shall not impose an annual percentage rate greater than 36 percent with respect to the consumer credit extended to a servicemember or a servicemember's dependent.

"(c) MANDATORY LOAN DISCLOSURES.—

"(1) INFORMATION REQUIRED.—With respect to any extension of consumer credit to a servicemember or a servicemember's dependent, a creditor shall provide to the servicemember or the servicemember's dependent the following information in writing, at or before the issuance of the credit:

"(A) A statement of the annual percentage rate applicable to the extension of credit.

"(B) Any disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.).

"(C) A clear description of the payment obligations of the servicemember or the servicemember's dependent, as applicable.

"(2) TERMS.—Such disclosures shall be presented in accordance with terms prescribed by the regulations issued by the Board of Governors of the Federal Reserve System to implement the Truth in Lending Act (15 U.S.C. 1601 et seq.).

"(d) LIMITATION.—A creditor described in subsection (a) shall not automatically renew, repay, refinance, or consolidate with the proceeds of other credit extended by the same creditor any consumer credit extended to a servicemember or a servicemember's dependent without—

"(1) executing new loan documentation signed by the servicemember or the servicemember's dependent, as applicable; and

"(2) providing the loan disclosures described in subsection (c) to the servicemember or the servicemember's dependent.

"(e) PREEMPTION.—Except as provided in subsection (f)(2), this section preempts any State or Federal law, rule, or regulation, including any State usury law, to the extent that such laws, rules, or regulations are inconsistent with this section, except that this section shall not preempt any such law, rule, or regulation that provides additional protection to a servicemember or a servicemember's dependent.

"(f) PENALTIES.—

"(1) MISDEMEANOR.—Any creditor who knowingly violates this section shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

"(2) PRESERVATION OF OTHER REMEDIES.—The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

"(g) DEFINITION.—For purposes of this section, the term 'interest' includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to the extension of consumer credit."

(b) CLERICAL AMENDMENT.—The table of contents of the Servicemembers Civil Relief

Localities Joining the Movement: sending resolutions to the General Assembly asking for a 36% cap on payday loans.

Alexandria

Amherst County

Appomattox County

Blacksburg

Bristol

Charlottesville

Chesterfield County

Colonial Heights

Culpepper

Duffield

Emporia

Essex County

Farmville

Fluvanna County

Frederick County

Hampton (asking for repeal of Payday Loan Act)

Harrisonburg

Henry County

Fairfax County

King and Queen County

Lexington

Louisa County

Luray

Matthews County

Montross

Nelson County

Newport News (asking Repeal of Payday Loan Act or 36% cap)

Norfolk (asked for a 36% cap on all consumer loans)

Nottoway County

Pearisburg

Pocahontas

Pulaski

Quantico

Roanoke

Shenandoah

South Boston

Stanley

Staunton

St. Paul (asked for 12% cap)

Warrenton

Waynesboro

White Stone

Winchester

York County

Payday Lenders Not Missed in North Carolina, Regulator Says

November 16, 2007

[E-Mail this article](#) | [Print this article](#)

By [David Morrison](#)

RALEIGH, N.C. — The North Carolina Commissioner of Banks has issued a report that says that North Carolinians have not missed payday lenders after the state deauthorized payday lending in 2001.

The study, titled North Carolina Consumers After Payday Lending, was conducted by the University of North Carolina's Center for Community Capital and found that most households have a variety of different tools to overcome short term financial shortfalls. The study also found that nine of out 10 low- and middle-income households surveyed considered payday lending a bad thing, even if they had experienced financial shortfalls.

"Hard-working North Carolinians have not missed payday lenders," said Mark Pierce, deputy commissioner of banks. "This study shows that people have many options to get through financial distress."

[View all the news from November 16, 2007](#)

<http://www.cutimes.com/section/lending/35201> copied 111907

Welcome groundswell on payday lending

The Virginian-Pilot
© November 13, 2007

WHAT DOES Norfolk, population 240,000, have in common with the 2,000 folks who inhabit the tiny town of Shenandoah? What common ground exists between Arlington's liberal enclave and Harrisonburg's conservative heartland?

All of those communities have condemned payday lending as a scourge that preys on their neighbors.

Has anyone in Richmond noticed the groundswell that's building?

A dozen cities, counties and towns in Virginia have either passed resolutions asking state lawmakers to cap interest rates on small, short-term loans or adopted predatory lending reform as a goal they'll pursue during the 2008 General Assembly session.

Some localities, including Norfolk, have used zoning powers to shoo some of the payday lenders invading their low-income neighborhoods. However, local leaders are fast realizing that the legal flyswatters in their arsenals are no match for the 805 payday loan offices that have overrun Virginia.

Statewide fumigation, in the form of a 36 percent rate cap for all payday loans, is the most realistic solution. That rate cap was, in fact, state law until 2002, when state legislators voted to give payday lenders the right to charge fees equal to annualized interest rates exceeding 300 percent.

The subsequent explosion of payday lenders in Virginia led to calls for reform, but state lawmakers have so far failed to act. That inertia is hard to explain based on a quick scan of the countryside. After all, this is an issue that unites rural, urban and suburban communities. Advocates for reform have sprung from every inch of the ideological spectrum.

A peek into legislators' campaign coffers offers a clue. Payday lenders and their cousins in the car title loan business donated more than \$400,000 to political parties and candidates in this year's legislative elections.

While lawmakers have been busy counting their loot, though, more and more people have figured out that predatory lending is a big problem with a relatively simple solution. The town councils get it. The big cities get it. When will the legislators,

<http://content.hamptonroads.com/story.cfm?story=136789&ran=8669> copied 111907

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***Let's take a look at the average Virginia borrower's
experience with payday lending in 2006***

- ***The borrower got 14 loans and was expected to pay each loan back in 15 days.***
- ***He borrowed \$365 and paid \$793.66 in interest.***
- ***The borrower paid \$793.66 in interest to repeatedly borrow the same \$365 for seven months.***

The average Virginia payday loan borrower got 14 payday loans in 2006.

How is that average calculated? The Bureau of Financial Institutions Report indicated that there were 3,593,401 payday loans made in 2006 to 433,537 borrowers. Loans divided by borrowers equals 8.3.

But we know there were actually less than 433,537 borrowers because many are counted twice or more by different payday lenders. Each payday lender counts its own borrowers, so if a borrower goes to two (or more) lenders he is counted more than once for purposes of the BFI report.

The payday loan industry recently commissioned the Georgetown Study. This report found that the average borrower goes to 1.7 lenders. Divide 433,537 by 1.7 and you get 255,022, which is a more accurate report of how many *individual* people borrowed from payday lenders in 2006. Divide 3,593,401 payday loans made by 255,022 different borrowers and you get 14 loans per borrower.

The average Virginia payday loan borrower pays \$793.66 in interest to borrow \$365 for 7 months.

If you borrow \$365 (the average amount according to the report), you pay \$56.69 in interest (averages 378%) over the average loan term of 15 days. At 14 loans per year, the average Virginia borrower pays \$793.66 in interest only to repeatedly borrow the same \$365 for just 210 days.

(See reverse for the statistics from the Bureau of Financial Institutions report)

The Virginia Partnership to Encourage Responsible Lending



Contact Dana Wiggins, Responsible Lending Coordinator at
dana@vplc.org or 804-782-9430 for more information.

Virginia's Credit Unions Offer Consumer-Friendly Alternatives to Payday Loans

Traditionally, Virginia's credit unions have been willing to offer loans for as little as \$500, often less. An August 2004 survey conducted for the Virginia Credit Union League found that while credit unions offered loans for as little as \$500, most banks would not offer loans for less than \$2,500.

What's more, a number of Virginia credit unions have developed loan products designed specifically to serve as an alternative to payday loans.

Here is a summary of some of these programs:

- **Langley Federal Credit Union (Newport News):**

QuickCash program features quick turnaround and an 18 percent APR. That translates into a \$3.48 interest payment for a two-week loan of \$500, vs. upward of a \$75 cost at a payday lender. Also features an education component to teach budgeting/savings basics designed to break dependency on payday lending. Langley also offers a host of companion programs, including one designed to help members boost their credit scores and secure access to more traditional, lower-cost loans.

Contact: Brett Noll - 757.643.8740.

- **Freedom First Credit Union (Roanoke/Salem):**

PAL program (Payday Alternative Loan) is a line of credit with an initial credit limit of \$250 to new borrowers; \$500 for those who complete 12 months of timely repayment. Members will see a substantial savings vs. a payday loan as the product features an interest rate of 18 percent and an annual fee of \$35. Borrowers must repay the entire balance within 30 days before a new advance is permitted.

The line of credit expires 12 months from the date of the first advance.

Contact: Jamie Asciolla - 540.378.8968.

- **Fort Belvoir Federal Credit Union (Northern Virginia):** Advanced Pay Loan program allows members to borrow up to \$500 for three months. Members with direct deposit pay 16 percent interest, those without direct deposit pay 18 percent. Members must repay the loan before seeking another, discouraging a dependency on such loans, and helping break that vicious cycle so often seen in payday loans, where consumers roll one unpaid loan into another, eventually leading to a debilitating level of debt. Contact: Jacque Connor, 703.730.1800, ext. 5125.

- **Shiloh of Alexandria (Northern Virginia):** Grace Loan - \$750 loan for 3-month repayment period at an incredibly reasonable 8 percent APR. Requires direct deposit or payroll deduction, minimum share account balance of \$25, and attendance at credit counseling and budget session.

- **Arlington Virginia Federal Credit Union (Northern Virginia):** Payday Advance Loan offers \$1,000 maximum at 15 percent APR and a \$10 fee. Loan is repaid with next direct deposit or payroll advance. Features a strong education component with free financial counseling and personal finance workshops (English and Spanish language), as well as introduction to products and services designed to build wealth and reduce the need to use payday loan-style services in the future.

Contact: Diane Reed, 703.526.0200, ext. 264.

Credit Unions Focus on Educating Consumers

Virginia's credit unions believe strongly that consumers educated in the basics of personal finance are better positioned to make sound decisions regarding payday loan and fringe lending services.

That's why credit unions in Virginia are so involved in financial literacy and programs that educate consumers on how best to manage their money and use credit wisely.

Educating Young People

- During the 2005-2006 school year, Virginia's credit unions reached 12,811 students through 408 presentations on money management, budgeting and the wise use of credit. Credit unions invested some 2,700 volunteer hours in making these presentations. Since 1999, Virginia's credit unions have reached 30,520 school children with lessons on basic budgeting and money management.

- Young people are especially vulnerable to financial pitfalls because few ever receive information and

training on personal finance basics. Credit unions are working to change this through financial literacy presentations in classrooms and innovative programs like student-run credit unions. More than three dozen elementary, middle and high school credit union branches operate in Virginia. These student-run branches introduce young people to mainstream financial services, while encouraging savings and the development of personal finance skills.

Educating Consumers

- Credit unions also continue to educate their members and communities about important consumer issues, including budgeting, savings and investments, car buying, home buying, and the dangers of identity theft. In 2005, Virginia's credit unions reported spending more than \$73,000 and investing 4,102 hours of staff time to conduct 2,756 hours worth of consumer education seminars.

The National Landscape: Credit Unions Breaking Payday Lending's Hold on Consumers

- More than 1,000 of the 8,700 U.S. credit unions now have products designed as alternatives to payday loans.

- A recent study by the Department of Defense on the impact of payday lending on servicemembers praised a number of credit union programs that help protect and educate military personnel. In fact, of the 24 programs cited by the report, 19 belonged to credit unions, including the following Virginia-based credit unions: 1st Advantage Federal Credit Union, Fort Belvoir Federal Credit Union, Langley Federal Credit Union, Navy Federal Credit Union and Pentagon Federal Credit Union. Programs ranged from signature loans for as little as \$100 to manageable payment plans. Many include a financial education component.

- Congress recently passed the Financial Services Regulatory Relief Act, which will allow credit unions to provide check-cashing services to non-members within their fields-of-membership. This will give credit unions the opportunity to bring the unbanked and underserved communities into a mainstream financial institution, providing access to other services such as savings and lending.

- Credit unions continue to offer access to affordable financial services by adding underserved communities to their fields-of-membership. Certain credit unions can seek permission from their regulator to serve specific communities designated as "underserved." Generally, these communities have a high percentage of lower-income families, which means credit unions are competing directly with payday lenders, pawn shops and the like.

- Credit unions are using their shared branching facilities to offer a new level of convenience to credit union members seeking quick access to service facilities. One of the chief advantages payday lenders have in the marketplace is their convenience, owed in large measure to the sheer number of facilities located in high traffic areas. Thanks to the convenient, central location of many credit union shared branch facilities, credit unions can now compete with payday lenders in offer-

ing the highest quality member service in well-staffed, convenient branch offices. Shared branching facilities are jointly owned by participating credit unions. Members from any participating credit union can walk into a shared branching facility for almost all of the same services available in any branch of their own credit union. Learn more about Virginia's shared branching network at <http://www.cuscva.com>

- The Filene Institute - a credit union research organization - has developed REAL Solutions, a turnkey solution that gives credit unions resources to implement products, services and business models with which to serve low-wealth households currently using the services of payday lenders, check-cashers, rent-to-own stores, pawnshops and other institutions in the alternative financial sector. The Virginia Credit Union League is researching the possibility of offering the REAL Solutions program in Virginia.

- A number of credit unions, overall--including roughly 50 percent to 75 percent of credit unions with assets of \$20 million or more--provide programs that are geared primarily to low- and moderate-income members, programs such as check-cashing services for members, money orders, financial counseling/debt counseling, and risk-based lending. (June 2003 testimony of the Credit Union National Association before the House of Representatives' FINANCIAL INSTITUTIONS SUBCOMMITTEE)

- Other signs of credit unions' efforts to meet the needs of those of modest means include the findings revealing that one-in-three credit unions will open a share certificate account - credit unions' version of a Certificate of Deposit (CD) - for as little as \$100 (or less) and that an identical proportion will grant a member a loan for as little as \$100 (or less). (June 2003 testimony of the Credit Union National Association before the House of Representatives' FINANCIAL INSTITUTIONS SUBCOMMITTEE)

About Member-Owned Credit Unions

- Credit unions are member-owned, not-for-profit financial cooperatives, dedicated to serving the needs of their members. Credit unions made their way to the U.S. about 100 years ago, after starting in Germany in the 1850s.

- There are 213 credit unions headquartered in Virginia, with combined assets of \$50.5 billion. There are approximately 3 million credit union member-owners in the Commonwealth.

- The majority of Virginia's 213 credit unions - 131 - have less than \$20 million in assets; 31 have more than \$100 million in assets.

- When it comes to service, credit unions are the undisputed leader in the financial services industry. For 21 years in a row, credit unions have ranked higher than banks and thrifts in the "customer satisfaction" category of the annual American Banker/Gallup Consumer Survey.



Feel free to contact us if you have questions about credit unions or their services.

- Alda Wilkinson, Senior Vice President, Governmental Affairs & Public Relations, 800.768.3344, ext. 604 or awilkinson@vacul.org

- Karin Sherbin, Director of Governmental Affairs, 800.768.3344, ext. 626 or ksherbin@vacul.org

**RESOLUTION
OF
THE COUNCIL OF THE CITY OF STAUNTON, VIRGINIA TO REQUEST
THAT THE GENERAL ASSEMBLY AND GOVERNOR OF VIRGINIA TAKE
ACTION TO PREVENT EXPLOITATIVE PAYDAY LENDING PRACTICES IN
THE COMMONWEALTH**

WHEREAS, the Council of the City of Staunton, Virginia, represents the citizens of the City of Staunton, Virginia;

WHEREAS, the Council of the City of Staunton, Virginia, senses from the citizens of the City of Staunton significant concern over what are perceived to be some exploitative payday lending practices in the City of Staunton and elsewhere in the Commonwealth, including practices which may exploit dedicated, brave women and men who are called for deployment as part of the armed forces of our Nation both in the United States and various parts of the world in the cause of freedom and security of our Nation;

WHEREAS, the Council of the City of Staunton, Virginia, shares these same significant concerns and wishes to express the collective sentiments of the People of the City of Staunton, Virginia, that the General Assembly and Governor of Virginia, ought to take action to prevent further exploitative payday lending practices; and

WHEREAS, it is vital that the General Assembly and the Governor of Virginia give their earnest attention to these matters at the next regular session of the General Assembly and enact laws that will prevent further exploitative payday lending practices.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Staunton, Virginia, that the General Assembly and the Governor of the Commonwealth of Virginia are requested to take action in connection with the next regular session of the General Assembly of Virginia to enact laws that will prevent further exploitative payday lending practices, including but not limited to:

1. Enactment of an annual interest rate cap of 36% for any consumer loans made in the Commonwealth of Virginia; 2. Prohibition of the use of a personal check or other method by a creditor to gain access to a consumer's bank account or method to gain title to a consumer's motor vehicle as collateral for a payday loan; and 3. Enactment of supplementary and complementary provisions which mirror the provisions of what is commonly referred to as the Talent-Nelson Amendment (Senate Amendment 4331), entitled "Terms of Consumer Credit Extended To Service Member's Dependent" and referenced on page S6352 of the June 22, 2006 Congressional Record-Senate, a copy of which is annexed to and incorporated by reference in this Resolution.

Adopted this 13th day of September 2007

Lacy B. King, Jr., Mayor

Attest: Deborah A. Lane, Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: January 8, 2008		AGENDA ITEM NO.: 7
CONSENT:	REGULAR: X	CLOSED SESSION: (Confidential)
ACTION: X	INFORMATION:	
<u>ITEM TITLE:</u> Ivy Creek Natural Area - Recreational Access Funds		

RECOMMENDATION:

Adopt a resolution to support an application to the Virginia Department of Transportation for Recreational Access Funds to create an access road to serve the Ivy Creek Natural Area.

SUMMARY:

Funds are available through the Recreational Access Program to provide access to publicly developed recreation areas. The fund is administered through the Virginia Department of Transportation (VDOT) with recommendation and concurrence with the Virginia Department of Conservation and Recreation (VDCR).

Work is proceeding to complete the final design and bid documents for Clemmons Lake Place, the entry road into the Ivy Creek Natural Area (Lynchpin Industrial Park).

Application for funds must be made by resolution of the governing body of the jurisdiction in which the access road is to be located.

The estimated cost of the road is \$620,000. Localities may receive up to \$250,000 in unmatched funds with an additional \$100,000 if matched dollar for dollar. Staff intends to request \$350,000 in Recreational Access Funds. Funds appropriated in the FY 2008 Capital Improvement Program will be used to demonstrate the \$100,000 required local match.

PRIOR ACTION(S):

May 23, 2007 City Council adopted the FY 2008 – 2012 Capital Improvement Program
January 2, 2008 Finance Committee

FISCAL IMPACT:

\$270,000 for road construction, FY 2008 Capital Improvement Program, Project # P0034, FY 2008 – 2012 Capital Improvement Program, page 107

CONTACT(S):

Kay Frazier, 455-5868
Andrew Reeder, 455-5876

ATTACHMENT(S):

Resolution

REVIEWED BY: lkp

RESOLUTION FOR RECREATIONAL ACCESS ROAD

WHEREAS, the Ivy Creek Natural Area is owned and is to be developed by the City of Lynchburg as a recreational facility serving the residents of Lynchburg and adjoining localities;

WHEREAS, the facility is in need of adequate access;

WHEREAS, the procedure governing the allocation of recreational access funds as set forth in Section 33.1-223 of the *Code of Virginia* requires joint action by the Director of the Department of Conservation and Recreation and the Commonwealth Transportation Board;

WHEREAS, a statement of policy agreed upon between the said Director and Board approves the use of such funds for the construction of access roads to publicly-owned recreational or historical areas;

WHEREAS, the Lynchburg City Council has duly adopted a zoning ordinance pursuant to Article 7 (Section 15.2-2280 et seq), Chapter 22, Title 15.2 of the *Code of Virginia*;

WHEREAS, it appears to the Lynchburg City Council that all requirements of the law have been met to permit the Director of the Department of Conservation and Recreation to designate the Ivy Creek Natural Area as a public Recreation facility, and further permit the Commonwealth Transportation Board to provide funds for access to this public recreation/education area in accordance with Section 33.1-223 of the *Code of Virginia*;

WHEREAS, the Lynchburg City Council agrees, in keeping with the intent of Section 33.1-63 of the *Code of Virginia*, to use its good offices to reasonably protect the aesthetic or cultural value of this road;

WHEREAS, the City of Lynchburg acknowledges that the State Environmental Review Process (SERP) must be completed prior to any construction activity on this project as a condition of the use of the Recreational Access Fund;

WHEREAS, the City of Lynchburg hereby guarantees that the necessary environmental analysis, mitigation, and fee simple right of way for this improvement, and utility relocations or adjustments, if necessary, will be provided at no cost to the Virginia Department of Transportation; and

WHEREAS, the property on which this facility will be located has no access to a public street or roadway and will require the construction of a new roadway (Clemmons Lake Place) which will connect to Jefferson Ridge Parkway, and thus to Lakeside Drive/Route 221;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Lynchburg hereby requests the Director of the Department of Conservation and Recreation to designate the Ivy Creek Natural Area as a public recreational area and to recommend to the Commonwealth Transportation Board that recreational access funds be allocated for an adequate access road to serve said park area;

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board is hereby requested to allocate the necessary recreational access funds to provide a suitable access road as herein before described;

BE IT FURTHER RESOLVED, that the City Council of Lynchburg hereby agrees that the new roadway including the bikeway so constructed will be added to and become a part of the road system of the City of Lynchburg; and

BE IT FURTHER RESOLVED that the City Manager is authorized to sign the necessary documents for this project.

Adopted:

Certified:

Clerk of Council

005L