

// A regular meeting of the Council of the City of Lynchburg was held on the 28th day of October, 2008, at 5.00 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. Council Member Perrow gave the Invocation, followed by the Pledge of Allegiance. The following Members were present:

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

Absent: 0

// Copies of the minutes of the October 14, 2008 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Gillette, seconded by Council Member Johnson, Council by the following recorded vote approved the minutes as presented:

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

Noes: 0

// In the matter of Library - General, Resolution #R-08-125 amending the FY2009 City/Federal/State Aid Fund budget and appropriating \$7,800, with resources from the Gates Foundation, to purchase three new personal computers and one new Early Learning Station for the Downtown Branch Library, laid over from the October 14, 2008 meeting, was again presented and read, and on motion of Council Member Gillette, seconded by Council Member Johnson, Council by the following recorded vote adopted the Resolution:

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

Noes: 0

// In the matter of Police - General, Resolution #R-08-126 amending the FY2009 City/Federal/State Aid Fund budget and appropriating \$15,919, fully reimbursable, to purchase nineteen (19) X-26 Tasers and cartridges, laid over from the October 14, 2008 meeting, was again presented and read, and on motion of Council Member Gillette, seconded by Council Member Johnson, Council by the following recorded vote adopted the Resolution:

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

Noes: 0

// In the matter of Police – General, City Council Report #4 was considered. On motion of Council Member Gillette, seconded by Council Member Johnson, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-08-129, as presented, amending the FY 2009 City/Federal/State Aid Fund budget and appropriating \$27,500, fully reimbursable, to conduct DUI and occupant restraint enforcement activities:

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

Noes: 0

// In the matter of Police - General, City Council Report #5 was considered. On motion of Council Member Gillette, seconded by Council Member Johnson, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-08-130, as presented, amending the FY 2009 City/Federal State Aid Fund budget and appropriating \$23,100, fully reimbursable, for accident investigation training and to purchase equipment:

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

Noes: 0

// In the matter of Community Planning - Community Development, a public hearing was held to receive public comments regarding the Community Development Block Grant and Home Programs Citizen Participation Plan. Director of Community Planning Charlene Montford 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. Council Members reviewed and offered some proposed changes to the Plan. Following discussion, City Manager Kimball Payne stated that staff will incorporate Council's changes to the Plan and that the Plan will be included on the November 28 agenda for formal adoption.

// In the matter of APCO, a public hearing was held regarding City Council Report #7 regarding authorizing the City Manager to execute a utility easement/right of way agreement with Appalachian Power Company allowing the installation of overhead electric lines on property owned by the City in Campbell County, tax map number 22A-1-38 through 22A-1-41, to serve the Spring Hill Suites Hotel. City Manager Kimball Payne 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 Perrow, Council by the following recorded vote adopted Resolution #R-08-131, as presented, authorizing the City Manager to execute a utility easement/right of way agreement with Appalachian Power Company allowing the installation of overhead electric lines on property owned by the City in Campbell County, tax map number 22A-1-38 through 22A-1-41, to serve the Spring Hill Suites Hotel:

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

Noes: 0

// In the matter of City Council, City Council Report #8 regarding endorsement of the Many Voices – One Community Dialogue on Race & Racism Advisory Board was considered. Assistant to the City Manager Leslie King provided a brief summary regarding the request. On motion of Council Member Garrett, seconded by Council Member Johnson, Council by the following recorded vote endorsed the Many Voices – One Community Dialogue on Race & Racism Advisory Board:

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

Noes: 0

// On motion of Council Member Perrow, 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, i.e., Transit Company Board, Lynchburg Business Development Centre Board, and Central Virginia Community College Board, and for a discussion concerning the location of a prospective business or industry in the City where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community pursuant to Section 2.2-3711(A) (1) and (5), respectively, Code of Virginia, 1950, as amended:

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

Noes: 0

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

// Council Member Helgeson 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 Gillette, and Council by the following recorded vote adopted the motion:

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

// In the matter of Appointments, and on nomination of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote appointed Corrin Hoffman to serve on the Transit Company Board to fill an unexpired term ending October 31, 2010:

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

On nomination of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote appointed Jennifer D. Martin to serve on the Transit Company Board for a term to expire October 31, 2011:

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

On nomination of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote re-appointed Ward A. Dean, Jr., to serve on the Business Development Centre Board for a term to expire September 30, 2011:

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

On nomination of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote appointed Jeffrey W. Laub and Jeffrey Yentz to serve on the Business Development Centre Board for terms to expire September 30, 2011:

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

On nomination of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote appointed Robert L. Bailey to serve on the Central Virginia Community College Board to fill an unexpired term ending June 30, 2010:

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

7

Noes:

0

// The meeting was adjourned at 6:23 P.M.

Clerk of Council

// A regular meeting of the Council of the City of Lynchburg was held on the 28th day of October, 2008, 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, Perrow, Foster 7

Absent: 0

// City Manager Kimball Payne stated that in 2003 the City entered into a public/private partnership with Amazement Square to build a Skatepark complex in the riverfront area. Mr. Payne explained that the City donated the land and \$50,000 to the project and that Amazement Square committed to raising the remaining funds to complete the Skatepark complex. Mr. Payne also noted that in May 2004, City Council also agreed to reimburse Amazement Square for the real property taxes on the Skatepark property as a contribution to the operating costs of the park. Mr. Payne stated that while Amazement Square itself is tax exempt as a museum, the Skatepark does not fit into that classification by itself and is therefore taxable and that the situation will become more complicated as Amazement Square continues to develop the Skatepark property bringing museum activities to the site. Mr. Payne stated that the City has received a letter from Mort Sajadian, Amazement Square Executive Director, suggesting three options:

1. Grant tax exempt status to the Skatepark.
2. Continue to reimburse Amazement Square for real property taxes paid on the Skatepark.
3. Purchase the property from Amazement Square and lease it back for a minimal amount, therefore removing the property from the tax roll.

Mr. Payne stated that although the simplest approach would be for Council to grant tax exempt status to the Skatepark by ordinance, there is a long-standing practice of not granting requests for tax exempt status to local non-profits and that since the General Assembly granted localities the authority to grant such status, the City has consistently discouraged entities from seeking this relief. Mr. Payne noted that Council has reaffirmed this position on several occasions, and that continuing to reimburse Amazement Square for taxes paid is feasible. Mr. Payne informed that with the new assessed value of the property, the annual donation to Amazement Square would be just over \$5,000. Mr. Payne went on to say that while the City's purchase of the property is a possibility, the transaction would be complicated by questions of appropriate price, ongoing management and maintenance responsibilities, and the lease rate.

In response to Council questioning, City Attorney Water Erwin stated that if Council wanted to change its current practice of not granting requests for tax exempt status to local non-profits, then Council would need to adopt and implement written procedures. Council Members discussed the various options, agreeing that the current practice of not granting requests for tax exempt status to local non-profits should be continued. Some Council Members reasoned that the current practice of reimbursing Amazement Square for real property taxes should be continued since the Skatepark was developed via a public/private partnership between the City and Amazement Square, and that both the Museum and the Skatepark are a great economic development asset to the City. Council Member Helgeson stated that changing the current policy of not granting requests for tax exempt status for local non-profits would open up Pandora's

Box, and even questioned if City Council should revisit its current practice of reimbursing Amazement Square for real property taxes since the amount of the reimbursement continues to grow from the original donation of \$2,000. Mr. Helgeson went on to say that although he recognizes the importance of Amazement Square and the Skatepark, there are other non-profit entities in the City that also contribute and that City Council might want to consider an Option 4, which would be to do nothing, or Option 5, to reach something in-between. Council Member Perrow stated that he also could not support changing the current policy of not granting requests for tax exempt status for local non-profits, but is in favor of continuing to reimburse Amazement Square for real property taxes since it is a great economic development attraction that probably brings in over \$5,000 in revenue to the City from tourism alone. Council Member Perrow made a motion, seconded by Council Member Garrett, to continue to reimburse Amazement Square for real property taxes paid on the Skatepark. In response to Vice Mayor Dodson's questioning, City Manager Payne stated that if it is Council's intent that this is a one time reimbursement, then it would need to come to Council every year, but that if it is Council's intent that this will be ongoing, then it could be added to the annual budget as an external service provider. In response to Mayor Foster's question, Council Member Perrow stated that it was the spirit of the motion that it be ongoing, whereby Mr. Payne stated that he would add the item to budget as an external service provider. The vote was called on the motion, and Council by the following recorded vote agreed to continue to reimbursement Amazement Square for real property taxes paid on the Skatepark:

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

Noes: Helgeson 1

// Director of Parks and Recreation Kay Frazier along with Ed Beehler, a member of the Off-Leash Dog Park Steering Committee (OLDPSC), provided an overview regarding a project to construct an Off-Leash Dog Park Facility at Blackwater Creek Athletic Area (BCAA). Ms. Frazier explained that staff is seeking Council's endorsement of the concept of the Dog Park facility and approval to continue to work in partnership with dog park enthusiasts to form a non-profit advocacy group capable of supporting the project through fundraising and volunteer efforts. Mr. Beehler outlined the process the Committee used in determining the feasibility of establishing an off-leash dog park in Lynchburg, and explained that after reviewing and evaluating ten park properties, the OLDPSC determined that Blackwater Creek Athletic Area provided the best opportunity to incorporate a dog park within an existing park property, at minimal costs. Ms. Frazier noted that the site selected would not infringe on the athletic field at this location. Mr. Beehler stated that no City dollars would be used and that the initial project costs were estimated to be approximately \$28,000, with final costs totaling a little over \$110,000 (three-phased approach). Mr. Beehler also noted that annual operating expenditures would be approximately \$4,000 annually and would be split between City and volunteer forces. Mr. Beehler stated that the Committee is recommending a six month pilot project to establish an off-leash dog park, including a detailed management plan which denotes specific responsibilities of the City and the Dog Park Advocacy Group (DPAG) within the boundaries of Blackwater Creek Athletic Area, and that the facility be monitored by volunteer staff (Dog Park Advocacy Group) for a minimum of six months. Mr. Beehler also explained that with little to no costs

to the City, Committee members and the Lynchburg Parks and Recreation Department believe that increased legitimate use at BCAA may go a long way in reducing illegitimate use, while providing a necessary recreational outlet for dog owners and their four-legged friends. Mr. Beehler went on to say that per City Council approval, future actions would include:

- Formation of a volunteer Dog Park Advocacy Group (DPAG)
- Completion of a draft Park Management Plan by the LPRD
- Completion of a draft Dog Park Financial Plan by the DPAG
- LPRD to work with the City Attorney to address any necessary changes to park rules/City Ordinance
- Regular project status reports submitted to the LPRD, Director

Ms. Frazier noted that the Study has been reviewed by the Physical Development Committee. Council Member Johnson, Chair of the Physical Development Committee, stated that the Committee reviewed the proposal and had no problem with forwarding the proposal to full Council. Council Member Johnson made a motion to endorse the concept of an Off-Leash Dog Park Facility to be constructed at Blackwater Creek Athletic Area. The motion did not need a second. Council Member Johnson did note that he received a letter from the Hill City Youth Football Association stating that the field at BCAA should be used for athletic fields for youth sports instead of a Dog Park Facility. In response to questioning, Ms. Frazier stated that the area for the Dog Park Facility is not large enough for an athletic field. Ms. Frazier went on to say that an Athletic Fields Study is almost complete, and that the Study includes the addition of and improvements to existing athletic fields to accommodate youth sports. Council Members discussed the proposal regarding the Dog Park Facility. Council Member Helgeson stated that although no funds are being requested at this time for the Dog Park Facility, he has some concerns that the City might be asked to contribute if funds are not raised to complete the Park. Other Council Members expressed support for the facility, especially since no City funds are being requested to fund the project, and stated that this is another good example of a public/private partnership working for the betterment of the City. Following discussion, a vote was called on the motion, and Council by the following recorded vote endorsed the concept of an Off-Leash Dog Park Facility to be constructed at Blackwater Creek Athletic Area:

Ayes: Dodson, Garrett, Gillette, Johnson, Perrow, Foster

6

Noes: Helgeson

1

// Public Works Director Dave Owen provided an update regarding the City's recycling program. Mr. Owen stated that the City's current recycling program was approved by City Council during the early 1990's, and that in 2004, a comprehensive recycling report was reviewed and discussed by City Council. Mr. Owen explained that the philosophy and guidelines to direct the program were approved along with the elimination of glass recycling and the addition of corrugated (cardboard) recycling. Mr. Owen went on to say that since then, City staff has conducted research and explored various options as to whether the recycling program should be continued as is, eliminated, reduced in size (commodities and/or number of sites), changed to enhance the program or implement a curbside recycling program. Mr. Owen also noted that staff performed a cost analysis of the different material types included in the program and has

prepared a report and also summarized the options and recommendations for Council's consideration. Mr. Owen stated that the average annual cost for the recycling program for the past three years was \$243,775 and that during this period, the City received revenues averaging \$44,540 annually from the sale of the recyclables, and that residential recycling potentially saved the equivalent of \$185,637 annually in landfill space, which can be considered available for future use. Council Members reviewed the options presented by staff, and discussed the major challenges regarding implementation of a curbside recycling program, i.e., significant increase in cost to implement a curbside recycling program and the challenge to sort the recyclable materials at the curb before taking the materials to the local recyclers since the local recyclers are presently not setup as a Materials Recovery Facility. Council Member Helgeson mentioned that there is a private company that is looking at offering a fee based curbside recycling program for customers in the City. Council Member Johnson mentioned that he is a member of the Virginia Municipal League Environmental Policy Committee and that a lot of localities have looked at and determined that a curbside recycling program does not pay for itself. Council Member Gillette mentioned that he would need to look at the impact on the environment due to the increase in the number of trucks to capture a small amount of recyclables. Council thanked staff for the update and asked for yearly updates on the information in the tables contained in the Recycling Program Report.

// City Manager Kimball Payne along with other City staff provided Council with a power point presentation regarding the local economic outlook, Budget and Capital Improvements Program (CIP) planning. Staff provided information regarding the current situation and implications for the current and next budget years, as well as a close look at the current capital program including projects currently in the pipeline and sources of funding. Mr. Payne stated that the next bond issue is scheduled for Summer or Fall 2009, and that the projected borrowing of \$37 million will be for the J & D Court, Sandusky Middle School and other capital projects. Council was also provided with a list of active capital projects thru the FY2009 CIP along with a status report on each project. In response to questioning, City Manager Payne stated that once we go to bid on a project, there is a certain expectation that the City will move forward with the project. Some Council Members commented that it would be prudent to proceed with the capital projects already scheduled.

// During roll call, Council Member Garrett mentioned that the Housing Authority provided Council with a report regarding 304 Walnut Street and that the owner is remaining engaged with the Housing Authority regarding the improvements. In response to Council Member Garrett's inquiry, Council Member Gillette stated that the Physical Development Committee is looking at pedestrian friendly accessibility on Old Forest Road. Council Member Johnson informed that the City has received an award for its sustainable initiative. In response to Council Member Helgeson's inquiry, City Manager Payne stated that a company has been hired to develop concepts to address the pedestrian traffic concerns on Wards Road and that once the concepts have been developed, then costs would need to be determined. Mayor Foster mentioned the City has also received an Economic Development award from the Virginia Municipal League.

// The meeting was adjourned at 4:44 p.m.

// A regular meeting of the Council of the City of Lynchburg was held on the 28th day of October, 2008, at 5.00 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. Council Member Perrow gave the Invocation, followed by the Pledge of Allegiance. The following Members were present:

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

Absent: 0

// Copies of the minutes of the October 14, 2008 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Gillette, seconded by Council Member Johnson, Council by the following recorded vote approved the minutes as presented:

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

Noes: 0

// In the matter of Library - General, Resolution #R-08-125 amending the FY2009 City/Federal/State Aid Fund budget and appropriating \$7,800, with resources from the Gates Foundation, to purchase three new personal computers and one new Early Learning Station for the Downtown Branch Library, laid over from the October 14, 2008 meeting, was again presented and read, and on motion of Council Member Gillette, seconded by Council Member Johnson, Council by the following recorded vote adopted the Resolution:

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

Noes: 0

// In the matter of Police - General, Resolution #R-08-126 amending the FY2009 City/Federal/State Aid Fund budget and appropriating \$15,919, fully reimbursable, to purchase nineteen (19) X-26 Tasers and cartridges, laid over from the October 14, 2008 meeting, was again presented and read, and on motion of Council Member Gillette, seconded by Council Member Johnson, Council by the following recorded vote adopted the Resolution:

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

Noes: 0

// In the matter of Police – General, City Council Report #4 was considered. On motion of Council Member Gillette, seconded by Council Member Johnson, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-08-129, as presented, amending the FY 2009 City/Federal/State Aid Fund budget and appropriating \$27,500, fully reimbursable, to conduct DUI and occupant restraint enforcement activities:

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

Noes: 0

// In the matter of Police - General, City Council Report #5 was considered. On motion of Council Member Gillette, seconded by Council Member Johnson, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-08-130, as presented, amending the FY 2009 City/Federal State Aid Fund budget and appropriating \$23,100, fully reimbursable, for accident investigation training and to purchase equipment:

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

Noes: 0

// In the matter of Community Planning - Community Development, a public hearing was held to receive public comments regarding the Community Development Block Grant and Home Programs Citizen Participation Plan. Director of Community Planning Charlene Montford 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. Council Members reviewed and offered some proposed changes to the Plan. Following discussion, City Manager Kimball Payne stated that staff will incorporate Council's changes to the Plan and that the Plan will be included on the November 28 agenda for formal adoption.

// In the matter of APCO, a public hearing was held regarding City Council Report #7 regarding authorizing the City Manager to execute a utility easement/right of way agreement with Appalachian Power Company allowing the installation of overhead electric lines on property owned by the City in Campbell County, tax map number 22A-1-38 through 22A-1-41, to serve the Spring Hill Suites Hotel. City Manager Kimball Payne 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 Perrow, Council by the following recorded vote adopted Resolution #R-08-131, as presented, authorizing the City Manager to execute a utility easement/right of way agreement with Appalachian Power Company allowing the installation of overhead electric lines on property owned by the City in Campbell County, tax map number 22A-1-38 through 22A-1-41, to serve the Spring Hill Suites Hotel:

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

Noes: 0

// In the matter of City Council, City Council Report #8 regarding endorsement of the Many Voices – One Community Dialogue on Race & Racism Advisory Board was considered. Assistant to the City Manager Leslie King provided a brief summary regarding the request. On motion of Council Member Garrett, seconded by Council Member Johnson, Council by the following recorded vote endorsed the Many Voices – One Community Dialogue on Race & Racism Advisory Board:

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

Noes: 0

// On motion of Council Member Perrow, 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, i.e., Transit Company Board, Lynchburg Business Development Centre Board, and Central Virginia Community College Board, and for a discussion concerning the location of a prospective business or industry in the City where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community pursuant to Section 2.2-3711(A) (1) and (5), respectively, Code of Virginia, 1950, as amended:

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

Noes: 0

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

// Council Member Helgeson 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 Gillette, and Council by the following recorded vote adopted the motion:

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

// In the matter of Appointments, and on nomination of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote appointed Corrin Hoffman to serve on the Transit Company Board to fill an unexpired term ending October 31, 2010:

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

On nomination of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote appointed Jennifer D. Martin to serve on the Transit Company Board for a term to expire October 31, 2011:

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

On nomination of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote re-appointed Ward A. Dean, Jr., to serve on the Business Development Centre Board for a term to expire September 30, 2011:

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

On nomination of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote appointed Jeffrey W. Laub and Jeffrey Yentz to serve on the Business Development Centre Board for terms to expire September 30, 2011:

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

On nomination of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote appointed Robert L. Bailey to serve on the Central Virginia Community College Board to fill an unexpired term ending June 30, 2010:

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

7

Noes:

0

// The meeting was adjourned at 6:23 P.M.

Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 11, 2008**

AGENDA ITEM NO.: 4

CONSENT: **X**

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION:

INFORMATION:

ITEM TITLE: **Request for a Municipal Lien Waiver at 1415 Fifth Street.**

RECOMMENDATION:

Approve the request for a municipal lien waiver at 1415 Fifth Street, Lynchburg, Virginia in the amount of \$5,322.83.

SUMMARY: The Greater Habitat for Humanity is in the process of donating 2 lots to the City of Lynchburg. One lot is at 414 Filmore Street, Tax Map No. 009-25-015, and the second lot is at 1415 Fifth Street, Tax Map No. 009-25-013. When title was transferred to Habitat for 1415 Fifth Street, a lien was overlooked to the City of Lynchburg for previous demolition costs of structure, penalties and interest. The City's Community Development Department would like this area to become green space since it is one of the entrances to the Fifth Street Corridor. The property does not have clear title because of the lien.

PRIOR ACTION(S):

October 28, 2008, Physical Development Committee; Recommended forwarding to full Council for approval

April 24, 2007, Physical Development Committee; Agreed in principle to the donation

March 20, 2006, Technical Review Committee

FISCAL IMPACT: The lien in the amount of \$5,322.83 will be written off.

CONTACT(S): Steve Lawson, Real Estate Manager, 455-3945
Lee Newland, PE, City Engineer, 455-3947
Charlene Montford, Director of Community Development, 455-3902

ATTACHMENT(S): Resolution, Aerial Photo

REVIEWED BY: lkp

RESOLUTION

BE IT RESOLVED That City Council hereby approves the waiver of a demolition lien in the amount of \$5,322.83 for 1415 Fifth Street.

Adopted:

Certified:

Clerk of Council

129L



LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 11, 2008**

AGENDA ITEM NO.: 5

CONSENT: **X**

REGULAR:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: Virginia Family and Children's Trust Fund award of a one-year grant to the Lynchburg Family Violence Fatality Review Team through the Office of the Commonwealth's Attorney

RECOMMENDATION:

Adopt a resolution to amend the FY 2009 City/Federal/State Aid Fund budget and appropriate \$8,025 with resources from the Virginia Family and Children's Trust Fund (FACT) grant to provide outreach materials and educational programming to the Central Virginia community.

SUMMARY:

The Office of the Commonwealth's Attorney has applied to the Family and Children's Trust Fund (FACT) for a one-year grant. The total grant award for the one-year period of July 1, 2008 to June 30, 2009 is \$8,025. The overarching goal of the grant program is to provide community outreach materials and educational programming to an estimated 450-500 individuals and organizations within the Central Virginia area in an effort to improve system response and reduce incidents of family violence.

PRIOR ACTION(S):

October 28, 2008, Finance Committee

BUDGET IMPACT:

None, no local match is required.

CONTACT(S):

Michael R. Doucette, Commonwealth's Attorney, 455-3762

ATTACHMENT(S):

Resolution

REVIEWED BY: lkp

RESOLUTION:

BE IT RESOLVED that the FY 2009 City/Federal/State Aid Fund budget is amended and \$8,025 is appropriated with resources from the Virginia Family and Children's Trust Fund (FACT) grant to provide outreach materials and educational programming to the Central Virginia community.

Introduced:

Adopted:

Certified:

Clerk of Council

134L

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: November 11, 2008		AGENDA ITEM NO.: 6
CONSENT:	REGULAR: X	CLOSED SESSION:
ACTION: X	INFORMATION:	(Confidential)
<u>ITEM TITLE:</u> CONDITIONAL USE PERMIT (CUP) – Grand Oaks at Boonsboro, 2016, 2020 and 2028 Mimosa Drive		

RECOMMENDATION: Approval of the requested conditional use permit petition.

SUMMARY: At its January 8, 2008 meeting, City Council conducted a public hearing concerning the petition of Systematic Concepts, LLC petition for a CUP 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. After discussion, City Council indefinitely postponed action on the petition to allow the developers an opportunity to address environmental concerns and density issues.

The petitioner submitted a revised concept plan on September 17, 2008 that would reduce the proposed density of the project to eight (8) single-family detached homes and eighteen (18) single-family attached homes. The revised plan also provides for a reduced environmental impact by eliminating one (1) road and homes that were proposed on the steepest part of the site. At its September 23, 2008 meeting, City Council requested that staff schedule a new public hearing for the petition on November 11, 2008.

PRIOR ACTION(S):

September 23, 2008: City Council requested that staff schedule a new public hearing for the November 11, 2008 City Council meeting regarding the petition of Systematic Concepts, LLC, for Grand Oaks at Boonsboro, 2016, 2020 and 2028 Mimosa Drive

January 8, 2008: City Council conducted a public hearing and postponed action indefinitely on the petition.

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.

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

Planning Commission deferred the project to a December 12, 2007 work session to allow the applicant time to identify and address concerns that were voiced during the public hearing.

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;

FISCAL IMPACT: N/A

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

ATTACHMENT(S):

Resolution

September 23, 2008 City Council Minutes

Revised Site Plan – Received September 17, 2008

January 8, 2008 City Council Minutes

PC Work Session Memorandum

Petitioner's Response Memo to Planning Commission

Revised Site Plan – Received December 5, 2007

PC Report

PC Minutes

Vicinity Zoning Pattern

Vicinity Proposed Land Use

Watershed Location Map

Original Site Plan – November 2, 2007

Architectural Renderings/Photos

Citizen Petition

Speaker Sign-Up sheet

REVIEWED BY: lkp

RESOLUTION:

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO SYSTEMATIC CONCEPTS, LLC TO ALLOW THE CONSTRUCTION OF A PLANNED UNIT DEVELOPMENT IN AN 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 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 eight (8) single-family detached homes and eighteen (18) single-family attached homes with landscaping and pedestrian features in an 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 September 17, 2008 and received by the Department of Community Development on September 17, 2008.
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

Council Meeting Minutes – September 23, 2008 – Grand Oaks at Boonsboro

// In the matter of Community Planning - Zoning, City Council Report #3 regarding a request to place the Conditional Use Permit (CUP) for a Planned Unit Development, Grand Oaks at Boonsboro, 2016, 2020 and 2028 Mimosa Drive, on a future City Council agenda for action was considered. City Planner Tom Martin provided a brief summary regarding the request, explaining that the petitioner, Systematic Concepts, LLC, has submitted a revised site plan proposing the construction of eight single-family detached homes and eighteen single-family attached homes. Mr. Martin also noted that the revised plan provides for a reduced environmental impact by eliminating one road and homes that were proposed on the steepest part of the site. Several Council Members commented that a new public hearing was needed to give the citizens an opportunity to comment regarding the proposed revisions to the site plan. Council Members discussed possible dates for the public hearing and agreed on November 11. Council Member Johnson informed that he would not be at the November 11 meeting due to his attendance at the National League of Cities meeting, but stated that he would like to be present when the vote is taken on this petition. Vice Mayor Dodson stated that City Council did not have to take action on the petition the same night as the public hearing. On motion of Council Member Perrow, seconded by Council Member Helgeson, Council by the following recorded vote requested staff to schedule a new public hearing for the November 11 Council meeting regarding the petition of Systematic Concepts, LLC, for a Conditional Use Permit (CUP) for a Planned Unit Development, Grand Oaks at Boonsboro, 2016, 2020 and 2028 Mimosa Drive:

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

Council Meeting Minutes – January 8, 2008 – Grand Oaks at Boonsboro

// In the matter of Community Planning - Zoning, a public hearing was held regarding City Council Report #4 outlining the petition of Systematic Concepts, LLC for a Conditional Use Permit for a Planned Unit Development to allow for the construction of a combination of 31 single-family attached and single-family detached homes at 2016, 2020 and 2028 Mimosa Drive. City Planner Tom Martin provided a brief summary regarding the petition, explaining that both the Planning Division and Planning Commission are recommending approval of the Conditional Use Permit. Mr. Tom Guffey, Guffey, Warner & Associates, representing the petitioner, outlined the request and asked for approval. Mr. Guffey explained that the developers have submitted a revised conceptual layout to address comments and concerns presented at the November 28 Planning Commission meeting. Mr. Guffey went on to say that the existing cemetery will be cleaned up and made a focal point of the development. An adjoining property owner spoke in support of the petition stating that she prefers this development with smaller homes over a development by right with larger homes. Fourteen individuals spoke and a petition was presented in opposition to the proposed development citing concerns regarding traffic, pedestrian safety, that the development would not be in character with the existing neighborhood, stormwater runoff onto adjoining properties with potential damage to adjacent streams/valleys, damage to the adjacent watershed, previous commitment to existing property owners regarding maintaining the residential status of properties in the area, overdevelopment of the property, too high density for the amount of land, and the negative impact on adjoining property values. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Members discussed the proposed development and offered the following comments and concerns, i.e., environmental impact needs more study, the R-1 zoning commitment made to citizens should be preserved, development does not fit and will change the character of the neighborhood, too high density, traffic, pedestrian safety, overdevelopment of the property, impact to enrollment on adjacent elementary school, and stormwater runoff onto adjoining properties with potential damage to adjacent streams/valleys, damage to the adjacent watershed. Council Member Helgeson did note that this is not a request to change the zoning of the property, that it is a development allowed by right with a conditional use permit, that it is a professional development, that the existing cemetery will be cleaned up and

maintained, and that all of the structures will be single family homes. Council Member Garrett offered a suggestion that the developers consider donating a portion of the property to resource conservation and revising the site plan to reduce the number of buildings to no more than twenty homes. Other Council Members voiced support for Council Member Garrett's suggestion and when questioned, the developers' representative stated that they would like an opportunity to work on the environmental concerns and density of the site and asked that City Council table this matter. On motion of Council Member Helgeson, seconded by Council Member Garrett, Council by the following recorded agreed to postpone action indefinitely regarding the petition of Systematic Concepts, LLC for a Conditional Use Permit for a Planned Unit Development to allow for the construction of a combination of 31 single-family attached and single-family detached homes at 2016, 2020 and 2028 Mimosa Drive:

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



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

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



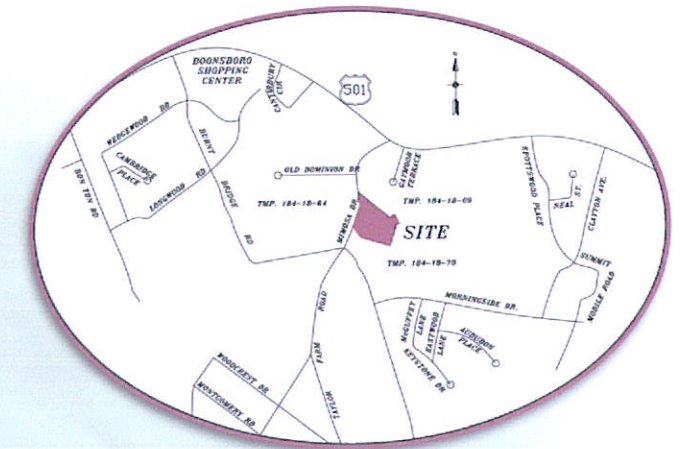
Trent J. Warner, P.E.
Vice President

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.

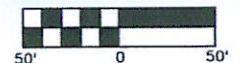
CONTACT INFORMATION

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



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

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.

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

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.

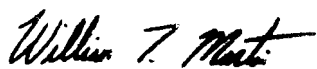
11. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the preliminary site plan on October 23, 2007. Comments related to the proposed use were minor in nature and have or will be addressed by the developer prior to final site plan approval.

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. Kozorow, 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**

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 BEEN APPROVED):

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.

MINUTES FROM THE DECEMBER 12, 2007 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

Grand Oaks at Boonsboro Work Session:

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GRAND OAKS AT BOONSBORO

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

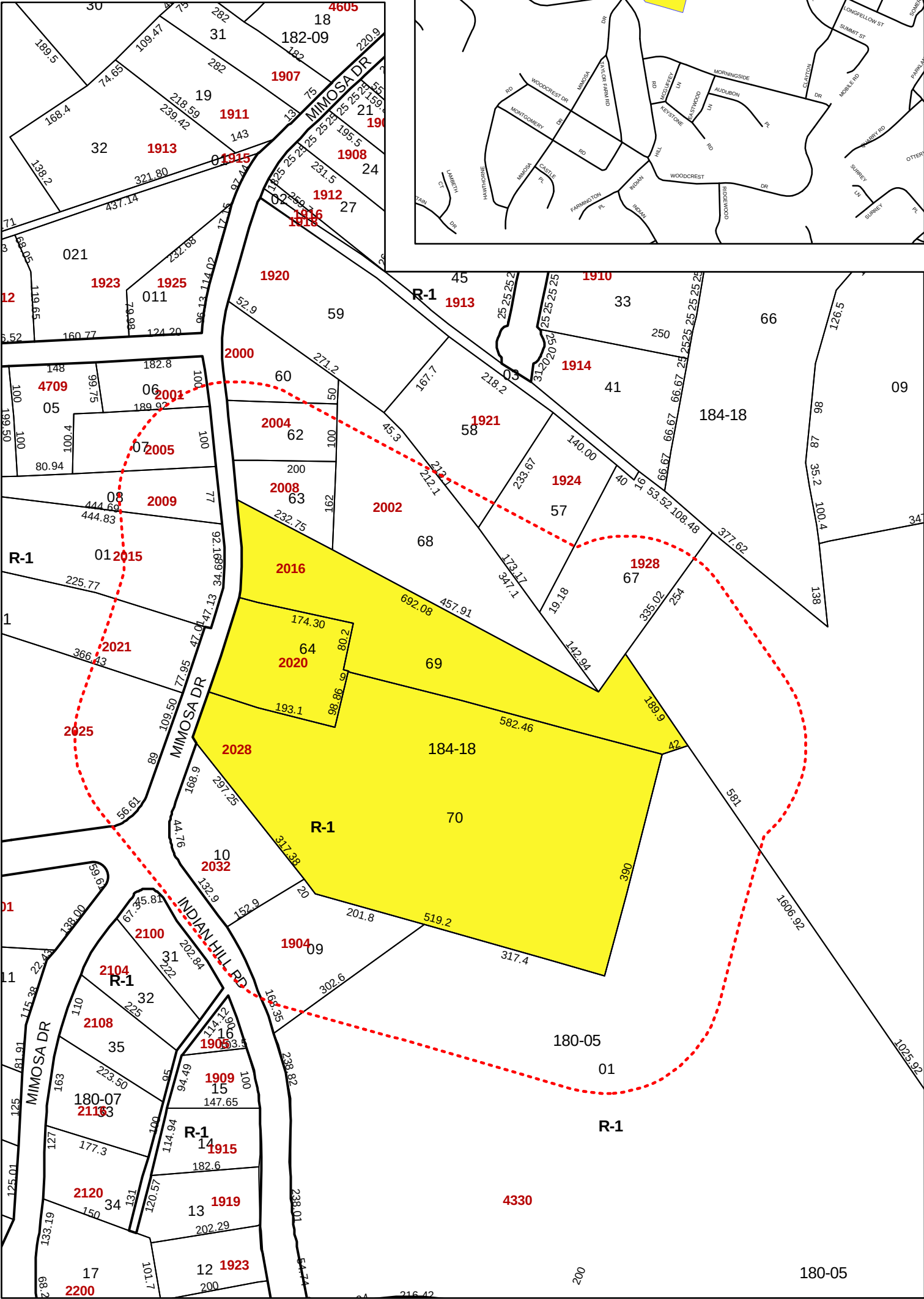
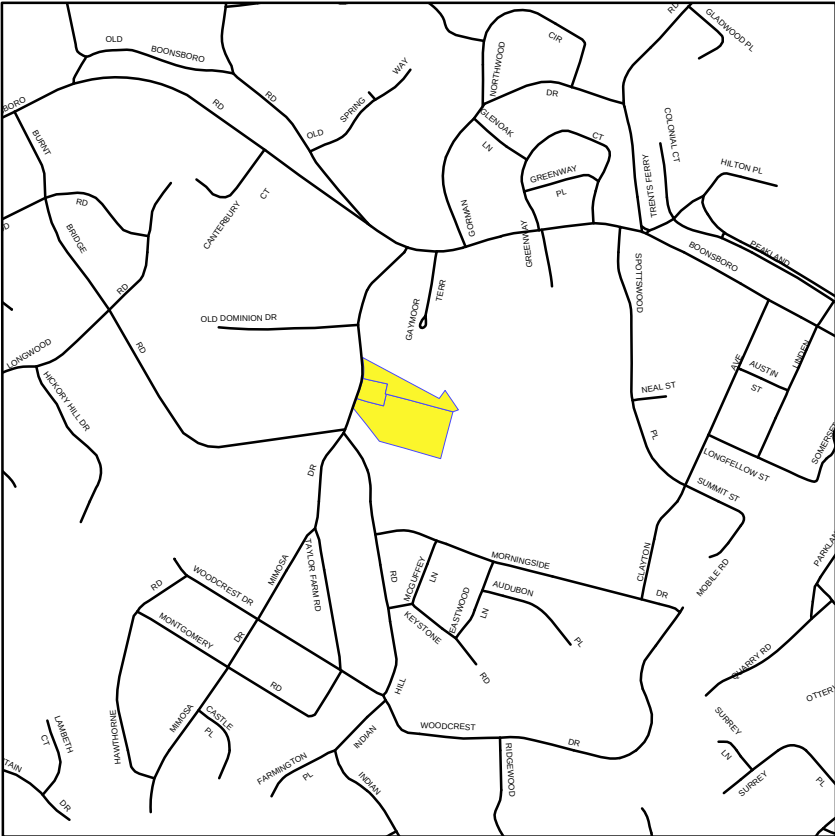
MAP PREPARED BY
THE DEPARTMENT OF COMMUNITY DEVELOPMENT



Subject Property

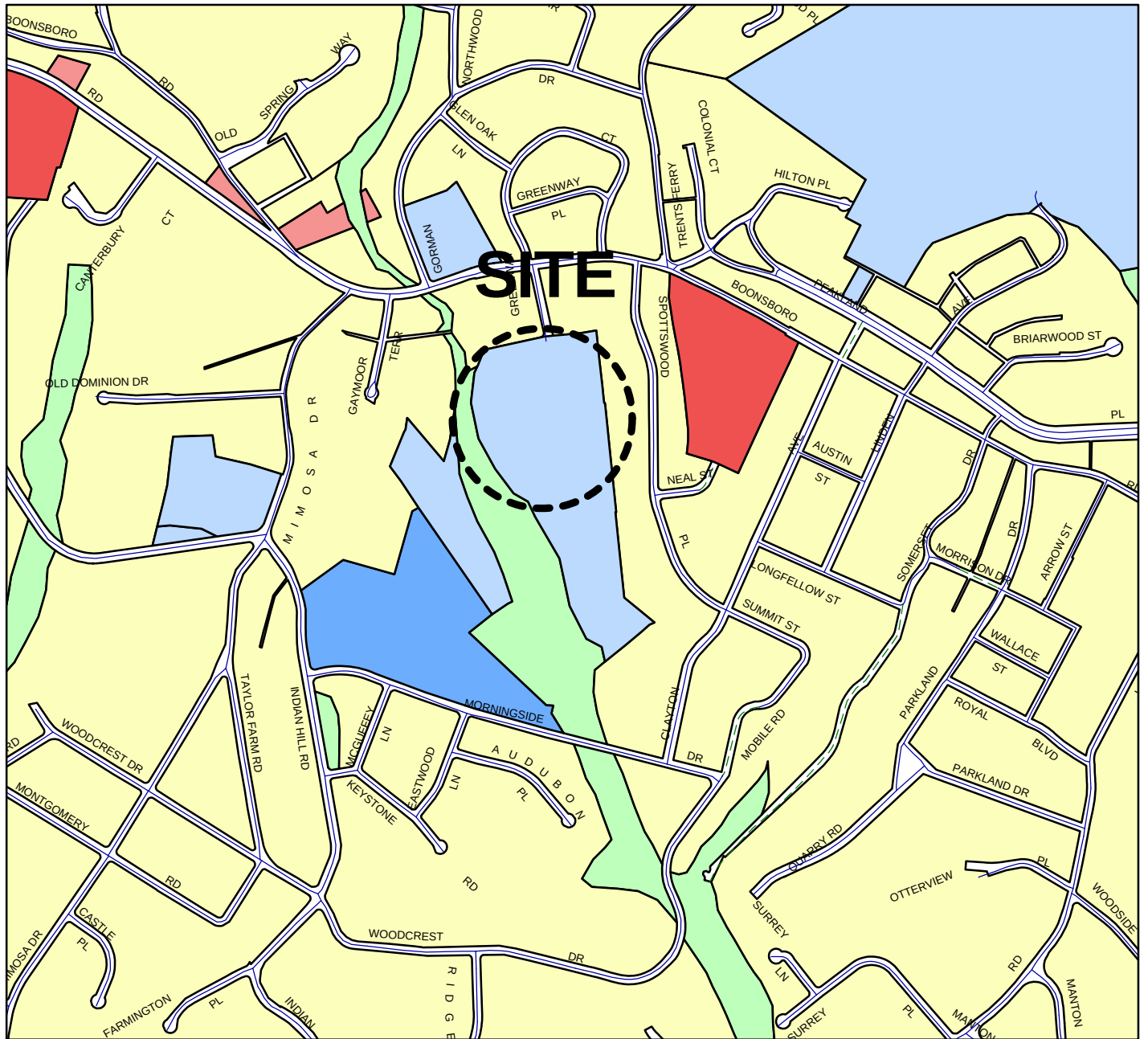


200 ft Radius



GRAND OAKS AT BOONSBORO CUP ADJOINING OWNERS

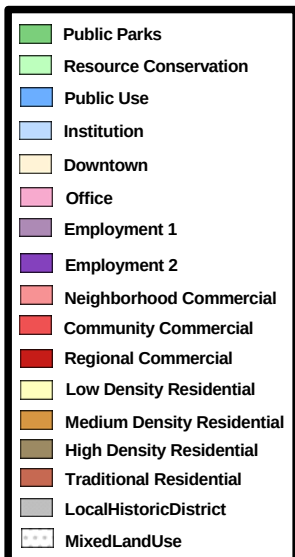
PIN	OWNER	LOCADDR
18005001	CITY OF LYNCHBURG C/O STEVE LAWSON	4330 MORNINGSIDE DR
18005009	SLOMINSKI ELIZABETH D	1904 INDIAN HILL RD
18005010	KAGEY MARGARET A F	2032 MIMOSA DR
18101001	BROOKMAN BARRY E & PATRICIA L	2015 MIMOSA DR
18101006	WATKINS WALDO C & DOROTHY P	2001 MIMOSA DR
18101007	MATHER CHAD 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	



CHURCH OF THE COVENANT

4415 BOONSBORO ROAD

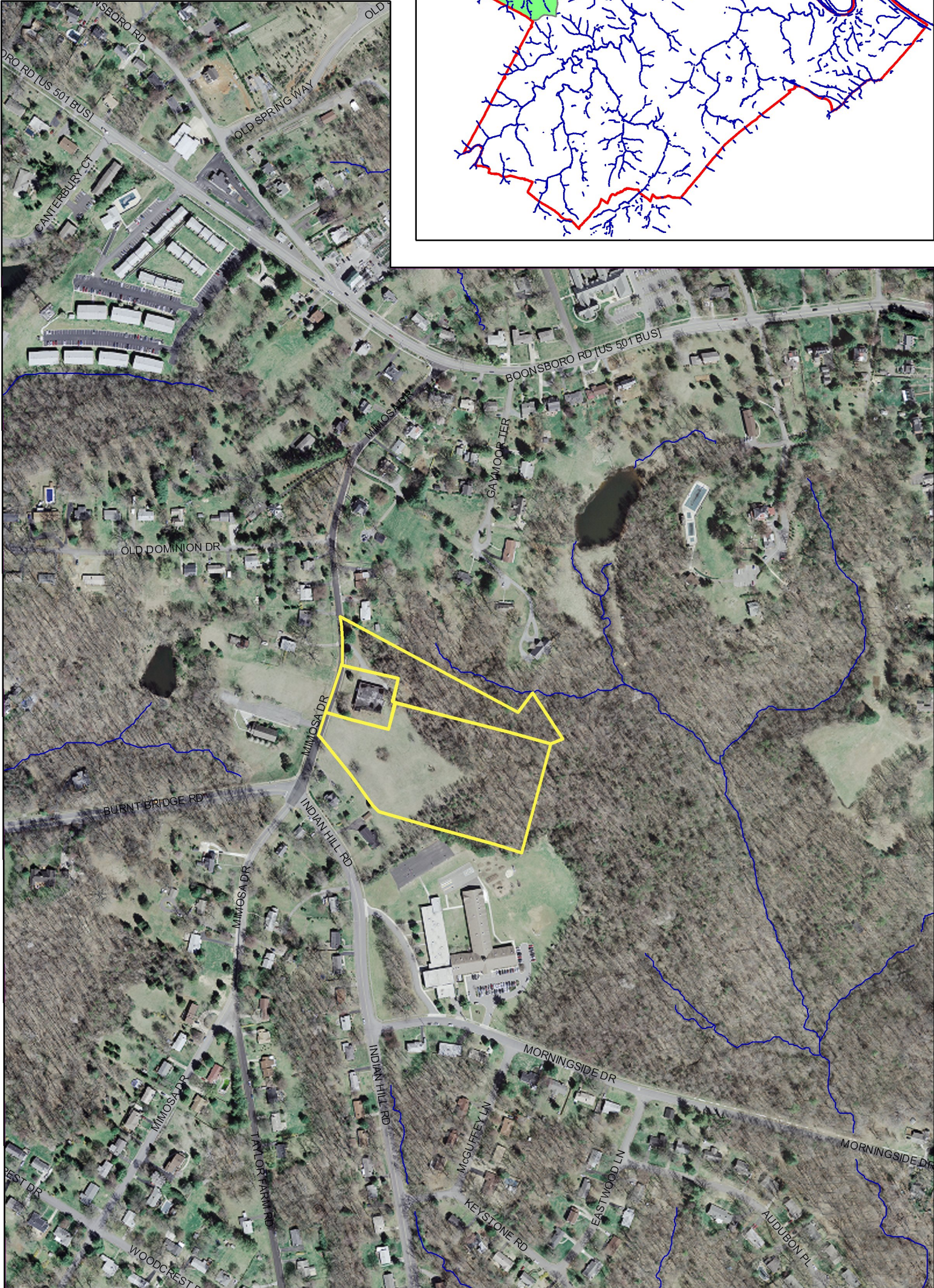
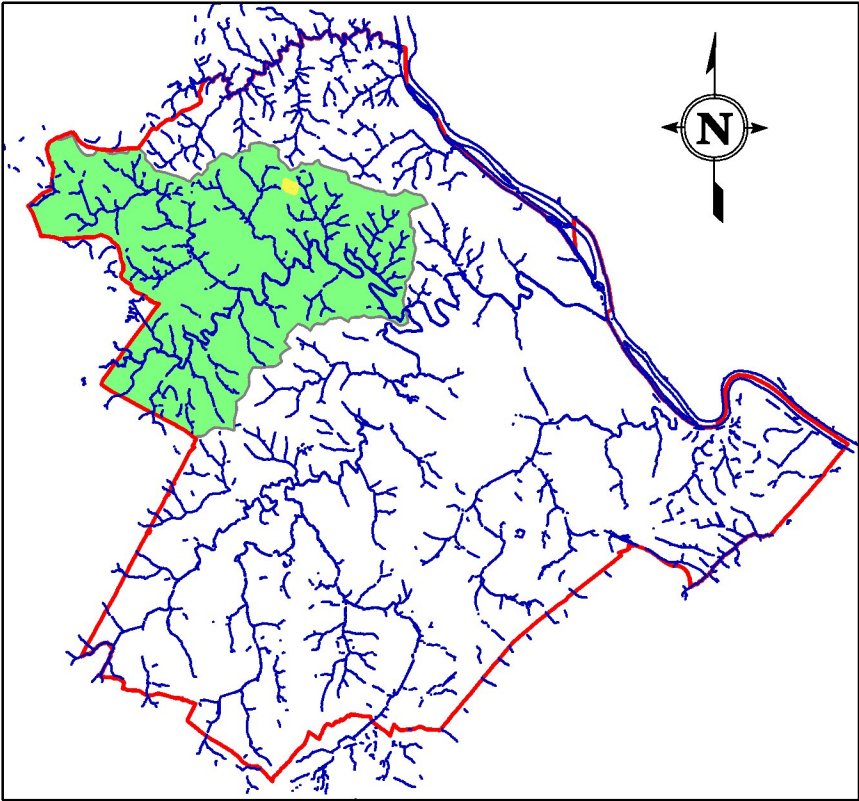
LAND USE PLAN



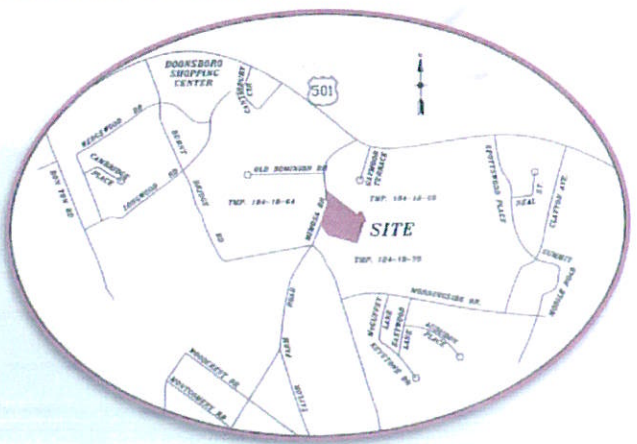
**Grand Oaks at Boonsboro
Watershed Location Map**

Legend

-  Project Site
-  Corporate Limit
-  Ivy Creek Watershed



Grand Oaks at Boonsboro



THE DEVELOPMENT OF GRAND OAKS AT BOONSBORO

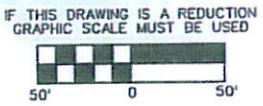
1. THIS PROPERTY CONTAINS 8.9 ACRES AND IS IDENTIFIED AS TMP 184-18-070, 184-18-064, & 184-18-069.
2. THIS PROPERTY IS ZONED R1 AND A CONDITIONAL USE PERMIT IS REQUESTED TO DEVELOP 7 UNITS OF SINGLE FAMILY DETACHED AND 24 UNITS OF SINGLE FAMILY ATTACHED HOMES.
3. SINGLE FAMILY DETACHED HOMES WILL BE 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 - 105 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.



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
OAKDALE CIRCLE
LYNCHBURG, 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

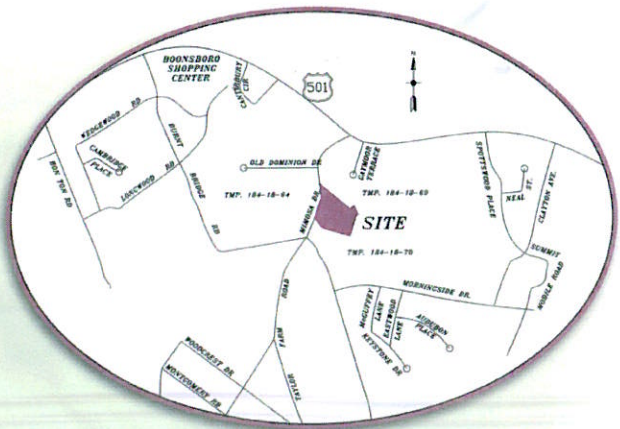
NOTE:
HOMES ARE EITHER ONE OR ONE AND ONE HALF STORY HOMES,
ALL WITH MAIN FLOOR MASTER BEDROOMS.

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 EXIST. 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.



Grand Oaks at Boonsboro



THE DEVELOPMENT OF GRAND OAKS AT BOONSBORO

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- THIS PROPERTY IS ZONED R1 AND A CONDITIONAL USE PERMIT IS REQUESTED TO DEVELOP 8 UNITS OF SINGLE FAMILY DETACHED AND 18 UNITS OF SINGLE FAMILY ATTACHED HOMES.
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- STREET LIGHTING WILL BE PROVIDED AND WILL BE SHIELDED, NON-GLARE IN TYPE.
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- REFUSE COLLECTION WILL BE PROVIDED TO INDIVIDUALS BY A PRIVATE COLLECTION PROVIDER.
- 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.
- DENSITY = 2.92 UNITS PER ACRE
SINGLE FAMILY DETACHED = 1.81 AC OR 20.34 %
SINGLE FAMILY ATTACHED = 2.57 AC OR 28.87%
COMMON AREAS = 4.41 AC OR 49.55%
CONSERVATION AREA = 0.89 AC (PORTION OF COMMON AREA)
CONVEYED AREA = 0.11 AC OR 1.24%
- AMENITIES
 - LANDSCAPED COURTYARD WITH SITTING AREAS
 - GAZEBOS AND ARBORS
 - NETWORK OF SIDEWALKS FOR WALKING
 - NATURE WALKING TRAILS
 - ACCESS TO PUBLIC TRANSPORTATION WITHIN WALKING DISTANCE
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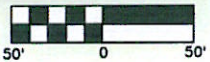
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IF THIS DRAWING IS A REDUCTION
GRAPHIC SCALE MUST BE USED



PARKING SUMMARY

PARKING REQUIRED = 26 x 2.5 = 65 SPACES
PARKING PROVIDED = ONE CAR GARAGES = 22 SPACES
TWO CAR GARAGES = 8 SPACES
DRIVEWAYS = 26 SPACES
ON-STREET = 20 SPACES
ALLEYS = 8 SPACES

RECEIVED
SEP 17 2008
COMMUNITY
DEVELOPMENT

**GUFFEY
WARNER &
ASSOCIATES**
ENGINEERS & SURVEYORS
21 TIMBER OAK CT - SUITE B
OAKDALE CIRCLE
LYNCHBURG, VA 24502
PHONE: 434-239-6000
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LYNCHBURG, VIRGINIA
TITLE:
CONCEPTUAL LAYOUT

DATE:
REV. 9-17-08
10-8-07
DRAWING No:
C-1
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1 OF 1

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 8 SINGLE FAMILY DETACHED AND 18 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 EXIST. 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.

NO.	REVISION	BY	DATE
3	REDUCED THE NUMBER OF DWELLINGS	GLM	9-17-08
2	ADDRESS CITY COUNCIL COMMENTS	GLM	1-25-08
1	ADDRESS TRC COMMENTS	GLM	11-2-07

[illegible]

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 8 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 = 1.74 AC OR 21.75 %
SINGLE FAMILY ATTACHED = 3.08 AC OR 38.50 %
COMMON AREAS = 3.18 AC OR 39.75 %
12. AMENITIES
 1. LANDSCAPED COURTYARD WITH SITTING AREAS
 2. GAZEBO'S 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

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

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



DATE:
REV. 11-2-07
10-8-07

DRAWING No:
C-1

SHEET NUMBER:
1 OF 1

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



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

Jefferson

1/2 PATIO 1 Story

2 CAR FRONT GARAGE



Jefferson





FRONT ELEVATION



REAR ELEVATION

Combined Unit L5-R5



RIGHT ELEVATION



LEFT ELEVATION

Combined Unit L5-R5

Truman

Single Family

1 1/2 Story

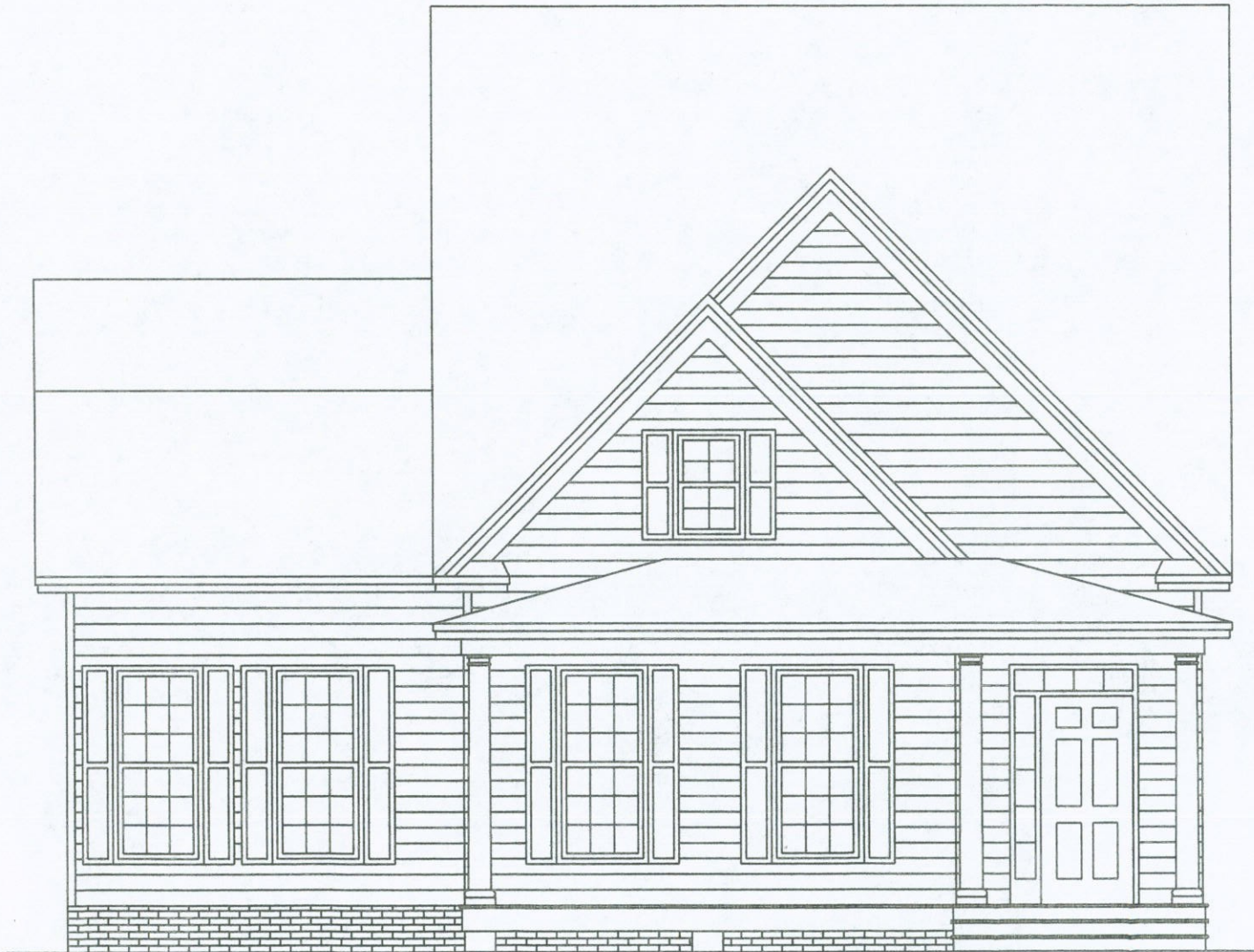
Rear Garage



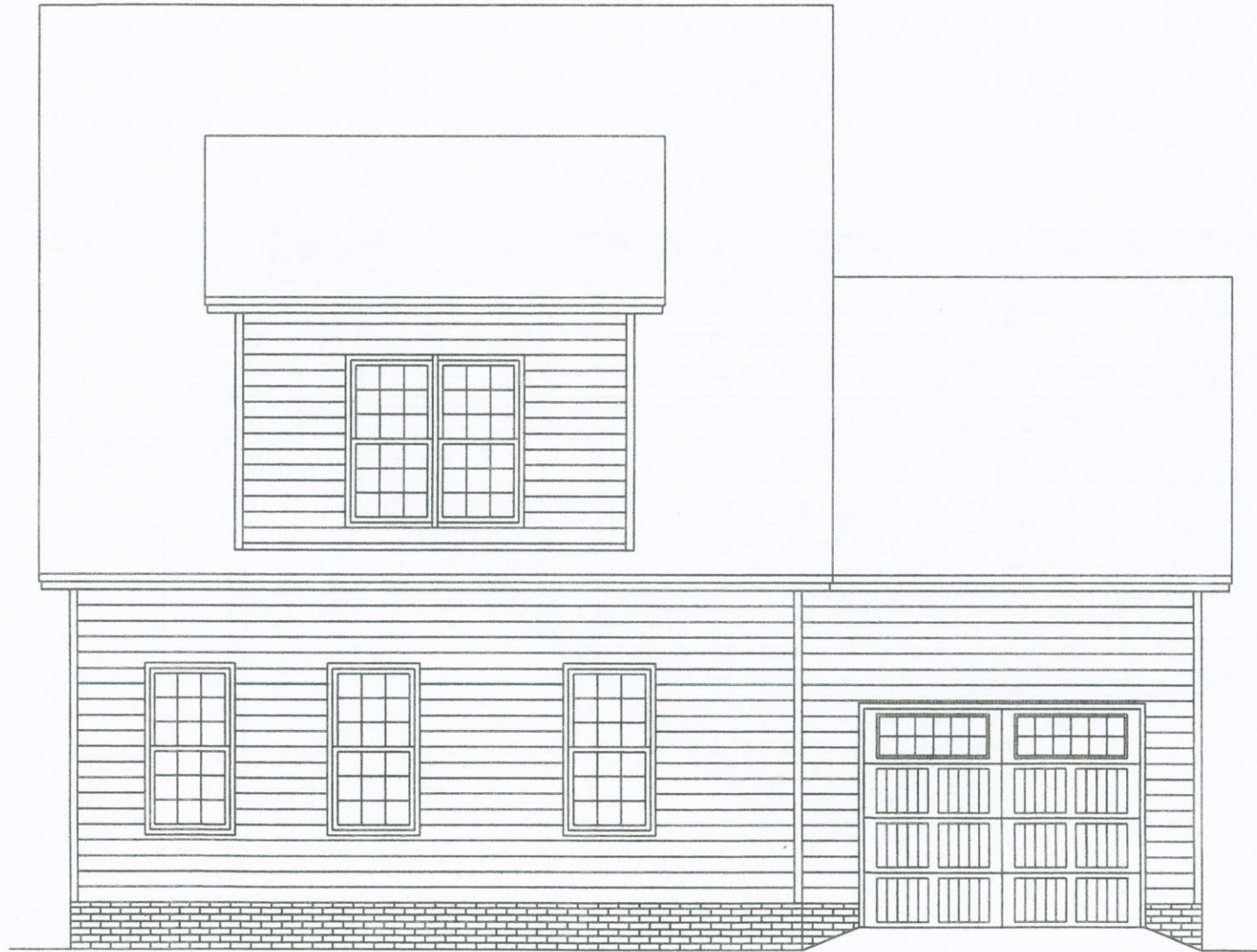
SINGLE FAMILY

REAR GARAGE





FRONT ELEVATION



REAR ELEVATION



RIGHT ELEVATION



LEFT ELEVATION

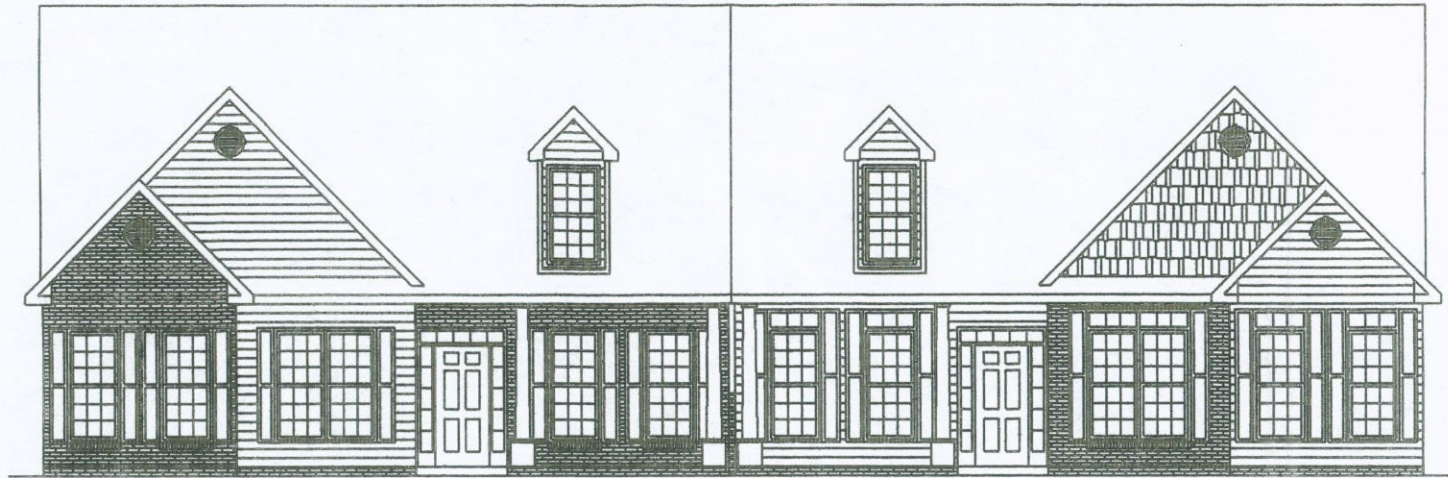
1 CAR REAR
GARAGE

1 story

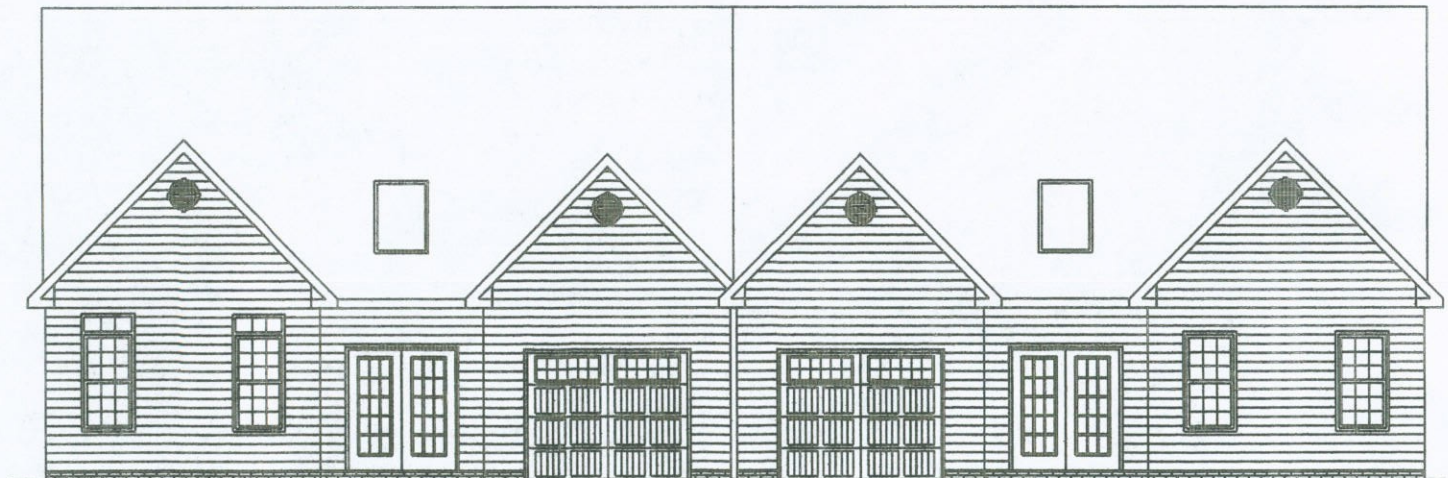
1/2 PATIO

WASHINGTON



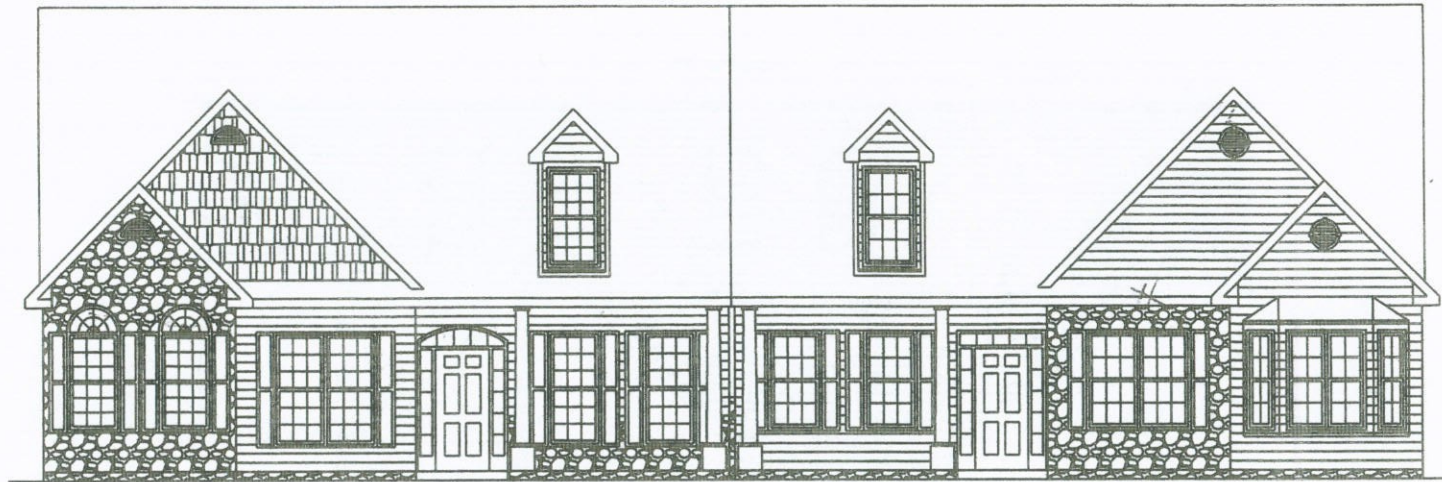


FRONT ELEVATION

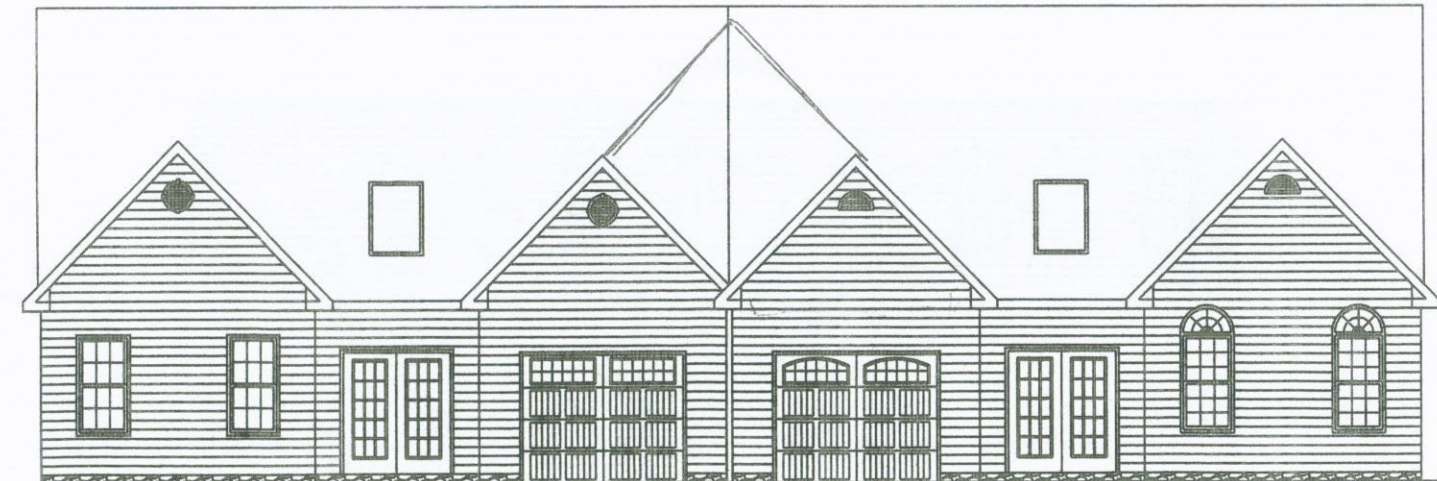


REAR ELEVATION

Combined Unit L1-R1



FRONT ELEVATION



REAR ELEVATION

Combined Unit L2-R2



RIGHT ELEVATION



LEFT ELEVATION

Combined Unit L1-R1



RIGHT ELEVATION



LEFT ELEVATION

Combined Unit L2-R2

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: November 11, 2008		AGENDA ITEM NO.: 7
CONSENT:	REGULAR: X	CLOSED SESSION:
ACTION: X	INFORMATION:	(Confidential)
<u>ITEM TITLE:</u> CONDITIONAL USE PERMIT (CUP) – Church of the Covenant Addition at 4415 Boonsboro Road		

RECOMMENDATION: Approval of the requested conditional use permit petition.

SUMMARY: The Church of the Covenant is petitioning for a CUP to allow the construction of a one thousand two hundred and fifty (1,250) square foot sanctuary addition to the existing church. Planning Commission recommended approval of the petition because:

- The petition agrees with the *Comprehensive Plan* which recommends an Institutional use in this area.
- The petition agrees with the *Zoning Ordinance* in that church uses are permitted in an R-1, Low Density Single-Family Residential District with approval of a CUP by City Council.

PRIOR ACTION(S):

September 24, 2008: Planning Division recommended approval of the CUP.

Planning Commission recommended approval (6-0, 1 Absent - Hannon) of the CUP with the following conditions:

1. The property shall be developed in substantial compliance with the concept plan dated September 10, 2008, and received by the Department of Community Development on September 10, 2008.
2. The building addition will be similar to the architectural renderings received by the Department of Community Development on August 4, 2008.
3. All lighting will be glare-shielded and non-directional to prevent illumination across the property line.

FISCAL IMPACT: N/A

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

ATTACHMENT(S):

Resolution
PC Report
PC Minutes
Vicinity Zoning Pattern
Vicinity Proposed Land Use
Speaker Sign Up Sheet

Watershed Location Map
Concept Plan
Architectural Renderings
Project Narrative

REVIEWED BY: lkp

RESOLUTION

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO CHURCH OF THE COVENANT TO ALLOW THE CONSTRUCTION OF A CHURCH SANCTUARY ADDITION IN AN R-1, LOW-MEDIUM DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT LOCATED AT 4415 BOONSBORO ROAD.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that the petition of The Church of the Covenant for a Conditional Use Permit for use of the property at 4415 Boonsboro Road to allow for the construction of a one thousand two hundred and fifty (1,250) square foot sanctuary addition to the existing church be, and the same is hereby, approved subject to the following conditions:

1. The property shall be developed in substantial compliance with the concept plan dated September 10, 2008, and received by the Department of Community Development on September 10, 2008.
2. The building addition will be similar to the architectural renderings received by the Department of Community Development on August 4, 2008.
3. All lighting will be glare-shielded and non-directional to prevent illumination across the property line.

Adopted:

Certified:

Clerk of Council

127L

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

To: Planning Commission
From: Planning Division
Date: September 24, 2008
Re: **CONDITIONAL USE PERMIT (CUP): Church of the Covenant Addition at 4415 Boonsboro Road**

I. PETITIONER

Church of the Covenant, 4415 Boonsboro Road, Lynchburg, VA 24503

Representative: Hal Craddock, Craddock Cunningham Architectural Partners, 10 Ninth Street, Lynchburg, VA 24504

II. LOCATION

The subject property includes one (1) tract totaling three and ninety-four hundredths (3.94) acres at 4415 Boonsboro Road.

Property Owner: Church of the Covenant, 4415 Boonsboro Road, Lynchburg, VA 24503

III. PURPOSE

The purpose of this petition is to allow the construction of a one thousand two hundred and fifty (1,250) square foot sanctuary addition to the existing Church of the Covenant.

IV. SUMMARY

- Petition agrees with the *Comprehensive Plan* which recommends an Institutional use in this area.
- Petition agrees with the *Zoning Ordinance* in that church uses are permitted in an R-1, Low Density Single-Family Residential District with approval of a conditional use permit (CUP) by City Council.

The Planning Division recommends approval of the conditional use permit petition.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The Lynchburg *Comprehensive Plan* recommends an Institutional use in this area. The plan provides that Institution areas include religious, educational, and other nonprofit entities. **(page 5.3)**
2. **Zoning.** The existing R-1, Low Density Single-Family Residential District was established in 1978 with the adoption of the current *Zoning Ordinance*.
3. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances will be needed for the development of the property as proposed.
4. **Surrounding Area.** There have been several items requiring City Council approval in the immediate area:
 - On January 8, 2008, City Council indefinitely postponed action on Systematic Concepts, LLC's petition for a CUP to allow the construction of a planned unit development including thirty-one (31) single-family attached and detached homes at 2016, 2020 and 2028 Mimosa Drive.
 - 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.
 - On November 13, 1979, City Council approved Peakland Swim Club's CUP petition to allow the construction of tennis court restrooms, beach volleyball court and addition of twenty (20) parking spaces.
5. **Site Description.** The subject property is bound to the north by single-family homes and Peakland United Methodist Church, to the south by vacant forest land, to the east by single-family homes and undeveloped property and to the west by single-family homes.
 6. **Proposed Use of Property.** The purpose of this petition is to allow the construction of a one thousand two hundred and fifty (1,250) square foot addition that would include new sanctuary space, restrooms and storage area. The site is served by City water and sewer services. The site is heavily landscaped, including existing foundation plantings, parking area landscaping and buffers. The proposed building would require no additional plantings to comply with the requirements of the City's *Zoning Ordinance*; however, additional landscaping is proposed to meet the requirements of the City's *Stormwater Management Ordinance*.
 7. **Traffic, Parking and Public Transit.** The City's Transportation Engineer had no comments regarding the proposed church addition.

 Parking requirements for the church are set at one (1) space for every three (3) seats by the *Zoning Ordinance*. The proposed sanctuary addition would provide for a maximum of seventy (70) seats which would require twenty-three (23) spaces. Thirty-one (31) parking spaces are provided within the existing parking lot, thus meeting the requirement of the City Code.

 Public transit is accessible through Greater Lynchburg Transit Company's Route 3D at the intersection of Boonsboro Road and Greenway Court, approximately six hundred and fifty (650) feet from the site.
 8. **Stormwater Management.** The one thousand two hundred and fifty (1,250) square foot building addition to the church will result in a slight increase in stormwater runoff. The City's *Stormwater Management Ordinance* provides that projects with new impervious cover between one thousand (1,000) and five thousand (5,000) square feet may mitigate stormwater run-off with landscaping, as long as run-off from the site is discharged into an adequate receiving channel. All run-off from the addition will be managed by landscaping to mitigate the slight increase of surface water run-off

to the existing channel. The proposed management strategy is acceptable to the City's Environmental Planner.

9. **Emergency Services.** The City's Fire Marshal had no comments of concern regarding the proposed building addition.

The Police Department commented that the parking area should be well lit for security, using dusk to dawn pole lights in a tamper resistant housing. The revised plan notes that any new lighting will be glare shielded and non-directional. The final lighting layout will be determined during site plan review.

10. **Impact.** The proposed addition will have limited impact on the surrounding area. Traffic, stormwater management and public safety concerns have all been addressed to the satisfaction of City staff, and the result is a project that would blend seamlessly into the existing church campus.
11. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the preliminary concept plan on August 19, 2008. Comments related to the proposed use were minor in nature and have been 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 Church of the Covenant's petition for a conditional use permit (CUP) at 4415 Boonsboro Road subject to the following conditions:

- 1. The property shall be developed in substantial compliance with the concept plan dated September 10, 2008, and received by the Department of Community Development on September 10, 2008.**
- 2. The building addition will be similar to the architectural renderings received by the Department of Community Development on August 4, 2008.**
- 3. All lighting will be glare-shielded and non-directional to prevent illumination across the property line.**

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 Kozzerow, Lynchburg Police Department

Battalion Chief Greg Wormser, Fire Marshal
Mr. Gerry Harter, Traffic Engineer
Mr. Robert Drane, Building Commissioner
Mr. Keith Wright, Zoning Official
Mr. Robert Fowler, Zoning Administrator
Mr. Kent White, Senior Planner
Mrs. Erin Hawkins, Environmental Planner
Mr. William Cardwell, Applicant, Church of the Covenant
Mr. Hal Craddock, Representative, Craddock Cunningham Architectural Partners

VII. ATTACHMENTS

- 1. Vicinity Zoning Pattern**
- 2. Vicinity Proposed Land Use**
- 3. Watershed Location Map**
- 4. Concept Plan**
- 5. Architectural Renderings**
- 6. Project Narrative**

**MINUTES FROM THE SEPTEMBER 24, 2008 PLANNING COMMISSION MEETING
(MINUTES HAVE BEEN APPROVED):**

a. Petition of the Church of the Covenant for a conditional use permit to allow the construction of a 1400 square foot addition to an existing church in an R-1, Low Density, Single-Family Residential District at 4415 Boonsboro Road.

Mr. Martin addressed the commissioners with the following comments. This petition is for the construction of a 1,250 building addition to be used for a church sanctuary with no more than 70 seats. There is adequate parking on the site for that number of seats. The *Future Land Use Map* recommends an institutional use for the subject property. The addition is well buffered and contained almost within the center of the property owned by the Church of the Covenant. Since the addition is so small, the stormwater management runoff will be handled through the use of landscaping. The planning division recommends approval of the conditional use permit with the conditions outlined in the report.

Mr. David Edwards came forward as the representative for the petition. He commented that Mr. Hal Craddock was not available to answer technical questions; Mr. Edwards will be able to speak to the need for the addition. He explained that the Church of the Covenant is a very small church and has been meeting in the living room of a two-story home on Boonsboro Road since 1954. For the past several years, they have been cramped in that facility. A friend of the church from Connecticut has offered to do this project as a gift. They would probably never be able to do this for themselves, but this is an opportunity to have a space large enough for the current worshiping community to be together.

Chair Hamilton closed the public hearing portion of the petition, as there were no others present to speak either in favor or against the petition.

Commissioner Swienton asked Mr. Martin about a particular tree he saw on his site visit. He indicated that it should be on the site plan on the far left side where it has predevelopment conditions in sub area A. If you go up about halfway between that and the existing church house, there is a rather large mature hardwood that is there, which might have been inadvertently omitted from the site plan. If that gets cut down as part of the construction, is there anything additional they need to do landscaping wise? Mr. Martin said that it was his understanding that there was no landscaping that would need to be removed. There will be none required because of the amount of landscaping that exists on the site. However, through the *Stormwater Management Ordinance*, they will be required to plant additional landscaping for water quality and management purposes.

Commissioner Swienton asked Mr. Edwards if he knew the tree to which he was referring. Mr. Edwards was not sure which one he was talking about, but he was not aware of any tree that is going to be anywhere near where the addition is going to be. Commissioner Swienton had a photograph of the tree he was referring to on his digital camera, and he showed the photograph to Mr. Edwards. After seeing the photograph, Mr. Edwards indicated that the tree would not be affected. Commissioner Swienton was happy with that answer.

Commissioner Barnes asked Mr. Martin if he knew where and what the additional landscaping would be that is required for stormwater management. Mr. Martin commented that would be determined during final site plan approval and that the type and location would be up to the Environmental Planner. Chair Hamilton asked Mr. Edwards if they were amenable to whatever suggestions the Environmental Planner might have and he indicated that they would.

Commissioner Worthington asked Mr. Edwards if they had contacted the adjoining neighbors. Mr. Edwards answered that they had sent out a letter and invited anyone with questions or concerns to call. The church did not receive any calls in response to that letter.

Commissioner Barnes asked if the construction entrance shown on the site plan would remain after construction is finished, and Mr. Edwards answered that it would not.

Commissioner Sale made the following motion, which was seconded by Commissioner Swienton, and it passed by the following vote:

“That the Planning Commission recommends to City Council approval of Church of the Covenant’s petition for a conditional use permit (CUP) at 4415 Boonsboro Road subject to the following conditions:

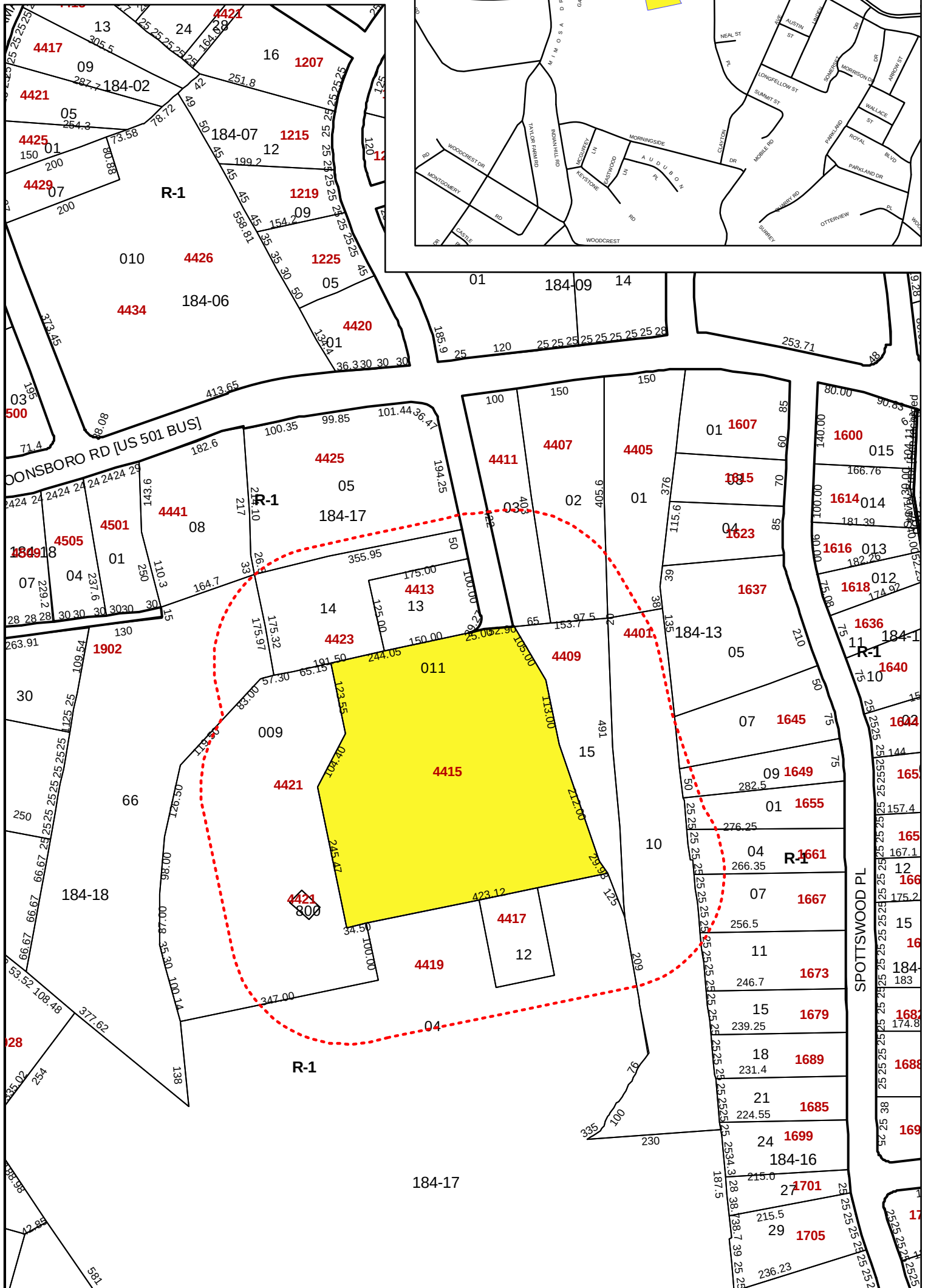
- 4. The property shall be developed in substantial compliance with the concept plan dated September 10, 2008, and received by the Department of Community Development on September 10, 2008.**
- 5. The building addition will be similar to the architectural renderings received by the Department of Community Development on August 4, 2008.**
- 6. All lighting will be glare-shielded and non-directional to prevent illumination across the property line.”**

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

4415 Boonsboro Road
Map # 184-17-011
Conditional Use Permit Request
Petitioner: Church Of The Covenant

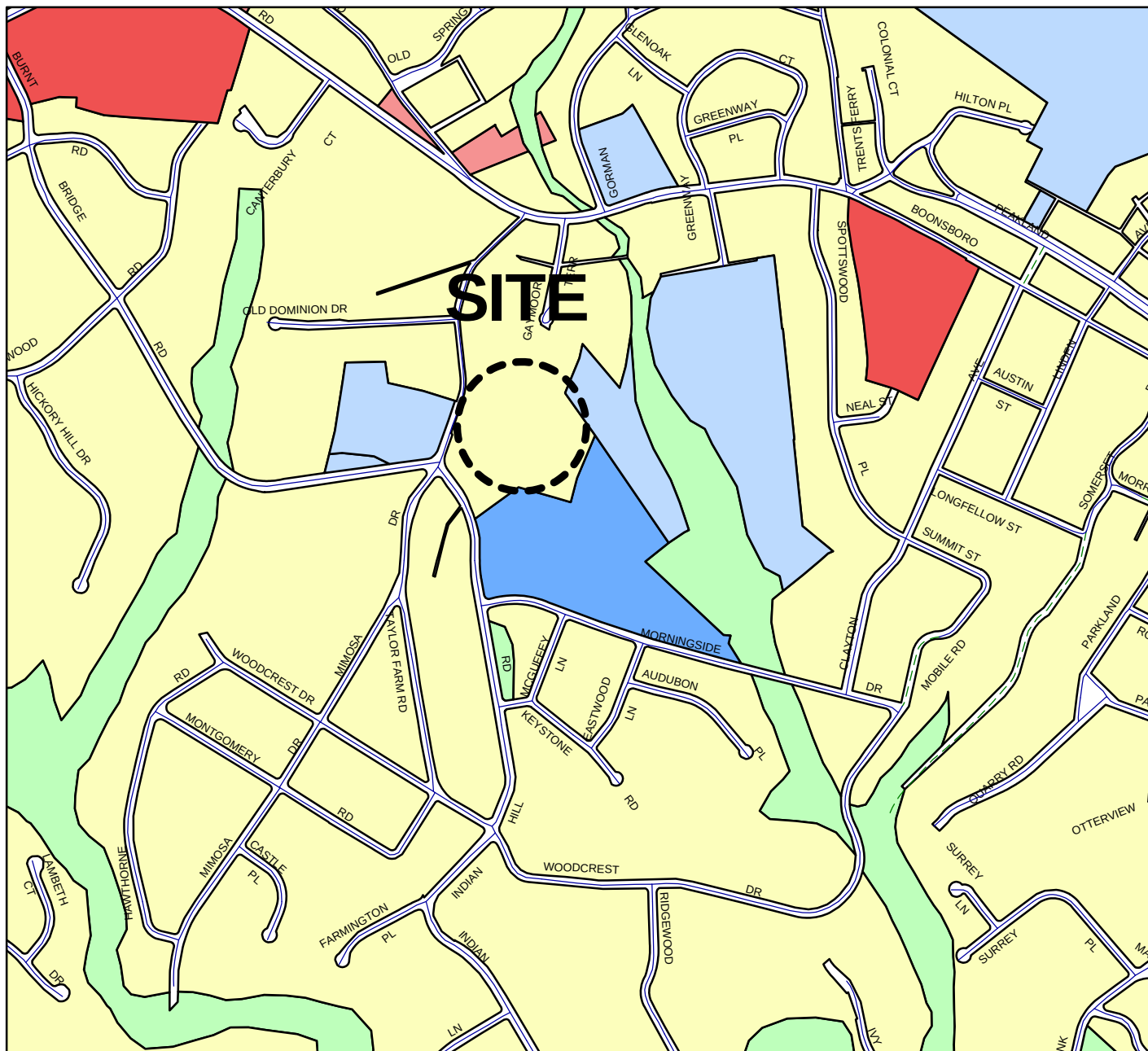


200 ft Radius

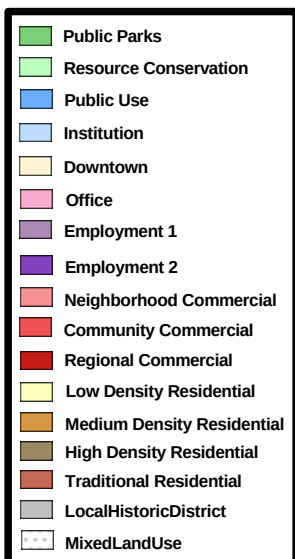


CHURCH OF THE COVENANT CUP ADJOINING OWNERS

PIN	OWNER	LOCADDR
18413007	MADDOX SAMUEL C III & KATHARINE P	1645 SPOTTSWOOD PL
18413009	MARTIN TERRY DONALD	1649 SPOTTSWOOD PL
18416001	WILLIAMS MARGARET E	1655 SPOTTSWOOD PL
18416004	HUGHES SPENCER M & MARY L N	1661 SPOTTSWOOD PL
18416007	NIVENS SCOTT A & SHANNON M W	1667 SPOTTSWOOD PL
18416011	LOWE CHARLES J JR & JANE C	1673 SPOTTSWOOD PL
18417001	COSBY P G III LIFE ESTATE LYNCHBURG COVENANT FELLOWSHIP INC	4405 BOONSBORO RD
18417002	DAWSON ROBERT E	4407 BOONSBORO RD
18417003	BUHLER DEIDRE H & MICHAEL O	4411 BOONSBORO RD
18417004	LYNCHBURG COVENANT FELLOWSHIP	4419 BOONSBORO RD
18417005	CRANK WILLIAM H & PATRICIA C	4425 BOONSBORO RD
18417009	LYNCHBURG COVENANT FELLOWSHIP	4421 BOONSBORO RD
18417010	LYNCHBURG COVENANT FELLOWSHIP	4401 BOONSBORO RD
18417011	CHURCH OF THE COVENANT TRUSTEE	4415 BOONSBORO RD
18417012	LYNCHBURG COVENANT FELLOWSHIP	4417 BOONSBORO RD
18417013	LYNCHBURG COVENANT FELLOWSHIP	4413 BOONSBORO RD
18417014	LYNCHBURG COVENANT FELLOWSHIP	4423 BOONSBORO RD
18417015	LYNCHBURG COVENANT FELLOWSHIP	4409 BOONSBORO RD
18417801	LYNCHBURG COVENANT FELLOWSHIP	4415 BOONSBORO RD
18418066	LYNCHBURG COVENANT FELLOWSHIP	1902 GAYMOOR TER
Owner	CHURCH OF THE COVENANT TRUSTEE	
Petitioner	CHURCH OF THE COVENANT TRUSTEE	
Representative	Hal Craddock/CCAP	



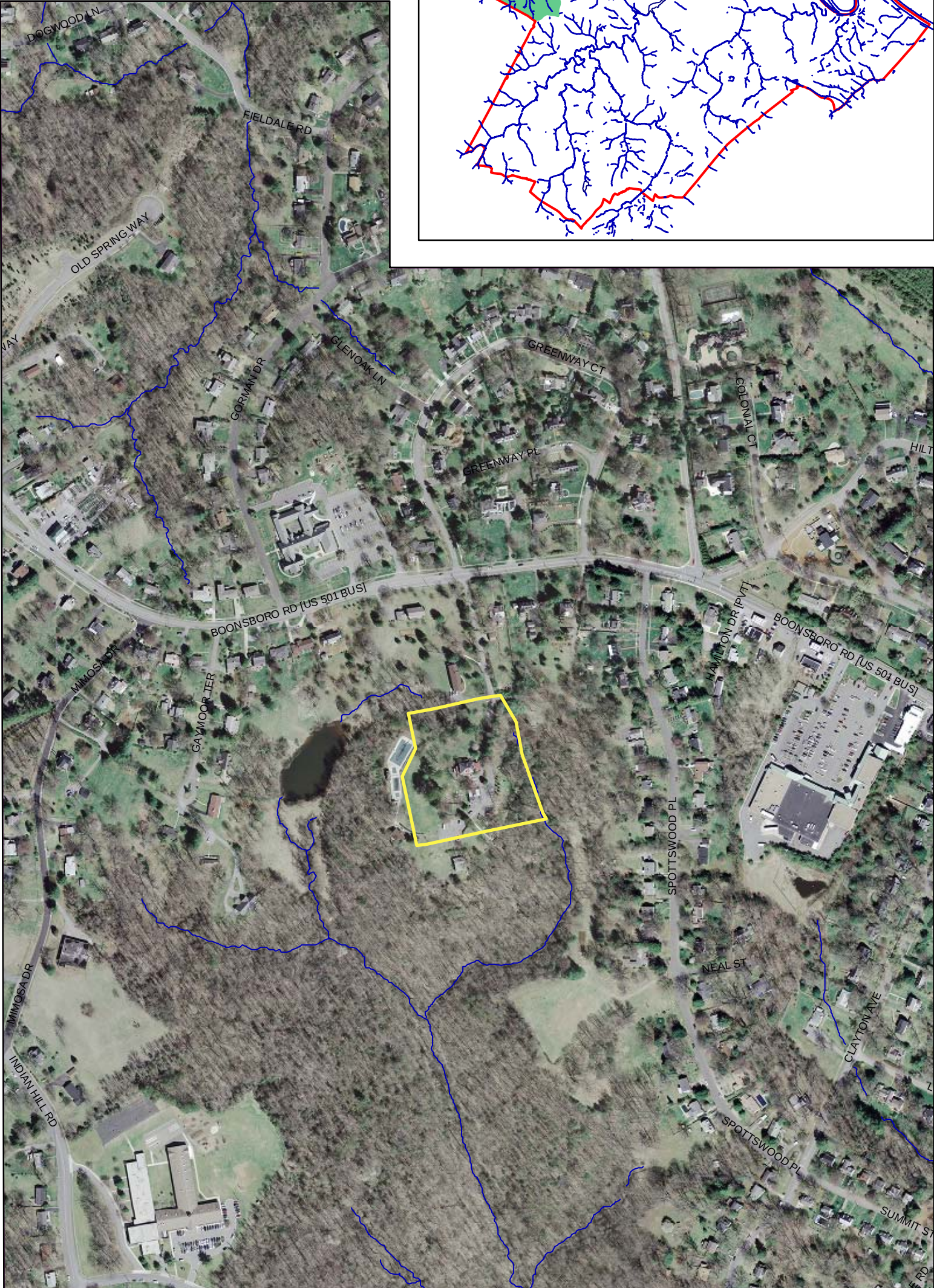
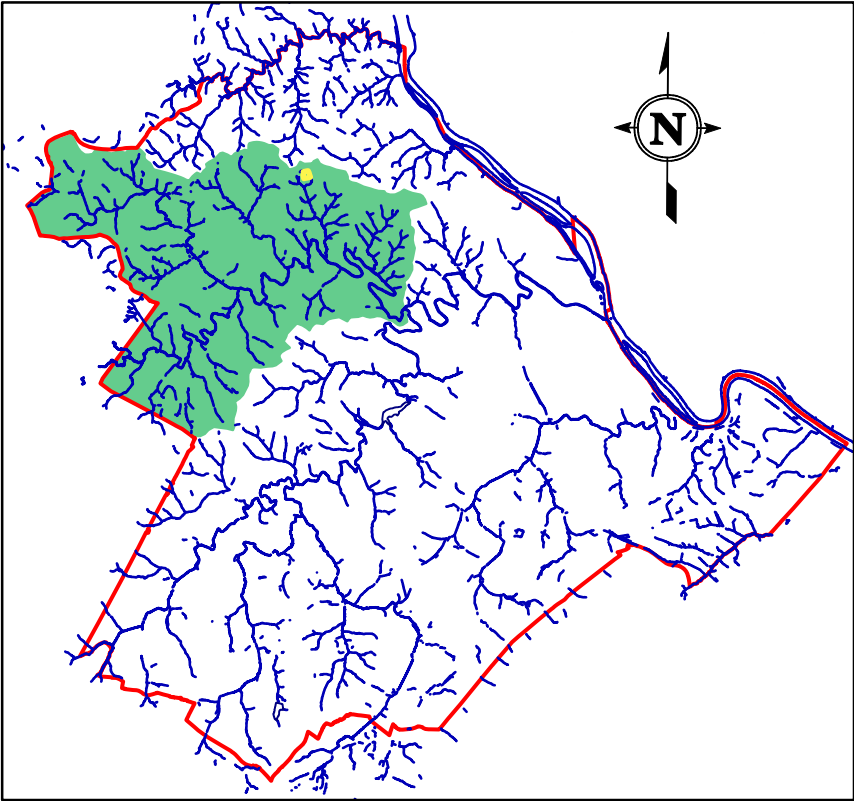
GRAND OAKS AT BOONSBORO 2016, 2020, 2028 MIMOSA DRIVE LAND USE PLAN

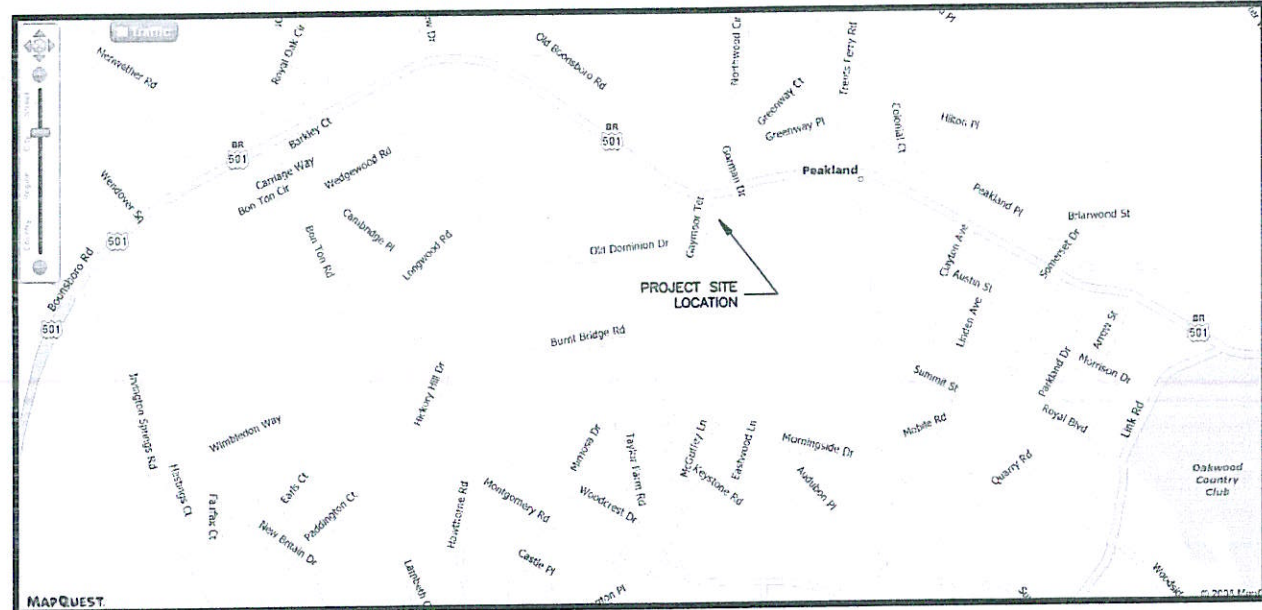


**Church of the Covenant
Watershed Location Map**

Legend

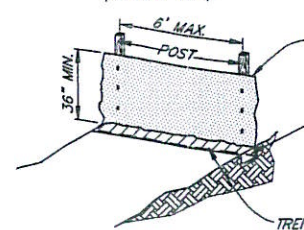
-  Project Site
-  Corporate Limit
-  Ivy Creek Watershed



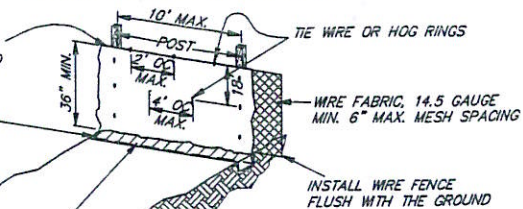


VICINITY MAP
SCALE: NONE

EXTRA STRENGTH FILTER CLOTH FABRIC
(WITHOUT WIRE)



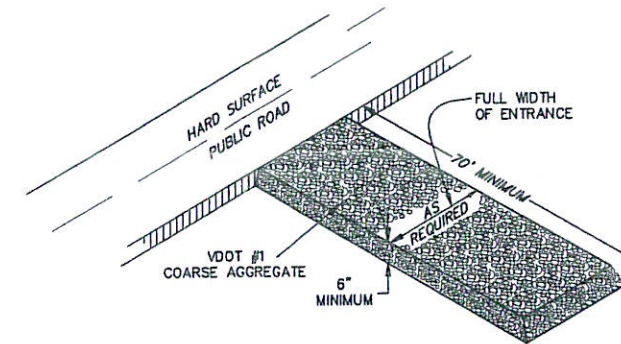
STANDARD STRENGTH FILTER CLOTH FABRIC



SILT FENCE - 3.05

Construction Specifications

- Silt fence and filter fabric must be entrenched.
- Post for silt fences shall be either 2.5 x 2 inch diameter wood or 1.25 pounds per linear foot steel with a minimum length of 5 feet. Steel post shall have projections for fastening wire to them.
- Wire fence reinforcement for silt fences using standard strength filter cloth shall be a minimum of 42 inches in height, a minimum of 14 gauge and shall have a maximum mesh spacing of 6 inches.
- Post shall be spaced a maximum of 10 feet apart at the barrier location and driven securely into the ground (min. of 12 inches) when extra strength fabric is used. Without the wire support fence, post shall not exceed 6 feet.
- When extra strength filter fabric and closer post spacing are used, the wire mesh support fence may be eliminated. In such a case, the filter fabric is stapled or wired directly to the post.
- Sediment must be removed when deposits reach approximately one-half the height of the barrier.
- Any sediment deposits remaining in place after the silt fence or filter barrier is no longer required shall be dressed to conform with the existing grade, prepared and seeded.
- Under no circumstances should silt fence be constructed in live streams.
- Silt fence shall be removed upon completion of the project.



CONSTRUCTION ENTRANCE - 3.02

Construction Specifications

The area of the entrance should be cleared of all vegetation, roots, and other objectionable material. The gravel shall be placed to the specified dimensions.

LEGEND

- TREE LINE
- EXISTING 10' CONTOUR
- EXISTING 2' CONTOUR
- DRAINAGE BOUNDARY
- RUNOFF DIRECTION

FLOW SUMMARY TABLE

	PRE-DEVELOPMENT		POST-DEVELOPMENT	
	A	B	A	B
DRAINAGE AREA	10 YR.	10 YR.	10 YR.	10 YR.
DESIGN STORM	7.05	7.05	7.05	7.05
RAINFALL INTENSITY, i (in/hr)	2.00	1.94	2.00	1.94
TOTAL DRAINAGE AREA (AC.)	5	5	5	5
TIME OF CONC. Tc (min)	0.80	1.08	0.80	1.08
ACRES WOODED AREA (C* = 0.20)	0.16	0.42	0.19	0.42
ACRES IMPERVIOUS (C* = 0.90)	1.24	0.44	1.21	0.44
ACRES LAWN (C* = 0.22)	0.27	0.36	0.28	0.36
WEIGHTED "C" FACTOR	3.78	4.87	3.93	4.87
PEAK FLOW (cfs)				

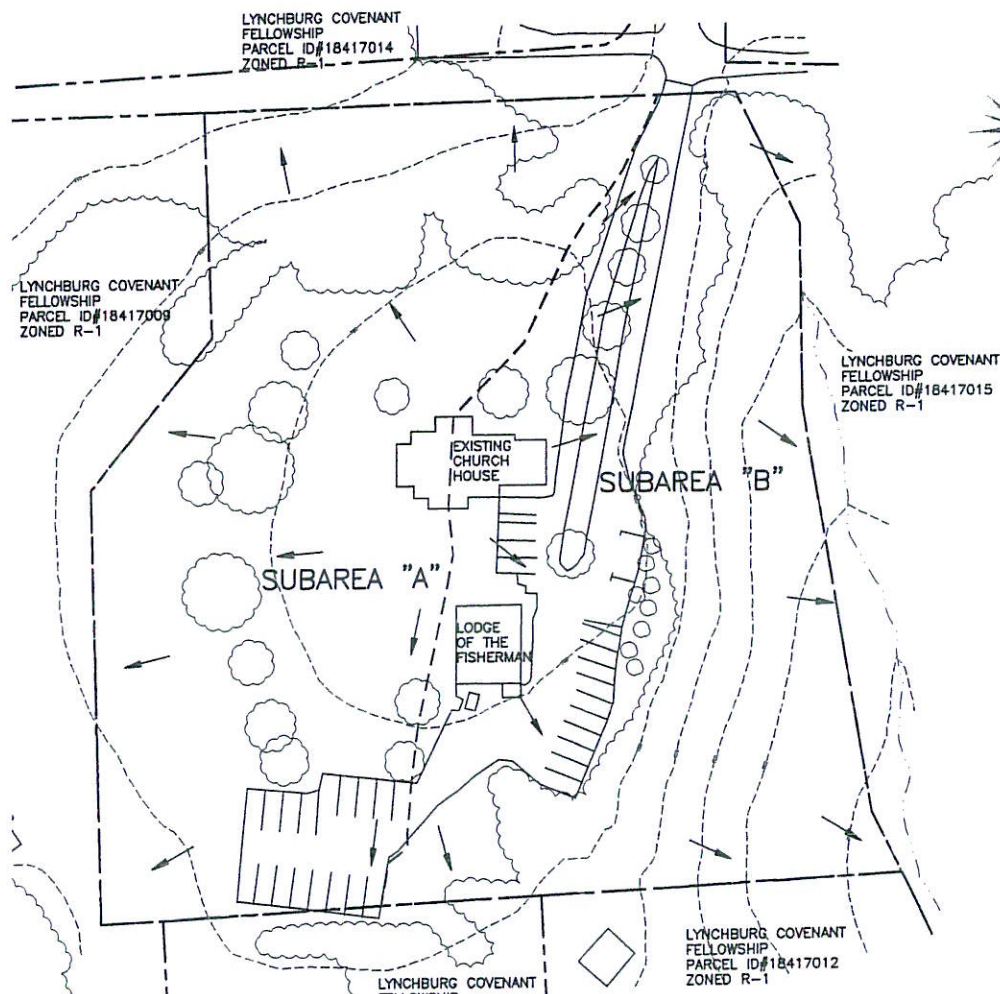
DRAINAGE CALCULATIONS

SCALE: NONE

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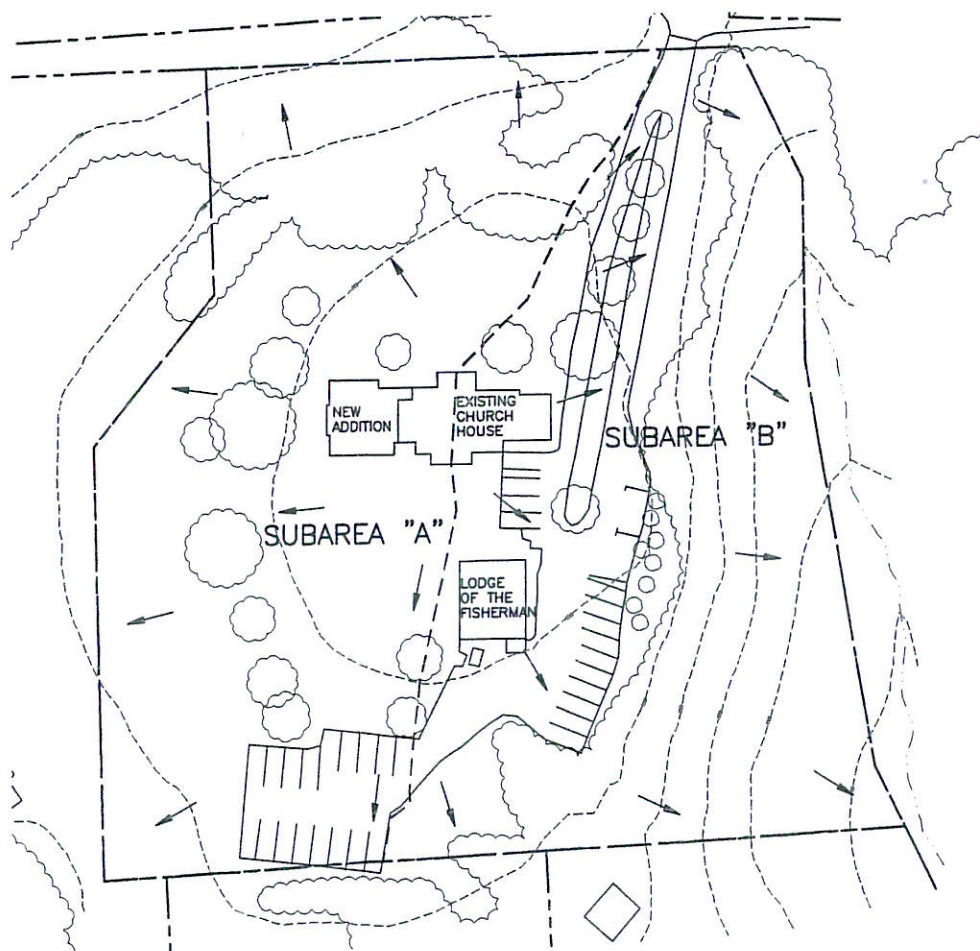
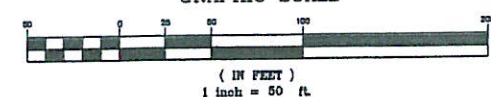
COMMUNITY
DEVELOPMENT

PROPERTY OWNER: CHURCH OF THE COVENANT
TRUSTEE
4415 BOONESBORO ROAD
LYNCHBURG, VA 24503
PARCEL ID #: 18417011



PRE-DEVELOPMENT CONDITIONS
SCALE: 1"=50'

GRAPHIC SCALE



POST-DEVELOPMENT CONDITIONS
SCALE: 1"=50'

CIVIL & ENVIRONMENTAL SERVICES, LLC
SITE PLANNING & DESIGN - ENVIRONMENTAL CONSULTING
191 BOONESBORO LANE - HALLSBURG, VIRGINIA 22988
1-800-361-1443 - WWW.CES-VA.COM

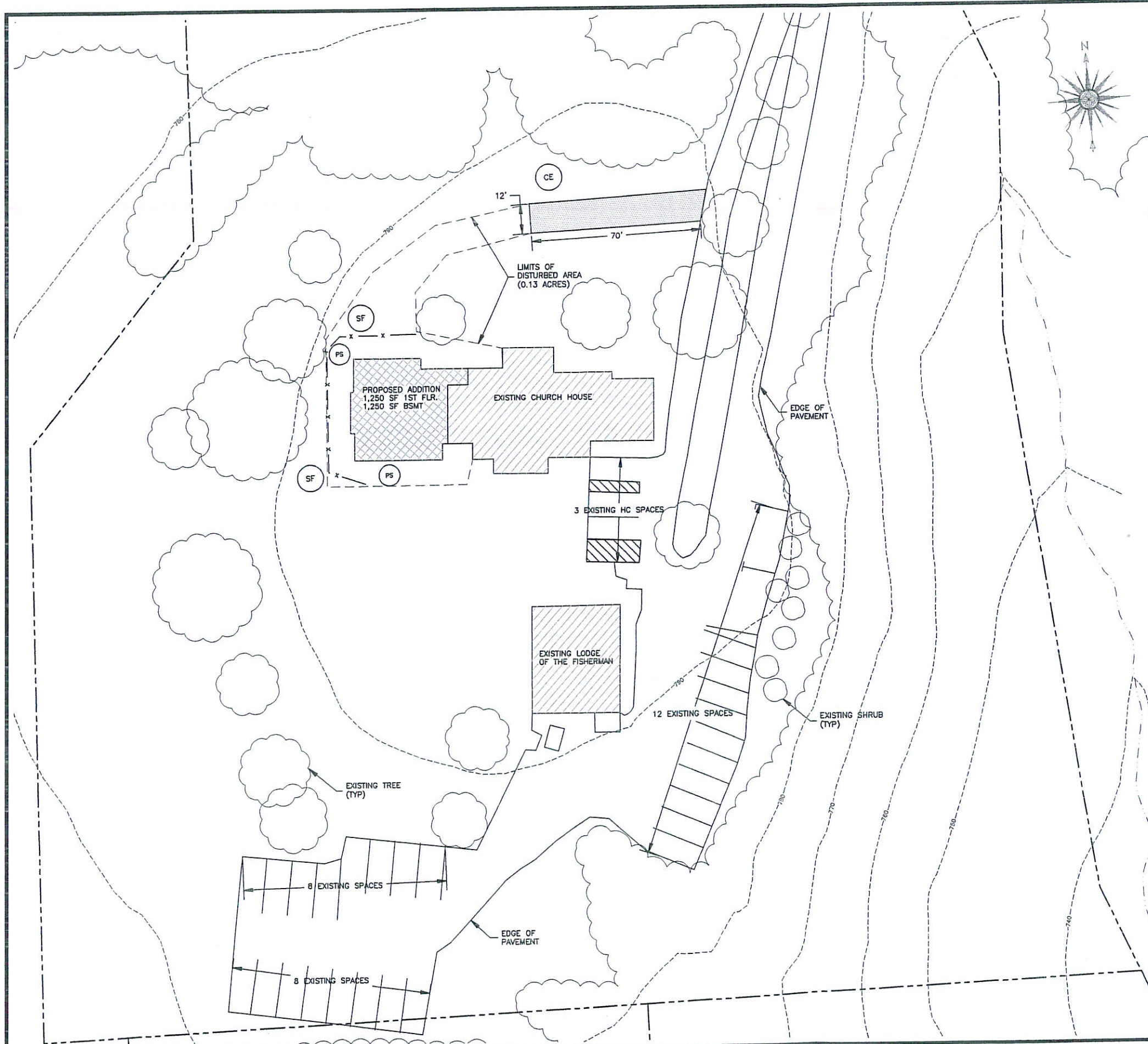
BUILDING ADDITION
CHURCH OF THE COVENANT
4415 BOONESBORO ROAD
LYNCHBURG, VIRGINIA

DRAINAGE PLAN

DRAWN: C.SONNE
CHECKED: DATE: 9/10/08
PROJECT: 08008
REVISIONS:

C1

OF: 3



E&SC MEASURES

REFER TO VIRGINIA EROSION & SEDIMENT CONTROL HANDBOOK (VESCH), LATEST EDITION.

- CE CONSTRUCTION ENTRANCE - 3.02
- SF SILT FENCE - 3.05
- PS PERMANENT SEEDING - 3.32

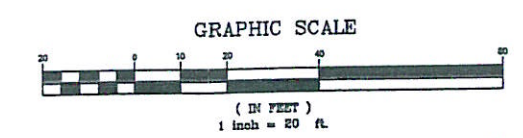
NOTES

- E&SC PRACTICES SHALL BE INSTALLED AS THE FIRST STEP IN SITE GRADING. ALL EARTHEN STRUCTURES AND DISTURBED AREAS SHALL RECEIVE STABILIZATION TO MINIMIZE POTENTIAL SOIL EROSION.
- ALL PRACTICES INDICATED SHALL BE INSTALLED IN STRICT ACCORDANCE WITH THE VIRGINIA EROSION & SEDIMENT CONTROL HANDBOOK (VESCH), LATEST EDITION.
- TEMPORARY SEEDING MUST BE APPLIED WITHIN SEVEN DAYS TO DENUDED AREAS THAT MAY NOT BE AT FINAL GRADE, BUT WILL REMAIN UNDISTURBED FOR LONGER THAN 30 DAYS.
- PERMANENT SEEDING SHALL BE PLACED AS SOON AS PRACTICAL.
- TOTAL DISTURBED AREA = 0.13 ACRES.
- PARKING CAPACITY = 31 SPACES X 3/SPACE = 93 SEATS
MAXIMUM ANTICIPATED SEATING = 70 PEOPLE
- PERIMETER LANDSCAPING FOR THE NEW ADDITION SHALL BE PROVIDED AS FOLLOWS:
ONE (1) LARGE (3' DIA.) SHRUB PER 10 LINEAR FEET PERIMETER
ONE (1) ORNAMENTAL TREE PER 50 LINEAR FEET PERIMETER
- EXISTING BUFFER WILL BE SUPPLEMENTED AS REQUIRED, SUBJECT TO THE REVIEW AND APPROVAL OF THE CITY PLANNER AND URBAN FORESTER.
- BASED UPON THE FEMA FLOODPLAIN FIRM FOR THIS SITE (PANEL 29 OF 131, MAP #5100930029D REVISED JUNE 3, 2008), NO PORTION OF THIS SITE FALLS WITHIN THE 100 YEAR FLOODPLAIN.
- THE EXISTING DOWNSTREAM STORMWATER RECEIVING CHANNELS FOR THIS SITE HAVE ADEQUATE EXISTING CAPACITY TO ACCOMMODATE THE ADDITIONAL STORMWATER RUNOFF RESULTING FROM THIS PROJECT.

LEGEND

- TREE LINE
- PROPERTY BOUNDARY
- STREAM
- EXISTING 10' CONTOUR
- EXISTING 2' CONTOUR

PERMANENT SEEDING SPECIFICATION
GRASS SEED - 200-250 LBS. PER ACRE OF KENTUCKY 31 OR TURF-TYPE FESCUE
FERTILIZER, LIME AND OTHER AMENDMENTS SHALL BE INCORPORATED INTO SOIL BASED UPON THE SOIL AMENDMENT SPECIFICATION SHOWN ON SHEET SWM2.
PROVIDE MULCH COVER AT EVERY SEEDING, CONSISTING OF 80 BALES/ACRE OR OTHER APPROVED MANUFACTURED MULCHING/STABILIZATION MATERIAL.



PROPERTY OWNER: CHURCH OF THE COVENANT TRUSTEE
4415 BOONESBORO ROAD
LYNCHBURG, VA 24503
PARCEL ID #: 18417011

WRITTEN DIMENSIONS ON THESE DRAWINGS SHALL HAVE PRECEDENCE OVER SCALE DIMENSIONS. CONTRACTORS SHALL VERIFY AND BE RESPONSIBLE FOR ALL DIMENSIONS AND CONDITIONS ON THE JOB AND THIS OFFICE MUST BE NOTIFIED OF ANY VARIATION FROM THE DIMENSIONS AND CONDITIONS SHOWN BY THESE DRAWINGS.

CIVIL & ENVIRONMENTAL SERVICES, LLC
SITE PLANNING & DESIGN - ENVIRONMENTAL CONSULTING
191 BATHWOOD LANE - NELLYSPORD, VIRGINIA 22968
(434) 381-1443 - WWW.SUSTAINABLE-SITES.COM

**BUILDING ADDITION
CHURCH OF THE COVENANT**
4415 BOONESBORO ROAD
LYNCHBURG, VIRGINIA

SITE PLAN

DRAWN: C.SONNE
CHECKED: DATE: 9/10/08
PROJECT: 08008
REVISIONS:

C2
OF: 3

PROJECT DESCRIPTION

The purpose of this project is to construct a building addition (approximately 1,200 sf footprint) to the Church of the Covenant. A total area of about 0.13 acres will be disturbed during the construction of this project, of which approximately 0.03 acres will be impervious.

The anticipated construction duration for this project will be 3 – 6 months. All temporary erosion and sediment control practices shall be removed no later than 30 days after all upgradient areas have been stabilized.

PROJECT OWNER

Church of the Covenant
Trustees
4415 Boonesboro Road
Lynchburg, VA 24503

EXISTING SITE CONDITIONS

The existing 3.94 acre site includes two buildings (the Church House, which is being expanded and the Lodge of the Fishermen). These buildings and associated paved parking areas sit atop a hill surrounded by woods in a residential area. Drainage from the existing site flows toward a pond to the west and a stream to the east. Both the pond and the stream ultimately flow to Blackwater Creek. Site slopes in the disturbed area are mild (approximately 3% – 5%).

ADJACENT PROPERTY

The site is abutted by R-1 (Single-Family Residential) on all sides. With the exception of one small abutted area to the northeast, all adjacent property is owned by Lynchburg Covenant Fellowship.

SOILS

Based upon the Soil Survey of Lynchburg City, the predominant soil type at this site is Appling fine sandy loam. This soil consists of deep, well drained sandy loam with a clayey subsoil.

CRITICAL EROSION AREAS

No critical erosion areas or environmentally sensitive areas were identified in the vicinity of this site.

EROSION & SEDIMENT CONTROL MEASURES

Unless otherwise indicated, all structural and vegetative erosion and sediment control measures will be constructed and maintained according to minimum standards and specifications of the Virginia Erosion and Sediment Control Handbook, Latest Edition.

STRUCTURAL PRACTICES

- Construction Entrance – 3.02:**
A construction entrance shall be constructed on the site entrance road, as indicated. This entrance shall reduce tracking of soil from the site during construction. The construction entrance shall be approximately 12' wide by 70' long.
- Silt Fence – 3.05:**
Silt fencing will be placed as shown around the downslope edge of the proposed building addition construction area as indicated.

VEGETATIVE PRACTICES

- Temporary Seeding – 3.31:**
All denuded areas that will remain undisturbed for over 30 days must be mulched and seeded within seven days. All temporary earthen structures and berms must be seeded and mulched immediately following grading.
- Permanent Seeding – 3.32:**
Permanent seeding shall be placed and mulched in the locations indicated on the plans as soon as practical after achieving final finished grade.

STORMWATER MANAGEMENT

Comparison of pre- and post-development stormwater flows from the project site indicates there will be a slight increase in runoff as a result of this project. Peak runoff from the 10 year storm will increase from 8.65 cfs to 8.80 cfs. This minimal increase (1.7% of total site runoff) shall have no measurable impact upon downstream channels.

MANAGEMENT STRATEGIES

- Construction should be sequenced so that grading operations can begin and end as quickly as possible. The anticipated duration of construction for this phase of construction will be approximately 9 months.
- Sediment trapping measures shall be installed as a first step in grading.
- Temporary seeding or other stabilization shall follow immediately after grading.
- Temporary erosion & sediment control measures shall be removed within 2 weeks following adequate stabilization of upgradient areas.
- The Responsible Land Disturber for this project is Christopher Sonne, of Civil & Environmental Services, LLC. This individual shall be responsible for ensuring that installation and maintenance of all erosion and sediment control measures conform with this plan, as well as VESCH requirements.

MAINTENANCE

In general, all erosion and sediment control measures will be checked daily and after each significant rainfall. The following items shall be checked in particular:

- Construction Entrance:**
The entrance shall be maintained in a condition which will prevent tracking or flow of mud onto public rights-of-way. This may require periodic top dressing with additional stone or the washing and reworking of existing stone as conditions demand. All materials spilled, dropped, washed, or tracked from vehicles onto roadways must be removed immediately. The use of water trucks to remove these materials will not be permitted under any circumstances.
- Silt Fence:**
Silt fences shall be inspected immediately after each rainfall and at least daily during prolonged rainfall. Any required repairs shall be made immediately.

Close attention shall be paid to the repair of damaged silt fencing resulting from end runs or undercutting.

Should the fabric on a silt fence decompose or become ineffective prior to the end of the expected usable life and the barrier still be necessary, the fabric shall be replaced promptly.

Sediment deposits should be removed after each storm event. They must be removed when the deposits reach approximately one-half the height of the barrier.

Any sediment deposits remaining in place after the silt fence is no longer required shall be dressed to conform with the exiting grade, prepared and seeded.
- Permanent Seeding:**
Seeded areas should be inspected following storm events. Reseed as required until completely established.

CIVIL & ENVIRONMENTAL SERVICES, LLC
SITE PLANNING & DESIGN - ENVIRONMENTAL CONSULTING
191 BATHWOOD LAKE - NELLYSFORD, VIRGINIA 22958
(434) 261-1443 - WWW.BURTAHALE-SITES.COM

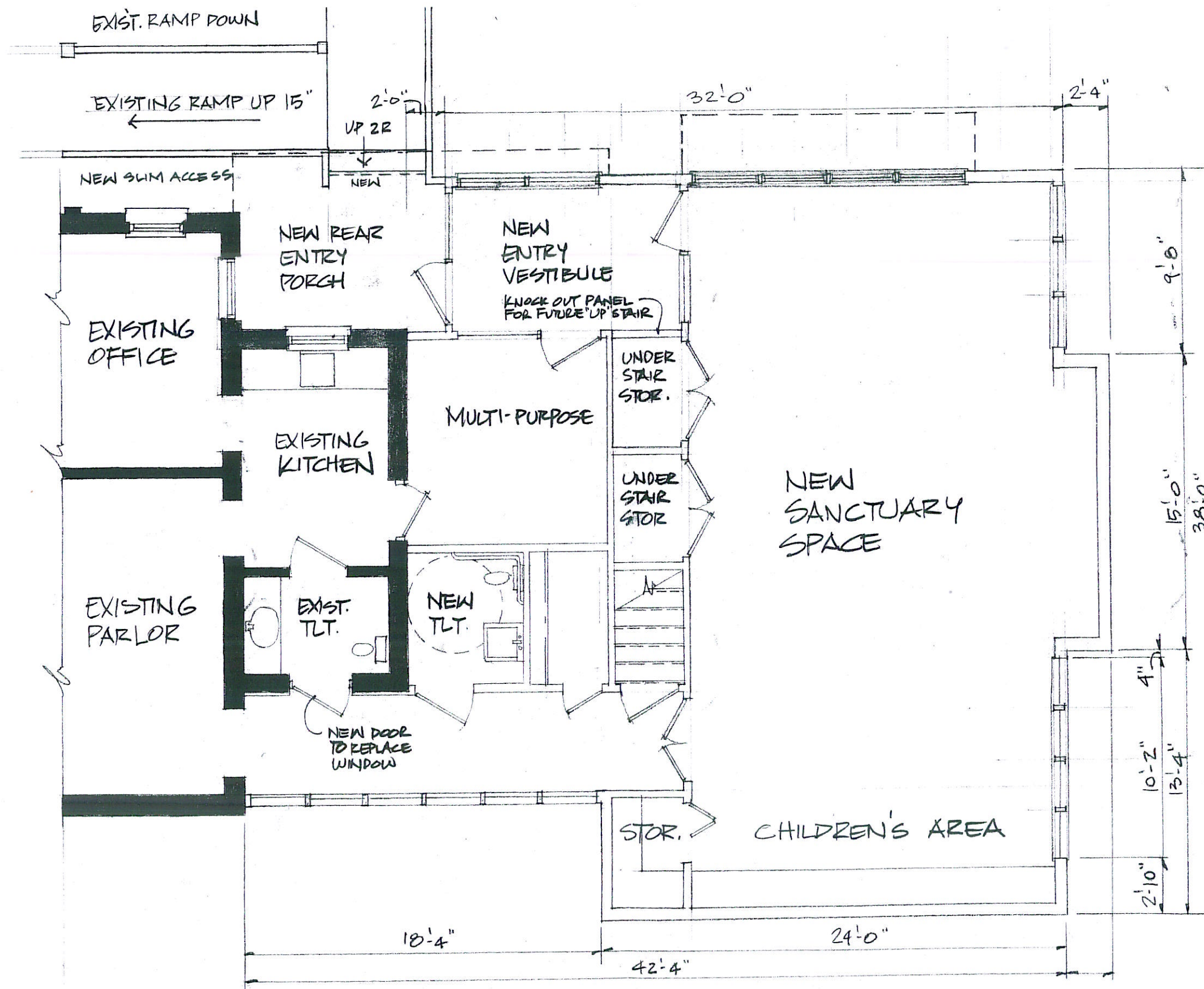
BUILDING ADDITION
CHURCH OF THE COVENANT
4415 BOONESBORO ROAD
LYNCHBURG, VIRGINIA

EROSION & SEDIMENT CONTROL NARRATIVE

DRAWN: C.SONNE
CHECKED:
DATE: 9/10/08
PROJECT: 08008
REVISIONS:

C3
OF: 3

WRITTEN DIMENSIONS ON THESE DRAWINGS SHALL HAVE PRECEDENCE OVER SCALE DIMENSIONS. CONTRACTORS SHALL VERIFY AND BE RESPONSIBLE FOR ALL DIMENSIONS AND CONDITIONS ON THE JOB AND THIS OFFICE MUST BE NOTIFIED OF ANY VARIATION FROM THE DIMENSIONS AND CONDITIONS SHOWN BY THESE DRAWINGS.



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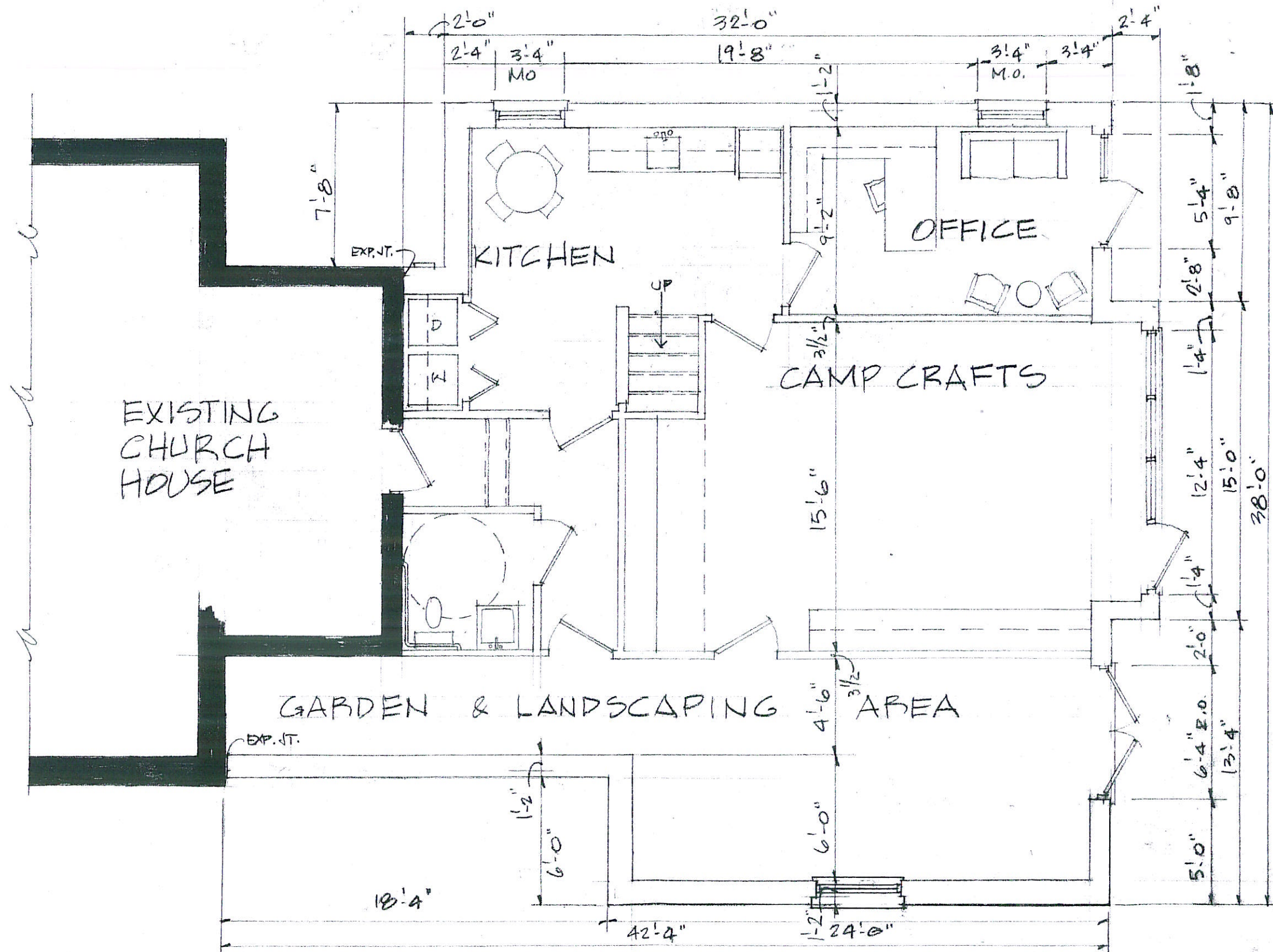
COMMUNITY
DEVELOPMENT

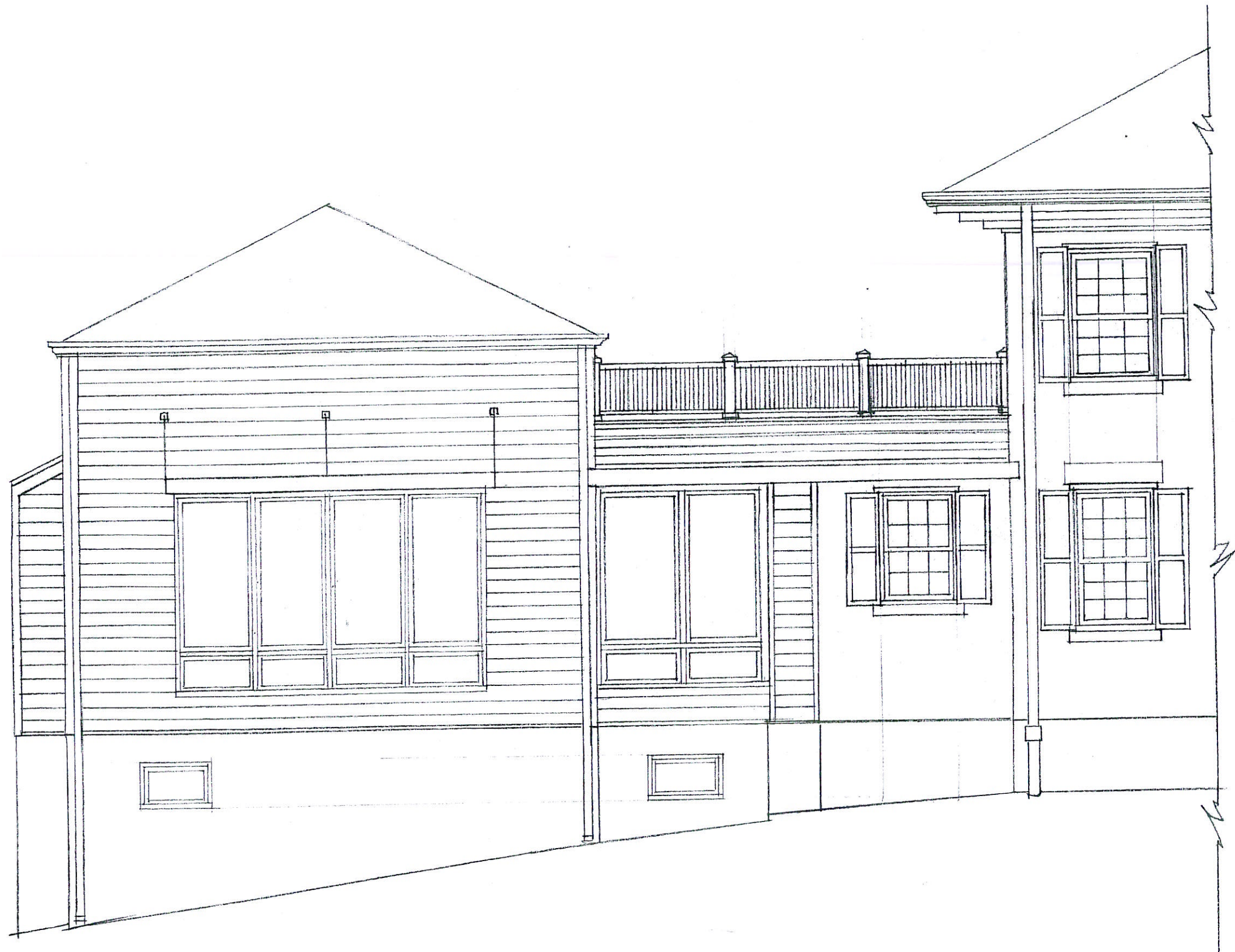
ALTERATIONS & ADDITIONS TO THE CHURCH HOUSE OF
CHURCH OF THE COVENANT
MAIN FLOOR PLAN 1/4"=1'-0"

CRAPPOCK CUNNINGHAM ARCHITECTURAL PARTNERS 8-4-08

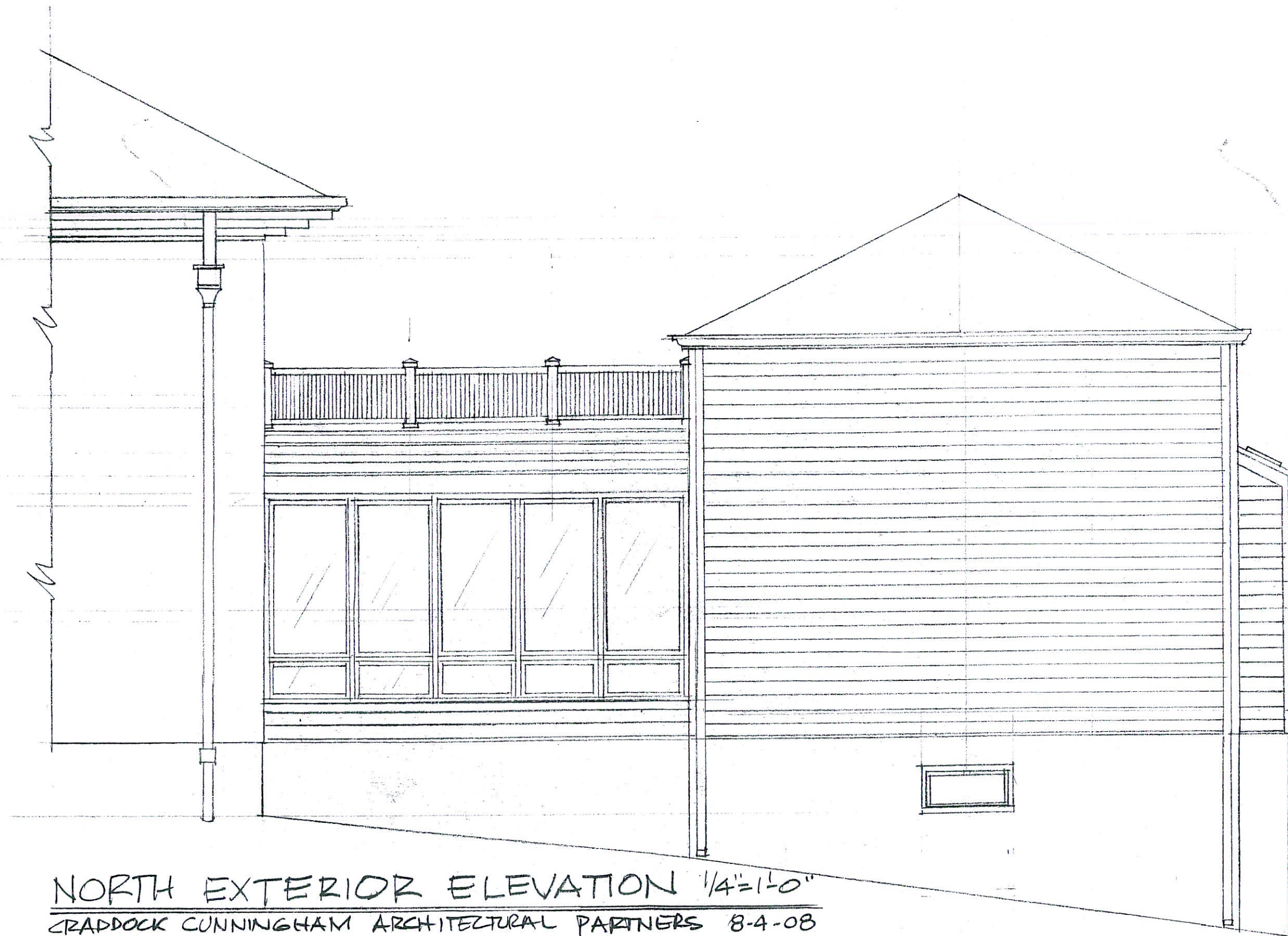
ALTERATIONS & ADDITIONS TO THE CHURCH HOUSE OF
CHURCH OF THE COVENANT
GROUND FLOOR PLAN 1/4"=1'-0"

CRADDOCK CUNNINGHAM ARCHITECTURAL PARTNERS 8-4-08





ALTERATIONS & ADDITIONS TO THE CHURCH HOUSE OF
CHURCH OF THE COVENANT
SOUTH EXTERIOR ELEVATION $\frac{1}{4}"=1'-0"$
CRADDOCK CUNNINGHAM ARCHITECTURAL PARTNERS 8-4-08



NORTH EXTERIOR ELEVATION 1/4"=1'-0"

CRADDOCK CUNNINGHAM ARCHITECTURAL PARTNERS 8-4-08

ALTERATIONS & ADDITIONS TO THE CHURCH HOUSE OF
CHURCH OF THE COVENANT



WEST EXTERIOR ELEVATION 1/4"=1'-0"
CRADDOCK CUNNINGHAM ARCHITECTURAL PARTNERS 8-4-08
ALTERATIONS & ADDITIONS TO THE CHURCH HOUSE OF
CHURCH OF THE COVENANT

**Church of the Covenant: Alterations and Additions to the existing Church House
CUP 0808-0005**

Project Narrative

Reason for Project:

The Church of the Covenant has met for more than thirty years in the original "estate" home at 4415 Boonsboro Road. The property is also home to Camp Kum Ba Yah, The Lodge of the Fisherman, and other ministries which have been "birthed" over the years by the church. The congregation is small by design and has fluctuated over the years from as few as a dozen members to fifty. Under the leadership of Rev. David Edwards, the attendance has more consistently been in the thirty to fifty range and has begun to strain the living room of the original home, which has always served as the sanctuary space. Hence the desire of the church's Board to add a new sanctuary space capable of handling a maximum of seventy participants. The church has no desire to grow any larger than what its current parking can handle.

The Addition:

The proposed addition will be added to the west elevation of the existing house and consist of a main floor and a walkout basement area that would be 75% above grade. The footprint of the new addition is approximately 1,250 square feet. The main floor would house a new sanctuary space approximately 37' x 18'-0" plus a 33 sq. ft. off set, or 703 sq. ft. Seating would be in moveable chairs and exits would allow discharge both directly to the exterior on the rear, and through the church house on the front. Also on the main level would be a new handicap accessible toilet, a coat closet, a multi purpose space and an enclosed stair to the lower level.

The "walk out" lower level will consist of a gardening and landscaping area, a craft space for Camp Kum Ba Yah, an office for the church's minister and a small kitchen, handicap toilet and laundry closet. Walls will have a R-19 insulation rating and the roof an R-34. **Flood lights with motion detectors will be mounted at the four new corners of the roof soffit.** The church's existing handicap ramp on the rear of the church house will continue to provide accessibility to both the existing church spaces and the new sanctuary space. All ground level spaces will be accessible from the ground level entries.

Parking:

The church currently has 31 marked parking spaces, 3 of which are designated as handicap accessible and are all within twenty feet of the existing handicap ramp leading to the church house and new addition. As mentioned above, there are no fixed seats in the existing sanctuary (378 sq. ft.) or the proposed sanctuary (691 sq. ft.). Using the one (1) space per three (3) seats as a guideline, the maximum of 70 seats we are proposing would only require 23 of the 31 spaces already on the property. These spaces are currently lit by "dusk-to-dawn" lighting and no additional parking lighting is planned.

Vegetation:

The existing site is well vegetated with existing trees on all sides of the church house and new addition. This existing buffer will be supplemented, subject to the review and approval of the City Planner and Urban Forester. In addition, a landscape planting plan will be submitted with the permitting documents showing new, ground plantings around the foundation perimeter of the new addition.

September 24, 2008

PLEASE PRINT

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LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: November 11, 2008		AGENDA ITEM NO.: 8
CONSENT:	REGULAR: X	CLOSED SESSION: (Confidential)
ACTION: X	INFORMATION:	
<u>ITEM TITLE:</u> Lynchburg Comprehensive Plan 2002-2020 Amendment – Chapter 12, Natural Resources		

RECOMMENDATION: Approval of the requested amendments to Chapter 12 of the City of Lynchburg *Comprehensive Plan 2002-2020*.

SUMMARY: The Lynchburg *Comprehensive Plan 2002-2020* recommends the establishment of “a Natural Systems/Environmental Resources Advisory Committee [NRAC] of local experts to monitor trends in environmental science.” **(12.8)** The Planning Commission appointed representatives to the Committee on June 14, 2006 and the group has met regularly since August 15, 2006. NRAC has submitted recommendations for the update of Chapter 12 of the Plan; these include the deletion of goals that have been completed or are no longer applicable, as well as amendments to reflect the current status of other existing City programs. The revisions also include the addition of a goal to prioritize open space, a goal to promote water conservation and drinking water source protection and a goal to promote the conservation of energy and natural resources. Planning Commission recommended approval of the amendments because:

- The City’s *Comprehensive Plan 2002–2020* provides that “one of the most important aspects of implementation is being certain that each strategy is moving forward; that this Plan has not simply been ‘put on the shelf’.” **(17.8)**
- The proposed revisions would more accurately reflect the status of the City’s current initiatives, as well as provide for additional goals to help the City become a more sustainable community.

PRIOR ACTION(S):

October 8, 2008: Planning Division recommended approval of the City of Lynchburg *Comprehensive Plan 2002-2020* Chapter 12 amendments.

Planning Commission recommended approval (6-0, 1 Absent - Oglesby) of the amendments to Chapter 12 of the City’s *Comprehensive Plan 2002–2020*.

FISCAL IMPACT: N/A

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

ATTACHMENT(S):

Ordinance
PC Report
PC Minutes
Speaker Sign Up Sheet

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE AMENDING CHAPTER 12, NATURAL SYSTEMS, OF THE CITY'S COMPREHENSIVE PLAN 2002-2020.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG that in order to promote the orderly development, public necessity, the general welfare and convenience of the citizens and good zoning practice that Chapter 12, Natural Systems, of the City's Comprehensive Plan 2002-2020 be, and hereby is, amended and reenacted as follows:

Introduction

Lynchburg residents attach a high value to preserving and enhancing their natural and environmental resources. For many residents, the beauty of the City is an essential part of their quality of life. The City is known for its hills and steep ravines that harbor rich woodlands, wildlife, and rare plants. The James River, Lynchburg's most prominent natural feature, provided the City's early reason for being—a source of water power and a transportation vehicle. Now the James River is becoming the focus for downtown revitalization.

As the City has developed, pressures have increased to build on sensitive natural lands. Citizens have expressed a desire to increase efforts to protect natural and environmental resources and to move toward a more sustainable community. Using such cities as Chattanooga, Tennessee, and Boulder, Colorado, as models, Lynchburg embraces sustainable development, defined as “meeting the needs of the present without compromising the ability of future generations to meet their needs.” The goals, objectives and strategies identified in this element strive to lead Lynchburg towards a more sustainable future by protecting and promoting the City's outstanding natural resources.

Context & Recommendations

Geology, Topography & Soils

The natural features of Lynchburg, including the geology, topography, and soils, have a significant impact on the suitability of the land for development. The variable rock types underlying the City have formed the hills and steep ravines of the central city, the imposing Candler's Mountain along the City's southern border, and the foothills of the Blue Ridge Mountains that begin in the Reusens area along the northwest border. Those areas of the City that feature a highly dissected landscape of narrow ridges and steep-sided valleys present a challenge to developers, especially for large retail and industrial buildings needing large areas for parking. Grading of steep slopes can result in significant soil erosion and sedimentation of streams, though to accomplish much additional development in Lynchburg, some steep areas will likely need to be graded.

Some areas of the City are so steep that they remain wooded and relatively natural today. Many steep-sided stream valleys harbor a rich diversity of plant and animal life. The amount and extent of forested areas is quite unusual for a city of Lynchburg's size and age. Large areas of woodland remain on Candler's Mountain, in the Tyreeanna area, in the vicinity of the Blackwater Creek

Natural Area and Peaks View Park, and in the Cheese Creek and Judith Creek watersheds. These areas have the potential to be connected to create a natural greenways system that builds on the success of the Blackwater Creek Natural Area.

Water Resources

Lynchburg is drained by ~~11~~ eleven streams. Judith, Pigeon, Blackwater, Fishing, and Opossum Creeks all drain directly to the James River, while Ivy, Cheese, Tomahawk, Burton, and Dreaming Creeks are tributaries of Blackwater Creek. By far, Blackwater Creek has the largest watershed area affecting the City and extending into neighboring Bedford and Campbell counties.

Over the years, City staff and citizens have noticed an increase in flood levels in the City streams, both the frequency of bank overflow and flood elevations. The increased impact of floods appears to be due to increased urbanization of stream watersheds, not only in the City, but also in neighboring counties. City engineers and planners have noted that the City's FEMA 100-year floodplain maps, published in 1983, are no longer accurate and recommend that they be updated. This has resulted in an update of the City's floodplain mapping with new FEMA 100-year floodplain maps being adopted by the City, effective June 3, 2008. While the City has permitted development to occur in the 100-year floodplain in the past, it should limit new development in the floodplain in the future and seek to protect existing development that may be affected by flooding.

The water quality of Blackwater, Ivy, and Fishing Creeks, and the James River is in violation of ~~has been found to violate~~ the state and federal water quality standard for E. coli, fecal coliforms, which indicates contamination from human or animal wastes. E. coli ~~Fecal coliform~~ levels exceed the standards to the extent that the Virginia Department of Environmental Quality (DEQ) has placed these streams on the priority list of impaired waters pursuant to Section 1313(d) (1) of the Federal Clean Water Act. Lynchburg's combined sewer system overflows (CSOs) have been identified as the primary source of this contamination. The City's project to separate sewage from stormwater flows, the Combined Sewer Overflow (CSO) project, is designed to address the problem. The DEQ has performed a special study ~~will be performing special studies~~, called Total Maximum Daily Load (TMDL) ~~studies~~, to determine actions that are necessary to address this problem ~~if there are any other actions that will need to be taken to reduce fecal coliform counts.~~ Implementation of this TMDL should be a priority to bring watershed/water quality in to compliance. ~~But beyond these efforts, other water quality concerns will need to be addressed in the future~~

The DEQ is seeking voluntary cooperation from localities in the effort to reduce nutrient (phosphorus and nitrogen) and sediment pollution as part of the James River Tributary Strategy. For communities above the fall line like Lynchburg, the focus will be on the reduction of erosion and sedimentation. The James River Tributary Strategy is one element of a multi-state effort to improve the water quality and to protect the important living resources of the Chesapeake Bay.

~~The EPA and the DEQ will also require The City by 2003 to adopted standards and implemented mitigation measures to address stormwater quality, the so-called Phase II National Pollution Discharge Elimination System stormwater requirements.~~

In response to the Phase II National Pollution Discharge Elimination System stormwater requirements from EPA and DCR, the City has adopted standards and implemented mitigation measures to address stormwater quality as required by the EPA and DCR.

The City and Bedford County have completed ~~obtained~~ a regional stormwater management grant

that will explore efficient methods for controlling stormwater quantities and for meeting these new stormwater quality requirements. ~~It is likely that t~~The City's efforts to address stormwater quality will reduce sediment pollution and therefore assist the DEQ in fulfilling the goals for the James River Tributary Strategy.

Air Quality & Noise Issues

The DEQ indicates that Lynchburg's air quality meets federal standards, though not all regulated air pollutants are monitored in the City. The EPA revised the standard for ozone in 2000, making it more difficult to meet. If the DEQ places an ozone monitor in Lynchburg in the future, there is a possibility that the City will not meet the standard and will have to prepare and implement a plan to address ozone pollution.

Noise, odors, and light emissions are environmental concerns for some citizens, though detailed data on these pollutants is not readily available.

Understanding the Value of Natural Systems

There is a keen interest among citizens in improving the environmental quality of Lynchburg and protecting its natural resources. The first step in protecting these resources is to understand their value in providing a healthy environment. Monitoring and managing the environmental resources within the City can require a significant amount of resources. As stated in Chapter 5, Citywide Land Use & Development, the City needs to improve its capacity to monitor, analyze, and report on local conditions, including environmental and natural resources. The City should develop a natural systems/environmental database to understand existing conditions and monitor future environmental health. Many cities and counties across Virginia are developing environmental databases in their GIS systems to help them plan sustainable, environmentally sensitive communities. Most cities map topography, soils, water bodies, floodplains and parks.

The City should also designate a City staff person to serve as an Environmental Management Coordinator, to maintain and monitor the environmental database and to prepare annual reports on the state of the City's environmental health, for distribution to City officials, staff, residents, and others in the region. Initial environmental reports could be based on existing data and expanded as the GIS and other data systems are improved. City officials and citizens could benefit from more comprehensive information about effective environmental protection techniques. City staff, including the Environmental Management Coordinator, should be kept abreast of environmental trends and practices through training, conferences, workshops, and other educational forums. The City ~~needs to~~ has established a Natural Systems/Environmental Resources Advocacy Advisory Committee of local experts to monitor trends in environmental science. The advisory group ~~could be~~ is composed of representatives from the Robert E. Lee Soil and Water Conservation District, ~~Friends of Lynchburg Stream Valleys Region 2000 Local Government Council~~, local colleges and universities, and others.

Evaluating Human Activities

Currently, the City does not have an effective tool for evaluating the impacts of development proposals on environmental resources. Residents have expressed a strong desire for a mechanism to evaluate development impacts. One possible method would be for the staff to develop a simple environmental checklist to be applied to all public and private development

proposals including rezonings, conditional use permits, site plans, and subdivision plans. The checklist would help evaluate the potential positive and negative effects of development proposals. More detailed evaluations may be required on projects that have a significant impact on environmental resources. Staff should, therefore, develop a process for reviewing these types of impacts more closely. The completed environmental checklists and detailed environmental analyses should be compared to economic and fiscal impact reports and incorporated into staff reports to the Planning Commission and City Council. The environmental checklists and analyses should also be used to update the natural systems/environmental database.

The City needs to establish a set of environmental performance standards for private and public development activities. The standards should be based upon adopted local, state, and federal requirements and cover such issues as air emissions; pollutant discharges; stormwater, erosion, and sediment controls; light, noise, and odor emissions; steep slopes; floodplains; and wetlands; among others. By having environmental performance standards in place, the City can require the modification, redesign, or replanning of proposed development projects.

Resource Management & Protection

The City desires to improve the protection and management of its natural systems in order to create a truly sustainable community. There are a number of approaches that the City may choose to pursue, including environmental performance standards, incentives for private actions, education and awards programs, and direct City actions.

As described above, it is important for the City to consider environmental performance standards for new development and redevelopment, not only to ensure compliance with state and federal standards, but also to address the protection and management of important natural resources. Through the application of reasonable standards limiting the development of floodplains, wetlands and streamside steep slopes, these important resources could be preserved. Standards for the construction and maintenance of stormwater management facilities would ensure that flooding levels are kept in check and that the water quality of stormwater discharges is addressed. A major concern raised by citizens is the design, quality, and upkeep of stormwater management facilities. During the Community Character Survey, poorly functioning stormwater management facilities received some of the lowest rankings. Maintenance and upkeep of such facilities are directly linked to their effectiveness in managing stormwater.

Incentives, rather than codified standards, may be more appropriate for other efforts to achieve sustainable development. For example, the City should continue to promote the recycling and re-use of existing buildings and offer incentives for the cleanup and redevelopment of brownfield sites, including tax abatement, density/intensity increases, and contributions to infrastructure and public amenities. Density increases or other incentives for private developers should be available in a variety of zoning districts, not just the Traditional Neighborhood Development and Planned Unit Development zones, in exchange for the preservation of significant wooded open space, unique species areas or critical habitats, and for green building design.

The City should also employ softer techniques for natural resource protection such as educational programs and programs to recognize private environmental initiatives. The City is planning to develop an environmental education center at Lynchpin Nature Center that would demonstrate environmental protection and green building techniques. The City should also install interpretive signage along the trail systems of the James River and Blackwater Creek to educate the public

about water, wetlands, and riparian land protection. Education and awareness programs should be used to promote the eradication of invasive plant species, such as kudzu, Japanese honeysuckle, and purple loosestrife. The City's park naturalists could work with landowners, community groups (e.g., Boy Scouts and Girl Scouts), and others, as well as offering special awards for eradication efforts. Developers who make special efforts to incorporate green building techniques, protect stream valley woodlands, or otherwise build sustainably could be recognized through an annual awards program. A number of communities in Virginia use awards programs to promote green development.

Finally, the City itself could become actively involved in natural resource protection and management. When the City constructs a building, a parking lot, a road, or a park, for example, it should strive to protect wooded areas, steep slopes, and floodplains to the extent feasible. The City should use green building techniques and demonstrate well-landscaped stormwater management facilities that not only serve as best management practices, but also provide visually pleasing amenities. The construction of the new Juvenile and Domestic Relations Courthouse and Sandusky Middle School projects will be the first City buildings built to sustainable building guidelines. Citizens in public meetings voiced a great deal of support for City establishment of a greenway program to expand the James River Heritage Trail and the Blackwater Creek Natural Area and to establish similar areas along other City streams. The greenway program should promote the purchase and accept donations of open space for resource protection along streams. The City could also use environmental performance standards to obtain the dedication of stream valley open space for the greenway program in developing and redeveloping areas. The Resource Conservation Areas identified on the Future Land Use Map and described in Chapter 5, Citywide Land Use & Development, outline what a fully implemented greenway system might look like.

A Regional Approach

Since nature does not respect political boundaries, regional cooperation is essential in addressing environmental problems and managing natural systems. The expansion of existing partnerships should be encouraged to address regional environmental issues such as stormwater (in progress), greenways, scenic resources, water and air quality, and invasive species. Collaboration between state agencies, local and regional environmental groups, and colleges and universities may prove more effective in addressing resource protection and management. The regional stormwater management effort is a good example of environmental planning that extends across jurisdictions and utilizes grant funds from the Virginia Department of Conservation and Recreation. The City should continue to pursue other funding opportunities to monitor and manage environmental resources.

Information about the health of the natural systems in the City and region is dispersed among various groups, and data collection is currently a cooperative effort. There is no local repository for information. Information-sharing responsibilities and data collection protocols should be established between the various groups so that an annual report on the state of the City's and region's natural systems and environmental health can be produced.

Chapter 12 – Natural Systems, Comprehensive Plan Goals, Objectives & Strategies

Goal 1. Promote an understanding of the value of natural systems (geology, landforms, vegetation, wildlife, air, water, noise, and energy, among others) in providing a pleasant, healthy, and safe environment for human activity.

Objective 1.A. Education. Increase awareness of environmental health issues, including those associated with the region's air and water quality, among City officials, staff, and citizens—both individual and corporate.

- 1) ~~Create~~ Designate a City staff ~~person~~ position (the Environmental Management Coordinator) to prepare and maintain the natural systems/environmental databases and prepare reports and coordinate efforts of other City Departments.
- 2) Publish an annual report on the state of the City's and regions natural systems and environmental health for distribution to City officials, staff, residents, and others in the region. The initial reports should be based on existing data and expanded as the GIS and other databases are improved. Use of the Internet and other technologies to distribute the report should be maximized to the greatest extent possible to reduce paper waste.
- 3) Demonstrate effective environmental protection and "green" building techniques at the proposed environmental education center at Lynchpin Nature Center and/or at other venues.
- 4) Provide environmental education opportunities that highlight the James River through interpretive signage and programs along the James River Heritage Trail and in the downtown riverfront parks.

Goal 2. Evaluate the potential effects, both positive and negative, of human activities (such as new development, redevelopment, installation of infrastructure, and resource use and disposal, among others) on natural systems.

Objective 2.A. Training & Education. Keep abreast of trends in environmental science to better understand the potential effects of development on natural systems.

- 1) ~~Establish a Natural Systems/Environmental Resources Advisory Committee of local experts to monitor trends in environmental science. Maintain the Natural Resources Advisory Committee and its support of the Planning Commission regarding environmental issues.~~
- 2) Provide training and conference opportunities for the City's Environmental Management Coordinator.
- 3) Offer workshops and training sessions for City officials, staff, developers, and citizens on effective environmental protection and "green" building techniques.

Objective 2.B. Environmental Impact Methodologies. Improve methodologies, practices, and procedures for assessing the environmental impacts of development proposals.

- 1) Develop a simple environmental checklist for ~~screening~~ evaluating proposed projects for potentially significant environmental effects. Apply this checklist to all rezonings, conditional use permits, site plans, and subdivision plans.
- 2) Establish methodologies for more detailed evaluation of potentially significant environmental impacts identified through use of the checklist.
- 3) Require private developers to prepare more detailed analyses for significant environmental impacts identified through use of the checklist.

4) Prepare detailed analyses for City projects that show potentially significant environmental impacts through use of the checklist.

5) Incorporate the environmental checklists and detailed environmental analyses in staff reports to the Planning Commission and City Council so that environmental impacts can be directly compared with economic and fiscal impact reports on projects.

~~6) Pursue the development of more accurate maps of the City's 100-year floodplains so that the impacts of development on floodplains can be assessed more accurately.~~

Goal 3. Temper and refine human activities to promote and enhance the value of natural systems.

Objective 3.A. Development Standards. Improve environmental standards for private and public development activities.

1) With input from the Natural Systems/Environmental Resources Advisory Committee, prepare a set of environmental performance standards for private and public development projects that address such issues as:

- Air emissions, based on state standards and local plans.
- Pollutant discharges into water resources, based on state standards and regional and local plans.
- Phase II National Pollution Discharge Elimination System Stormwater Program.
- James River Tributary Strategy.
- Total Maximum Daily Load Impaired Waters Plans.
- Erosion and sediment controls based on state and local standards.
- Noise exposure limits based on Federal Highway Administration standards.
- Light emissions, odors, energy use and efficiency, water consumption and solid waste disposal, based on local standards.
- Natural features, including steep slopes, floodplains, and tree cover, based on local standards.
- Wetlands, based on U.S. Army Corps of Engineers standards.

2) Consider adoption of the environmental performance standards as either policies or regulations after public input.

Objective 3.B. Analyses. Use environmental analyses to modify, redesign, or replan entirely proposed developments to ensure the City's environmental health.

1) Apply environmental performance standards to reduce negative environmental effects.

2) If environmental analyses show significant adverse effects even after application of standards, then modify, redesign, or replan projects to reduce the effects, based on the recommendations of the analyses.

3) Consider environmental tradeoffs or offsets for economic development projects deemed essential to the City.

Goal 4. Manage natural systems to improve the health and enjoyment of future generations.

Objective 4.A. Incentives. Develop incentive programs for the private preservation of important environmental resources.

~~1) Offer density/intensity increases and/or other incentives to private developers for the preservation of significant wooded open space, unique species areas, and critical habitats; for "green" building design; and for environmental remediation within not only the Planned Unit Development and Traditional Neighborhood Development zoning districts, but also other zoning districts.~~

Offer density/intensity increases and/or other incentives to private developers for the following:

- Preservation of significant wooded open space
- Preservation of unique species areas
- Preservation of critical habitats
- Implementation of "Green" Building design (ex: LEED, Earth Craft)

- Environmental remediation within Planned Unit Development, Traditional Neighborhood Development zoning districts and all other zoning districts

2) Continue to promote the adaptive re-use of existing buildings, ~~as a form of recycling~~ through a variety of incentives.

3) Offer incentives for the redevelopment of “grey field” sites and cleanup and redevelopment of “brownfield” sites, for example, density/intensity increases, tax abatements, and City contributions of infrastructure and public amenities.

4) Establish a program to promote the donation of open space easements to the City or a private land trust, showing the tax benefits that apply. The program should ~~address only target~~ land recommended for open space preservation on the Future Land Use Map and/or identified through future land resource plans/studies.

5) Promote the eradication of invasive plant species through education and awards programs or other incentives.

Objective 4.B. Protection. Protect and manage important environmental resources.

1) Establish a greenway program to expand the James River Heritage Trail and Blackwater Creek Natural Area and to establish similar areas along other City streams:

- Apply performance standards protecting floodplains, wetlands, and streamside steep slopes to development projects.
- Organize a program to purchase and accept donations of open space land for natural resource protection and passive recreational use along streams.

2) Protect important natural resources on City-owned land:

- Refrain from filling or developing in the 100-year floodplain and in wetlands, except as required for water resource and passive recreational projects. For the latter type of project, impacts on floodplains and wetlands should be minimized to the greatest extent possible.
- Limit development of steep slopes adjacent to streams, floodplains, and wetlands.
- Protect wooded areas, unique vegetation areas, and critical habitats to the greatest extent possible.
- Protect and enhance scenic resources, such as City parks, the Old City Cemetery, the Riverfront and Point of Honor.
- Eradicate invasive plant species on City-owned properties.

3) Apply “green” building techniques to new and renovated City buildings.

4) ~~Continue to work with neighboring jurisdictions to address both water quality and quantity (flooding) within watersheds develop through a regional stormwater management program and watershed management plan that addresses both water quality and quantity (flooding) within watersheds, and to design stormwater facilities to be attractive visual assets rather than eyesores.~~

5) Monitor the water quality impacts of the CSO project and implement water quality improvement plans for other TMDL impaired streams as they are designated.

6) Take advantage of ~~water quality improvement fund (WQIF) grants that are available from the Virginia Department of Conservation and Recreation (e.g., the recently approved regional stormwater management grant for the City of Lynchburg and Bedford County).~~ Federal, State, Local, and private grants that are available for the purpose of protecting land and water resources.

7) Monitor the air quality standard attainment status of the City and the region, as determined by the state, particularly with respect to ozone, and develop an appropriate nonattainment plan as necessary.

8) Expand public/private clean-up programs to remove trash and debris from stream valleys and ravines.

9) Utilize GIS and other tools, such as the Virginia Conservation Lands Needs Assessment, to guide prioritization of conservation of current city open spaces and in assessing impact of new development on surrounding natural systems.

10) Promote water conservation and protection of drinking water sources throughout the City and region through educational outreach, encouragement of conservation practices and through land use conservation/protection.

Goal 5. Promote regional cooperation in managing natural systems.

Objective 5.A. Partnerships. Build partnerships in managing natural systems.

1) Continue to expand partnerships with the following agencies, governments, and groups to address regional environmental issues:

- ~~Region 2000 Regional Commission~~ Virginia's Region 2000 - Local Government Council
- Robert E. Lee and Peaks of Otter Soil and Water Conservation District
- Adjoining counties
- State agencies, including DEQ, DCR, and VDOT
- Colleges and universities
- Local and regional environmental groups
- Citizen and business volunteers
- Central Virginia Erosion & Sediment Control Committee (CVESCC)

2) Identify issues that are best addressed on a regional basis, such as:

- Stormwater management and watershed management ~~(Grant in progress)~~
- Greenways and Blueways ~~(James River Heritage Trail planning in progress)~~
- Air quality
- Invasive plant species eradication
- Scenic resources protection

Objective 5.B. Information Collection. Improve methods for collecting and sharing environmental information.

1) Work with regional partners to establish responsibilities and protocols for environmental data collection.

2) Distribute the annual report on the state of the City's and region's natural systems and environmental health to regional partners.

3) Use the Internet and other technologies to broadcast information widely and to minimize paper waste.

4) Promote conservation of energy and natural resources.

~~Objective 5.C. Regional Cooperation. Initiate regional cooperative efforts with demonstration projects.~~

~~1) Support current regional stormwater management planning and greenways efforts.~~

~~2) Expand regional environmental planning efforts to other topic areas, such as air quality, invasive plant species eradication, and scenic resource protection, over time as success is demonstrated.~~

Adopted:

Certified:

Clerk of Council

The Department of Community Development

City Hall, Lynchburg, VA 24504

434-455-3900

To: Planning Commission

From: Planning Division

Date: October 8, 2008

Re: City of Lynchburg *Comprehensive Plan 2002-2020* Amendment – Chapter 12, Natural Systems

I. PETITIONER

City of Lynchburg, Planning Division, 900 Church Street, Lynchburg, VA 24504

Representative: Dr. Karin Warren, Chair, Natural Resources Advisory Committee [NRAC], Randolph College, 2500 Rivermont Avenue, Lynchburg, VA 24503

II. LOCATION

N/A

Property Owner: N/A

III. PURPOSE

The purpose of this petition is to consider the NRAC recommended updates to Chapter 12, Natural Systems, of the City of Lynchburg *Comprehensive Plan 2002-2020*.

IV. SUMMARY

- The City's *Comprehensive Plan 2002-2020* recommends establishing "a Natural Systems/Environmental Resources Advisory Committee of local experts to monitor trends in environmental science." **(12.8)**
- The NRAC's recommendations include revisions to the text, goals and objectives of the Natural Systems chapter of the City of Lynchburg *Comprehensive Plan 2002-2020*.

The Planning Division recommends approval of the amendments to Chapter 12, Natural Systems, of the *Comprehensive Plan 2002-2020*.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The Lynchburg *Comprehensive Plan 2002-2020* recommends the establishment of "a Natural Systems/Environmental Resources Advisory Committee of local experts to monitor trends in environmental science." **(12.8)** The Planning Commission appointed representatives to the committee on June 14, 2006 and the group has met regularly since August 15, 2006. In addition to revisions to the *Stormwater Management Ordinance* and an evaluation of climate change initiatives, the committee was also charged with the review and update of Chapter 12 of the plan. NRAC has submitted recommendations for the Planning Commission's review; these include the deletion of goals that have been completed or are no longer applicable, as well as amendments to reflect the current status of other existing City programs. The revisions also include the addition of a goal to prioritize open space, a goal to promote water conservation and drinking water source protection and a goal to promote the conservation of energy and natural resources.
2. **Zoning.** N/A
3. **Board of Zoning Appeals (BZA).** N/A
4. **Surrounding Area.** N/A
5. **Site Description.** N/A

6. **Proposed Use of Property.** N/A
7. **Traffic and Parking.** N/A
8. **Stormwater Management.** The proposed revisions highlight the City's ongoing work to implement mitigation measures that address stormwater quality as part of the Phase II National Pollution Discharge Elimination System. NRAC also recommended language to clarify Objective 4.B.3 to reflect the City's desire to work with neighboring jurisdictions to ensure consistent standards as part of a regional stormwater management program.
9. **Emergency Services.** N/A
10. **Impact.** The City's *Comprehensive Plan 2002–2020* provides that “one of the most important aspects of implementation is being certain that each strategy is moving forward; that this Plan has not simply been ‘put on the shelf’.” **(17.8)** The proposed revisions would more accurately reflect the status of the City's current initiatives, as well as provide for additional goals to help the City become a more sustainable community.
11. **Technical Review Committee.** N/A

VI. PLANNING DIVISION RECOMMENDATION:

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of amendments to Chapter 12, Natural Systems, of the City of Lynchburg *Comprehensive Plan 2002-2020*.

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 Kozzerow, Lynchburg Police Department
Battalion Chief Greg Wormser, Fire Marshal
Mr. Gerry Harter, Traffic Engineer
Mr. Robert Drane, Building Commissioner
Mr. Keith Wright, Zoning Official
Mr. Robert Fowler, Zoning Administrator
Mr. Kent White, Senior Planner
Mrs. Erin Hawkins, Environmental Planner

VII. ATTACHMENTS

1. **Proposed Revisions – Chapter 12, Natural Systems, City of Lynchburg *Comprehensive Plan 2002-2020***

MINUTES FROM THE OCTOBER 8, 2008 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED):

a. Consideration of amending Chapter 12, Natural Systems of the *City of Lynchburg Comprehensive Plan 2002-2020*, to reflect the Natural Resources Advisory Committee's recommended updates to the text, goals and objectives. The revisions include the addition of a goal to prioritize the conservation of open space, a goal to promote water conservation and drinking water source protection and a goal to promote the conservation of energy and natural resources. Additional updates also propose to delete goals that have been completed or are no longer applicable as well as amendments to reflect the current status of other existing City programs.

Mr. Martin addressed the commissioners with the following comments. These amendments to Chapter 12, Natural Systems of the *Comprehensive Plan* are an item that was identified by the Planning Commission that needed to be worked on during the five-year review of the plan. The Natural Resources Advisory Committee (NRAC) has completed its work on those revisions and the chair of NRAC, Dr. Karin Warren, is here to speak to the commission about them today. Planning staff has reviewed the proposed revisions. There are really no major changes, and staff does recommend approval.

Dr. Karin Warren came forward, as well as Dr. Thomas Shahady, the co-chair of NRAC, to address the commission. Chair Hamilton thanked them for their work on this committee and these revisions. Dr. Warren explained that when the committee started reviewing Chapter 12, the first thing they wanted to do was to see what progress had been made on its goals and which ones needed to be addressed. It is a testament to how thorough the original chapter was in that a lot of good goals were already laid out in this chapter. A lot of the changes that the commission sees in this document are places where progress has been made. One is the very existence of NRAC. Another goal is the work on the environmental development checklist project that they are working on currently. The committee is hoping to bring more information on that in the spring. Finally, the committee wanted to see what is not in Chapter 12 that they felt should be in there. Most of those identified already fit into existing goals. The revisions are further strategies to accomplish those goals.

Commissioner Swienton asked a question regarding the section "Geology, Topography & Soils" and how the grading of steep slopes can result in significant soil erosion and sedimentation of streams. Commissioner Swienton noticed that there was no commentary as to whether or not the grading of steep slopes is recommended, but there was a part about limiting development in floodplains. He was curious what the committee's opinion was as to whether or not there should be any recommendation on limiting grading of steep slopes. Dr. Warren commented that, in general, steep slope development is something they hope to discourage through various incentives and to adopt methods that--if that type of development is unavoidable--can minimize the impact. They are looking at this issue in the environmental development checklist that the committee is developing--incentives that can reduce steep slope development or providing information about alternatives to it--recognizing that Lynchburg is a very hilly city and it is something that the City has to deal with it.

Commissioner Swienton asked Dr. Warren to clarify that this issue would not be addressed through a statement in the *Comprehensive Plan* but rather through the environmental development checklist. Dr. Warren explained that the checklist will be used to assess where impacts might be and then look for ways to incentivize reducing the impact of that development. Commissioner Swienton asked if the checklist will have any definition of a steep slope. Dr. Warren explained that they are developing a glossary to go with the checklist. The glossary will also be a companion to Chapter 12. There will be a definition of a steep slope based on the degree of it.

Commissioner Swienton asked about the paragraph on the next page which talks about limiting development in the floodplain in the future. He asked Dr. Warren if the committee had any recommendation on how much should be limited because this sentence is very open ended. He asked if this issue would also be handled through the checklist. Dr. Warren stated that they have not had extensive discussion about this issue yet. They look to city staff on the committee to give advice about how this links with other ordinances, such as

the *Stormwater Ordinance* and the *Zoning Ordinance*. The committee plans on addressing this issue when they get to that point.

Commissioner Swienton asked about the next paragraph, which talks about violations given to the City by the Department of Environmental Quality (DEQ) for federal and state water quality standards. He was not sure when these violations occurred and he asked if the City is still in violation of those. Dr. Shahady commented that the Total Maximum Daily Load (TMDL) has been performed and completed. The City is really looking toward implementation of the TMDL. Dr. Shahady stated that the City is still in violation of the E. coli standard. Dr. Shahady commented that this paragraph should be changed to reflect that the TMDL has been done. Dr. Shahady suggested putting in some language reflecting that implementation of the TMDL should bring water quality standards into compliance.

Commissioner Swienton asked about the ozone monitor mentioned in the section "Air Quality and Noise Issues." Commissioner Swienton wondered if either Dr. Shahady or Dr. Warren had ever placed an ozone monitor in the City. Dr. Warren commented that she had just recently purchased an ozone monitor, but the class that will use it does not begin until next fall. It is not one that you can place permanently. They would have to take samples and analyze them separately. They want to check a few spots around Lynchburg where there is possible concern, such as congested areas. If the commission has suggestions for areas of town that they are particularly curious about, she could arrange for those to be tested. Commissioner Swienton stated that he was curious because the reference is to DEQ monitoring this and if they do not get around to it, the City could still have an issue that might need addressing. Dr. Warren agreed that DEQ is not monitoring this, but there is some question. We believe that we are not in violation, but we would like reassurance. They were thinking that this would be a good opportunity to use their college partners to get that done.

Chair Hamilton asked what would happen if they did find that the City was in violation of some clean air standards. What kind of means would they suggest to clean up the air? Dr. Warren explained that if their data indicated that they were violating the ozone standards, then they would probably have to notify DEQ and DEQ would have to verify the data. You have to violate it a couple of times before you are classified as "non attainment." But in terms of dealing with air quality, it would be linked directly to mobile sources. Making sure that everyone's emissions tests are up to date, making sure that people are keeping their cars tuned up and getting their inspections can go a long way toward helping air quality. Dealing with congestion issues would also help air quality issues. Dr. Shahady commented that we do not want to be classified "non attainment." All the rules change, and that would not be in our best interest. Dr. Warren commented that if their research indicated that there was a concern, they would bring it to the commission sooner rather than later. Commissioner Worthington commented that a lot of the cars that travel up and down Timberlake Road are not people that live in Lynchburg, and you can't deal with them. Commissioner Worthington asked Commissioner Hannon how California dealt with their pollution problems. Commissioner Hannon said that it has been such a long time since he lived in California that there were no such standards when he was there.

Dr. Warren stated that many urban cities deal with it in different ways. You can put restrictions on what kind of cars you are allowed to drive or provide incentives for people to use more public transportation. Some cities are adding a fine if you come into the city to disincentive people from opting to use their cars. Dr. Warren thought that the issue needs to be dealt with on a regional level and how we can address this is through vehicle standards or looking for alternatives to vehicles and trying to reduce congestion. Lots of cars standing and idling builds up the kind of conditions for this kind of pollution. Dr. Warren mentioned that Lynchburg is lucky in that our air quality is probably pretty good because of the kind of weather patterns we have. Pollution doesn't get stuck here like it does in other cities. Good planning can help though, in terms of where future development occurs, where our traffic is going to be and making sure that the City can deal with traffic in a way that doesn't create backups.

Commissioner Hannon asked to go back to the issue of water quality. If he understands it correctly, the combined sewer system overflows (CSOs) have been identified as the primary source of the contamination. That implies that these contaminations are periodic and tied to some event like a rainstorm of a certain magnitude. Commissioner Hannon asked how periodic the contaminations occur and what they are triggered by? Dr. Shahady explained that you have to look at it in two ways. There are also sanitary sewer overflows

(SSOs), and those happen whether it rains or not due to system failures. He explained that a very small amount of rainfall would cause CSOs. These violations were with no rainfall event and a CSO. Commissioner Hannon asked if there are choke points or holding ponds. Is the City doing anything? These overflows must be point specific and what is being done to address that? Dr. Shahady explained that we are trying to disconnect—that project is going on—and that is going to take money and time. There are also overflow points that are identified in the consent order that the City is under presently. There are specific overflow points where it runs directly into the stream and there is no other way to handle those overflows. When we get a three or four-inch rain, we have a lot of sewage going into the streams.

Commissioner Hannon asked what the other sources of contamination are. Dr. Shahady commented that agriculture is a big one and we are looking at this on a watershed wide basis. Livestock, wildlife and pets also contribute, as well as runoff from parking lots. Dr. Warren commented that some of the sites where her students test are near where the CSO project has gone on and separation has occurred. It does make a difference. You can tell in the years after the separation that the results are better. They are still getting positives for coliform, but the results are not as dramatic as they were before separation.

Commissioner Hannon asked if a number of the other sources are natural sources, then that must mean that there is a background level of coliform. Commissioner Hannon asked if they had any numbers as to what the background level is and how far off our violations are in comparison to those numbers. Dr. Shahady commented that it spikes. It is very, very high, number wise. He is thinking ten fold at some of these spots. He explained that you also have to identify the use of the water. Swimming waters are a certain level versus drinking water sources. They are looking at the recreational levels and that is the standard the City is violating. Some of the numbers are tremendous and a lot of it has to do with our CSO system. Commissioner Hannon asked how the James River is in terms of the coliform, since that is an area that the City cannot control. Dr. Shahady stated that the James River has been in violation, but does not have the spikes they are seeing in Blackwater Creek. The James is maintaining a pretty steady level of violation and Blackwater Creek is contributing to that due to upstream discharges and some of the agriculture issues and failing septic systems. Ultimately, the state is managing this as the James River Basin, trying to control the middle James and, of course, Blackwater Creek is a contributor to it.

Commissioner Worthington asked if they monitor the creek at the borders of the counties to try and find out what is coming into Lynchburg versus what the City is contributing. Dr. Shahady explained that they do monitor in Bedford quite a bit. What you get is a transition, a primarily agricultural watershed that urbanizes into Lynchburg. The urbanization does degrade the water further but he would never say that is not degraded coming in either. Dr. Shahady stated that they do monitor what comes in versus what goes out. He stated that they try and manage this watershed with non-point agricultural techniques at the top and do urban best management practices in the City. We have a unique watershed in that we have to deal with both.

There was discussion about how to change the paragraph dealing with the water quality and TMDL. Dr. Shahady suggested changing it to say that the City has water quality violations, that the TMDL has been done and that we are going to recommend that implementation of the TMDL take place in order to bring the waters into compliance. Chair Hamilton said there would be time for them to reword it after all questions had been asked.

Chair Hamilton had a question regarding the section "Understanding the Value of Natural Systems." It talks about initial environmental reports based on data in GIS. Chair Hamilton had some recollection of Bob Flint, when he was a commissioner, always looking for that type of information on the GIS. This type of information would be valuable to the commissioners, as well as developers. Chair Hamilton asked what kind of form that would take. Dr. Warren thought that Mr. Martin might be better able to address that question. Mr. Martin commented that the only environmental information in the GIS is the floodplain information. Commissioner Barnes asked if the green infrastructure project is based on GIS. Mr. Martin said they have given them a lot of GIS data. Mr. Martin thought that the person who would end up managing that would be Erin Hawkins or J. P. Morris. Chair Hamilton asked Mr. Martin why he thought it was important that environmental information be part of the GIS. Mr. Martin thought that you could use that information for the overall health of the City, but at a project specific level, we could see what the topography is and identify potential issues. Mr.

Martin reminded the commission that the *Comprehensive Plan* has to have a balance. The City has to develop, but we also have to maintain a level of environmental responsibility. Any information that we have that allows us to do that would be helpful. Commissioner Barnes pointed out that this information might help them find areas that are less environmentally sensitive and more appropriate for development. Dr. Shahady did not know how coordinated the college is with the City's GIS, but they have been dealing with land use databases, which the college does have it in GIS. The college is looking at putting together some grants that will hopefully identify conservation areas on a bigger scale, on a watershed scale. There was some discussion about how the city is moving to Arc View (a different type of GIS) and Dr. Shahady thought that once the City moves to that type of platform, it should help. Translating each other's data has been slowing things down a little.

Chair Hamilton moved to Objective 4.A. and establishing a program to promote the donation of open space easements or land trusts to the City. Chair Hamilton asked if NRAC has looked at areas that the City would target for that type of gifting. As a Planning Commission, they are looking at working with the IDA and City Council to figure out the areas that would be prime for higher density development and which areas should be left for open space. Dr. Shahady commented that this is going on in California a lot. They are developing natural conservation plans that look at it on a watershed scale and say the specific things Chair Hamilton is asking. NRAC has not done that yet, but he thinks it is really where they have to move in their thinking, particularly as people move out to Bedford. We really have to pay attention to that because it affects our watershed. The college has some money now to model the watershed and is looking at nutrients and how they are flowing through the system. He thinks that we need to continue to develop these tools and as more information becomes available make it a useful tool for decision makers and planners. Dr. Warren said that it is on their radar as something they would like to do and they are excited about the green infrastructure study that is going on because they see how that will segue into the ultimate goal of identifying areas that would be most appropriate for high density and what areas would be most appropriate for conservation.

Mr. Martin brought up a discrepancy in the use of "designate" and "create" in two places. One is in the section "Understanding the Value of Natural Resources" where it says to "designate" a staff person (an Environmental Management Coordinator) and Objective 1.A. number 1) says to "create" a staff person. There was discussion about which one to use. After some discussion, it was decided that "designate" should be used because "create" sounds like you are creating a new position, whereas "designate" carries the possibility of reallocating someone's time rather than creating a new position. There was consensus among the commissioners to use the word "designate."

Dr. Shahady and Dr. Warren took some time to redraft the section about water quality and TMDL. Chair Hamilton asked if there was anyone else present to speak either in favor or opposition to this petition. No one came forward and she closed the public hearing portion. Commissioner Barnes commented that the conversation they have been having today really points out the original purpose of forming this committee, which was to connect the planning process by connecting people in the business community with those in the academic community to address environmental issues.

Commissioner Sale commented that he is very pleased with both where we were and where we are going and how we are getting there. It shows the dynamic quality of what we are doing. The document includes some nice "tweaks" to keep us updated. Chair Hamilton commented that she was interested to see the incentives that would be in the environmental checklist.

Dr. Shahady then offered the following changes to the paragraph about water quality: "The water quality of Blackwater, Ivy, and Fishing Creeks, and the James River is in violation of ~~has been found to violate~~ the state and federal water quality standard for E. coli fecal coliforms, which indicates contamination from human or animal wastes. E. coli fecal coliform levels exceed the standards to the extent that the Virginia Department of Environmental Quality (DEQ) has placed these streams on the priority list of impaired waters pursuant to Section 13123 (d)(1) of the Federal Clean Water Act. Lynchburg's combined sewer system overflows (CSOs) have been identified as the primary source of this contamination. The City's project to separate sewage from stormwater flows, the Combined Sewer Overflow (CSO) project, is designed to address the problem. The DEQ has performed a special study ~~will be performing special studies~~, called Total Maximum Daily Load (TMDL) studies determining actions that are needed to address this problem in the future ~~to~~

~~determine if there are any other actions that will need to be taken to reduce fecal coliform counts. Implementation of the TMDL should be a priority to bring the watershed water quality into compliance. But beyond these efforts, other water quality concerns will need to be addressed in the future.~~

Commissioner Barnes made a motion, which was seconded by Commissioner Sale, to approve the above amendment, as proposed by Dr. Shahady. It passed by the following vote:

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

Commissioner Sale made a motion, which was seconded by Commissioner Hannon, to approve all other changes to Chapter 12 of the *Comprehensive Plan*. It passed by the following vote:

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

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 11, 2008**

AGENDA ITEM NO.: 9

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **ZONING ORDINANCE AMENDMENTS - Section 35.1-11.9. Terms beginning with "L", Section 35.1-36, Community Business Districts, B-3, Section 35.1-38, General Business District B-5 and adoption of Sections 35.1-43.22 thru 35.1-43.30 pertaining to large scale retail establishments**

RECOMMENDATION: Approval of the *Zoning Ordinance* amendments

SUMMARY: The proposed amendment to Section 35.1-11.9. Terms beginning with "L", would create the definition for a "large scale retail establishment". The proposed amendments to Section 35.1-36, Community Business Districts, B-3, Section 35.1-38, General Business District B-5 would regulate large scale retail establishments by referencing Sections 35.1-43.22 thru 35.1-43.30 which set development standards for large scale retail establishments as drafted by the Planning Commission. The Planning Commission recommended approval of the *Zoning Ordinance* Amendments because:

- The *Zoning Ordinance* amendments would require development standards for large scale retail establishments exceeding fifty (50,000) square feet.
- The *Zoning Ordinance* amendments would establish voluntary provisions that would allow a large retail establishment to be approved by an administrative process.
- The *Zoning Ordinance* amendments would provide an option for approval of a conditional use permit (CUP) by the City Council for those developments that do not meet the voluntary provisions.
- The City's *Comprehensive Plan 2002-2020* recommends reviewing and updating the list of uses permitted under the City's Zoning Ordinance to reflect changes in the type, scale and use characteristics of emerging industries. **(9.6)**
- The City's *Comprehensive Plan 2002-2020* recommends ensuring compatibility between development/preservation goals and roadway levels of service. **(14.6)**
- The City's *Comprehensive Plan 2002-2020* recommends that no building permit be issued that creates or exacerbates a significant safety hazard in the transportation system. **(14.7)**
- The City's *Comprehensive Plan 2002-2020* recommends evaluating the potential effects, both positive and negative, of human activities (such as new development, redevelopment, installation of infrastructure, and resource use and disposal, among others) on natural resources. **(12.8)**

PRIOR ACTION(S):

August 20, 2008: Planning Division recommended approval of the *Zoning Ordinance* amendments.
Planning Commission recommended approval (6-1) of the *Zoning Ordinance* amendments.

August 6, 2008: Planning Commission conducted a public hearing on the proposed *Zoning Ordinance* amendments and placed the items on a special meeting agenda.

July 23, 2008: Planning Commission conducted a work session with the City Attorney on the proposed *Zoning Ordinance* amendments.

June 25, 2008: Planning Commission conducted a work session on the proposed *Zoning Ordinance* amendments. Planning Commission requested a second opinion from the City Attorney on the proposed “cross access” requirement.

June 24, 2008: Commissioner Hannon provided a memorandum to the Planning Commission questioning the legality of the proposed “cross access” requirement.

June 12, 2008: Planning Commission conducted a work session on the proposed *Zoning Ordinance* amendments. The City Attorney provided an opinion to Planning Commission regarding the legality of the proposed cross access requirement.

June 11, 2008: Commissioner Hannon requested an opinion from the City Attorney on the proposed requirement for access between the large scale retail establishment parcel and adjacent parcels, also known as “cross access”.

May 28, 2008: Planning Commission conducted follow-up work session on the proposed *Zoning Ordinance* amendments.

May 8, 2008: Planning Commission conducted a second work session with a stakeholder group on the proposed *Zoning Ordinance* amendments.

April 9, 2008: Planning Commission conducted a follow-up work session on the proposed *Zoning Ordinance* amendments.

March 19, 2008: Planning Commission conducted work session with a stakeholder group concerning the proposed *Zoning Ordinance* amendments.

February 27, 2008: Planning Commission conducted a third work session on the proposed *Zoning Ordinance* amendments.

February 13, 2008: Planning Commission conducted a second work session on the proposed *Zoning Ordinance* amendments.

January 9, 2008: Planning Commission conducted a work session on the proposed *Zoning Ordinance* amendments.

November 14, 2007: City staff provided ordinances from Blacksburg, Chesapeake and Virginia Beach to the Planning Commission.

August 14, 2007: City Council conducted a second work session on the proposed *Zoning Ordinance* amendments and referred the amendments back to the Planning Commission for further consideration.

July 12, 2007: City Council conducted a work session on the proposed *Zoning Ordinance* amendments.

May 8, 2007: City Council held a public hearing on the proposed *Zoning Ordinance* amendments. The discussion of the proposed amendments was added to the July 12, 2007 work session agenda.

March 28, 2007: Planning Commission recommended approval of the proposed *Zoning Ordinance* amendments.

January 3, 2007: Planning Commission initiated amendments to the *Zoning Ordinance* pertaining to large scale retail establishments.

FISCAL IMPACT: N/A

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

ATTACHMENT(S): Ordinance(s) ; Planning Commission Minutes – August 20, 2008; Planning Commission Minutes – August 6, 2008; Speaker Sign-Up Sheet

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTION 35.1-11.9, SECTION 35.1-36 AND SECTION 35.1-38 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, AND TO AMEND THE CODE OF THE CITY OF LYNCHBURG BY ADDING THERETO NEW SECTIONS NUMBERED 35.1-43.22 THRU 35.1-43.30, THE AMENDED AND NEW SECTIONS RELATING TO LARGE SCALE RETAIL ESTABLISHMENTS .

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That in order to promote the public necessity, convenience, general welfare, and good zoning practice Section 35.1-11.9, Terms beginning with "L;" Section 35.1-36, Community Business Districts, B-3; and Section 35.1-38, General Business District B-5 of the Code of the City of Lynchburg, 1981 as amended, be hereby amended and reenacted as follows:

Sec. 35.1-11.9. Terms beginning with "L".

Terms used in the zoning ordinance, when defined in this section, shall have the following meaning:

(a) Land with minor improvements: A tract of land which:

(1) Does not include any building or other structure.

(2) Includes a building or other structure with a floor area of less than four hundred (400) square feet.

(b) Large Scale Retail Establishment: retail establishments having a cumulative gross floor area of fifty thousand (50,000) square feet or greater in floor area, whether such gross floor area is contained entirely within a freestanding building or is within two (2) or more buildings, whether located on a single lot or contiguous lots owned or operated as associated, integrated or cooperative business enterprises.

~~(b)~~ (c) Local street: A public street not classified as a freeway, arterial or collector street under the definitions in this section.

~~(c)~~ (d) Lodging house: See Section 35.1-11.3, Boardinghouse.

~~(d)~~ (e) Lot:

(1) A lot of record existing on the effective date of the zoning ordinance or any applicable subsequent amendment thereto.

(2) A tract of land, either unsubdivided or consisting of two (2) or more contiguous lots of record, located within a single block which on the effective date of the zoning ordinance or any applicable amendment thereto was in single ownership or control.

(3) A tract of land located within a single block, which at the time of filing for a building permit (or, if no building permit is required, at the time of filing for a certificate of occupancy), is designated by its owner or developers as a tract all of which is to be used, developed or built upon as a unit under single ownership or control.

(4) A lot may be subdivided into two (2) or more lots, provided that all resulting lots and all buildings thereon which were constructed after the effective date of the zoning ordinance or any applicable subsequent amendment thereto shall comply with all the provisions of the zoning ordinance. In such case, the designation of such lots shall be made at the time of filing for a certificate of occupancy.

~~(e)~~ (f) Lot area: The area of a lot; provided, that if that lot includes any part of the area of a street closed subsequent to the effective date of the zoning ordinance, not more than one-half (1/2) the area of such closed street shall be counted as lot area for purposes of determining the maximum floor area ratio or the required lot area per dwelling unit or lot area per room for such zoning lot.

~~(f)~~ (g) Lot area per dwelling unit: That portion of the lot area required for each dwelling unit located on a zoning lot.

~~(g)~~ (h) Lot, corner: Either a lot bounded entirely by streets or a lot in which the interior angle formed by the extensions of the street lines in the directions which they take at their intersections with lot lines other than street lines forms an angle of one hundred thirty-five (135) degrees or less. In the event that any street line is a curve at its point of intersection with a lot line other than a street line, the tangent to the curve at that point shall be considered the direction of the street line. Any portion of a corner lot whose nearest frontage is more than one hundred (100) feet from the point of intersection of the two (2) street lines or of the two (2) tangents shall be subject to the regulations for a through lot or for an interior lot, whichever is applicable.

~~(h)~~ (i) Lot coverage: See Section 35.1-11.4, Coverage, lot.

~~(i)~~ (j) Lot depth: See Section 35.1-11.5, Depth of lot.

~~(j)~~ (k) Lot, interior: Any lot neither a corner lot nor a through lot.

~~(k)~~ (l) Lot line: A boundary of a lot.

~~(l)~~ (m) Lot line, front: A street line.

~~(m)~~ (n) Lot line, rear: Any lot line, except a front lot line, which is parallel or within forty-five (45) degrees of being parallel to and does not intersect any street line bounding such lot.

~~(n)~~ (o) Lot line, side: Any lot line which is not a front lot line or a rear lot line.

~~(o)~~ (p) Lot of record: A lot which is part of a subdivision recorded in the office of the city clerk, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

~~(p)~~ (q) Lot, through: Any lot, not a corner lot, which adjoins two (2) street lines opposite to each other and parallel or within forty-five (45) degrees of being parallel to each other.

~~(q)~~ (r) Lot width: The horizontal distance between the side lot lines of a zoning lot at the building line.

Sec. 35.1-36. Community business districts (B-3).

(a) Intent. These districts are to provide for commercial and other services for large sections of the city. They will include a wide range of business uses and other uses compatible with a moderate-sized business area, at densities lower than those permitted in the central business area. New districts of this type will be strongly encouraged to develop as fully planned entities.

(b) Prohibited uses. Within any business B-3 district, as indicated on the official zoning map, no lot, building or structure shall be used and no building shall be erected which is intended or designed to be used in whole or in part for any industrial or manufacturing purpose.

(c) Uses permitted by right. The following uses will be permitted by right in community business districts under the regulations of Section 35.1-14 of the zoning ordinance:

(1) Uses permitted by right or by conditional use permit in the B-1 through B-2 districts, except a PUD, a CCD, a TND, or uses specifically listed as requiring a conditional use permit in the B-3 district.

(2) Establishments selling the following types of merchandise at retail:

Household appliances

Art works

Art supplies

Bakery goods

Bicycles

Business machines

Carpets and rugs

Clothing and accessories

Dry goods

Furniture

Garden and farm supplies

Greenhouses, nurseries and garden supply establishments

Jewelry

Luggage

Musical equipment and supplies

Orthopedic appliances

Optical goods

Paint

Pets

Radios, television sets and phonographs

Phonograph records

Photographic equipment

Sporting goods, toys and games

Supermarkets or food stores exceeding eight thousand (8,000) square feet in total floor area

Virginia A.B.C. package stores

Hotels and motels

(3) Services listed below:

Auditoriums, limited to a maximum capacity of one thousand (1,000) persons

Automobile driving schools

Banquet halls

Bicycle rentals

Blueprinting, duplicating and printing shops limited to a maximum of five thousand (5,000) square feet of floorspace

Business services not involving large mechanical devices schools and colleges of all types (including vocational schools) that do not exceed a maximum enrollment of one hundred (100) students

Public and commercial parking lots and parking garages for automobiles only

Dance studios

Funeral undertakers

Interior decorating establishments

Medical and dental laboratories

Loan offices

Locksmith shops

Opticians and optometrists

Pawn shops

Photographic studios

Stage and motion-picture theaters

Travel bureaus

Gymnasiums and health salons

(4) Banks, savings and loan, and similar establishments.

(5) Wholesale sales establishments with storage limited to a maximum area of one thousand (1,000) square feet.

(6) Radio and television studios and stations, without towers, provided that studios produce no exterior electromagnetic effect and are soundproofed from adjoining properties.

(7) Restaurants, including drive-in and outdoor restaurants.

(8) Large scale retail establishments meeting mandatory requirements of Section 35.1-43.22 thru Section 35.1-43.29 and voluntary provisions of Section 35.1-43.30.

~~(8)~~ (9) Other uses determined by the city council to be similar to and compatible with the above uses.

(d) Permitted accessory uses. The following shall be permitted as accessories to permitted principal uses in community business districts:

(1) Accessory uses permitted in the B-1 and B-2 districts (except those uses customarily permitted only as accessories to residential uses) shall be permitted in B-3 districts only as accessories to residential uses permitted and regulated herein as conditional use permit.

(2) Dance floors, accessory to restaurants.

(3) Other uses determined by the city council to be customary as accessories to uses permitted in this district.

(e) Uses permitted by conditional use permit. The following uses shall be permitted in community business districts as conditional use under the regulations of Section 35.1-15 and Article X of the zoning ordinance:

(1) Residential uses of any density or type other than a single-family detached dwelling.

(2) Automobile service stations.

(3) Arts and crafts shops.

(4) Arenas and auditoriums limited to a maximum capacity of two thousand five hundred (2,500) persons.

(5) Temporary fairs, exhibitions and circuses.

- (6) Veterinarian hospitals without outdoor kennels, including facilities for the sale and care of animals normally kept as pets but not farm animals.
- (7) Automobile and trailer rentals.
- (8) Commercial recreation places such as dancing, bowling, billiards and the like, when located within enclosed buildings.
- (9) Cluster commercial development.
- (10) Schools and colleges of all types exceeding a maximum enrollment of one hundred (100) students.
- (11) Traditional neighborhood developments.
- (12) Large scale retail establishments not meeting voluntary provisions of Section 35.1-43.30.

(f) Standards. The following dimensional standards shall apply within the B-3 business district:

(1) General standards	<u>B-3</u>
Minimum average lot area per establishment (square feet)	6,000
Minimum lot depth (feet)	100

(2) Yard regulations. The requirements for yards shall be the same as that for business B-2 districts, Section 35.1-35.

(3) Height regulations. The height requirements shall be the same as that for business B-2 districts, Section 35.1-35.

(4) Area regulations. The area requirements shall be the same as those for business B-2 districts, Section 35.1-35.

Note 1. These standards need not necessarily apply in planned unit developments.

(g) Signs. (As provided in Sections 35.1-26 through 35.1-26.16)

(h) Parking requirements. Off-street parking and loading space shall be provided as required in Section 35.1-25 of the zoning ordinance.

Sec. 35.1-38. General business district (B-5).

(a) Intent. This district is to provide for a variety of commercial and similar uses which require large sites and which often produce substantial nuisance effects. The location of these districts should provide for a high level of access, relatively large amounts of level land, and opportunities to shield adjacent residential districts from nuisance effects.

(b) Special regulations. The following special regulations shall apply in general business districts:

(1) Direct access shall be available to at least one (1) arterial street.

(2) Driveways shall be kept to a minimum and shall meet the requirements of the "Standard Entrance Policy" of the City of Lynchburg.

(c) Prohibited uses.

(1) Within any business B-5 district, as indicated on the official zoning map, no lot, building or structure shall be used and no building or structure shall be erected which is intended or designed to be used, in whole or in part, for other than one (1) or more of the following specified purposes; provided that no operations shall be carried on which create conditions of smoke, fumes, noise, odor, light or dust detrimental to health, safety or the general welfare of the community.

(d) Uses permitted by right. The following uses shall be permitted by right in the general business district subject to the regulation of Section 35.1-14 to the zoning ordinance:

(1) Uses permitted by right in the B-3 district except single-family dwellings.

(2) The following additional uses:

Auction rooms
Armories
Automobile and truck rental
Automobile, truck and trailer sales with outside sales and storage permitted Automobile service stations
Automobile and truck tire sales
Rebuilding and retreading establishments
Battery sales
Bottling plants
Billboards, subject to the regulations of Section 35.1-26.1
Blacksmith shops
Bookbinding
Building material sales
Carpentry shops
Coffee and peanut roasting
Commercial amusements, including swimming pools, golf courses and driving ranges, and skating rinks, but not including circuses, carnivals, and race tracks
Contractors' establishments
Dairies, pasteurizing plants, or ice cream manufacture
Dance halls
Depositories for the storage of office records, microfilm or computer tapes
Diaper services
Drive-in theaters
Dry cleaning and dyeing plants
Exterminators
Furniture upholstering and repair shops
Custom furniture manufacturing
Commercial greenhouses
Hiring halls and other places of assembly for the registration or assignment of employment
Automobile painting and body repair shops
Laundries
Sales lots for construction and farm equipment and similar machinery
Ice manufacture
Commercial kennels for dogs and other pets
Wholesale or produce markets
Monument and gravestone sales
Motion-picture production studios
Newspaper offices
Photographic developing and printing establishments
Printing plants
Second-hand stores including auction sales provided such activity is conducted wholly within an enclosed building
Small sign shops
Storage warehouses and yards, except sandyards, gravel yards, coal yards, railroad yards, automobile wrecking yards, junkyards or the storage of combustibles prohibited by the fire code
Travel trailer sales and rentals
Window blinds, shades and awnings (manufacture)
Leather products (not to include tanning)
Other uses determined by the city council to be of similar character to and compatible with the above uses.

(e) Permitted accessory uses. The following uses are permitted as accessory to principal uses permitted in general business districts:

(1) Accessory uses permitted in B-3 districts.

(2) Other uses determined by the planning commission to be customarily accessory to uses permitted in this district.

(3) Exterior signs pertaining to the uses conducted on the premises, as regulated in the B-4 district, except that projecting signs otherwise complying with this ordinance will be permitted.

(f) Uses permitted by conditional use permit. The following uses shall be permitted in general business districts as conditional use under the regulations of Section 35.1-15 and Article X of the zoning ordinance:

(1) Temporary fairs, amusement parks and circuses.

(2) Arenas, auditoriums or stadiums unlimited in capacity.

(3) Moving and storage establishments.

(4) Transient trailer parks.

(5) Radio towers and transmitting stations.

(6) Residential uses of any density or type.

(7) Motor freight stations.

(8) Trucking terminals.

(9) Commercial swimming pools.

(10) Schools and colleges of all types exceeding a maximum enrollment of one hundred (100) students.

(11) Flexible space developments as provided in Section 35.1-43.14.

(12) Large scale retail establishments not meeting the voluntary provisions of Section 35.1-43.30.

(g) Standards for B-5 business districts.

(1) General standards

Minimum average lot area per establishment (square feet)

B-5
None required
0

Minimum lot depth (feet)

(2) Yards. When a lot in any business B-5 district is used, in whole or in part, for residential purposes, the yard requirements shall be the same as those in a residential R-5 district.

a. Front yards.

1. Where all of the lots contained within a block are located in a business B-5 district, no front yard will be required.

2. Where the lots contained within a block are partly in this district and partly in another district in which a greater front yard is required, the front yard requirements of the latter district shall apply to the entire street frontage in both districts, or twenty (20) feet, whichever distance is the greater.

b. Side yards. No side yard shall be required except where a business B-5 district abuts a residential district, in which case the yard required on the abutting side shall be the same as that required in the residential district.

c. Rear yards. The requirement for rear yards is the same as that for business B-2 districts, Section 35.1-35.

(3) Height regulations. The height regulations shall be the same as those required for a business B-4 district, Section 35.1-37.

(4) Area regulations. The area requirements shall be the same as those required for a business B-2 district, Section 35.1-35.

(h) Signs. (As provided in Sections 35.1-26 through 35.1-26.16)

(i) Parking requirements. Off-street parking and loading space shall be provided; however, the requirements of off-street parking of said section shall not apply in connection with buildings located in the first fire district as described in the city code.

2. That in order to promote the public necessity, convenience, general welfare, and good zoning practice the Code of the City of Lynchburg, 1981 as amended, be hereby amended and reenacted by adding thereto new Sections 35.1-43.22 thru 35.1-43.30 as follows:

Sec. 35.1-43.22. Retail establishments, large scale.

Intent. Retail establishments are critical to the economic vitality of the city, convenience of citizens and ensuring that the city maintains its position as the economic center of the region. While retail establishments are important, their size can greatly impact the general health, safety and welfare of the city in terms of aesthetics, stormwater management, air pollution, light pollution, traffic, walkability and neighborhood compatibility. It is the intent of this ordinance to promote economic development and redevelopment which utilizes high-quality site, building design and land use to further the goals and objectives of creating accessible and attractive commercial districts, sustaining nature in the City, reinforcing neighborhood character, promoting a diverse, vital economy and providing effective support systems as stated in the City's Comprehensive Plan.

Sec. 35.1-43.23. Severability clause.

As provided in Section 35.1-3, if any provision of the zoning ordinance regulating large scale retail establishments is declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of the zoning ordinance regulating large scale retail establishments and all of such provisions shall remain in full force and effect.

Sec. 35.1-43.24. Applicability.

- (a) The provisions of this ordinance **shall** apply to large scale retail establishments having a cumulative gross floor area of fifty thousand (50,000) square feet or greater in floor area, whether such gross floor area is contained entirely within a freestanding building or is within two (2) or more buildings, whether located on a single lot or contiguous lots owned or operated as associated, integrated or cooperative business enterprises.
- (b) When a large scale retail establishment is constructed with a cumulative gross floor area less than fifty thousand (50,000) square feet after the adoption of this ordinance, any enlargements expansions or additions or conversions of use that would result in a cumulative gross floor area of fifty thousand (50,000) square feet or greater in floor area, whether such gross floor area is contained entirely within a freestanding building or is within two (2) or more buildings, whether located on a single lot or contiguous lots owned or operated as associated, integrated or cooperative business enterprises, the entire establishment **shall** be subject to the regulations of this ordinance.
- (c) The regulations of this ordinance **shall** not apply to the renovation, rehabilitation or redevelopment of retail establishments existing prior to the adoption of this ordinance. However, as a redevelopment incentive, only those enlargements, expansions of these retail establishments exceeding seventy five thousand (75,000) additional square feet **shall** meet the requirements of this ordinance.

Existing 100,000 sf Retail Space <i>(Prior to Ordinance adoption)</i>	75,000 sf Addition	
Redevelopment Incentive – <i>Retail establishments existing prior to adoption of this ordinance may expand up to 75,000 sf.</i>		

- (d) The requirements of this ordinance **shall** be in addition to all other applicable ordinances, regulations and requirements, such as the Erosion & Sediment Control Ordinance, Stormwater Management Ordinance, Landscaping Ordinance and Sign Ordinance. In the event that this ordinance and other applicable regulations of the Zoning Ordinance differ, the regulations of this ordinance shall apply.
- (e) The use of the word “**shall**” in this ordinance denotes a mandatory requirement.
- (f) The use of the word “**should**” denotes a voluntary provision.
- (g) When a site plan is submitted that fulfills voluntary provisions as provided in Section 35.1-43.30 and all mandatory requirements of this ordinance and that qualifies for administrative review based on satisfying the point total of Section 35.1-43.30, the City Planner is authorized to approve the site plan in accordance with the Technical Review Committee’s recommendation as provided in Section 35.1-14, Site Plan Review of the Zoning Ordinance.
- (h) When a site plan is submitted where the petitioner does not wish to fulfill the voluntary provisions as provided in Section 35.1-43.30 of this ordinance, the site plan **shall** only be approved as a conditional use by the City Council after public hearings as provided in 35.1-15, Conditional use permits issued by City Council and 35.1-19, Public hearings of the Zoning Ordinance. The City Council **shall** in determining whether or not to grant a conditional use permit for a large scale retail establishment consider the extent to which the proposal conforms to the voluntary provisions of this ordinance and further the City Council **shall** encourage high-quality design elements not addressed by this ordinance.
- (i) Nothing in this ordinance shall prevent the right of any proper party to apply for a variance from the Board of Zoning Appeals for any requirement of this ordinance as provided in 35.1-13, Variances of the Zoning Ordinance.

Sec. 35.1-43.25. Transportation .

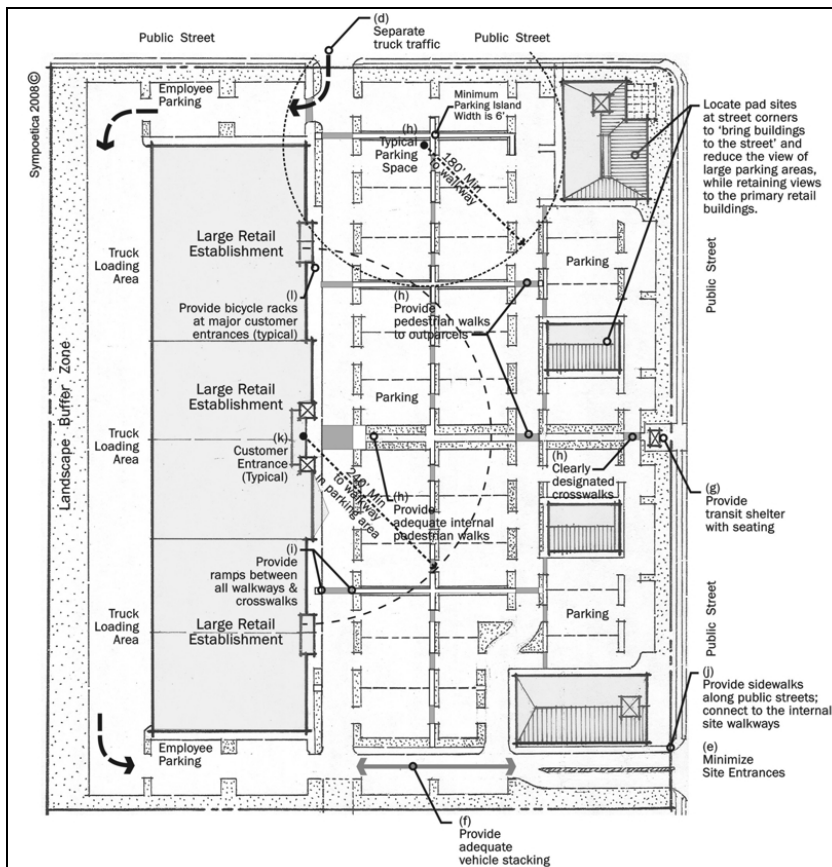
Mandatory Requirements:

- (a) A traffic study detailing impacts on the City’s road network and traffic circulation for the site **shall** be submitted. The traffic study **shall** be prepared by a firm qualified to conduct traffic engineering studies. The methodology for the required traffic study **shall** be approved by the City’s Transportation Engineer prior to commencement of the study. Technical guidelines for traffic studies may be obtained from the City’s Transportation Engineer.
- (b) The findings and recommendations for needed improvements as determined by the City’s Transportation Engineer **shall** be made by the developer. Needed improvements may include but are not limited to: Right and left turn lanes, sidewalks, new or modification of existing signals, trails or trail connections, sight distance improvements, street lighting, bus stops or transit pullout bays, access management techniques, and transportation systems management. Only those improvements where a clearly demonstrated nexus between the development and the need for the improvement exist **shall** be required.

(c) Shared Direct Access and Internal Vehicle Circulation

1. All developments **shall** be designed to achieve direct and convenient vehicular access between adjacent commercial properties including outparcels, subject to the provisions of this ordinance.
 2. The shared direct access and/or internal vehicular circulation provisions shall apply to all properties, including outparcels, owned or controlled by the owner of the development or that are the subject to a single site plan or plan of development.
 3. In determining whether a site plan meets the requirements of this section, the City Planner and the Technical Review Committee shall consider the characteristics of the proposed development, the information in the traffic study prepared pursuant to this section, the existing uses on adjacent properties, and the foreseeable development of adjacent properties based on the existing uses, existing zoning designations, comprehensive plan designations and factors and development patterns in the area.
 4. The shared direct access provisions of this ordinance shall not be required to provide primary access to a public street for an adjacent commercial property not owned or controlled by the owner of the development or subject to a single site plan or plan of development that would not otherwise exist. An owner shall not be required to provide primary access through the shared direct access provisions to a public street to benefit an adjacent commercial property not owned or controlled by the owner of the development or subject to a single site plan or plan of development that would not otherwise exist.
 5. An owner shall not be required to construct any improvements allowing shared direct access with adjacent commercial properties other than on property owned or controlled by the owner or subject to a single site plan or plan of development in order to meet this standard. An owner shall not be required to dedicate any property or property interest to the City to meet this standard.
 6. In the event that an owner of adjacent commercial property will not consent to a design allowing shared direct access at the time of development, the development shall be designed and constructed to allow for the establishment of shared direct access with adjoining commercial properties in the future should the consent of the adjacent owner or owners become available.
- (d) Truck traffic **shall** be separated to the greatest extent possible from vehicular, pedestrian and bicyclist traffic.
- (e) Entrances to the site **shall** be designed to maximize pedestrian, bicyclist and vehicular safety, maximize efficient traffic circulation and minimize the impact on adjacent neighborhoods.
- (f) Adequate stacking for vehicles **shall** be provided at the access points to and from parking areas.
- (g) Provisions for mass transit **shall** be made in the form of appropriately placed benches and shelters within the development or along public streets.
- (h) Pedestrian walkways **shall** be provided between all buildings and between buildings and parking areas and all out parcels. Walkways within parking areas **shall** be located in a manner to provide safe efficient movement of pedestrians. Walkways **shall** be located in a manner so that no parking space is further than one hundred twenty (120) feet from a walkway. Walkways and crosswalks **shall** be distinguishable from drive aisles. Walkways and crosswalks *should* use surface materials such as pavers, bricks, concrete or similar architectural treatments.

- (i) All pedestrian walkways **shall** be designed to provide safe efficient access for people with disabilities. Ramps **shall** be provided between all walkways and all crosswalks.
- (j) Sidewalks **shall** be provided along the property frontage of all public streets. Connections between the sidewalk and internal walkways **shall** be provided.



Voluntary Provisions:

- (k) Multiple building entrances *should* be used to reduce the distance between customer entrances and parking areas. No customer entrance *should* be located further than two hundred forty (240) feet from a pedestrian walkway within a parking area.
- (l) Accommodations for bicyclists, in the form of bicycle racks *should* be provided.

Sec. 35.1-43.26. Natural Systems.

Voluntary Provisions:

- (a) Stormwater management facilities *should* be designed as attractive landscaped amenities.
- (b) To the greatest extent possible, storm water management *should* utilize existing or proposed regional stormwater management facilities.

- (c) All parking areas in excess of that required by Section 35.1-25, Off Street Parking and Loading *should* incorporate porous pavements that allow stormwater to infiltrate through to the soil below.
- (d) Streams or intermittent branches *should* not be enclosed or piped except where necessary for vehicle crossings.
- (e) A landscaped buffer area *should* be maintained between streams and/or intermittent branches at the following rate:

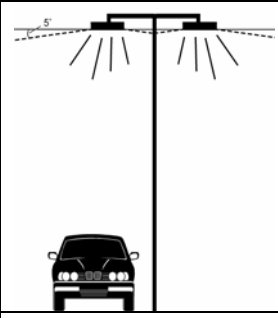
<u>Distance from Stream / Intermittent Branch</u>	<u>Landscaping Required</u>
Fifty (50) feet minimum	Twenty (20) one and one half (1.5) inch caliper trees per acre
Seventy-Five (75) feet	Fifteen (15) one and one half (1.5) inch caliper trees per acre
One Hundred (100) feet	Maintenance of existing vegetation

- (f) Wetlands benching, fountains and the incorporation of walking trails and pedestrian benches around the perimeter of stormwater management areas are all encouraged. Lighting of these areas is encouraged for safety.

Sec. 35.1-43.27. Lighting.

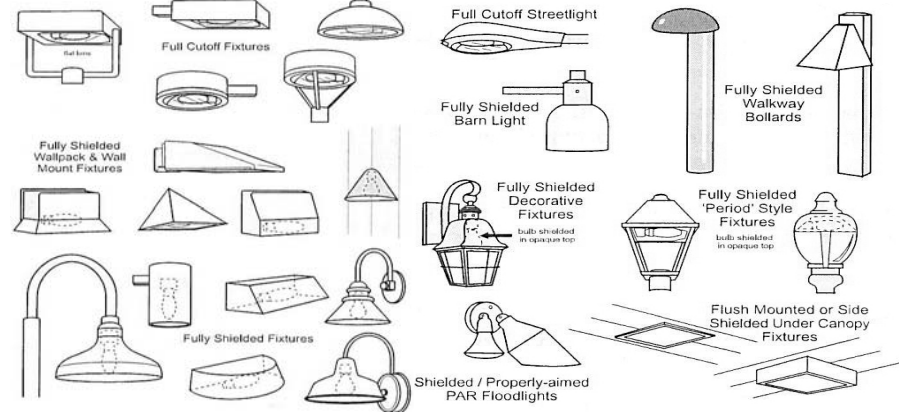
Mandatory Requirements:

- (a) All exterior lighting ***shall*** be glare shielded and designed to prevent illumination beyond the property line.

	(b) In no instance <i>shall</i> light poles exceed thirty-five (35) feet in height. (c) No exterior lighting <i>shall</i> radiate above a level that is five degrees (5°) below horizontal.
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Voluntary Provisions:

- (d) Lighting fixtures *should* be of the types listed below:

	
<i>Fixtures that shield the light source to minimize glare and light trespass and to facilitate better vision at night.</i>	

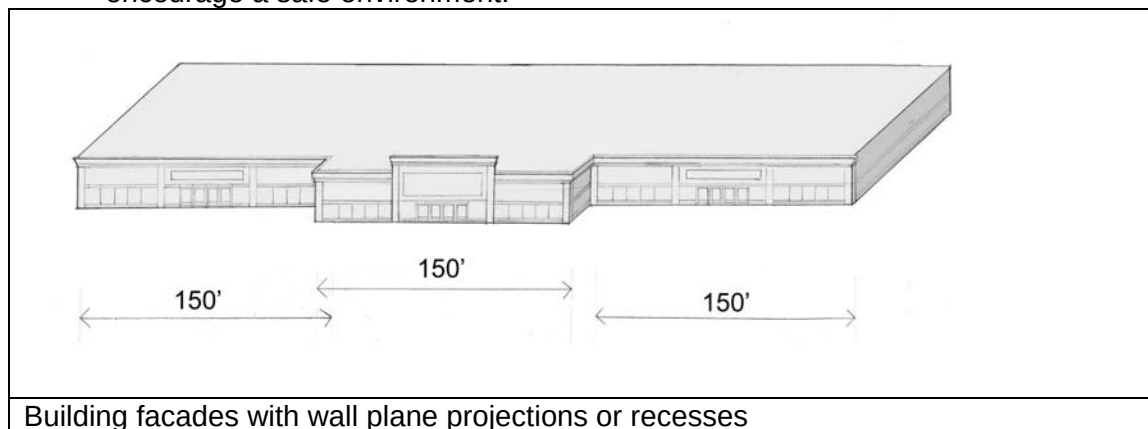
Sec. 35.1-43.28. Building design and sustainability.

Voluntary Provision:

- (a) All buildings *should* obtain the minimum rating from the U.S. Green Building Council's, Leadership in Energy and Environmental Design (LEED), or the Green Building Initiative's Green Globes. The City Planner may approve other green building certifications.
- (b) Buildings and sites *should* be designed using Crime Prevention through Environmental Design (CPTED) techniques.
- (c) Building Façade

Voluntary Provisions:

1. Building facades greater than 150 feet in length measured horizontally and visible from a public street, *should* incorporate wall plane projections or recesses having a depth of at least three (3) feet to break up the expansiveness of the exterior. All recesses *should* be properly lit to encourage a safe environment.



Building facades with wall plane projections or recesses

2. Fronts and sides of buildings that are oriented toward a public or private street or residential area *should* incorporate arcades, display windows, false windows, awnings or similar architectural features to add visual interest and scale.
3. The structural or architectural bay pattern of the building *should* be expressed on the exterior through the use of reveals, projecting ribs, or offsets to a minimum depth of at least twelve (12) inches.
4. Exterior building materials for portions of buildings oriented toward a public or private street or residential area *should* include a combination of brick, wood, stone or textured concrete masonry.
5. Façade colors for all portions of the building *should* be subtle, neutral or earth tone colors (no primary colors). Building trim and accent areas may feature brighter colors, including primary colors. Final color palate is subject to approval of the City Planner.
6. Developers are encouraged to reduce the footprint of large retail establishments by designing a store with multiple levels.

(d) Roofs

Mandatory Requirement:

1. Parapets ***shall*** conceal flat roofs and all rooftop equipment such as heating ventilation and air conditioning (HVAC) units from street level view.

Voluntary Provision:

2. Variations in roof lines *should* be used through the use of overhanging eaves, parapets, pop outs, height variations and entrance features.

(e) Entryways

Mandatory Requirement:

1. The building **shall** have clearly defined, highly visible entryways.

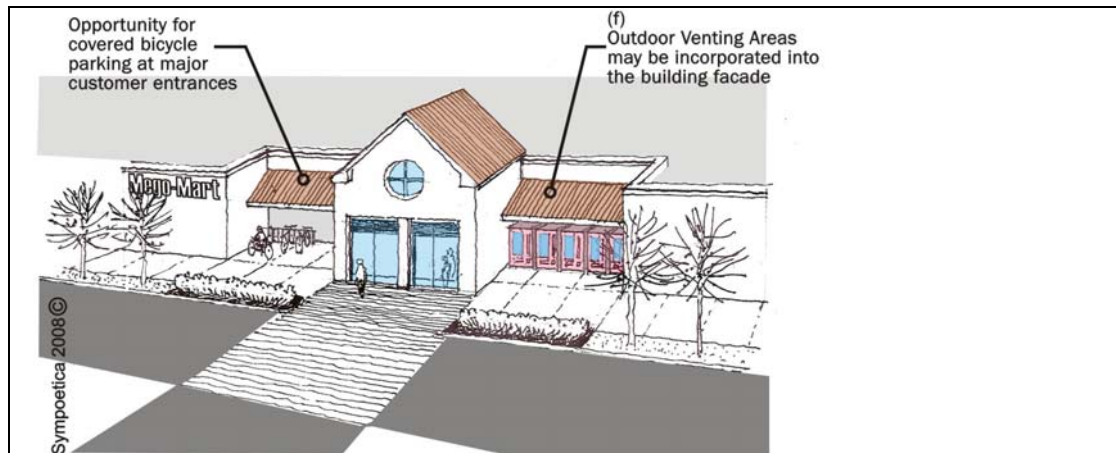
Voluntary Provisions:

2. The building entryway *should* incorporate at least two (2) of the following:
 - a. Canopies or porticos
 - b. Overhangs
 - c. Recesses/projections
 - d. Arcades
 - e. Arches
 - f. Peaked roof forms
 - g. Display windows
 - h. Outdoor patios
 - i. Landscaped area with sitting opportunities

(f) Outdoor Vending Areas

Mandatory Requirement:

1. Outdoor vending areas **shall** be incorporated into the façade of the building.



(g) Service Areas Incorporated Into Overall Plan

Voluntary Provision

Loading docks, truck parking, outside storage, cargo containers, trash collection, utility meters, HVAC equipment, trash collection, and other service functions *should* be incorporated into the overall design and landscaping so that the visual and acoustical impacts of these functions are fully contained and out of view from public / private streets and all adjacent properties (unless those adjacent uses are other loading areas, truck parking areas and storage areas) and no attention is

attracted to the functions by the use of screening materials that are different from or inferior to the principal materials of the building and landscaping.

Sec. 35.1-43.29. Definitions.

Arcade: A covered passage with Shoppe's on one or both sides.

Awning: A permanent roof like structure that projects from the wall of a building, covered with any material designed and intended for protection from the weather or as a decorative embellishment including those types which can be retracted, folded, or collapsed against the face of the supporting building.

Arch: A curved structural member that spans an opening.

Canopy: An ornamental roof like structure.

Cornice: A projecting ornamental molding along the top of a wall or building.

Display Window: A window opening which has the purpose of presenting merchandise or seasonal displays.

Earth Tone: A color scheme that draws from a color palette of browns, tans, grays, greens, blues and some reds. The colors in an earth tone scheme are muted and flat in an emulation of the natural colors found in dirt, moss/trees and rocks.

Façade: The outer surface of a building.

Outparcel: A parcel located on the outside perimeter of a commercial development fronting a right of way.

Outdoor Patio: A paved recreation area that adjoins a building, outfitted for sitting or dining.

Parapets: A low wall along the edge of a roof.

Peaked Roof Form: A pointed shape or structure used to cover an area.

Portico: A colonnaded porch or ambulatory, consisting of a roof supported by columns, usually attached to a building but sometimes forming a separate structure.

Primary Colors: Bright vivid colors that result in a color that is not considered an earth tone.

Reveals: A notch or cut of at least three (3) feet into a façade that creates a recess.

Shoppe: A small retail establishment offering for sale a specified line of goods or a small commercial establishment for the making or repair of goods.

Wall Plane Projections: A jutting out of at least three (3) feet from the primary plane of a building wall.

Sec. 35.1-43.30. Voluntary provisions.

(a) To qualify for an administrative review as provided by Section 35.1-43.24(g) of this Ordinance, a total of fifteen (15) points is required from the table below. One (1) point from each category shall be required:

<u>Voluntary Provision</u>	<u>Section</u>	<u>Points</u>	<u>Required from Category</u>	<u>Selected</u>
<u>Site Mobility</u>				
Multiple building entrances	35.1-43.25(k)	1		
Bicycle Racks	35.1-43.25(l)	1		
<u>Environmental</u>				
SWM facilities as amenity	35.1-43.26(a)	1		
Regional SWM facility	35.1-43.26(b)	1		
Porous pavement	35.1-43.26(c)	1		
No piping of streams	35.1-43.26(d)	1		
Stream Buffers	35.1-43.26(e)	1		
Certified environmental rating	35.1-43.28(a)	3		
<u>Building Design</u>				
Building façade with wall plane	35.1-	1		
Building facades incorporating	35.1-	1		
Expression of bay pattern	35.1-	1		
Building materials	35.1-	1		
Building Colors	35.1-	1		
Variation in roof lines	35.1-	1		
Features at entryways to buildings	35.1-	1		
<u>Site Design</u>				
Service areas incorporated into overall	35.1-43.28(g)	1		
CPTED techniques	35.1-43.28(b)	1		
Lighting fixtures	35.1-43.27(d)	1		

3. That this ordinance shall become effective upon its adoption.

Adopted:

Certified:

Clerk of Council

MINUTES FROM THE AUGUST 20, 2008 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

b. Work Session on the Big Box Ordinance

Chair Hamilton commented that the motion did not carry and they would hold business as usual. She asked Mr. Walter Erwin, the City Attorney, and Mr. Gregory J. Haley, to come forward to address the commissioners. Mr. Erwin introduced Mr. Haley from Gentry Locke Rakes & Moore in Roanoke. He is a specialist in zoning law. He was asked for his opinion on the issues that came up at the public hearing. Chair Hamilton thanked him for coming. The issues Mr. Haley had addressed in his memorandum deal with the Schewel case, the requirement of background information and the ambiguity of the ordinance. Chair Hamilton asked Mr. Erwin for a summary. He stated that there were three legal issues that came up from the public hearing—what bearing, if any, the Schewel case might have, does the city need background studies or information for adopting this type of ordinance and is the ordinance too vague? The fourth issue raised was not a legal issue—what should be the square footage threshold be to trigger this ordinance?

Regarding the Schewel case, they contacted the County Attorney's office in Albemarle County and obtained copies of the judge's opinion and pleadings that had been filed. Mr. Erwin spoke with the Deputy County Attorney on three occasions and the attorney who had served as lead counsel on two occasions. Basically what had happened in that case was that Schewel's had built a store in Albemarle County on a parcel where it was permitted by right. After several years, Schewel's filed an amended site plan to build a warehouse on the back of the existing building to increase their storage. As part of the site plan review, staff told them they were denying it because they wanted Schewel's to provide for interparcel access. They wanted Schewel's to give the adjoining property owner an easement across their property. The case was appealed to the circuit court. There were a number of procedural issues that the county argued. All the attorneys agreed, including the county attorneys, that staff did not have the authority to require one property owner to formally dedicate a public easement across their property for the benefit of another property owner. Mr. Erwin thinks that what happened in the Schewel case is very different from the situation that Planning Commission is facing in this ordinance. The first way it differs is that there were no specific provisions in Albemarle's ordinance requiring interparcel access. There were no standards to follow; staff just decided to do it. In this ordinance, shared direct access would be specifically required and has specific standards for staff to consider whether or not shared access is necessary. A second difference is that our ordinance does not require anyone to dedicate a private easement across their property. The ordinance would just require that they put an access point at their property line. You could do it by a variety of means—simply dedicate it on the site plan—we do not tell anyone what they have to do. They are free to choose what works best for their development. A third difference is that the warehouse Schewel's was proposing would not generate any substantial additional traffic that needed to be addressed through an interparcel connection. As Mr. Erwin had stated before, you have to show that the condition that you are trying to impose is related to what is taking place. In the Schewel case, there was no analysis by staff that could justify the access being required because of additional traffic. Mr. Erwin thinks that what happened in the Schewel case is significantly different than what is being proposed in this ordinance. He does not think that the Schewel case stands for the proposition that the City cannot include, if it wishes, a direct access provision in the ordinance. He would also point out that the Schewel case is a decision from the Albemarle Circuit Court. That decision is not binding on any other courts in Virginia; only the decisions of the Virginia Court of Appeals or the Virginia Supreme Court are binding on other courts. Other courts can certainly examine what happens in other jurisdiction, but the Schewel case would not be binding on Lynchburg, even if the facts were similar.

The second issue that came up from the public hearing that Mr. Erwin addressed was the question of whether or not it is necessary for a city to do background studies to justify this type of ordinance. This ordinance was not initiated by staff or the Planning Commission. This ordinance was initiated by City Council in August 2007 when it directed that a big box ordinance be prepared and brought back to them for consideration. In Virginia, the law presumes that the legislative body is aware of all studies and reports and that the legislative body is in the best position to determine what is most appropriate for its locality. There is no requirement in Virginia that a local government body has to conduct studies, hearings or gather any background information before making a legislative decision. It could do so if it wishes, but it is not a requirement. As Mr. Erwin mentioned in his outline, there are a number of studies out there where planning associations and other groups have discussed the impact that big box developments can have on a community and have recommended that local government bodies adopt ordinances to try and minimize their impact and to plan for big box development. City Council, under Virginia law, is presumed to be aware of all that information and have taken that into consideration when it directed the preparation of this ordinance.

The final legal issue raised at the public hearing was whether or not this ordinance is too vague and there is too much discretion given to staff. The courts in Virginia have recognized that you can't adopt an ordinance that addresses every detail. If that was a requirement, it would be impractical. It is legitimate for a government body to delegate the administration. You can't delegate your legislative functions, but you can delegate the oversight and administration of the ordinance to staff, as long as you give staff some guidelines to follow. It is somewhat of a double-edged sword. This ordinance has gone through a lot of revisions. In some of the earlier revisions, it contained much more specific details than it does now. A conscious decision was made to not appear that we are dictating to these developers and micromanaging their project. We want to give them some latitude in how to design their project. On the one hand, if you put too many specifics in your ordinance, you run the risk of being accused of micromanaging. On the other hand, if you take some of that out, then you hear the position that Planning Commission is currently hearing. There is not enough detail.

In summary, if the Planning Commission decides that there needs to be more standards and it needs to be more detailed, it can put them in the ordinance. But in looking at this and looking at some of the court cases, it is Mr. Erwin's opinion that this ordinance meets the current standards and doesn't have to be any more detailed. It is detailed enough to give staff the guidance they need in following the ordinance.

Mr. Haley explained that he is kind of a troubleshooter. When a local government gives his firm something they want them to check on, he or another lawyer will try and pick it apart. It is not their job to agree with anyone. In fact, the City of Lynchburg got them involved a couple of years ago on a zoning administrator determination where he got to tell the City that it was wrong and needed to change what it was doing, in his opinion. He is not here to agree with the City Attorney or to say what he wants to hear. His job is to tell them what he thinks and then do with it what they will. He had worked with Mr. Erwin on the July memorandum because Mr. Erwin wanted to make sure he got it right and then when the new issues came up, Mr. Erwin asked Mr. Haley to look at them and write specifically on them.

With respect to the Schewel case, he thinks that the single most important difference can be found by reading the complaint and answer. In that case, Schewel had access to its property across someone else's property. It had a private right-of-way and deeded right of access. The county staff was telling them they had to create a legal instrument which would give the back property access across right-of-way they did not even own. The county, when it had to take a position, agreed that they had gone too far and could not do it administratively. Mr. Haley is not even sure you could write an ordinance to do what they tried to do in Albemarle County. What is being proposed for this ordinance access to a public street; it is access between parking lots and that is pretty different. Legally, it is a different concept.

His firm represented the developer in the Wal-Mart on Route 220 South in Roanoke County. A citizen's group filed a lawsuit challenging the Wal-Mart saying that the approval process was incorrect, there hasn't been enough study and that the conditions imposed on the development were too vague. It was litigated in the circuit court of Roanoke County, and the case was dismissed. He is in the process of representing the town of Blacksburg in a fight with a big box developer. They lost that case but are optimistic that there will be a positive result in the Supreme Court of Virginia in a few weeks on appeal. There is a lot of interest in large retail regulation across Virginia and a lot of people are wrestling with the same issues as Lynchburg.

In terms of the process that the City has gone through in drafting these regulations with multiple revisions and much input is normal and typical. In terms of the necessity of a study, that is one thing on which the case law is clear. The Supreme Court has very specifically held that there is no requirement that you do a formal study.

It is not an easement. If the business is going to be open for commercial purposes, there is in essence, a public right of access, but really it is a traffic circulation regulation that can be related logically to the large retail use. To give them an example, he is representing Highland County in the windmill cases where a citizens group said not enough studies were done and it was arbitrary for them to adopt a regulation. There were competing experts put on the stand from both sides and all that study was generated after the fact for the litigation. The court had no trouble saying that the elected legislative body makes the decision.

In terms of the vagueness and the necessity of standards, a substantial amount of power is being delegated to staff. The Supreme Court of Virginia has recognized that it is necessary. Somebody has to make the call and Planning Commissions and City Council simply do not have the time to get into that level of detail with multiple revisions and negotiations. Mr. Haley just finished a case where they were representing a developer of a new

residential subdivision. They negotiated and bargained for a subdivision exception and the staff agreed to the necessity and the desirability of the exception. A citizen group filed a lawsuit and the circuit court said that the standards were adequate.

Mr. Haley pointed out all the standards in the ordinance that outline the conditions for shared direct access being required (the traffic study, consideration of the characteristics of the property, the amount of traffic, the adjoining property, etc.) It also states that you can require shared direct access only when there is a direct relationship. There is discretion given to staff, but there are also clear standards. He has independently of the City Attorney thought hard about this and told Mr. Erwin what he thought. They disagreed on a few minor points but mostly they agreed. Chair Hamilton thanked him and asked for questions or comments.

Commissioner Swienton thanked them for addressing the ambiguity issue. In terms of appeals, is there a mechanism in this ordinance that a developer can take to the Board of Zoning Appeals and separately, is there a mechanism for a neighborhood to challenge any of staff's decisions? Mr. Haley said that there are two ways to appeal. Under the traditional analysis of the zoning administrator decision, the developer can appeal that to the Board of Zoning Appeals (BZA) or a neighboring property can appeal that to the BZA. The BZA makes a determination about whether the zoning administrator was correct in interpreting the *Zoning Ordinance*. That probably doesn't apply here. The other process is for site plan review. Under the Code of Virginia, there is a specific statute that says a site plan action is reviewed like a subdivision review. When you are looking at a site plan, it drops into the subdivision review procedures. The site plan presenter has the right to file an action in circuit court within 60 days to challenge the denial. He cannot remember if there is a citizen right of action to challenge site plan approval, but he is pretty sure there is not. That is probably going to get fixed in the next couple of years in the General Assembly because it has been a very hot topic in the courts.

Commissioner Swienton asked him if he had any recommendations on how to get a definite appeal process for the citizens. He asks this because the Planning Commission is effectively creating an ordinance that denies a public hearing process. He believes there has to be a mechanism to protect citizens. Mr. Haley said there is not an easy fix for that. He would have to think about that. The Supreme Court of Virginia in a 2006 and 2008 decision held that there was no private right of a citizen to enforce the subdivision ordinance by bringing action challenging subdivision approval. Whether that applies to site plan review is not a clear question, but he thinks that it probably does. You cannot create a right to go to court by ordinance; it has to be by statute. If you wanted to have a public participation element in there, you could require that the Technical Review Committee give notice to adjoining property owners that it is considering reviewing something and invite comments.

Mr. Erwin commented that the reason that the appeal process is not spelled out in this ordinance is because it is granted by state law and does not need to be in this ordinance. There are also appeal procedures spelled out in other portions of the *Zoning Ordinance*. The second part of Commissioner Swienton's question would require more research, but he has serious doubts that the City can give private citizens or adjoining property owners the right to challenge this type of development. It is just not something that the law provides for, and in one sense you would be undermining the very purpose for which Council is developing this ordinance. The developers said that that the reason they wanted these standards is because they do not like going through the conditional use permit process and running the risk of appeals and having citizen groups challenging it just because they don't like it. If they meet certain standards, this ordinance will allow them to put their project in by a matter of right. Even if you could legally do it, if you put in a procedure by which adjoining property owners can challenge those decisions, then you have, in effect, defeated the purpose that Council said it was trying to achieve.

Mr. Erwin stated that there is a procedure where a zoning decision can be appealed to the BZA. If a citizen says he wants to know what this provision means and he disagrees with that opinion, they can go to court. Mr. Erwin thinks it will be very difficult legally and practically to put a provision in that says that the adjoining property owners have the right to appeal the Technical Review Committee's decision about a big box in accordance with the ordinance.

Mr. Haley commented that the reason there are these distinctions in the law is very clear in the cases. The cases say zoning is one thing. Site plan approval is something different. In zoning, you are saying that a large retail use is allowed in a heavy commercial district. The use decision is covered by the ordinance. How you lay out the project is treated more administratively, so you would have no right to judicially challenge it. That is the logic that the court has drawn.

Commissioner Worthington asked if the Supreme Court case Foster vs. Board of Supervisors of Halifax County had any bearing on the joint access issue. He acknowledged that the attorneys had said that based on the

Schewel case, the ordinance does not violate anything, but he asked if the Foster case did. Mr. Erwin said that it really did not. In the Foster case, you had two parcels of property. Landowner A had allowed Landowner B to use their property voluntarily to have access to the public road. At some point Landowner B said that just having permission from the adjoining property owner really isn't adequate for us. We need something more definite. We want the county to require Landowner A to give us a legal easement across their property to get to the road. The county said we will do that. We will condemn a private easement and it will be a legal right of Landowner B to come across Landowner A's property. The Supreme Court said that the local government had no authority to require Landowner A to grant a legal easement across their property for the benefit of the adjoining property owner. They were not creating a public street. They were trying to tell one property owner that they had to dedicate an easement across their property for the benefit of a second property owner. In the City's case, the City is not requiring the dedication of any easement. When they got to court in the Schewel case, the county attorneys agreed that they did not have the authority to require Schewel's to give the adjoining property owner an easement across their property. The Foster case makes that clear. We have tried to make it clear in our ordinance that the City is not requiring any property owner to dedicate an easement for another property owner.

Commissioner Worthington asked if the granting of an access point requires them to maintain that access point. He gave the example of a storm washing out the access point. Is there any implied requirement of the owner to maintain that piece of property so that a car can get through? Mr. Erwin said that there would be in the sense that the City has required that access point because it thinks that the traffic generated by your development needs more than one point of access and entrance to be effective. If the City requires you to put in, it is just like the *Landscape Ordinance*. That ordinance requires you to maintain the trees and shrubs. It would be the City's responsibility to step up and say that the access point needs to be cleared, not the responsibility of the adjoining property owner. The same is true of parking spaces. If a storm causes some of them to be covered up, the City would tell you that you have to move the dirt or whatever is blocking them to make the parking spaces usable again. Mr. Erwin pointed out that this does not create a private right of action that would give the adjoining property owner the ability to tell the other property owner that they have to do anything.

Mr. Haley commented that in the Foster case the county had tried unsuccessfully to use the power of eminent domain to take from a property owner the right to exclude people from the property. The county had tried to take that right and give it to his neighbor to benefit his neighbor. The Supreme Court of Virginia said that you cannot take the property right away from a property owner for the benefit of a neighbor. That is not the proper right of condemnation. It has to be for public benefit. Mr. Haley gave an example of a case he had tried in Halifax County where there was an inadequate road going into a subdivision of mobile homes. The private right-of-way was a beat up road that was too narrow for a mail truck, school bus or ambulance. The owner of the property would not let the county improve it. The county condemned the right-of-way to put in a public road and the owner used the Foster case as his defense. The judge said it was completely different from the Foster case and threw out the challenge. Mr. Haley said that the bottom line question in this case is whether the code of Virginia authorizes a local government to require you to make access available to your property. The Supreme Court of Virginia has said over and over again that you can impose against the developer's will a reasonable access requirement. The demand has to be reasonable and proportionate. It is not a taking; it is a regulation.

Mr. Erwin clarified that the government has to use its power to benefit the public. This ordinance is not to benefit the adjoining property owner. The direct access requirement is to benefit the public to try and reduce congestion on the public street and give the public more than one point of access to improve traffic flow. This is not being imposed to benefit private property owners. This ordinance is telling a developer that if you want to come and build your shopping center, you need to understand that it will pose an impact. The number one impact we hear about is traffic. Local government has the right to require a developer to take the appropriate steps to minimize the adverse impact that all the traffic generated by your development will have.

Commissioner Hannon asked the attorneys what a title company would call this direct access. Mr. Erwin just testified that the City can require that it be maintained. The public has the right to use it. Commissioner Hannon had asked Mr. Hershel Keller at the public hearing if the public has the right to cross your property and you have an obligation to maintain that right-of-way what a title company would call it because it needs to be on the title report. This affects the use of the property. Commissioner Hannon asked Mr. Haley what his opinion was as to how a title company would address this issue. Would they ignore it and take the risk of liability that a case was brought in the event that it was not properly maintained? Mr. Haley commented that title companies give opinions at the time the property transaction closes. This kind of requirement would be imposed at the time a building permit or a zoning permit is issued or a development plan is approved. Usually, the site plan profferer is already going to have title. Commissioner Hannon said he would have to disagree. If he owns a piece of property and he puts a big box on it and has designated this access on his site plan and he puts it up for sale, the first thing a

potential buyer is going to ask for is a preliminary title. What is that preliminary title report going to say regarding this access point? Mr. Haley said that the site plan will control the development of that property. This access point is only another designation on the site plan. Commissioner Hannon asked him if he is saying that a title company is just going to refer to a site plan—it is not going to burden the property. It is not going to be called an easement? Mr. Haley explained that if you are going to maintain a property for a commercial use, you are required to have parking, etc., and all that is imposed through the site plan process. This shared direct access is for a single site plan under shared ownership with a large retail use. There are no third party rights being affected unless someone agrees to it. All of the interparcel access that is being required is for parcels that are under common control for purposes of development. In Mr. Haley's view, the requirement for an access is going to be treated as any other requirements for access and all the other requirements in the site plan.

Chair Hamilton interjected that she was not sure how whether or not it is called an easement is pertinent to the issue at hand. Commissioners Hannon and Worthington said it is. Commissioner Hannon commented that he does not seem to be making any headway on this and he is willing to let this go. However, easements are not parking. If he owns a big box, he should be allowed to close off these access points at any time and put up gates on any access points when the store is closed, and in earlier testimony he was told that an owner would not be allowed to do that. Mr. Erwin commented that at an earlier meeting, Mr. Martin had said that if the property owner went out of business and wanted to close all the entrances, he could do that. After the hours of operation are over, if he wanted to close off those access points, the City would allow him to do that. The purpose of the access points is to help handle the traffic that is being generated by the use. If the use ceases and it is not generating any more traffic, the City would not tell the owner that he had to keep them open. This is not a public road. It is not creating a secondary highway. Commissioner Hannon said that with all due respect, he does not think that assurance would suffice for a title company.

Mr. Haley commented that there are shared direct access provisions between adjoining commercial parcels all over the State of Virginia. Commissioner Hannon said he is not disputing that. He is not saying it is a new issue. The issue is that there has been an attempt to diffuse the issue of whether or not this is an easement by calling it a dedication. Commissioner Hannon's concern is that he heard from those who spoke at the public hearing that it would be considered a burden and that it was one of the ambiguities of the ordinance.

Commissioner Hannon commented that the complaint at the public hearing was not that the ordinance was too ambiguous but that many of the specific provisions are ambiguous. For example, the term "owned or operated in an associated, integrative or cooperative business enterprise." An example was put forth at the public hearing about two brothers who bought adjoining commercial properties and they had two different uses, would these be considered "associated, integrated or cooperative business enterprises." The answer given at the public hearing is that it would be up to the Planning Department to answer that question once they got very far along with the process and had spent a lot of money on it. That was a disincentive. Another ambiguity raised was "truck traffic shall be separated to the greatest extent possible." The issue was what does that mean and the answer was that it would be totally up to the discretion of the Planning Department.

Mr. Erwin commented that no ordinance is ever going to be perfect. You will never be able to draft an ordinance that covers every detail. The Supreme Court has recognized that and says that is not practical. If you require that degree of detail, government would never do anything. There has to be discretion awarded to government officials and the Supreme Court has said that government officials are going to do their jobs in an honest and forthright manner. He gave a case example where a zoning official turned down a request to put in an asphalt plant because the ordinance said a zoning official could turn down a request if he believes the facility will generate unreasonable amounts of noise, smoke, emissions, etc. for the adjacent property owners. That was challenged because it was too vague. The case said that the government official was given too much discretion and the Supreme Court said that is not too vague. Government officials are perfectly capable of determining what constitutes unreasonable amounts of noise, dust or smoke in enforcing an ordinance. Mr. Erwin said that if the Planning Commission wants to go back and further define certain things, it can do that. On the other hand, he thinks that the ordinance, the way it is written, does give enough guidance for zoning staff to use. That is their occupation and there is an appeals process. If a developer feels that an opinion of zoning staff is unreasonable or they are interpreting it in the wrong way, there is an appeals process built in for that decision to be challenged. Mr. Erwin is not saying that this is a perfect ordinance. It could be more specific but he does not think that they have to because it falls within the guidelines of the reasonable discretion that the local government body can give staff in administering an ordinance. When this gets to City Council, Council may tweak it further. The Planning Commission is passing on a recommendation. Counsel will take it and build on it and may add to it. Mr. Erwin does not think that Planning Commission is required to do more. It has met the requirements that the Supreme

Court has said need to be met for an ordinance realizing that a government body is never going to be able to put every detail in an ordinance. It is practical to give staff the authority to make decisions.

Chair Hamilton said they could take up the issue of making the ordinance more specific directly in later discussion. She would like to keep the questions right now to those that commissioners need to ask of the two attorneys.

Commissioner Worthington asked what happens if a big box is put on a piece of property and then it burns down and a new store is planned that is not as big. After that access point is granted, can he shut it down because he is no longer building such a big store or once it is granted, it is there forever? Mr. Erwin said that he did not think so. That is the reason the ordinance was rewritten to not assume that there needs to be shared direct access included on the site plan for every big box development. The traffic that is being generated by a particular development will be looked at and a decision made whether or not shared direct access is required. If someone wants to build a new facility after a fire, for example, they have to come back with a new site plan. Staff would do the same analysis that was done for the larger building and decide whether shared direct access is necessary for the new, smaller building. It may be concluded that the access is no longer required.

Commissioner Worthington thought that makes it sound like anyone building now has to provide shared direct access. Mr. Martin commented that if a 100,000 square foot building is constructed and the requirement for the cross access is put in and that use ceases to exist because of a fire and another retailers builds 40,000 square feet, but there is a requirement for cross access because of the previous building, would the new owner have to maintain it? Mr. Martin's answer would be no. Mr. Martin asked Commissioner Worthington if his question is whether whatever instrument is used to establish the cross access--on the site plan or if they had done an easement or covenant, would the new owner be required to honor and maintain it? Commissioner Worthington said that is what he is asking and also pointed out that it might limit what can done with the property. Commissioner Worthington asked if a new owner could put their building right in front of the access point, if he wanted to, and Mr. Martin said yes.

Commissioner Hannon asked a question about a comment from page nine of Mr. Haley's memorandum. On that page, Mr. Haley had said that the shared direct access provision would, in some cases, have the effect of establishing the ability of the public to travel across one commercial property to access the parking and internal vehicle circulation areas of an adjoining commercial property. This sounds to Commissioner Hannon like a public right-of-way. Commissioner Hannon asked Mr. Haley to explain what that means. Mr. Haley explained that if you have 40 acres and you are going to have 30 acres of that developed for a big box use and two five-acre parcels for restaurants. Normally, if someone wants to buy one of the outparcels, he will negotiate for a contractual easement that would be a recorded instrument that would provide his right to access the big box's parking lot. Commissioner Hannon commented that he does not think that we are discussing voluntary easements. We are talking about a situation where the City requires the doing of something that an owner would not have otherwise done. Mr. Haley said that what he is getting at is that in many, many instances, you are going to have shared direct access as a private requirement because no one is going to buy an outparcel unless they have access to the parking lot. Commissioner Hannon said that is not the case here. Mr. Haley said that in most cases, it is a requirement that will be taken care of by the legal instruments done by the parties for their own reasons. If it is done by a site plan designation, a site plan is project specific and site specific and use specific. When you terminate that use and you get a new site plan, that one wipes out the old one. The only time the City is going to be imposing the right to travel from one parcel to another parcel is when it is under common ownership and a common plan is developed.

Commissioner Hannon said that he is aware of that and his question is very different. Many times a commercial property owner will put up signs that say that the owner reserves the right to deny access at any time or words to that effect. The purpose of those signs is to avoid an implied dedication of public use. Commissioner Hannon said that the way he is reading Mr. Haley's memo is that when the property owner is required to allow public access and has established the ability of the public to travel across a piece of property, that would create a public right-of-way. If a business closes and closes that access, Commissioner Hannon believes that a citizen could go to court because he no longer has the right to cross that property. If you are a title company, he thinks that you would show that exception on your title report, even if a smaller building is built on a site that used to have a big box on it. Mr. Haley said that he cannot think of any legal theory where a site plan designation would create a private right of action to enforce it. Commissioner Hannon said that it would be a public right and Mr. Haley said he would disagree with that. Chair Hamilton interjected and said they were not going to argue about this point. She asked for any other questions for the attorneys.

Commissioner Sale asked Mr. Haley to explain why he had made the recommendations for revisions that are in his memorandum. Mr. Haley said that paragraph one is not a change, just a clarification of the 75,000 square foot threshold for redevelopment. Paragraph two is just trying to make it clearer about the administrative review process. Paragraph three is a clarification to make it clearer that you are not requiring the shared direct access without owner consent. Paragraph four is geared at the Schewel case. It is telling the Technical Review Committee not to use this requirement to get access to back land to the public street.

Commissioner Hannon commented that Mr. Haley's clarification about the 75,000 square feet for redevelopment does not apply to our ordinance, since it talks about the 75,000 being cumulative feet rather than 75,000 additional square feet. Mr. Haley said that he had made this recommendation without consulting with anyone and thought that if a site was expanded and it went over 75,000 square feet, it would trigger this ordinance. He acknowledged that he may have read it incorrectly. Mr. Martin explained that this paragraph was to address those sites that exist prior to the adoption of this ordinance and you can add 75,000 new square feet to those sites without triggering this ordinance. Mr. Haley clarified that someone could have 75,000 existing square feet and then add an additional 74,999 square feet and it would not trigger this ordinance, and Mr. Martin said that was correct. Mr. Haley said that he had read it as once an existing development reaches 75,000 square feet, it would trigger this ordinance. He would suggest clarifying this paragraph. Mr. Martin suggested a graphic to illustrate it. Chair Hamilton commented that those who came to the public hearing also misunderstood this paragraph. Mr. Haley said that this shows the usefulness of this type of process.

Mr. Haley commented that his fifth recommendation was to clarify that sometimes people use pipe and sometimes they use some other type of enclosure, so this was to capture those types of things.

His clarification about non-directional lighting was because non-directional made it sound like the light could go anywhere and you are trying to direct it away from the adjoining property line. Mr. Martin said that it has always been referred to as non-directional because they do not want it directed at one point across the property line. He understands what Mr. Haley is saying. Directional would be more like a spotlight. Commissioner Swienton suggested revising it to say that it would be designed to prevent illumination beyond the property line.

Commissioner Sale asked Mr. Haley if he saw this proposed ordinance as better than what is currently around and something that is useful in terms of the environment he litigates. Mr. Haley said that he just went through this with the town of Blacksburg. They had acted very quickly because they had a project underway and needed to do something. The City's is certainly more detailed and looser than the town of Blacksburg. There is another way to do this and that is to say that no one can have a big box without a conditional use permit. The commissioners said they had tried that and City Council rejected that draft. Mr. Haley said he understands that Council is trying to create an incentive for good design. That is absolutely consistent with the trend in the industry. It is more of a challenge to administer on the one hand. On the other hand, the planning professionals are becoming more and more educated. It is much more of a specialization than it used to be. There are degree programs. These things have gotten so complicated that when you see a good project, you know it. It doesn't usually happen without the coordination of the government and the developer to meet everyone's needs and make lots of compromises. On the other hand, you need better people, more skill and thankfully, those people seem to be around. That is the way the world is moving. A lot of people don't like intensive regulatory reviews of proposed development projects and a lot of developers don't like it, but the alternative to that is the old way of doing things where you end up with Timberlake Road. People are trying to balance all the competing interests and develop policies. This strikes him as an innovative way to attack a problem that actually gives developer more control than it would to just say that you need a conditional use permit. If it struck him as bad policy, he would say so. If it struck him that it cannot be administered in the real world because it is going to be impractical because it is too much on the administrators, he would say so. He thinks it is innovative and creative and will require sophistication to administer, but he does not think it is impractical.

Mr. Erwin commented that it is innovative and it is the wave of the future. In the past, zoning ordinances tended to just focus on the use of the property. In recent years, there has been a movement to say not only the use of the property but also the form of the property is important. That is what the property looks like, how it meshes with adjoining properties. Because you really can't regulate aesthetics just by itself, localities are moving towards what is called "incentive based zoning" where they tell developers these are the standards we have developed. If you will voluntarily meet these standards, then we will offer you something. You can do your project without going through the conditional use permit process. You can have a higher density of development. We will offer you an incentive to develop your property in this particular way that you didn't have in the past. The General Assembly, just this year, adopted legislation that expands the ability of local governments to offer incentive based zoning. The General Assembly recognized that it needs to give local governments the power to offer this to

developers. Developers, as it became clearer, do not like going through the conditional use permit process and would prefer doing a project as a matter of right. A lot of developers like that process. It is more difficult to administer, but it is something you are going to see more and more governments turning to as this incentive based zoning becomes more popular.

Commissioner Hannon clarified with Mr. Martin that this ordinance is going to apply to parcels that can now be developed by right. Mr. Erwin answered that and said that is correct. The reason for this ordinance is the result of one particular project, the Wal-Mart on Old Forest Road. Citizens came to City Council and said they did not like the fact that currently in our community, big box developments can go in as a matter of right. There needs to be some oversight and City Council agreed. Council had discussed the original ordinance that Planning Commission recommended and Council said it would like to use a hybrid ordinance with already set standards and say if you can meet them, you do not have to go through the conditional use permit process. If you don't want to meet them, you can go through the traditional conditional use permit process. Mr. Erwin concurred with Commissioner Hannon that this ordinance will be imposing a requirement that currently doesn't exist, but that is a decision that has been made by City Council. Mr. Erwin acknowledged that City Council could change its mind after they receive this draft and decide to leave things the way they are.

Chair Hamilton thanked them both for coming. After a five-minute break, she asked if everyone would like to stay and get a decision on this today or put this off to another work session. There was consensus that they would like to stay and work on it, as long as it did not go much after 7:00. Whether or not they take a vote depends on how far they get with their discussion.

Chair Hamilton wanted to lay out the topics that were brought up at the public hearing. The first was Rick Read's question as to how many vacant parcels there are left for green field development and how many are potentially available. Mr. Martin has that information. There was a question as to the necessity of the ordinance, and she felt that was covered by both attorneys. There was a question as to why there was no one to speak in favor of the ordinance. There is the question about the size threshold to trigger the ordinance. There is the question about whether redevelopment should be a separate ordinance. The other big part was ambiguity. Clearly this document is legally okay—whether we as a body want to tighten it up or not is another question. The other issue is that the *“shalls”* and *“shoulds”* are too expensive. They may or may not want to take this into consideration.

Mr. Martin went over the number of parcels that are left that could be developed. He showed a map of the vacant land left in the city as classified by the assessor's office. There are 7,591.92 acres vacant. Commissioner Barnes wanted to know if the map could more clearly show stream lines and steep slopes, etc. Mr. Martin pointed out that a lot of times parcels may or may not follow the stream valleys. The next thing that Mr. Martin did was map the land that was zoned B-3 and B-5 and map the vacant parcels and look at the parcels to see if they were contiguous to one another. If they were, he included those as one land area. Land that is left that is zoned B-3 or B-5 and is classified as vacant is 673.263 acres. Then he looked at the *Future Land Use Map* and did the same thing and mapped the vacant land areas on top of the *Future Land Use Map* designations for community commercial and regional commercial and there is 275.365 acres of land that are vacant and designated for commercial on the *Future Land Use Map*. From this analysis, we can see that there is actually more land zoned commercial than when the *Comprehensive Plan* was done that we intended to go to commercial. The other anomaly in this is that one of the biggest areas that is zoned B-3 but is currently listed as vacant is the Liberty University tract; that is 130 some acres. He also took out the cemeteries because they were being counted as vacant land.

The next thing that Mr. Martin did was to see how many of these tracts were greater than five acres. For the land that is zoned B-3 or B-5, there are 427.46 acres of tracts that are five acres or more. For the *Future Land Use Map* side, there are 155.848 acres that are five acres or more. For all vacant land, there are 4,697 acres that are five acres or more, but he did not do the contiguous land area on that. There is some land out there, but there is not as much as you think because we haven't looked at topography, water or sewer or any of that. Chair Hamilton asked how difficult it is to do a vacant land analysis. Mr. Martin said you have to turn the topography on and look at each tract and get a feel for the slopes. Commissioner Worthington suggested asking someone like Rick Read what tracts they would show a potential developer. He acknowledged that was not scientific. Mr. Martin commented that just the other day they had a big box developer come in and they wanted to locate somewhere in the Lakeside/501 area, but they did not want to be in Lakeside Centre. They found at least three sites that might have worked for him, but it was very hard. They were looking for anywhere from 10 to 15 acres.

Commissioner Barnes asked if these sites included grey field sites as well, and Mr. Martin said it was his understanding that these were green field sites. Commissioner Sale asked Mr. Martin if he could make a guess as to how many sites were left in Lynchburg that were topographically acceptable for reasonable consideration for green field development, as well as make a guess as to how many grey field sites there were for reasonable consideration. Mr. Martin thought that the sites that were currently zoned appropriately and large enough would be behind Home Depot (about 30 acres; accessibility would be a problem but it has already been bulk graded), some land behind Billy Craft Honda and the land mass that is currently zoned industrial but on the *Future Land Use Map* for that type of development behind the 911 Center. As far as grey field sites, you can look at any of the shopping centers (the one on Campbell Avenue, Fort Hill Shopping Center, the Plaza, maybe the River Ridge Mall). Commissioner Sale asked Mr. Martin if we are basically talking about approximately ten parcels and Mr. Martin said that would be a reasonable guess, but it might be less than ten.

Commissioner Swienton commented that when he visualizes on a map where these ten sites are, he can see that good planning is required because poor planning on all ten of these could create strategic chokeholds. Chair Hamilton agreed with that comment.

Mr. Martin commented that with this you can get a better feel for what vacant land is left that is more than five acres and you can see that it is kind of sporadically placed. However, everyone wants to be in the western part of the city.

Chair Hamilton moved the discussion to talking about the size threshold. Commissioner Worthington asked if they could take a vote on who might want to raise it to 75,000 for new development. Commissioner Swienton commented that if he had wanted to negotiate, he would have started out at 25,000 square feet. Commissioners Worthington and Oglesby were both in favor of raising it to 75,000 because they feel it is making it difficult for someone to make a 50,000 square foot building pay for itself with all these requirements on it. Commissioner Swienton commented that he is still comfortable with 50,000 square feet and his reference point is the inside of the DeMoss Center. That is over 100,000 and he saw it empty. Even splitting it in half, he thought that was still rather large and could have significant impacts on an area. Commissioner Sale does find the 50,000 square foot threshold necessarily restrictive on that kind of impact in Lynchburg, particularly as we are getting denser. Starting at 50,000 square feet means that we can talk about it. He would rather it be smaller than larger so that there can be an opportunity to have some conversations. He uses the size of a football field as his reference point for 50,000 and that is just the footprint of the building. That is going to have an impact and with the sites left that we are talking about, we want to have an opportunity to talk to people about this kind of new development or redevelopment in a thoughtful, provocative, helpful way for the City.

Commissioner Swienton commented that one thing he thought about was the concept about grocery stores brought up at the public hearing and that they are neighborhood commercial. In terms of existing sites, the old Winn Dixie was neighborhood commercial, but it won't be anymore. Supermarkets at one time had hours that did not go 24 hours a day. To him, the impact that supermarkets have against a neighborhood is greater than it used to be. They no longer close at 9:00 p.m. A different retail environment necessitates more requirements that a developer needs to meet to protect the neighborhood.

Commissioner Hannon commented that the administrative review "carrot" is illusory, and it is getting more illusory the more language that is put into the ordinance. Mr. Case had brought up at the public hearing that if we passed this, that it would basically kill any further construction in excess of 50,000 square feet, and Commissioner Hannon agreed with that statement.

Commissioner Barnes commented that he goes back to the original intent of this ordinance which was to provide additional oversight into large retail development. He also sees that the incentive to have redevelopment start at 75,000 square feet might push developers more to redevelop grey field sites, and he thinks that having the higher threshold for redevelopment is important. He is comfortable with leaving new development at 50,000 square feet.

Chair Hamilton is comfortable with that as well. With all due respect, she does think that the fast track is illusory. She did some research to look at the big boxes that are here and what they were willing to go through to be big boxes. Wards Crossing went from R-4/R-5 to B-3/B-5. Sam's and Wal-Mart both went through two rezoning processes, as did Candler's Station. Lakeside Centre went from R-4 to B-5. Crossroads Colonnade also went from R-4 to B-5. The old Lowe's on Timberlake Road went B-1/B-3 to B-5 in 1986 and the new Lowe's did the same in 1988. The old Winn Dixie went from R-2 to B-3C in the '80's and it was only 44,000 square feet. The Linkhorne Kroger went through a rezoning from B-3C to B-5. Wards Crossing West went through a voluntary

rezoning to B-3C. People who are willing to do these developments are willing to go through a rezoning process. She thinks that the fast track is only an incentive for them to develop here, even if there are a few places that are by right now. The vast majority are going to have to go through a rezoning anyway. She does not think that Commissioner Hannon's argument about it being illusory is a founded argument. She also likes the fact that the threshold is higher for redevelopment. She agrees with Commissioner Swienton that it is about mitigating the negative externalities on the public that we get from the footprint no matter what they sell. If you have someone staying open until midnight with lights and the traffic, it is still negative externalities on private property owners. She feels that we are acting in their best interest. She commented that the reason we didn't have anybody come and speak in favor of this is because we are supposed to represent the citizens. The Planning Commission is supposed to be there to protect the public good. You are not going to have people speak about regulations unless it directly affects them and then they ask why you didn't do anything.

Chair Hamilton asked if anyone wanted to make a motion. Commissioner Oglesby made a motion, which was seconded by Commissioner Worthington, to change the size threshold for new development sites from 50,000 square feet to 75,000 square feet. Commissioner Sale asked if they had any suggestion as to how that would apply to redevelopment. Commissioner Worthington said to keep it at 75,000 square feet. Commissioner Barnes pointed out that then you are making no distinction between new development and redevelopment. Commissioner Worthington said they he did not feel that someone will move down the street to renovate an old building versus doing a green field. If they want a green field site, they are going to go where they want. They will go where they think they can sell the most goods, and it doesn't matter whether it is green field or brown field. It is cheaper to build on a green field than a brown field and today it is all about the money. Developers make their decisions based on a market survey, figure out where the households are, figure out the drive time and then they make their decision. It has nothing to do with whatever we come up with, but if it makes us feel good, we should do it. However, he does not think that it will have a major impact. He agrees with Commissioner Hannon on this point. Commissioner Sale pointed out that we heard at the public hearing that we need to incentivize redevelopment and he is responding to that request and that thought. He thinks that in the future, we will see more energy toward redevelopment than we do right now. If we go to 75,000 square feet for new development, then we take away the incentive for redevelopment.

Commissioner Swienton said that he looks at the retailers that Chair Hamilton just cited and they went through the rezoning process. To him, there is a proven track record that large retailers will accept the conditional use permit process.

Commissioner Hannon did not know how good examples from the 1980's are because of the costs involved in the retail market now in and around Lynchburg. This ordinance is going to be a disincentive to new development and redevelopment. The public good can always justify anything and it doesn't always turn out to be for the public good. He thinks that fundamental public good is recognized in private property rights. One thing he learned in writing legal briefs is that when it gets too long and too complicated, something is wrong. This has gotten so long and so complicated that every time Mr. Erwin looks at this, we have new language that goes in it. He does not like it, but he would go with 75,000 square feet because it is better than 50,000 square feet.

Commissioner Worthington asked Commissioner Oglesby if she wanted to change her motion to change the threshold for redevelopment to 100,000 square feet and she said she did. Chair Hamilton said there was an amended motion on the floor to raise the thresholds from 50,000 square feet to 75,000 square feet for new sites and from 75,000 square feet to 100,000 square feet for redevelopment sites.

The motion failed by the following vote:

AYES:	Hannon, Oglesby and Worthington	3
NOES:	Barnes, Hamilton, Sale and Swienton	4
ABSTENTIONS:		0
ABSENT:		0

Chair Hamilton asked if anyone wanted to address the issue of ambiguity or wanted to tighten it anywhere. Commissioner Swienton stated that he is okay with it, although he is open to some tightening. The main parts that he wanted addressed by the attorneys was whether the way it is written is legal and if the developer comes in and has a disagreement with city staff that there is a method of appeal. He is comfortable with the opinions given him by the attorneys about these issues.

Commissioner Sale agreed with that comment and said that he looks at this more of an opportunity to have a big, long discussion with some standards. Some of the items are opportunity for conversation and discussion. He is okay with it the way it is, except that he would like to consider some of the suggestions that Mr. Haley made in his memorandum. Commissioner Sale asked Mr. Martin if he had read Mr. Haley's suggestions and if all of them seemed reasonable and applicable and helpful. Mr. Martin said that he agreed with all of them, except the first one (that one Mr. Haley acknowledged that he had interpreted incorrectly.) Mr. Martin thought that paragraphs (d) and (e) on page three should be discussed.

Commissioner Hannon commented that there are many things that go into the administrative review process. With all due respect to Commissioner Sale, he stated that this is not a dialogue process. It is a very expensive process and can be very time consuming. With all due respect to Commissioner Swienton, if the remedy if the process doesn't go in a reasonable way is to go to court, that is no remedy at all. The City has endless funds to litigate things like this and a developer has a budget and he is operating on a margin. If he looks at this and thinks that he has to budget a contingency for attorney's fees in the event that they go through this administrative review process and have to litigate it, it is not an option. It is not a dialogue process and it is not a sound business proposition to attempt to go through the administrative review process not knowing where you are going to come out. You just can't know by looking at this where you are going to come out. A good example of that is what happened in the Walgreen's case on Langhorne Road. In that case, the Planning Department came back with requirements that on their face were impossible and it killed the deal. The City spent nearly \$200,000 on a study that is collecting dust somewhere. The ambiguities within this draft give the Planning Department (and he is not questioning their good faith attempt to effectuate the public good) such a wide latitude of discretion that it is essentially an unknown for a developer to decide to go through this process. That is why he says that this process is illusory. This is a lot of verbiage that is going to get us right back to where Council said they did not want to be, which is a conditional use permit process.

Commissioner Barnes commented that Mr. Erwin had stated that you cannot pass an ordinance that covers every possible scenario. City staff is given discretion in a number of ways, from the Traffic Engineer to the Environmental Planner. They are not operating in a vacuum. They are operating from codes, so it is not as if staff has unlimited discretion. There is certainly some wiggle room with some of the standards, and each site will be evaluated differently. In some of the places that are ambiguous, such as truck traffic being separated to the greatest extent possible from vehicular, pedestrian and bicycle traffic, that will differ from site to site. It will depend partly on the professional judgment of staff. He is not too troubled by the ambiguities.

Commissioner Hannon brought up the issue of getting owner permission for joint access. What if the owner will consent in consideration of \$50,000? That will be up to the city staff to decide whether or not that is consent or it is not consent. Commissioner Barnes said that he sees nothing in the ordinance about paying for consent. Chair Hamilton asked Mr. Martin is that is generally a practice and does the city get involved in that sort of thing? Mr. Martin answered no, and said that the developer would say we have the consent worked out and we do not have it worked out. Mr. Martin thinks that there has been an attempt to paint staff as evildoers, which they are not. Staff is trying to interpret, enforce and move development forward in the city the best that they can. There are appeal processes in place for when staff has done wrong. In the case of a site plan, the appeal process would go through the Planning Commission. Mr. Martin also wanted to point out that whether or not the City goes to court is City Council's decision; it is not a staff decision. Whether or not we have endless amounts of money to fight an issue is decided by Council.

He would like to address that you cannot confuse a rezoning petition with that of an administrative review process. The Walgreen's petition was a rezoning. They were asking to go from residential to commercial. There were *Future Land Use Map* and *Comprehensive Plan* considerations that needed to be made. The decisions on that were made by Council, not by the Planning Department. Staff made its recommendations and its cases, which Council listened to and then made its ultimate decision. Mr. Martin commented on the issue of the administrative review process of the ordinance. Staff looks at and approves site plans every day. There are not people beating Planning Commission's door down appealing the decisions staff makes. Obviously, there is not a huge problem with the decision making capabilities that staff has. If Planning Commission deems it appropriate to tighten up the ordinance, Mr. Martin welcomes that. He is actually a proponent of having ordinances say what they mean, but to simply imply that staff is going to do wrong, he does not accept that.

Commissioner Hannon interjected that Mr. Martin has as much said that Commissioner Hannon is implying that staff will do wrong and that staff is evil. Chair Hamilton said that she did not think he was implying that and we are not going to argue that.

Commissioners Worthington and Oglesby had no comment on the ambiguity of the ordinance or tightening up the standards. Chair Hamilton commented that she feels that the conditional use permit process is a viable option for developers. Five of the ten properties that she had previously mentioned were developed in the last five years. That are not all projects of the 1980's and they all went through strenuous rezoning and conditional use permit processes.

Commissioner Sale made a motion, which was seconded by Commissioner Oglesby, to change the language of Section 35.1-43.24(g) (from page nine of Mr. Haley's memorandum) to the following:

"When a site plan is submitted that fulfills all mandatory requirements of this ordinance and that qualifies for administrative review based on satisfying the point total requirement of Section 35.1-43.30, the City Planner is authorized to approve the site plan in accordance with the Technical Review Committee's recommendation as provided in Section 35.1-14, Site Plan Review of the Zoning Ordinance.

The motion passed by the following vote:

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

Commissioner Sale made a motion, which was seconded by Commissioner Barnes, to change the language of Section 35.1-43.25(c)(1)(from page ten of Mr. Haley's memorandum) to the following:

"All developments shall be designed to achieve direct and convenient vehicular access between adjacent commercial properties, including outparcels, subject to the provisions of this ordinance."

The motion passed by the following vote:

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

Commissioner Sale made a motion, which was seconded by Commissioner Barnes, to add the following sentence to Section 35.1-43.25(c)(4) (from page ten of Mr. Haley's memorandum).

"The shared direct access provisions of this ordinance shall not be required to provide primary access to a public street for an adjacent commercial property not owned or controlled by the owner of the development or subject to a single site plan or plan of development that would not otherwise exist. An owner shall not be required to provide primary access through the shared direct access provisions to a public street to benefit an adjacent commercial property not owned or controlled by the owner of the development or subject to a single site plan or plan of development that would not otherwise exist."

Commissioner Sale commented that this is addressing the Schewel situation with more clarity. Chair Hamilton agreed with that comment because she heard from some of the developers that paragraph number four under shared direct access was not clear to them.

The motion passed by the following vote:

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

Commissioner Sale made a motion, which was seconded by Commissioner Barnes, to change the language of Section 35.1.43.26(d) (from page ten of Mr. Haley's memorandum) to the following:

“Streams or intermittent branches should not be enclosed or piped except where necessary for vehicle crossings.”

The motion passed by the following vote:

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

Commissioner Sale made a motion, which was seconded by Commissioner Barnes, to change the language of Section 35.1-43.27(a) to the following:

“All exterior lighting shall be glare-shielded and designed for preventing illumination beyond the property line.”

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

There was discussion about the best way to revise paragraph (c) and how it refers to the size threshold for redevelopment sites. Mr. Martin suggested leaving the language as it is and adding a graphic depicting the addition of 75,000 square feet to an existing shopping center. Commissioner Hannon suggested also adding the word “additional” before 75,000 square feet. There was consensus among the commissioners that this change helped clarify the paragraph, as well as adding a graphic.

Commissioner Hannon made a motion, which was seconded by Commissioner Oglesby, to change the language of paragraph (c) to the following, and to insert a graphic:

“The regulations of this ordinance *shall* not apply to the renovation, rehabilitation or redevelopment of retail establishments existing prior to the adoption of this ordinance. However, as a redevelopment incentive, only those enlargements, expansions or additions of these retail establishments exceeding seventy-five thousand (75,000) additional square feet *shall* meet the requirements of this ordinance.”

The motion passed by the following vote:

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

Commissioner Worthington made a motion to approve this draft, as amended, and send it on to City Council for their consideration. The motion was seconded by Commissioner Oglesby.

Commissioner Swienton asked if there needed to be another public hearing, since they were making changes to it after the public hearing was held on August 6th. Mr. Martin said no because what is in the ordinance has not changed; it is just being tweaked.

Commissioner Sale commented that this is a good document. Mr. Haley said that it is a better document than he has seen. It is a dynamic document. He thinks this will help Council to move forward on this question. They can send it back to us, but this is the best we can do. He thinks that there will be a lot of interest in this when it gets before Council, but he is ready to move forward.

Commissioner Hannon commented that when he was the newest member of the commission and came in a little late in the process, he had high hopes for it. As it has grown and morphed over the months and he has listened very closely to the testimony from the stakeholders, his sense is that although this as good a big box ordinance as we can draft, he does not think that it is in the best interest of the City of Lynchburg. He does not

think that we should adopt it. He thinks that it is a disincentive to the kind of development that we are going to need to be in competition with adjoining counties and he opposes it.

Commissioner Worthington commented that City Council directed them to come up with something. This is as good as we can get, even though he wishes it was 75,000 or 100,000 square feet for the threshold.

Commissioner Swienton commented that for him to vote for an ordinance that removes the public hearing process is huge. He also recognized that by right developments exist in various forms within the City. What we are doing is creating another form of that and he is comfortable with this. He had highlighted the concerns from the minutes of the August 6th public hearing and he feels that in various discussions that we have addressed those. Maybe not satisfactorily to all of us here, but he feels that we made an attempt to address the concerns that were brought up with the exception of the LEED certification. We are not saying that it has to be LEED certification; we are saying a third party green building certifier. Other than that, Commissioner Swienton thinks that we have made a very earnest attempt to discuss the concerns that were brought up in public hearing.

Commissioner Hannon pointed out that we did not hear from property owners at the stakeholder meetings, and his concern is that these property owners' land is, in effect, being downzoned. If this ordinance is adopted, the immediate effect is going to be the use, the marketable value, of the property. As it was explained at the public hearing, people back into property value. You have to look at everything else and then you get down to what you can afford to pay for the property. As a result of this ordinance, what people can afford to pay for that property is less. What we are doing by recommending that this ordinance be passed is we are effectively reducing the value of people's property. He takes that very seriously and he is disappointed that we didn't actually hear from property owners. It was pointed out by some of the commissioners that they will have an opportunity at City Council.

Chair Hamilton pointed out that we did hear from some at the first stakeholder meeting. The first stakeholder group was well composed and it was designed by the Planning Commission. We heard from a variety of people who had a vested interest. It just happened to be that the real estate people were the most vocal.

The motion then passed by the following vote:

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

MINUTES FROM THE AUGUST 6, 2008 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

3. Public Hearings:

a. Consideration of Amending Section 35.1-11.9. Terms beginning with "L" of the Zoning Ordinance to include the definition of a large scale retail establishment. Large Scale Retail Establishment: Retail establishments having a cumulative gross floor area of fifty thousand (50,000) square feet or greater in floor area, whether such gross floor area is contained entirely within a freestanding building or is within two (2) or more buildings, whether located on a single lot or contiguous lots owned or operated as associated, integrated or cooperative business enterprises.

b. Consideration of Amending Section 35.1-36, Community Business Districts, B-3 and Section 35.1-38, General Business District B-5 of the Zoning Ordinance to set development standards for and to regulate the development of large scale retail establishments.

c. Consideration of adopting Section 35.1-43.22, Retail Establishments, Large Scale, Section 35.1-43.23, Severability Clause, Section 35.1-43.24, Applicability, Section 35.1-43.25, Transportation, Section 35.1-43.26, Natural Systems, Section 35.1-43.27, Lighting, Section 35.1-43.28, Building Design and Sustainability, Section 35.1-43.29, Definitions and Section 35.1-43.30, Voluntary Provisions as part of the Zoning Ordinance. The proposed ordinances would regulate retail establishments having a cumulative gross floor area of fifty thousand (50,000) square feet or greater in floor area by requiring the following mandatory requirements: A traffic study, the needed improvements as recommended by the traffic study, direct access between commercial properties, separation of truck traffic, entrance design that maximizes safety, adequate vehicle stacking, provisions for mass transit, pedestrian walkways between buildings, parking areas and out parcels, walkways with Americans with Disabilities (ADA) accessibility, sidewalks along property frontage, glare shielding of lighting, thirty-five (35)-foot maximum height of light poles, prevention of light radiating above a level that is five degrees (5°) below horizontal, the concealment of rooftop equipment, clearly defined building entryways and the incorporation of vending areas into the facades of buildings. The proposed ordinances also provide for the following voluntary provisions: Multiple building entrances, bicycle racks, stormwater management facilities as an amenity to the development, regional stormwater management facilities, use of porous pavement, no piping of streams, preservation of stream buffers, obtaining a certified environmental rating, building facades with wall plane projections, building facades that incorporate architectural features, the expression of bay patterns, use of brick, rock, stone, wood or similar material as building material, earth tone building colors, variation in roof lines, features at entryways to buildings, service areas that are incorporated into overall plan, Crime Prevention thru Environmental Design (CPTED) considerations and lighting fixture types. The proposed ordinances would require a Conditional Use Permit for retail establishments having a cumulative gross floor area of fifty thousand (50,000) square feet or greater in floor area meeting only the mandatory requirements. The proposed ordinances would provide for administrative review of retail establishments having a cumulative gross floor area of fifty thousand (50,000) square feet or greater in floor area that achieve fifteen (15) of a possible twenty (20) points awarded for voluntary provisions.

Mr. Martin addressed the commissioners with the following comments. The Planning Commission initiated changes to the *Zoning Ordinance* on January 3, 2007, concerning the regulation of large scale retail development. The first ordinance drafted by the Planning Commission was somewhat vague in that it only stated that a conditional use permit would be required for retail establishments that exceeded 50,000 square feet. On March 28, 2007, the Planning Commission conducted a public hearing and recommended approval of that ordinance to City Council. Council conducted a public hearing in May 2007 and postponed its decision on the ordinance until July 12, 2007. At a subsequent work session on August 14, 2007, City Council recommended that the Planning Commission redraft the ordinance with more design and development standards included. The Planning Commission has conducted a series of eight work sessions from November 2007 to July 2008. Two of those work sessions were with stakeholder groups.

The City recognizes that retail establishments of this scale are very important and vital to the City's economic stability. It also recognizes that retail establishments have impacts to the City in terms of aesthetics, stormwater management, air pollution, light pollution and compatibility with surrounding neighborhoods. The ordinance was drafted by the Planning Commission to try and further the goals and objectives stated in the City's *Comprehensive Plan*. There are several key elements of the proposed ordinance. The first is that it applies to retail establishment with a cumulative floor area of 50,000 square feet or more. It does not apply to the renovation, rehabilitation or redevelopment of an existing establishment. It also provides an incentive to expand existing retail establishments by increasing the threshold to 75,000 square feet. The ordinance also sets mandatory requirements and voluntary provisions. The ordinance provides for an administrative review if all the mandatory provisions are met and 75 percent of the voluntary provisions are met. If the developer of the retail establishment does not wish to fulfill enough of the voluntary provisions and all of the mandatory provisions, then a conditional use permit would be required from the Planning Commission and City Council.

The mandatory requirements in the ordinance are a traffic study, the improvements that are recommended by the traffic study, access between adjacent commercial properties, the separation of truck traffic, efficient pedestrian, bicyclist and vehicular circulation, adequate vehicle stacking at access points from the public road into the parking areas, provisions for mass transit, pedestrian walkways between all buildings and parking areas that are ADA accessible, light poles that do not exceed 35 feet in height, control of exterior lighting, concealment of rooftop equipment, clearly designed entryways and incorporation of vending areas into the façade of the building.

The voluntary provisions in the ordinance include multiple building entrances, provision of bicycle racks, stormwater management ponds that are an amenity to the development, incorporation of regional stormwater facilities, the use of porous pavement for anything over the required off street parking, no piping of streams, provision for stream buffers, obtaining a certified environmental rating, various façade architectural details, the use of certain building materials, features at entryways to the building, Crime Prevention Through Environmental Design techniques and lighting fixture types.

In reviewing this ordinance, it became evident that an addition to the definition section of the *Zoning Ordinance* (35.1-11.9) to reference what a large scale retail establishment would be needed. The B-3 and B-5 sections of the *Zoning Ordinance* would also need to state that a large scale retail establishment meeting mandatory and voluntary provisions would be a use permitted by right and those that do not would require a conditional use permit.

Chair Hamilton asked for anyone who wished to speak in favor of the petition. No one came forward. She asked if there was anyone who wished to speak in opposition to the petition. Mr. Gary Case came forward to speak. He said he was not in total opposition but was in opposition to the ordinance in its present form. He thinks that 50,000 square feet is too small and it should be 100,000 square feet. His reason is that most of the new grocery stores are 62,000 to 75,000 square feet. As a point of reference, the Kroger store and adjoining shops on Old Forest Road is over 50,000 square feet. His reason for giving this as an example is to show that 50,000 square feet is not a lot. His other objection is that this will apply to renovations if they go over 50,000 square feet and that this will discourage redevelopment. When you redevelop an older site like the Plaza, they become what are called second and third generation shopping centers. They will not get the high dollar tenants. If the cost is run up with rules and regulations, he thinks that will discourage redevelopment and the stores will continue to deteriorate.

He understands the need for a traffic study but explained that those cost a developer a minimum of \$25,000. The traffic study, along with the site plan, could cost a developer \$50,000 without even knowing whether it will work or not. He wondered if a preliminary review could be done without the traffic study to see if it is warranted. He is also concerned with all the needed improvements from the traffic study having to be paid for by the developer. This might require the obtaining of right of way and that could get very expensive. He also thought that some of improvements that the developer would be required to do might be things that the City needed to do anyway. He hoped that the improvements needed that are caused by the proposed development could be segregated from the improvements that are needed for the current traffic.

Another of his big concerns is the shared access between adjacent properties being mandatory. He did not have any problem if it was done to give access to outparcels because the owner would still have control over it. He has a problem making it mandatory when there are adjoining properties involved. A lot of times it works well and if two private owners want to do it, then it is a good thing. But the adjoining business may be a competing business. You shouldn't have to give up private property rights and invite your competition to use your property to make it more convenient for your customers to get to him. To him, it goes against private ownership. He gave

Walgreen's and Kroger on Wards Road as an example. Kroger did not want to give permission for joint access because Kroger has a pharmacy. He also pointed out that the adjoining site might not be configured to have the increase in traffic caused by the big box. You might end up stacking traffic on the adjoining site and it is not even that business's traffic. He also remarked that if someone gets hurt on your property, you will get sued, not the other guy. It is his traffic, not yours that was involved in the accident. He remarked that topography would sometimes make it difficult to provide this joint access as well. Mr. Case also thought that by creating this easement, you could impede the use of this site in the future. A developer would have to build his site to accommodate the heavier traffic that he is not even generating. He gave the Biscuitville on Old Forest Road as an example of a site that would find it very difficult to handle traffic if its adjoining site was developed. Since it is not always practical, he sees a lot of problems with making this provision mandatory.

He also thought it needed to be spelled out what is meant by an owner not consenting to shared direct access (paragraph 6). The owner next door might grant access for the price of \$100,000. If the owner says he doesn't want it under any circumstances, then that is one thing. It could really be a huge problem if it is not better defined what is meant by the owner will not grant access. Another point he made about joint access is that the property might be zoned commercial but may not be used commercially. It may be an apartment complex and now you have commercial traffic going through a residential property. Maybe the wording needs to be changed to zoned commercial and used commercially.

He also made a point about the mandatory provision for parapets concealing flat roofs and all heating and cooling equipment. He thought that other things could be used like walls or fencing that look nice. He did not know how they could have built Home Depot if this requirement had been in effect. He did not know how they could have built a parapet high enough to hide the equipment from view from Graves Mill Road. He thought this requirement would be difficult to implement sometimes because of Lynchburg's topography.

Mr. Case thought that the LEED certification should be voluntary and noted that it is. He summarized by saying that they are all for good site development. He thinks that they have good regulations in place now and he is not 100 percent sure that we need this ordinance. He thought that if implemented, this ordinance would put Lynchburg at a disadvantage with Campbell and Bedford counties because they do not have ordinances like this.

Mr. Case mentioned that one of the goals of the *Comprehensive Plan* is to keep Lynchburg as a retail hub. He said that incentives have to be given to businesses to locate in Lynchburg. We don't want to increase our taxes on the citizens, so commercial development is left to generate taxes. In addition, commercial development doesn't create the need for additional services like new schools. He ended by saying that the City should not out regulate itself and send everybody outside of the City.

Mr. Hershel Keller came forward next to speak. His concerns are with the ambiguity of the ordinance. He explained that the purpose of laws is to establish rules by which people can govern their behavior and the laws need to be understandable. In certain places, the proposed ordinance does a good job of that. He gave two examples from the lighting standards (light poles should not exceed 35 feet in height and no exterior lighting shall radiate above a level that is 5° below horizontal) that are objective, quantifiable standards. A developer could look at those and understand them. If you look elsewhere—more places than not—in the ordinance, it says that truck traffic shall be separated to the greatest extent possible. He does not know what that means. Another instance says that entrances shall be designed to maximize pedestrian, bicycle and vehicle safety. What does maximize mean? That is not an objective, quantifiable standard. Another instance says provisions for mass transit shall be made—again not objective or quantifiable. Another example says stormwater management facilities shall be designed as attractive landscape amenities. All of these examples are subjective standards. If they are subjective standards, then somebody has to be the arbiter of what qualifies to satisfy each of those. His assumption is that would be the City Planner. What you have done under the scope of this ordinance is to leave it to the discretion of the City Planner whether a developer qualifies to go through the voluntary process or the conditional use permit process. He thinks this takes a step backward from what the law is, which is to establish objective standards and give people a set of rules by which they can govern their behavior and not rely on the whims of the king to decide whether or not they qualify under the law. That is a fundamental issue that has not been addressed in this ordinance. He does not think they should take it lightly because that puts the developer under the whim of the City Planner or whoever that city official arbiter is. He does not think that their intention is to put that much responsibility in the hands of one person who is not an elected official.

Mr. Keller did remark that he is pointing this out without having a solution. He does not how you define the things he mentioned above, but he thinks that before this group takes on the huge responsibility of recommending the enactment of law that better language should be given to some of the design standards.

Mr. Norman Moon came forward next to speak. He is also concerned about the size requirement. He also does not think that the ordinance clearly defines what is meant by renovation. He is still not clear about when the ordinance applies and when it does not. The way he reads it, the ordinance sounds like it applies to the whole center, if it is renovated.

He is also concerned with the LEED certification. It is sort of the "in" thing. Everyone has heard about it, but most of them had never heard of it until this year or maybe last year. We still don't really have the standards. He feels like we are at the point where we were with ADA in 1992. We have not really adapted to it. We don't really know exactly what it means yet. It is kind of early for us to jump on it and start applying these things. He wondered how many of them could name a LEED certified building in Lynchburg. He pointed out that it goes beyond the construction and goes into the operation of the facility--waste removal—all kinds of things. He feels like the LEED certification has become a big part of this ordinance. Getting back to the renovation aspect, it really does concern him. He has a lot of questions and thinks that they all are going to have a lot of questions.

Mr. Rick Read came forward to speak next. He commented that when Chair Hamilton had asked for anyone in favor of this ordinance, that no one came forward. That is the only point he wanted to make. He hates to think that we have put all this time and effort into this, but to him, it is apparent that there is no one here who is for it. Everybody here today is speaking against it.

Mr. Danny Givens made a comment from the audience that he thought there were people who were in favor of it, but they just were not here today. Chair Hamilton asked him to come forward and speak on the record. He commented that he has been concerned about this for the last few years. From what he has read, a lot of communities are growing too fast and those are obviously larger cities. But now cities the size of Lynchburg are finding that it is advantageous to take steps such as what they are taking with this ordinance to make some smart growth movement. He commented that unless you look in the right places, it is hard to see the repercussion of the growth that is taking place too quickly without some sort of regulation. He thinks that this is a step in the right direction and offered that maybe they should look into whether or not 50,000 square feet is the right size. He thought that they might want to look down the road to see how it might impact us economically. When these big stores come in, they actually have detrimental effects on the community because they put out of business a lot of the smaller businesses. Other cities are seeing an increase in taxes in the short life, but a few years down the road, that is not the case.

Mr. Mike Sandez came forward next to speak. He commented that he is a new citizen in Lynchburg. He has just been hired at the Liberty University School of Law. He has been teaching law for five years and practicing law for a number of years prior to that. He wants to emphasize that this issue is new to him and he is really speaking as a citizen. He thinks that everyone's antenna went up after the Kelo vs. City of New London case was handed down by the U.S. Supreme Court on a few years ago. Regular citizens became quite concerned with the fact that the City of New London, by way of eminent domain, took private property—not for direct use by the public, but rather to convey the property over to another private property owner because of a promise to develop that property into some big, new, economically driven project and to enhance the City of New London. The four property owners that fought this to the Supreme Court lost their homes. For one lady, it was a big traumatic and dramatic event in her life.

Mr. Sandez feels that citizens need to speak up early and often. He thinks that anytime there is this public imposition of the use of private property, there is the potential for a taking by government. We should all be concerned about that, and we should proceed with great caution. That is his main concern today, and he is going to raise some concerns he has about language and thoughts that have come to his mind.

He wondered if there was any background data on the need for this. Mr. Martin mentioned traffic, pollution and safety, but he didn't hear any reference to specific data that has been collected. Coming from San Diego, he does not see much of a traffic problem. He does understand the desire to maintain the beauty of the community; this is a beautiful community. He has been in several of the large shopping centers; traffic seemed to flow just fine. It seems to operate and function quite well, as he has done his shopping here. If there is no background data, he is wondering what the governmental purpose is here. If it is just a desire to maintain safety and public health, that is going to be a problem for them, as representatives of the City. In the Nolan vs. California Coastal Commission, the U.S. Supreme Court said that the idea of just desiring something is not enough. There actually needs to be data obtained to establish what the purpose is behind the ordinance. Even that is not enough. What has to happen is that the ordinance has to substantially further that purpose. So if we don't know exactly what the

data is, we don't what it is that the city is trying to solve. He questions whether the generic idea of an idyllic setting for the City will satisfy constitutional muster.

Another concern he has is the discretion that is granted to the planning department. If it is excessive or arbitrary, then that can make the ordinance unconstitutional. What is excessive traffic? He is not sure it exists here. What are associated, integrated or cooperative enterprises? He is not sure what that means. Perhaps it would be good to have some dividing trees or something aesthetic, if the two businesses are that different, but they want joint ownership. These are questions that are better left to the private sector. If the planning department is requiring the public access easement or reciprocal covenant on the adjacent properties, then this is actually the essence of an arbitrary, capricious governmental ministerial agent that can cause problems for the City. When a person goes to invest, what do they know prior to hearing from the person with the discretion after they have perhaps invested thousands, if not millions, into a project? The potential investor or the actual owner has no idea what will be required of him. It may be that this associated, integrated contract might have some physical barrier between the two lots. But if they are brothers and they are associated or integrated somehow, they have got to cut through that swath of trees to comply. That might be counterproductive if they are considering aesthetics, but it also might be cost prohibitive to the investor. The City has lost, and they've lost. That doesn't make sense either.

It is not clear to him that the ordinance substantially furthers a governmental purpose, even if we knew it, based on data that exists. There is no data, from what he understands. He is here as a citizen to urge caution. Think about this. Exercise common sense. When we are talking about associated, integrated enterprises, does it really make sense that people who are associated or integrated are going to work at cross purposes? To him, that would be counter productive if they were investors. Most business people that go into a joint venture are not going to shoot themselves in the foot. They are going to work it out, and they are going to work it out privately. That is easily done through a reciprocal covenant.

Business does provide the income for many of the things that we want in our communities. Generally, this seems to undermine the efforts of those big investors who have a project that might be beneficial to Lynchburg.

Chair Hamilton asked for anyone else present who wished to speak. No one came forward, and she closed the public hearing.

Commissioner Sale commented that there was an attempt in the ordinance to incentivize renovation of existing large properties. They attempted to do so by raising the size threshold for renovating existing sites to 75,000 square feet. He is hearing that doesn't seem to be as helpful as they thought. He asked Mr. Case what more they could do to incentivize redevelopment of large properties in some ordinance like this. Mr. Case thought it should be taken out of this ordinance. The City already has a stringent *Landscape Ordinance* and *Sign Ordinance*. If you take the Plaza as an example, complying with those types of things won't break the camel's back, but yet they can raise the bar on the aesthetics of the center. Most people want to do those things anyway, so they can raise rent.

Commissioner Sale commented that what he is hearing is that this ordinance should be for new development only. Mr. Case said that is what he is trying to convey. He is trying to say that the things required by the *Landscape Ordinance* and *Sign Ordinance* are things that a developer can economically do. When you start making them do other things, it won't be economically feasible for a developer because he can't get the rents that will make it feasible. Mr. Case said that developers have choices. But once they pass a certain point economically, they are going to go somewhere else. He is concerned about this because we have more centers that need to be renovated than we have opportunities for new centers, if you look at the available land.

Commissioner Hannon asked Mr. Case if this ordinance is adopted, does he foresee that it will have any impact on property values. Mr. Case said that construction prices go up all the time. The price of the land is a big component. It can be as much as twenty to twenty-five percent of the total investment. If the other costs of a project, particularly off site costs, take up a lot of his budget, then an investor has to push the land value down. There is no other way to do it.

Commissioner Hannon asked Mr. Case if this ordinance is adopted and he is showing some property that now has to comply with this ordinance, is that going to impact the value of that property. Mr. Case said that has been his experience. The City needs to continue to place its real estate at a price point, based on the volume a retailer can do, for them to make a living. Otherwise, they are going somewhere else. Things here are pretty reasonable, but if you start investing in a traffic study, etc. and are told no, go spend another \$50,000 to \$100,000, people are

just not going to do that. If a developer has a set of clearly defined set of rules, then he can decide whether or not he wants to play.

Commissioner Hannon asked if the property owner will pay for these additional costs by getting less for his property. Mr. Case commented that a developer can only pay so much. The property owner should be entitled to what everybody else can get for land. That is a concern. Mr. Case also pointed out that we have Bedford and Campbell counties right around us. If you can build there cheaper than you can build in the City, it is not a hard decision. He is more concerned about what happens to the existing centers because he doesn't know how many more new, big boxes we are going to get here.

Commissioner Hannon asked Mr. Case how he sees the shared direct access impacting the footprint of the proposed building site. Mr. Case said you can work with the location of the building on your own site because you can move your pad around a little bit. The thing that he is concerned about is what happens to the guy beside the big box. He has a little neighborhood type business and now he is providing snow removal and maintenance and having to deal with all this traffic that can really hurt his business and cost him a lot of money. This liability thing is also a big issue. If you get hurt on his property, he is going to get sued, not the big box. It is also a concern of his that traffic could get stacked up on that person's property while people are waiting for a light to change, and those people haven't spent a dime on that property. Mr. Case commented that most times, cross easements make sense, if they are agreed to by private individuals. He commented that we all see the merits, but we don't want to talk about the problems.

Commissioner Barnes wanted to point out that there are buildings in Lynchburg which are LEED certified. He pointed out the new Juvenile and Domestic Court and Randolph College's new gymnasium. There are other buildings in town that have LEED features and may or not be LEED certified. Mr. Moon pointed out that those are institutional projects. The reason for that is that when you construct a school, it has an expected life span of 50 years, which is very different from retail. What he thinks they need to understand about retail in general is that they are not building cathedrals to be admired hundreds of years from now. When you talk about renovating older centers, many times retailers do not want to go into existing buildings because the building doesn't fit. If you look at a grocery store that was built in the '70's and then a building that was built in 2008, the two stores have no similarity. The depths of the stores are just one thing that has changed driven by what people want. The older buildings just don't function as well.

Mr. Case wanted to comment on the LEED certification. Most retailers are looking at some LEED aspects because of the energy factor. But to make it totally LEED certified, the only people who can do it are the government. Mr. Moon said that what concerns him the most is the LEED certification itself. We haven't proven that the actual certification makes sense to anyone other than the one who certifies it. The cost is \$75,000 to \$80,000. Mr. Moon also pointed out that it is fairly easy to become an expert in LEED certification. It takes about six months and \$1,000. He said that none of them are against these things, but there are still a lot of things that need to be proven about it.

Commissioner Worthington asked the question if this would kill development in Lynchburg. Mr. Case thought it would kill big box development. He doesn't see developers fighting or going to this extreme, but he cannot say for sure. He brought up the surrounding counties and the fact that it will be cheaper for them to build there where there are no ordinances like this. He commented that enterprise has made this country what it is and it has always worked out its own problems. When it comes to private development, we've done well so far. He's not sure we need to complicate it anymore.

Commissioner Swienton asked Mr. Case what he thought if the surrounding counties adopted an ordinance that is identical to this, would that kill large scale development there as well. Mr. Case thought that would put us on more of a level playing field locally, but then we are still competing with other areas in Virginia and North Carolina. Developers know where they get the biggest return. He gave Charlottesville as an example. It has gotten so out of sight to develop there based on what the requirements are that people choose against it.

Commissioner Swienton said that what he was trying to separate is if, in his opinion, the ordinance will prevent people from coming to Central Virginia if we all had the ordinance, as opposed to just Lynchburg having it. Mr. Case said that the issue is when it gets cost prohibitive. He gave Lynchburg and Richmond as examples. It costs the same to build a building in either city, but their return will be better in Richmond. It comes down to where it costs the least amount to build, coupled with how much of a return on their investment they will get.

Commissioner Hannon asked Mr. Case what he thought some of the costs were associated with some of the ambiguous standards in the ordinance. Is there anyway to figure them out? Mr. Case said that many developers will say that they will not get into a rezoning or conditional use permit situation, so he does not waste their time. Commissioner Hannon asked if he thought that he could sell the fast track part of the ordinance as not being a conditional use permit process. Mr. Case thought it was still a conditional use permit; it just didn't have a public hearing.

Mr. Keller came back and gave an example of a client he is working with now. The cost of the special use permit process for the area of the state involved is estimated to be \$300,000 for just the legal and professional fees. That is before they get into whether they have mitigated the traffic to the greatest extent possible. That could involve a lot of meetings; each of those meetings could be \$10,000 to \$12,000. In this case, his client said he would not locate to this particular area. It is very easy for the costs of compliance to get so high that it tips the scale. It happens all the time. With this ordinance, we have the traditional costs, and then you are layering on additional costs for each one of these ambiguities that you have to address.

Commissioner Hannon brought the discussion around to the issue of easements for direct access. Commissioner Hannon asked Mr. Keller what he would say when a developer asks him what this is and how it will show up on his title report, how would he answer that? Mr. Keller answered that if someone has the right to come across his property, it is an easement. If someone has the right to come across his property, that is a legal right and enforceable against him—whether it is recorded or implied by law or by the subdivision of property, that is an easement. Commissioner Hannon said that the way he sees it is essentially a public right of way. If that is the case, how could it ever be removed? Mr. Keller said that it is not clear to him. Hypothetically, if it is a public right of way, then it would be up to City Council. Commissioner Hannon asked him if he had a client asking him as an attorney, what is this and how does it work, what would be his advice? Mr. Keller said that he does not know the answer to that question. Mr. Case said that if it is part of site plan approval, then in his opinion, it doesn't go away without the City's permission.

Commissioner Worthington said that there is a case they might want to look at, Schewel Furniture vs. Albemarle County. The store wanted to build a 4,000 square foot addition, and the county was requiring them to give right of way for connectivity. Commissioner Worthington acknowledged that each case is different. He has not seen the case or read the judge's opinion, but he is concerned that it may have significant bearing on what they are discussing. The judge issued a summary judgment and said it was a taking and therefore unconstitutional. Commissioner Worthington talked with Donna Clark, the real estate person for Schewel Furniture Company. He is a big proponent of cross connectivity, but he thinks it might be pointless to put it in here if there has been a case already that says it cannot be done. He found out about this earlier today, and Donna Clark said she would be willing to come and talk to them about it. Commissioner Hannon asked if the county appealed this decision, and Commissioner Worthington said not that he was not aware that they had.

Mr. Moon commented that very few people have a lot of experience dealing with easements, but if you talk to people who do, they are so much more serious than they appear on the surface. The impact that it can have on property values--you can be making a decision that can have severe detriment to the value of that property if it is not done very, very carefully.

Commissioner Sale commented that there is data for large retail establishments that does not go to the extent of 100,000 square feet and that is informally where we are right now. There may be places that are moving in the direction of 100,000 square feet as the threshold. It becomes a question of what is functional, useable, understandable and reasonable in other developments other places. He wants to know more about why they think 100,000 square feet is the right number for Lynchburg. Mr. Case said that data of what other people are doing is not data. That is information. If everyone is using 50,000 square feet, that doesn't make it the right number. Commissioner Sale said that it was data of what people were actually doing. Mr. Case said that it is a moving target and is new for our area. Mr. Case said that 50,000 sounds like a big number, but it is not and that is why he gave the old Kroger store on Linkhorne Drive as an example. It is 44,000 square feet. If you add the rest of that strip, you are up to all the new rules and regulations. To him, 100,000 square feet is where you get into stores that probably have extended hours and generate a lot more traffic. Neighborhood grocery stores are built to serve neighborhoods and not to draw people from all over the city. That is why he leans toward 100,000 square feet being the right number.

Commissioner Sale asked Mr. Case if 100,000 square feet plus is looking more at the regional issues of Lynchburg as opposed to a smaller number, which would be more of a neighborhood issue. Both will generate traffic and have an impact. It is just a matter of how expansive is that impact. How small should it be for the city

to have some comment to assist in conversations about the impact of that development? Mr. Case gave the store on Linkhorne Drive as an example and said that if they wanted to bring it up to modern standards and this ordinance is in place, they will have to do all these things just to stay in that spot. It probably wouldn't make economic sense. So they move out, and now there is no grocery store in that area. Commissioner Swienton asked Mr. Martin to clarify that point. Would they have to comply with this ordinance? Mr. Martin said they would have to add an additional 75,000 square feet to the existing structure before the requirements of this ordinance would apply. He pointed out paragraph (c) on page one where it talks about the ordinance not applying to the renovation, rehabilitation or redevelopments of retail establishments existing prior to the adoption of this ordinance and that it only applies to additions or expansions exceeding 75,000 square feet. Mr. Case said that the way he reads it is that if the store goes over 75,000 square feet, then this ordinance is triggered.

Commissioner Sale commented that they have been asked by City Council to do this and it was not generated from nothing. There are a lot of people who are quite concerned about these matters and it is a very ambiguous issue in terms of how do we provide the large retail, as well as regulate it. He appreciates everyone's comments and said they have been very helpful in honing what they hope can be a good document that would go to Council with good input and good backing. He is not ready at this point to vote on this or make these amendments tonight. He would like to think about this some more. He made a motion to put this into a work session. Commissioner Barnes seconded that motion.

Commissioner Hannon asked if this is meant to end the discussion tonight, and Chair Hamilton said it would if the motion carried. He said he had some more questions. Commissioner Sale tabled his motion.

Commissioner Hannon asked Mr. Moon if he thought some of the matters in here would be better handled in building code. Mr. Moon said possibly. He said he views it more as an architectural document. He defended the developers and said they are not out to build something that the community doesn't want or to build something ugly or unsafe. They do not want to create traffic problems. He has been working with Wal-Mart on Old Forest Road and the first thing they looked at was potential traffic problems. He thinks that there is a lot more concern on the developer side and on the end user of this than the general public understands or ever sees. He said the retailers will spend the dollars as long as they can make a reasonable rate of return. Getting back to answering the question about the building code, he said that pertains more to safety and construction standards than architectural standards. You could incorporate them somehow into the local building code, but he did not think they could go in the international building code. Commissioner Hannon asked him if it would have to go in the *Zoning Ordinance*, and Mr. Moon thought that it did. He questioned why we needed another layer to this when it takes a long time to develop a big box regardless.

Commissioner Sale brought his motion forward again to bring this issue back to a work session. Commissioner Swienton commented that there is ambiguity on some points that we definitely need to clarify. Commissioner Sale also commented that he wanted to look into the case that Commissioner Worthington had raised. Commissioner Sale also commented to Mr. Sandez that he could get with Mr. Martin to discuss the data he would like to see on what prompted this ordinance. Mr. Sandez, when prompted by Chair Hamilton, commented that it has to do with the U.S. Supreme Court case called Nolan vs. California Coastal Commission where this point was discussed about the background information or data. The idea there was that the local municipality was imposing a public access easement so that the citizens could access the beach. That was considered a taking. One of the things in that case was that there wasn't really any data to support the idea that the ordinance substantially furthers a governmental purpose. The Supreme Court said there needs to be data to support the demand. Most of what he has heard is about traffic. He thought that this ordinance really only addresses private property ingress and egress.

Commissioner Hannon asked him if he was suggesting that there has to be a site specific finding in order to justify that. Mr. Sandez said that was correct. He further said that one of the ideas of condemnation, eminent domain, is that the courts do not want to see that one property owner bears the burden from imposing some sort of governmental regulation. Although it may be site specific, the governmental body that is doing the condemning has to pay with public monies so the cost is spread. Even so, there has to be the data to support that there is a substantial furthering of the ordinance by whatever is done.

Commission Hannon commented that anyone here today could feel free to send them an e-mail outlining their concerns. He asked Mr. Keller if he had the time to highlight the language about which he has concerns. Chair Hamilton said he could e-mail a redlined draft to Mr. Martin, and he will forward it to the commissioners.

The motion then passed by the following vote:

AYES:	Barnes, Hannon, Hamilton, Sale, Swienton & Worthington	6
NOES:		0
ABSTENTIONS:		0
ABSENT:	Oglesby	1

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 11, 2008**

AGENDA ITEM NO.: 10

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Proposal to Amend the Boundaries of Enterprise Zone #2 (Downtown)**

RECOMMENDATION: Adopt a resolution to amend Virginia Enterprise Zone # 2 to encompass the area as delineated and as described on a map entitled "City of Lynchburg, Virginia, Enterprise Zone # 2 Amendments", contingent upon approval by the Commonwealth of Virginia, Department of Housing and Community Development.

SUMMARY: Lynchburg has two enterprise zones identified by the state as # 2 and #46 and referred to locally as "Downtown" and "Lynchpin", respectively. Both zones were established by the state and provide incentives for businesses to locate, or to expand, thus stimulating economic development within the designated areas. Although the benefits of enterprise zone designation have changed over the years, two primary benefits remain; job creation and capital improvement grants.

Enterprise Zone #2 has existed since 1984 and its current boundaries encompass primarily downtown, with an extension to the Carroll Avenue industrial area. The boundaries are eligible for amendment upon approval of City Council and the Virginia Department of Housing and Community Development. Under the state's regulations the zone size is limited to 7% of the locality's total land area and as much as 15% of an existing zone may be deleted (with an equal area then added) in a given year.

For sometime there has been an interest in amending the boundaries of Enterprise Zone #2 (Downtown) to take in more of the midtown area and, in particular, the Plaza and properties along Oakley Avenue. Because of the limit on the size of the enterprise zone, taking in new areas requires that the zone designation be lifted from other areas where it is of little utility. The areas proposed for deletion from the zone are primarily residential where zone designation provides no benefit. In order to accomplish this amendment, City Council is required to conduct a public hearing and to consider adopting a resolution in support of the proposed revision to the zone boundaries. Property owners in the areas to be deleted by the proposed amendment have also been notified.

Enterprise zone designation has no impact on land use regulation.

PRIOR ACTION(S): None

FISCAL IMPACT: None

CONTACT(S): Marjette Glass, 434-455-4490

ATTACHMENT(S): Resolution; Map showing existing zone, proposed deletion, and proposed expansion;
Legal Description

REVIEWED BY: lkp

Resolution:

BE IT RESOLVED That the Lynchburg City Council endorses the removal of Subtraction Areas "A, B & C" from the City of Lynchburg, Virginia Enterprise Zone #2 and the addition of Areas "D, E & F" to the City of Lynchburg, Virginia Enterprise Zone #2 as shown on the map entitled City of Lynchburg, Virginia Enterprise Zone #2 and as described below:

Subtraction Area "A"

Starting at the point of intersection between the centerline of Charlotte Street and Dearing Street thence proceeding in a southeasterly direction along the centerline of Dearing Street to its point of intersection with the Norfolk Southern Railroad thence S78°04'36"E, 56.8' to a point said point being on the western bank of the James River thence proceeding along the bank of the James River S33°21'47"E, 1694.7' to a point thence S71°09'30"W, 70' to a point said point being on the eastern side of the right of way of the Norfolk and Southern Railroad thence proceeding in a southerly direction along the right of way of the Norfolk and Southern Railroad to its point of intersection with Orange Street thence proceeding S19°02'29"E, 530' to a point thence proceeding N66°29'43"W, 162.1' to a point thence N9°30'08"E, 13.4' to a point thence S80°57'51"E, 61.4' to a point said point being on the western side of the right of way of the Norfolk and Southern Railroad thence proceeding in a northerly direction along the right of way of the Norfolk and Southern Railroad to its point of intersection with the northern side of the right of way of Orange Street thence proceeding N56°18'35"E, 505.5' to a point thence N26°36'26"W, 513.8' to a point thence S55°22'42"W, 174.9' to a point thence S26°40'35"E, 504.5' to a point said point being on the northern side of the right of way of Orange Street thence proceeding S57°57'01"W, 39.5' to a point thence N82°44'56"W, 112.9' to a point thence S57°55'36"E, 74' to a point said point being on the northern side of the right of way of Orange Street thence proceeding in a westerly direction along the right of way of Orange Street to its point of intersection with the right of way of the Norfolk and Southern Railroad thence proceeding in a northerly direction along the right of way of the Norfolk and Southern Railroad to its point of intersection with the right of way of Cabell Street thence proceeding along the right of way of Cabell Street N42°42'27"W, 254.1' to a point thence N37°49'33"E, 43.1' to a point said point being on the eastern side of the right of way of Cabell Street thence proceeding in a southeasterly direction along the right of way of Cabell Street to its point of intersection with the eastern side of the right of way of the Norfolk and Southern Railroad thence proceeding in a northerly direction along the right of way of the Norfolk and Southern Railroad to its point of intersection with the northern side of the right of way of A Street thence proceeding in a southwesterly direction along the right of way of A Street to its point of intersection with the eastern side of the right of way of Cabell Street thence S38°08'26"E, 30.5' to a point thence S5°28'08"W, 56.4' to a point said point being on the northern side of the right of way of Stonewall Street thence proceeding in a westerly direction along the right of way of Stonewall Street to its point of intersection with the right of way of Dabney Street thence proceeding in a northwesterly direction along the right of way of Dabney Street N55°10'14"W, 709.5' to a point thence N55°28'41"E, 255.1' to a point said point being on the right of way of Hancock Street thence proceeding in a northerly direction along the right of way of Hancock Street to its point of intersection with the right of way of D Street thence proceeding in an easterly direction along the right of way of D Street to its point of intersection with the right of way of Norwood Street thence N28°53'55"W, 192.1' to a point thence S56°52'50"W, 327.2' thence S33°53'05"E, 163.2' to a point said point being on the northern side of the right of way of D Street thence proceeding in a southwesterly direction along the right of way of D Street with the right of way of Blackford Street thence proceeding in a southerly direction along the right of way of Blackford Street to its point of intersection with the right of way of Bridge Street thence proceeding in a westerly direction along the right of way of Bridge Street to its point of intersection with the right of way of Ryan Street thence proceeding along the right of way of Ryan Street S52°28'16"E, 140.3' to a point thence S14°09'01"W, 30.2' to a point thence S64°55'24"W, 78.8' to a point said point being on the western side of the right of way of Blackwater Street thence proceeding along the right of way of Blackwater Street N52°06'34"W, 2747.3' to a point thence N59°37'16"E, 288.5' to a point thence N59°45'43"E, 233.4' to a point said point being on the northern side of the right of way of Scott Street thence proceeding in a northeasterly direction along the right of way of Scott Street to its point of intersection with the right of way of Belmont Street thence proceeding in a southeasterly direction along the right of way of Belmont Street to its point of intersection with the right of way of J Street thence proceeding in an easterly direction along the right of way of J Street to its point of intersection with the right of way of Rivermont Avenue thence proceeding in a northerly direction along the right

of way of Rivermont Avenue to its point of intersection with the right of way of Wall Street thence proceeding in an easterly direction along the right of way of Wall Street to its point of intersection with the right of way of Randolph Street thence proceeding in a northerly direction along the right of way of Randolph Street to its point of intersection with Amherst Street thence proceeding in a northerly direction along the right of way of Amherst Street to its point of intersection with the right of way of Cabell Street thence proceeding in a westerly direction along the right of way of Cabell Street N72°31'30"W, 56.6' to a point thence N13°01'00"W, 363.5' to a point thence N64°14'04"W, 87.5' to a point thence N25°49'27"E, 153.1' thence N64°33'16"W, 34.3' to a point thence N27°24'27"E, 60.8' to a point thence N65°41'19"W, 62.5' to a point thence S23°40'13"W, 39.9' to a point thence S90°00'00"W, 31' to a point thence S18°02'03"W, 22.6' to a point thence N88°16'53"W, 75' to a point said point being on the right of way of Rivermont Avenue thence proceeding in a northerly direction along the right of way of Rivermont Avenue to its point of intersection with the centerline of Charlotte Street thence proceeding in a northeasterly direction along the centerline of Charlotte Street to the point of beginning.

Subtraction Area "B"

Starting at the point of intersection between the right of way of High Street and Flint Street and proceeding in a northerly direction along the western side of the right of way of Flint Street to its point of intersection with the right of way of Davis Street thence proceeding along the northern side of the right of way of Davis Street N54°54'27"E, 677.1' to a point thence S36°54'55"E, 136.2' to a point thence N48°25'21"E, 167.1' to a point said point being on the western side of the right of way of the Norfolk Southern Railroad thence proceeding in a southerly direction along the right of way of the Norfolk Southern Railroad to its point of intersection with Fishing Creek thence proceeding in a westerly direction following the centerline of Fishing Creek to its point of intersection with the northern side of the Norfolk Southern Railroad thence N3°38'59"W, 15.7' to a point thence N3°11'49"W, 14.4' to a point thence N22°39'27"E, 13.6' to a point thence N49°14'11"E, 13.6' to a point thence N56°38'01"E, 17.4' to a point thence N52°31'26"E, 13.4' to a point thence N48°18'07"E, 26.1' to a point thence N29°44'42"E, 22.8' to a point thence N19°39'14"E, 15.8' to a point thence N11°25'54"W, 19.4' to a point thence N41°06'49"W, 21.4' to a point thence N55°44'37"W, 11.4' to a point thence N38°58'52"W, 20' to a point thence N33°44'33"W, 20' to a point thence N37°59'56"W, 14.4' to a point thence N83°49'47"W, 13.2' to a point thence S85°14'11"W, 29.9' to a point thence N86°52'43"W, 36.3' to a point thence N85°27'18"W, 22.6' to a point thence N86°25'12"W, 30.3' to a point thence N85°59'11"W, 129.6' to a point thence N1°50'59"W, 225.2' to a point said point being on the western side of the right of way of Flint Street thence proceeding in a northerly direction along the right of way of Flint Street to the point of beginning.

Subtraction Area "C"

Starting at the point of intersection between the right of way of Wythe Road and Rives Street and proceeding in a northeasterly direction along the right of way of Rives Street to its point of intersection with the right of way of Reed Street thence proceeding in a northeasterly direction along the right of way of Reed Street to its point of intersection with the right of way of Thurman Avenue thence proceeding in a southeasterly direction along the right of way of Thurman Avenue to its point of intersection with the right of way of Watts Street thence proceeding in a northeasterly direction along the right of way of Watts Street to its point of intersection with the right of way of Stephenson Avenue and Cliff Street thence proceeding in a southeasterly direction along the right of way of Cliff Street to its point of intersection with the right of way of the Lynchburg Expressway thence proceeding in a southwesterly direction along the right of way of the Lynchburg Expressway to its point of intersection with the right of way of Stadium Road thence proceeding in a southwesterly direction along the right of way of Stadium Road to its point of intersection with the right of way of Wythe Road thence proceeding in a northwesterly direction along the right of way of Wythe Road to the point of beginning.

Addition Area "D"

Starting at the point of intersection between the centerline of Monroe Street and the southern side of the right of way of 4th Street thence proceeding S53°31'09"W, 173.1' to a point thence S35°52'34"E, 167.2' to a point thence S55°04'11"W, 1290.6' to a point thence S7°55'24"E, 190.4' to a point said point being on the northern side of the right of way of 5th Street thence proceeding in a westerly direction along the right of way of 5th Street to its point of intersection with the western side of the right of way of the Norfolk and Southern Railroad thence N8°39'51"W, 106' to a point thence S58°34'25"W, 86.7' to a point thence N7°53'00"W, 238.5' to a point said point being on the southern side of the right of way of Miller Drive thence proceeding in a southwesterly direction along the right of way of Miller Drive to its point of intersection with the western side of the right of way

of Morgan Street thence proceeding in a northerly direction along the right of way of Morgan Street to its point of intersection with the right of way of Atherholt Road thence proceeding in a southwesterly direction along the right of way of Atherholt Road to its point of intersection with the western side of the right of way of Langhorne Road thence proceeding along the right of way of Langhorne Road N63°14'19"W, 1179.1' to a point thence N23°00'31"E, 256.6' to a point said point being on the northern side of the right of way of Tate Springs Road thence proceeding in an easterly direction along the right of way of Tate Springs Road to its point of intersection with the right of way of Thomson Drive thence proceeding along the right of way of Thomson Drive N28°21'22"W, 998' to a point thence N33°46'15"E, 311.3' to a point thence N58°39'50"W, 1101.8' to a point thence S35°47'38"W, 487.3' to a point thence S46°44'18"E, 862.4' to a point thence S22°02'27"E, 534' to a point thence S87°53'00"W, 843.6' to a point thence N70°27'24"W, 424.1' to a point thence N2°39'27"E, 71' to a point thence N60°26'15"E, 85.8' to a point thence N58°28'09"W, 340.8' to a point thence S2°51'39"W, 226.9' to a point thence S39°05'19"W, 328.5' to a point said point being on the eastern side of the right of way of Clifton Street thence proceeding in a southerly direction along the right of way of Clifton Street to its point of intersection with the right of way of Langhorne Road thence proceeding along the right of way of Langhorne Road S87°53'41"E, 1292.1' to a point thence S25°34'48"W, 123.4' to a point said point being on the eastern side of the right of way of Tate Springs Road thence proceeding in a southwesterly direction along the right of way of Tate Springs Road to its point of intersection with the right of way of Yorktown Avenue thence proceeding in an easterly direction along the right of way of Yorktown Avenue to its point of intersection with the right of way of Atherholt Road thence proceeding in a southwesterly direction along the right of way of Atherholt Road to its point of intersection with the southern side of the right of way of Yorktown Avenue thence N53°39'53"W, 227.9' to a point thence S27°33'30"W, 326' to a point thence N71°01'41"W, 441.6' to a point thence N82°44'52"W, 409.9' to a point thence S79°45'44"W, 390.6' to a point said point being on the eastern side of the right of way of Tate Springs Road thence proceeding in a westerly direction along the right of way of Tate Springs Road to a point said point being 100' from the centerline of Blackwater Creek thence proceeding in a southerly direction 100' parallel to the centerline of Blackwater Creek to the point of intersection with the northern side of the right of way of Alleghany Avenue thence proceeding in an easterly direction along the right of way of Alleghany Avenue to its point of intersection with the southern side of the right of way of Lakeside Drive thence S42°03'59"W, 362.7' to a point thence S46°29'32"E, 1418.8' to a point thence S31°55'24"W, 314.9' to a point thence N54°58'37"W, 1436.6' to a point thence S33°16'00"W, 341.6' to a point thence S54°51'04"E, 720.7' to a point said point being on the eastern side of the right of way of Cary Street thence proceeding in a southerly direction along the right of way of Cary Street to its point of intersection with the right of way of Hood Street thence proceeding in a southeasterly direction along the right of way of Hood Street to its point of intersection with the right of way of Richmond Street thence N38°40'32"E, 151.3' to a point thence S54°35'02"E, 74.1' to a point said point being the intersection of the right of way of Richmond Street and the eastern side of the right of way of Eldon Street thence proceeding along the right of way of Eldon Street N38°40'32"E, 151.3' to a point thence S54°35'02"E, 74.1' to a point thence S26°40'51"E, 506' to a point thence N31°45'09"E, 98.1' to a point thence S50°14'55"E, 954.9' to a point thence S32°58'39"W, 138.4' to a point said point being on the eastern side of the right of way of Shenandoah Street thence proceeding in a southeasterly direction along the right of way of Shenandoah Street to its point of intersection with the western side of the right of way of Memorial Avenue thence proceeding in a northeasterly direction along the right of way of Memorial Avenue to its point of intersection with the eastern side of the right of way of Oakley Avenue thence S46°36'57"E, 56.4' to a point said point being on the eastern side of the right of way of Memorial Avenue thence proceeding in a southwesterly direction along the right of way of Memorial Avenue to its point of intersection with the right of way of Eldon Street thence S56°45'41"E, 123.1' to a point thence N33°07'49"E, 936.8' to a point thence N65°55'39"W, 186.1' to a point thence N22°51'54"E, 501.9' to a point thence S63°27'18"E, 174.2' to a point thence N17°09'42"E, 71.2' to a point thence S62°19'21"E, 115.2' to a point said point being the intersection of Euclid Avenue and Saint Augustine Street thence proceeding in a northwesterly direction along the right of way of Saint Augustine Street to its point of intersection with the western side of the right of way of Memorial Avenue thence N18°02'00"E, 60.3' to a point thence S58°52'28"E, 189.8' to a point thence N20°28'15"E, 1143.7' to a point thence N14°51'21"W, 181.8' to a point thence N84°34'18"E, 351.6' to a point thence N34°21'49"W, 480.1' to a point said point being on the eastern side of the right of way of Memorial Avenue thence proceeding in a southerly direction to the point of intersection between the right of way of Memorial Avenue and the southern side of the right of way of Lakeside Drive thence N64°41'18"W, 1292.2' to a point thence N44°25'33"E, 571' to a point thence N45°07'00"W, 502' to a point said point being on the eastern side of the right of way of Murrell Road thence proceeding in a westerly direction along the right of

way of Murrell Road to the point of intersection of Murrell Road and the southern side of the right of way of Lakeside Drive thence proceeding in a southwesterly direction along the right of way of Lakeside Drive to a point said point being on the southern side of the right of way of Lakeside Drive and being 103' from the right of way of Alleghany Avenue thence N70°46'42"W, 276.4' to a point said point being on an unnamed branch thence proceeding in an easterly direction along the unnamed branch to its point of intersection with the northern side of the right of way of Lakeside Drive thence N6°13'47"W, 432.6' to a point thence S87°09'52"W, 212.3' to a point thence S46°50'51"W, 148' to a point thence N52°52'59"W, 271.3' to a point thence N39°12'51"E, 460' to a point thence S89°20'58"E, 362.6' to a point thence N44°01'20"E, 207.2' to a point said point being on the southern side of the right of way of Yorktown Avenue thence proceeding in a northwesterly direction along the right of way of Yorktown Avenue to its point of intersection with the eastern side of the right of way of Atherholt Road thence proceeding in a northeasterly direction along the right of way of Atherholt Road to its point of intersection with the northern side of the right of way of Yorktown Avenue thence S62°27'03"E, 147.9' to a point thence N44°23'49"E, 890.5' to a point said point being on the northern side of the right of way of Langhorne Road thence proceeding in an easterly direction along the right of way of Langhorne Road to its point of intersection with the right of way of Memorial Avenue thence S36°23'16"E, 296.2' to a point thence N55°40'33"E, 463.8' to a point thence N34°59'14"W, 108.1' to a point thence N54°18'57"E, 163.3' to a point thence N35°16'23"W, 189.1' to a point thence N53°46'56"E, 50' to a point thence S34°40'32"E, 140' to a point thence N57°25'02"E, 432.6' to a point thence N35°47'39"W, 262.9' to a point said point being on the northern side of the right of way of Memorial Avenue thence proceeding in an easterly direction along the right of way of Memorial Avenue thence N54°25'23"E, 446.2' to a point thence S13°31'48"E, 103.6' to a point thence N54°21'41"E, 424.4' to a point thence S35°07'46"E, 202.6' to a point thence N17°42'08"E, 323.7' to a point thence N50°15'04"E, 71.7' to a point thence S34°07'34"E, 100' to a point thence N52°04'52"E, 264.6' to a point said point being on the northern side of the right of way of Fifth Street thence proceeding in an easterly direction along the right of way of 5th Street to its point of intersection with the eastern side of the right of way of Taylor Street thence proceeding in a southerly direction along the right of way of Taylor Street to its point of intersection with the southern side of the right of way of Fifth Street thence N55°26'22"E, 63.9' to a point thence S41°09'14"E, 168.7' to a point thence S58°08'02"W, 43.6' to a point thence S27°06'09"E, 83.4' to a point thence S82°06'15"E, 59' to a point said point being on the centerline of Park Avenue thence proceeding in a northeasterly direction along the centerline of Park Avenue to its point of intersection with the centerline of Monroe Street thence proceeding in a northwesterly direction along the centerline of Monroe Street to the point of beginning.

Addition Area "E"

Starting at the point of intersection between the right of way of Oakley Avenue and Fort Avenue thence proceeding in a northeasterly direction along the right of way of Fort Avenue to its point of intersection with the centerline of Saint Augustine Street thence N48°48'50"W, 124.5' to a point thence N82°07'46"W, 44.9' to a point thence S36°14'31"W, 309.3' to a point thence N58°35'50"W, 290.7' to a point thence S33°16'36"W, 634.2' to a point thence S54°30'07"E, 41.8' to a point thence S35°22'31"W, 174.5' to a point said point being on the right of way of Oakley Avenue thence proceeding in a southeasterly direction along the right of way of Oakley Avenue to the point of beginning.

Addition Area "F"

Starting at the southeastern most point of the centerline of Englewood Street thence S48°02'55"E, 525' to a point thence N54°41'02"E, 32.4' to a point thence N45°45'28"W, 737.2' to a point thence S37°38'51"W, 182.9' to a point thence S52°07'30"E, 62.9' to a point thence S40°54'51"W, 27.4' to the point of beginning.

BE IT FURTHER RESOLVED That upon approval by the Commonwealth of Virginia, said areas shall be removed and or designated as part of the City of Lynchburg, Virginia Enterprise Zone #2.

Adopted:

Certified:

Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: November 11, 2008		AGENDA ITEM NO.: 11
CONSENT:	REGULAR: X	CLOSED SESSION: (Confidential)
ACTION: X	INFORMATION:	
<u>ITEM TITLE:</u> PUBLIC HEARING ON THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER)		

RECOMMENDATION: Hold a public hearing and receive comments regarding the 2007-08 Consolidated Annual Performance and Evaluation Report (CAPER).

SUMMARY: The U.S. Department of Housing and Urban Development (HUD) requires each jurisdiction receiving HUD-administered grants to draft a CAPER. The CAPER describes the City's progress towards the housing and community development goals established for their community. This CAPER is for the period of July 1, 2007, through June 30, 2008. The CAPER, including a summary of any public comments, will be submitted to the HUD Richmond Field Office on Tuesday, November 25, 2008.

PRIOR ACTION(S): N/A

FISCAL IMPACT: N/A

CONTACTS:

Charlene Montford/ 455-3902

ATTACHMENT(S):

Draft Consolidated Annual Performance and Evaluation Report

REVIEWED BY: lkp

136L



Third Program Year CAPER

The CPMP Consolidated Annual Performance and Evaluation Report includes Narrative Responses to CAPER questions that CDBG, HOME, HOPWA, and ESG grantees must respond to each year in order to be compliant with the Consolidated Planning Regulations. The Executive Summary narratives are optional.

The grantee must submit an updated Financial Summary Report (PR26).

GENERAL

Executive Summary

This module is optional but encouraged. If you choose to complete it, provide a brief overview that includes major initiatives and highlights that were proposed and executed throughout the first year.

The City of Lynchburg reports annually to the U.S. Department of Housing and Urban Development (HUD) on program and project accomplishments funded through the Community Development Block Grant (CDBG) and Home Investment Partnerships (HOME) entitlement grant programs via the Consolidated Annual Performance and Evaluation Report (CAPER). The questions reflected in the CAPER are drawn from the requirements of the 1995 Consolidated Plan regulations, which were subsequently interpreted in memorandum format and submitted to all CPD Field Directors and Entitlement Grantees in 1998. The City has provided narrative responses, tables, charts and other supporting data to assure compliance with HUD Consolidated Planning regulations and requirements.

Lynchburg's Program Year 2007 (PY07) CAPER is the third report for the PY 2005-2010 Consolidated Plan. The report describes the City's progress towards the housing and community development goals for the period of July 1, 2007 through June 30, 2008. During this period, the City received Community Development Block Grant (CDBG), HOME and Supportive Housing funds for programs and activities to assist our community. This funding was utilized to facilitate the City's and the U.S. Department of Housing and Urban Development's mutual goals of providing decent housing, creating a suitable living environment, and expanding economic opportunity for individuals and families earning at or below 80% of the area median income.

General Questions

1. Affirmatively Furthering Fair Housing:

- a. Provide a summary of impediments to fair housing choice.
- b. Identify actions taken to overcome effects of impediments identified.

The City's Consolidated Plan contains a number of objectives that address housing goals for lower-income persons, or people with incomes ranging from 30% to 80% of the area median income. Using CDBG, HOME and Supportive Housing Program grant funds, the City funded programs to address the housing needs of this population during the program year.

A draft Analysis of Impediments to Fair Housing (AI) has been prepared and submitted to HUD. It is the goal of the City to complete the update to the AI by June 2009. The AI will include and identify the actions taken to overcome effects of the impediments identified.

During this reporting period, the following actions were taken to further fair housing:

- Fair Housing brochures were distributed to the public through the CDBG sub-recipients and to persons visiting City Hall, the public libraries and the Community Development Office.
- Laura Dupuy, Executive Director of a local non-profit, Lynchburg Neighborhood Development Foundation, continues to serve on the Governor's Fair Housing Board.
- City staff participated in the Homeless and Housing Coalition, composed of service providers who prepare the Continuum of Care to address the needs of homeless persons and the special needs of persons that are not homeless but require supportive housing.
- The equal housing opportunity logo was included on all newspaper ads placed by the Community Development Division.
- Lynchburg Redevelopment and Housing Authority (LRHA) posted in every building for which Section 8 occupants are located a Federal Fair Housing Poster. There is also a poster in each staff person's office located at 918 Commerce Street.
- In addition to the web site and newspaper advertisements, City staff ensured that all bid documents and contract solicitation for City, Federal and State projects included solicitation of minority-owned and women-owned businesses.
- All non-profits that receive CDBG and HOME funds have their own marketing policy that indicates recruitment and solicitation of minority-owned and women-owned businesses where possible.
- City staff assisted contractors in obtaining the certified list of minority-owned and women-owned businesses. The vendor/contractor list provided on the State of Virginia's web site was distributed to contractors, as requested.

2. Describe Other Actions in Strategic Plan or Action Plan taken to address obstacles to meeting underserved needs.

The City believes that the significant obstacles to addressing under-served needs are financial resources. If current trends continue for lower taxes and a decline in government program support, the private sector will play a key role in making up for the loss of government funds.

The City has continued to promote the involvement of private citizens, banks, corporations, and others in community development activities. As more people become involved, the proper and effective coordination of this involvement will become even more challenging.

The City of Lynchburg continues to support cooperative ventures, and to initiate cooperation where it is lacking. City Council exercised a coordinating role in its allocation of CDBG and HOME funds to sub-recipient organizations, and through the establishment of the Consolidated Plan. Other examples of coordination include the Code Enforcement Task Force, where citizens and city staff meet monthly to discuss problems and plan activities. The Enterprise Zone Loan Pool allows City staff to be in regular contact with bank executives on matters of community lending. The Central Virginia Disability Services Board meets bi-monthly, and involves the region's local governments and disabled citizens. There are other examples of cooperation and coordination within the community that are too numerous to mention; however, they collectively reflect the City's commitment to the concept of shared responsibility.

Shared responsibility also implies the open exchange of information and the combination of scarce resources. The City maintains a leadership role in this regard, while opening the process to all interested parties, including low- and moderate-income citizens.

The City continues to seek reduction in the number of households with incomes below the poverty line by 10 percent each year through long-term solutions such as education (including adult education and job skill training), economic development, and coordinated supportive services. These areas are traditionally within the local government's sphere of influence, and the Lynchburg City Council has placed significant emphasis and funding in these areas.

City staff reviews the quarterly reports for each CDBG and HOME project that is funded to ensure that the City is meeting the goals and objectives stated in the Consolidated Plan. For projects that are not meeting the goals established in the Consolidated Plan and Annual Action Plan City staff will contact the agency to discuss the project and the necessary action that will be needed to bring the project to a current status.

City staff will review each CDBG and HOME project to ensure that funds are being expended in accordance with the program regulations and that the project funds are being expended in a timely manner. If a project has not expended funds during the quarterly review, City staff will contact the agency to discuss the project status and the importance of expending the project funds in a timely manner.

For ongoing HOME rental projects City staff requires the agency responsible for the project to submit to the City an annual HUD HOME Monitoring Checklist, Project Compliance Report for Rental Housing and Project Compliance Checklist. This information is reviewed for HOME Program compliance.

The City's CDBG and HOME funds are audited in conjunction with the City's annual audit. City Council reviews on an annual basis the remaining project funds and determines if funds will be retrieved from agencies and reprogrammed to other projects.

3. Leveraging Resources

- a. **Identify progress in obtaining "other" public and private resources to address needs.**
- b. **How Federal resources from HUD leveraged other public and private resources.**
- c. **How matching requirements were satisfied.**

This section will be divided into public, quasi-public, and private resources.

Public Resources:

The City of Lynchburg operates several programs and services which contribute to community revitalization. These include the following:

- The Neighborhood Services Division of the Community Development Department enforces ordinances regarding abandoned vehicles, illegal dumping, and weeds.
- The Buildings & Grounds Division of the Public Works Department coordinates the following programs:
 - **Adopt a Flower Bed:** businesses purchase plants, which City employees plant and maintain. Currently there are about twenty flower beds, mostly along the highways.
 - **Arbor Day:** a day to celebrate and promote reforestation of the City.
 - **Tree Stewards:** a volunteer program to maintain and trim City trees.
 - **Citizens for a Clean Lynchburg:** Partly funded by a Virginia Department of Environmental Quality grant (primarily to pay for a part time volunteer coordinator), this volunteer program promotes litter prevention.
- The Waste Management Division of the Public Works Department operates the **Adopt a Street** program. Sixty locations throughout the City, each at least one-half mile long, are cleaned by volunteers.
- The Utilities Department operates the **Combined Sewer Overflow** ("CSO") project. This largest of all the City's capital improvement projects will separate the storm water and waste water system from the current one system into two systems. The project will take nearly twenty more years and over \$300M to complete. Thus far, the project has received \$77M of local

funding, provided by sewer fees, \$20M in state funding, and \$19M in federal funding; \$313M is yet to be raised.

- The Inspections Division of the Community Development Department maintains the inspections for property maintenance and rental properties. Certain areas of the City are targeted for attention, and vacant properties are registered with the City.
- Lynchburg houses a branch of the Department of Social Services ("DSS"). nineteen programs are administered by DSS. Several of these programs coincide with activities for which HUD allows CDBG and / or HOME programs to be used. They are listed as follows:
 - **Child Care Services:** Provided to enable low income families (regardless of TANF status) to be employed or to prepare for employment
 - **Employment Services:** Provided to TANF recipients to help secure employment, education, or training. Several services are offered. Family Services:
 - **Services to Adults:** Services to the elderly and disabled, including emergency assistance with prescription medications, food, clothing, and shelter; links adults to community outreaches.
 - **Services to ChildrenAuxillary Grant Program**
 - **Energy Assistance Program:** A few programs which to offset rising costs of heating (and, if available, cooling), and assistance with heating equipment and fuel.
 - **Food Stamp Program:** augments purchasing power for low income persons and families.
 - **Medicaid Assistance Program (MEDICAID):** pays for medical, dental, pharmaceutical, and optometric care to public assistance recipients and medically needy persons.
 - **State and Local Hospitalization Program (SLH):** provides medically necessary services to indigent persons.
 - **Temporary Assistance to Needy Families (TANF):** Monthly assistance to needy families with school-age children.
 - **Temporary Assistance to Needy Families - Unemployed Parent (TANF-UP):** monthly assistance to needy two-parent families with school-age childrenwhen primary wage-earner is unemployed.
 - **Virginia Initiative for Employment not Welfare (VIEW):** Clients are given up to two years of supportive services and an additional year of transitional services to obtain gainful employment and no longer need welfare; required for all TANF recipients.

Other HUD grants used in the community are the **Supportive Housing Program, Shelter Plus Care, Housing Opportunities for Persons with AIDS,** and **McKinney-Vento Homeless Assistance.** McKinney-Vento Homeless Assistance is given to Miriam's House, Bedford Domestic Violence Services, Lyn-CAG, LNDF, the Salvation Army, and YWCA.

In September 2008, Virginia University of Lynchburg received a \$600,000 **"Historically Black Colleges and Universities"** grant from HUD to revitalize its neighborhood, Fairview Heights.

Lynchburg Neighborhood Development Foundation ("LNDF") has funded its projects with a mixture of CDBG and HOME as well as participation in the New Markets Tax Credits and Historic Preservation Tax Credits programs. CDBG and HOME funds are not used in the same project. Also, the **Federal Home Loan Bank of Atlanta** has awarded money to Lynchburg Neighborhood Development Foundation for housing activities.

Thanks to Representative Bob Goodlatte, in December of 2007, \$245,000 was earmarked in the U.S. Congress for the Academy of Fine Arts. This is an **Economic Development Initiative - Special Projects** grant to reconstruct the historic fly tower which was demolished by storms. The entire project is estimated to cost \$17.5M, of which \$5M will be generated from historic preservation tax credits, \$1.5M each from the Federal and Commonwealth governments, and \$1M each from the City, foundations, and corporations. Approximately \$6.5M is expected to be raised from individuals. More than \$12M has been raised during the last five years.

In June 2008, Amazement Square received a \$10,000 grant from the **National Endowment for the Arts** to support "The Big Read," a nationwide initiative. The award was made due to Amazement Square's "Year of the Author." Activities will include small group community discussions, a play, and film viewings -- all centered around Fahrenheit 451.

Quasi-Public Resources:

The "Community Dialogue on Race & Racism" began discussion in January, 2008 and has achieved its goal of beginning a community-wide discussion of community issues. The City currently has seven action groups meeting in the city: 1) Police 2) Education/Youth & Family Support 3) Diversity Events 4) Citizens Advocacy/Strengthening Community 5) Faith-Based 6) Communications/Media 7) Workforce Development.

Most of action groups started meeting September 6, 2008 and are still in the planning stages. The Communications Action Group has had two ward forums in Ward II. The Community Dialogue on Race & Racism will continue engaging citizens in dialogue through on-going study circles. The City is looking to have 15 study circles a year to bring diverse groups of people together to build relationships, trust, understanding and improve community issues.

Churches United for Service ("CUS") grew out of the Community Dialogue. It is an association of ministers, mostly from downtown, African-American churches. CUS has held at least two "love walks", in which ministers, Lynchburg police officers, community leaders, and ordinary citizens walk in downtown communities to take a stand against violence and for community morale.

The Housing and Homeless Coalition ("HHC") is a gathering of service providers in the greater Lynchburg area presenting a continuum of care to the public. Services

from homeless shelters to domestic violence shelters to subsidized apartments to local governments are represented. Many of these service providers are funded in whole or in part by federal grant money.

Lynchburg Community Loan Fund, an organization founded by Lynchburg Neighborhood Development Foundation, combines funds from private businesses, religious organizations, the U.S. Department of the Treasury, CDBG grant funds, foundations, individuals, banking institutions, and other community development financial institutions to serve individuals and businesses which may not have ready access to traditional financial institutions. Through this service, neglected and unstable neighborhoods can be brought to a stable condition.

The United Way of Central Virginia used the FY 2008-2009 CDBG grant as part of a match to a \$400,000 grant from the Virginia Early Childhood Foundation. This is a foundation begun by Governor Warner and continued by Governor Kaine. It is funded by a mixture of money from the Commonwealth legislature and private donations. The grant will be awarded for two years, with \$200,000 each year. The purpose of the grant is to support early education programs in the City that meet child care quality standards.

Private Resources:

As the Annual Action Plan asserts, Lynchburg has a strong tradition of philanthropy. Lynchburg is sometimes called the "City of Churches," and many of these churches have outreach programs. Due to the number of churches in the area and the fact that some of them are cautious when the government asks questions about their activities, and due to the varied sources of private contributions to charity an exhaustive list of private services and funders throughout Lynchburg is not available. The following list of activities is only representative of what private services are available. The Housing Program Coordinator intends over the next few years to list and map services offered by churches and other private entities.

Timberlake Ministers' Association is an association of several congregations; one of their ministries is to alleviate the need for food in the Timberlake area.

Interfaith Outreach Association ("IOA") receives **monetary and in-kind donations** of groceries and furniture from **over sixty churches, one synagogue, and one Baha'i community**. IOA acts as a screening agency for applicants and distributes aid. IOA also runs an energy/heating assistance program.

The Salvation Army and Lynchburg Daily Bread are the two places (they are separate entities) in the City where people from the greater Lynchburg area can come for a hot meal every day, with no questions asked. The Salvation Army offers breakfast and supper, whereas Lynchburg Daily Bread offers lunch. The Salvation Army has been serving Lynchburg and the surrounding counties of Campbell, Bedford, Amherst, Appomattox and Nelson for over 100 years. Just last year, 14,500 people in need received help from The Salvation Army from its 4-building campus on Park Avenue, across from Miller Park in Lynchburg. In FY 2007-2008, the **City of Lynchburg gave \$50,000 of CDBG money** to fund construction of the Center of Hope. **The Salvation Army's five year Capital Campaign raised \$5,021,000 in**

private and corporate donations over and above the CDBG contribution. The Center of Hope will house and expand existing Family Services social services, transitional shelter, emergency shelter services, and the community feeding program. It will be handicap-accessible and will allow family suites in the transitional shelter section. The Salvation Army also houses a day care on its campus. Salvation Army staff offer life skills and laycounseling to needy individuals and assist them to establish jobs, credit, and good habits.

Lynchburg Daily Bread **receives food from businesses, churches, individuals, and the USDA.** Any excess is shared with other nonprofit organizations. When lunch is over, the facility is used as a day shelter where families can be together and individuals can use a donated mobile phone to attend to business.

With several years of decreased CDBG funding and with bad economic times, nonprofit organizations are finding it increasingly difficult to expand or even sustain programs. The Housing Program Coordinator has assisted nonprofit organizations in finding new ways to fund programs, such as soliciting in-kind donations from businesses that may recognize a kinship with the nonprofit services.

One organization, New Land Samaritan Inns, operates The Gateway, a program for homeless men recovering from substance abuse. For the year ending December 31, 2007, the Gateway received \$62,842 of grant money, \$20,013 of in kind contributions, and \$92,027 from churches, community organizations, businesses, and individuals. Volunteers live at the Gateway four nights per week to assist residents. Dinners every week, most nights during the week, are cooked by church group volunteers; about five volunteers are in a group. A volunteer also buys groceries, transports residents to medical appointments, and arranges the clothing closet and library. A major contributor to this program recently decided to end its support. The Gateway faced a real possibility of closing, which caused a community outcry. Since that time, the Executive Director has publicized the plight on local news media. The Gateway has been buoyed by **increased philanthropy and a benefit concert held at Grace Memorial Episcopal Church.**

Area agencies are meeting together and contacting government representatives to found a nonprofit residential program for addicts in the first stages of recovery. The need is made pressing by the closure of the Arise program earlier this year, which formerly took care of these needs.

Three years ago, Grant Writers of Virginia ("GWV") established a location in Lynchburg. GWV is a business network of grant writers dedicated to assisting nonprofit organizations become sustainable. Since coming to Lynchburg, GWV has assisted around nine nonprofit organizations in the Lynchburg area to apply for grants, and has attempted to help more. Recently, GWV has made an offer to all local public school systems to forward to them all likely grant opportunities.

The **United Way of Central Virginia** funds twenty-eight agencies in Central Virginia, including agencies which also receive HUD grant money. There are also local foundations which assist nonprofit organizations: **the Greater Lynchburg Community Trust, the Centra Health Foundation, the Retail Merchants Foundation, the Easley Foundation, and the Plymale Foundation.**

The Free Clinic of Central Virginia, a private, nonprofit corporation, exists "to provide primary medical, nursing, dental, pharmaceutical, and educational services to those in Central Virginia who do not have the resources to obtain this basic health care." The Free Clinic screens clients and targets the underinsured and uninsured. Funding for the Free Clinic is provided by the **United Way and charity events such as the Smith Mountain Lake home tour and the James River Basketball Tournament**. Most professionals and support staff provide their services free of charge, thus maximizing the impact of each dollar raised to support the Free Clinic.

The Lynchburg Hunger Project, very loosely associated with the Housing and Homeless Coalition, is developing out of a class taught at Randolph College. Originally intended to update the 2-1-1 Food resource delivery, it may develop into a dialogue among churches to coordinate and improve food service.

Lynchburg Covenant Fellowship ("LCF") began as an ecumenical ministry launched by The Church of the Covenant. It has grown over the past fifty-eight years to become its own organization. It has since created several other independent organizations, such as New Land Samaritan Inns and IOA. LCF has entities in the City of Lynchburg and in the counties of Amherst, Appomattox, and Bedford. It has worked successfully with the following entities: **HUD (Section VIII Rental Assistance and Section 202), Lynchburg Health Department, Lynchburg DSS, Virginia Housing Development Authority, Lynchburg Redevelopment and Housing Authority, YWCA, Central Virginia Community Services Board, Central Virginia Training Center, Lyn-CAG, LNDF, Rush Homes, private businesses, and agencies which have become independent of LCF**. LCF owns and operates seven housing complexes for impoverished persons, including Shalom Apartments, scheduled to receive HOME funding through LRHA in FY 2008-2009.

Lynchburg Community Action Group, Inc. ("Lyn-CAG") "serves to effectively assist low income families and individuals in the Central Virginia Region 2000 community to move from economic and social dependency to self-sufficiency." Region 2000 encompasses the Cities of Lynchburg and Bedford and the counties of Amherst, Appomattox, Bedford, and Campbell. LynCAG is a **United Way** agency. It also receives funds from Section VIII, SHARE-HIP, and HOPWA. LynCAG offers crisis intervention, shelters, housing, transportation, housing improvement, lead, financial, educational and training, and community reentry (for released inmates) services. The Housing Improvement Program, and Weatherization program are funded by CDBG. The Substantial rehab program (including lead paint) is funded by HOME. As a CHDO, it constructs homes for first-time home buyers, also funded by HOME.

The Central Virginia YWCA operates a Domestic Violence Prevention Center and a residence building. It receives CDBG money. The CDBG money assists the YWCA in applying for and receiving other grants, including from the **United Way**.

The City of Lynchburg is home to two chapters of two organizations which are primarily volunteer-driven: **Greater Lynchburg Habitat for Humanity** ("GLHFH") and **Rebuilding Together, Lynchburg** ("RTL").

Greater Lynchburg Habitat for Humanity primarily constructs new homes that are sold to low-income, first time homebuyers that have partnered in their program. In order to offer an affordable purchase price for the homebuyer, GLHFH sells homes at cost and a no-interest mortgage is negotiated. The program occasionally rehabilitates a donated structure or a Habitat for Humanity home that has come back into its possession. GLHFH has catalogued 17,524.25 volunteer hours donated by 3,783 volunteers in the last program year. GLHFH operates the Habitat Re-store to help fund its activities, and receives donations of land, money, material, and labor from businesses, congregations, and agencies. The Lynchburg Redevelopment and Housing Authority has been an important partner in the past by donating land or property acquired through the Spot Blight program or an acquisition program.

RTL focuses on repairs and rehabilitations of owner-occupied, single family housing for veterans, the elderly, and the disabled. RTL receives donated materials from building supply companies and donated labor, sometimes in the form of teams from local companies, churches, and other entities. Since the Summer of 2008, RTL has been increasing efforts to create a network of partner churches. In FY 2007-2008, RTL received assistance from 50 skilled and 250 unskilled volunteers. 144 individuals in 66 owner-occupied homes were assisted. The following chart breaks down recipients by percentage of MSA:

# of Households	% of MSA
49	30%
11	50%
6	80%

c. How matching requirements were satisfied.

According to quarterly reports, three projects drew down HOME funds in FY 2007-2008:

LNDF's Homeownership Fund	\$3,561.64
Lyn-CAG's Substantial Rehabilitation	\$18,616.25
GLHFH's Development for Homeownership Opportunities	
Required match (25% of HOME draw down)	
Match amount	

Institutional Structure

1. Describe actions taken during the last year to overcome gaps in institutional structures and enhance coordination.

CAPER Institutional Structure response:

The current plan for management of CDBG and HOME funds involves five sets of "players": City staff, nonprofit organizations, Community Development Advisory Committee, citizens, and City Council. Fiscal Year 2007-2008 program year involves both official and unofficial activities by these players. City staff advertises in a City

newspaper of general circulation a request for proposals for the use of CDBG and HOME funds. Nonprofit organizations submit proposals to receive grant funding. The Community Development Advisory Committee reviews and recommends to City Council which program proposals to accept and how much funding to allot to acceptable projects. City Council holds public hearings for citizen participation. City Council votes to approve the annual action plan. City staff writes the annual action plan and submits it to HUD. City staff (in Grants Administration and Finance) are involved with day-to-day administration of HUD grant money, preparation of HUD-required reports (Comprehensive Plan, Annual Action Plan, and CAPER), environmental and programmatic reviews, and technical assistance in meeting HUD regulations and programmatic goals.

There is a division of labor in the Grants Administration Division. The Grants Administrator oversees all Division staff, coordinates efforts with Finance Department staff working with HUD grants, and enters data in IDIS. The Housing Program Coordinator is responsible for the Part 58 NEPA environmental review process and Federal Labor Relations compliance. The Department director oversees the Division.

Public Housing Strategy

1. Describe actions taken during the last year to improve public housing and resident initiatives.

CAPER Public Housing Strategy response:

The mission of the Lynchburg Redevelopment and Housing Authority (LRHA), as the Public Housing Authority (PHA) for the City is: "the Lynchburg Redevelopment and Housing Authority is dedicated to the improvement of the quality of life for all Lynchburg citizens by being a leader in community redevelopment, revitalizing neighborhoods and facilitating economic growth and development, by seeking and entering into partnerships with organizations and clients to achieve safe, decent and affordable housing, with an emphasis on homeownership, maintained in a manner that fosters pride and dignity."

The strategies stated in the Public Housing Assistance Annual Plan for Fiscal Year 2008 indicates that LRHA will continue to increase the awareness of the community of existing assistance programs, to attract more landlords to participate in the Section 8 program and continue to work in partnership with other local housing providers such as Lynchburg Community Action Group (Lyn-CAG), Lynchburg Neighborhood Development Foundation (LNDF), Rush Lifetime Homes, and Lynchburg Habitat for Humanity. An intensive effort with the marketing of available units continues to be advertised on a monthly basis in the local newspaper. The overall performance was satisfactory.

Barriers to Affordable Housing

1. Describe actions taken during the last year to eliminate barriers to affordable housing.

CAPER Barriers to Affordable Housing response:

A primary barrier to affordable housing in the target area is the very low property values that currently apply to lots in these census tracts. This is a large disincentive to development through renovation because the cost of repair typically exceeds the value of the renovated property. Therefore, only non-profit organizations that can access soft costs funds (i.e. finance and construction related costs) and grant funds are able to conduct rehabilitation projects in these areas. The for-profit developers are unable to conduct the extent of renovation necessary to make the houses in the target market amenable to modern housing demands. However, the City did allocate CDBG and HOME funds to non-profit entities to address the needs of extremely low and low income families and individuals. Agencies funded included the Lynchburg Neighborhood Development Foundation, Lynchburg Redevelopment and Housing Authority, Habitat for Humanity and Lynchburg Community Action Agency.

Lynchburg is a City of relatively low housing costs. Therefore, average income and cost-of-living reflect these somewhat lower housing costs. Recently, there has been a resurgence of housing development, primarily in the outlying areas of the City. Development in the CDBG target areas remain limited to non-profit and subsidized activity. This is due in part to the very low property values in these census tracts and a greater value being placed on improvements to property than to the land itself. In the target areas, this high value on improvements, or buildings, had the effect of costing more than clearing land, and thereby, negating the opportunities of redevelopment. This was also a large disincentive to development through renovation because the cost of repair typically exceeds the value of the renovated property. Therefore, subsidized development has been the primary construction in the CDBG neighborhoods to off-set the resistance of these neighborhoods to general real-estate market forces.

The usual barriers, zoning, building code and density issues for the targeted census tracts have been interpreted to encourage appropriate development in these areas. This is especially true in the development by non-profit housing providers where the City has waived or offset utility and other fees for making the project more affordable for the very low and low-income residents.

Despite the cost-to-value disparity, there are several incentives that the City offers to private and corporate entities interested in development in the targeted census tracts. Businesses located in the enterprise zone benefit from tax exemptions on improvement and other tax incentives.

On occasion, the City will either waive or offset these and other fees (e.g., utilities, and liens) in cases of non-profit housing providers developing affordable housing units in a manner consistent with the City's plans.

In order to assist in addressing barriers to affordable housing, City Council has taken the appropriate role for the City to continue supporting cooperative ventures and to initiate cooperation where it is lacking. City Council has also exercised this coordinating role in its allocation of CDBG and HOME program funds to sub-recipient organizations.

All of the home ownership programs funded with federal dollars include an educational component for potential home buyers about mortgage financing, credit and budgeting issues, and the responsibilities of home ownership.

The City of Lynchburg was the first Virginia locality to implement welfare reform. The program is continuing and is having a positive impact and will ultimately reduce the number of families in poverty.

Overall performance was as expected.

HOMELESS

Homeless Needs

*Please also refer to the Homeless Needs Table in the Needs.xls workbook.

1. Identify actions taken to address needs of homeless persons.
2. Identify actions to help homeless persons make the transition to permanent housing and independent living.
3. Identify new Federal resources obtained from Homeless SuperNOFA.

CAPER Homeless Needs response:

1. Identify actions taken to address the needs of homeless persons

The Homeless and Housing Coalition of Central Virginia (HHC), formed in May of 1997 is charged with the responsibility of coordinating efforts to end homelessness through a variety of active committees. HHC members contribute voluntarily to maintain the coalition and Continuum of Care. There is no paid staff or designated entity devoted to convening the Coalition's activities or process. Miriam's House, a private non-profit, transitional living center, has assumed the lead in facilitating meetings, coordinating notices, and moving the HHC along a path to meet the standards set by HUD and the needs of the Planning District 11 community.

The HHC is committed to a Continuum of Care that is a strategic plan involving all stakeholders, and providing a seamless system of service delivery to all homeless families and individuals within Central Virginia. The Continuum of Care is a dynamic work in progress, open to review by the entire Coalition as well as HHC committees. The Lynchburg City Council has approved the Continuum of Care as a cornerstone of its Consolidated Plan.

The Homeless and Housing Coalition regularly publicizes its mission, which is to develop, sustain and coordinate a comprehensive, seamless system of services for homeless citizens of the cities of Bedford and Lynchburg and the counties of Amherst, Appomattox, Bedford and Campbell, in order to move the homeless population toward self-sufficiency and ultimately to end homelessness. The HHC recruits new members and advocates continuously, seeking to diversify its

membership and include public and private organizations whose work impacts the Central Virginia homeless population.

The Continuum of Care lists the objectives articulated by the Housing and Homeless Coalition, to define the scope of services available for low-income persons, ranging from the homeless to those ready to enter into home purchase.

The HHC has conducted a Point-in-Time survey of homeless individuals each year since 1997, as well as an inventory of homeless beds. Service providers have come to expect to conduct the count each year and reporting rates have improved annually.

In January of 2008, the Housing and Homeless Coalition organized a HUD-required Point in Time count, incorporating a survey of persons at emergency and transitional shelters, persons receiving hot meals at the Salvation Army and Lynchburg Daily Bread, persons in the field, and evidence of homeless campsites. This effort required six months of planning. The Director of the Housing and Homeless Coalition, Rhonda Ford, with the assistance of the Director of the Community Development Department, Charlene Montford, organized a planning team. Representatives of the Grants Administration Division, Zoning/Neighborhood Services Division, Inspections Division, GIS Division, and Lynchburg Police Department assisted in their fields of expertise. Representatives from the Salvation Army, Lyn-CAG, LNDF, Rush Lifetime Homes, and Miriam's House represented organizations throughout the Continuum of Care. Students from Lynchburg College and Randolph College participated in a survey of diners at the Salvation Army and Lynchburg Daily Bread. A homeless man volunteered to assist in locating homeless camps.

Results of the Point in Time Survey:

CoC Homeless Population and Subpopulations

K: CoC Point-in-Time Homeless Population and Subpopulations Chart

Indicate date of last point-in-time count: 1/24/2008				
Part 1: Homeless Population	Sheltered		Unsheltered	Total
	Emergency	Transitional		
1. Number of Households with Dependent Children:	35	9	1	45
1a. Total Number of Persons in these Households (adults and children)	91	31	1	123
2. Number of Households without Dependent Children**	56	33	44	133
2a. Total Number of Persons in these Households	56	33	44	133
Total Persons (Add Lines 1a and 2a):	147	64	45	256
Part 2: Homeless Subpopulations (below)	Sheltered		Unsheltered	Total
a. Chronically Homeless	30		23	53
b. Severely Mentally Ill	26		18	44
c. Chronic Substance Abuse	30		9	39
d. Veterans	7		14	21
e. Persons with HIV/AIDS	0		0	0
f. Victims of Domestic Violence	10		1	11
g. Unaccompanied Youth (Under 18)	108 children identified by the school division		*	108

* An additional 62 persons were identified who were precariously housed with friends or relatives and identified themselves as homeless

After the Point in Time Count was completed, results were compared to the Housing Inventory Chart. Utilization rates were determined by consulting HMIS data and APRs. Adjustments were made for programs with low bed utilization. Stakeholders discussed the Point in Time data in relation to year-round trends and the Salvation Army's new Center of Hope.

The Lynchburg Hunger Project is in the earliest planning stages of identifying the food needs of homeless persons and determine if they are being met.

Lynchburg nonprofit organizations, some of them funded by HUD grant money, offer several transitional several programs to assist Homeless individuals and families live independently in permanent housing.

2. Identify actions taken to help homeless persons make the transition to permanent housing and independent living

Virginia: Sharing a Common Wealth to End Homelessness is a comprehensive plan developed as part of a Policy Academy Initiative. This Plan, which is Virginia's Ten Year Plan, includes increasing housing units by 300 units annually, expanding use if

mainstream resources, initiating rental assistance for homeless families and increasing state funding to shelters and transitional living programs. The Plan also places emphasis on the needs of the chronically homeless through the creation of new funding streams directed at increasing rental assistance and reducing barriers to mainstream resources.

In conjunction with the State's comprehensive plan, the HHC has developed a plan to end homelessness by 2012 and it represents the HHC's efforts at building congruence with the statewide plan while being specifically responsive to our local needs. The Continuum of Care provides the objectives and strategies of this Plan.

The Continuum of Care narrative for 2008 addresses the actions taken to address the needs of homeless persons and the special needs of persons that are not homeless but require supportive housing. This narrative also includes the summary of accomplishments for the reporting period 2007 and to develop and implement a Continuum of Care strategy for the homeless, to help homeless persons make the transition to permanent housing and independent living.

Nonprofit organizations in the City of Lynchburg focus on the general homeless population and special needs populations.

The Greater Lynchburg area has a Continuum of Care, managed by the Housing and Homeless Coalition. Miriam's House is the lead organization in the Continuum of Care. The Continuum of Care consists of forty-five organizations.

General Homeless Population:

As mentioned above, the Salvation Army (a member of the Continuum of Care) is constructing the Center of Hope. Thirty-eight more beds, including family suites, will be added to current capacity.

Miriam's House, a transitional housing program for women and children, rearranged its rooms to allow for acceptance of larger families.

Special Needs Populations: Disabled persons

Rush Lifetime Homes, Inc., one of the City's two CHDOs. The mission of Rush Homes is "to provide the opportunity for permanent, affordable homes to adults with low incomes and significant mental and physical disabilities in Central Virginia." To that end, it has two programs for independent living: Home of Your Own Program and Supportive Housing Program. The Supportive Housing Program is for persons with disabilities who are homeless; a few included services are case management, money management, property maintenance assistance, health care needs assistance, and transportation. Rush Homes' recent activities are in Lynchburg and nearby Madison Heights, within Amherst County. In FY 2007-2008, Rush Homes applied only for CDBG funded supportive housing, to continue to allow disabled persons to live with a minimum of dependence. In Madison Heights, Rush Homes is renovating one three-bedroom home and a quadplex to create five new units in "Mays Street Housing." This year, Rush Homes was awarded CDBG funding for the Supportive Housing Program and HOME funding for Independence Housing which is the most recent

addition to the Home of Your Own program for individuals which already have supportive services. Rush Homes receives CDBG, HOME, and SHP grant money, and is also funded through the VHDA, Federal Home Loan Bank of Atlanta, private foundations, fundraising, and program income.

Cornerstone is a project formerly composed of three agencies: LNDF (owner/developer), Community Housing Partners Corp. (property manager), and Miriam's House (case management). In July or August of 2008, LNDF assumed the role of property manager as well. HOME and SHP grant money, Federal Home Loan Bank of Atlanta's Affordable Housing Program, and McKinney-Vento assistance are part of this project. It is one of the first independent living arrangements for homeless persons, and receives applicants on a referral basis.

A Veterans Affairs Outpatient Clinic is able to meet the needs of homeless veterans in the area.

The following table shows goals and actual accomplishments:

Objective	Proposed 12 mo. Achievement	Actual 12 mo. Achievement
Create new permanent housing beds for CH	2	0
Increase percentage of homeless persons staying in permanent housing over six months to at least 71%	71%	80%
Increase percentage of homeless persons moving from temporary housing to permanent housing to at least 61.5%	67%	77%
Increase percentage of homeless persons employed at exit to at least 18%	36%	22%
Ensure that CoC has a functional HMIS system	75%	73% CoC switched HMIS software companies; CoC has inadequate resources; some ESG-funded agencies will not cooperate.

Eight beds were reserved for chronically homeless persons in 2007; chronically homeless persons numbered fifty-nine.

Plans are being made to take definitive actions in FY 2008-2009 to increase the amount of homeless persons in permanent housing.

The following are objectives and steps taken from the Continuum of Care:

Objective	Step
Create new permanent housing beds for chronically homeless persons	Meet with housing authority to identify ways to designate public housing for chronically homeless persons
	Secure site for The Haven, a single room occupancy facility for homeless persons in recovery.
Increase percentage of homeless persons staying in permanent housing over six months to at least 71.5%	Expand the pilot aftercare program offered by Miriam's House, a transitional housing program, to Permanent Supportive Housing Residents
	Provide money management and eviction prevention training to all persons in Permanent Supportive Housing.
	Implement APR tracking of all permanent housing projects; monitor quarterly.
Increase percentage of homeless persons moving from temporary housing to permanent housing to at least 63.5%	Develop centralized referral system to all mainstream resources.
	Expand aftercare/recovery services to all transitional housing programs.
Increase percentage of homeless persons employed at exit to at least 19%.	Coordinate with WIA Board to advertise jobs and coordinate transportation specifically for homeless persons.
	Provide employment cross training between homeless service agencies.
	Utilize CET to move homeless persons into employment.
Decrease the number of homeless households with children.	Establish a CoC committee to focus on homeless family issues and identify barriers to employment.
	Work with Lynchburg Redevelopment and Housing Authority to ensure greater access to housing for homeless families.

Eight beds are reserved for chronically homeless in 2008; chronically homeless number fifty-three.

3. Identify new Federal resources obtained from Homeless Super NOFA.

The Continuum of Care is in a Hold Harmless Renewal status. New money is being channeled through McKinney-Vento Homeless Assistance.

Specific Homeless Prevention Elements

1. Identify actions taken to prevent homelessness.

CAPER Specific Housing Prevention Elements response:

Lyn-CAG operates the Housing Improvement Program and Substantial Rehabilitation Program, respectively funded by CDBG and HOME. The Housing Improvement Program is intended for minor repairs of houses to keep them livable; the substantial rehabilitation program assists structures which are greatly deteriorated or which have lead based paint issues.

When children are old enough to leave foster care, the Lynchburg Department of Social Services and other local CoC agencies observe the Virginia Department of Social Services mandate to move young people to permanent housing. Discharge planning includes assisting youth in securing employment and housing.

Centra Health, the local hospital system, it has no policy of ensuring no patient is discharged to a shelter or a street. Hospital social workers are working with the CoC to ensure safe and adequate placement; they are working to establish a safety network for discharged patients. Mental health patients discharged through community services boards and in conjunction with the state hospital system. must have placement upon discharge; in rare cases, they are discharged into a McKinney-Vento funded program.

The Virginia Department of Corrections mandates that juveniles only be discharged to authorized persons. Adult may only be discharged to a verifiable address. They are required to work with the Community Release Unit and the local probation officer for discharge. Local CoC agencies observe Commonwealth protocol.

For a copy of additional information, including financial summaries, please contact the Department of Community Development.

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 11, 2008**

AGENDA ITEM NO.: 12

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Adoption of the Amended Citizen Participation Plan for the Community Development Block Grant and HOME Programs**

RECOMMENDATION: Adopt the amended Citizen Participation Plan with noted revisions.

SUMMARY: A public hearing was held to receive comment on the amended Citizen Participation Plan and no one spoke. During Council's subsequent discussion of the amended plan, several revisions were suggested. Revisions have been included in the attached document as follows:

- Language regarding the provision of translation services was revised to stipulate "reasonable efforts" when such services are requested.
- A statement has been included regarding training for the CDAC.
- The paragraph regarding a technical assistance workshop for applicants has been deleted.
- A definition of "Low to Moderate Income" has been provided.
- Further revisions were made to address grammatical errors and for clarity.

PRIOR ACTION(S): Public Hearing on the amended plan, October 28, 2008.

FISCAL IMPACT: N/A

CONTACT(S): Charlene Montford, 455-3902; Gwendolyn Gillespie, 455-3916

ATTACHMENT(S): Resolution, Amended Citizen Participation Plan, as revised

REVIEWED BY: lkp

Resolution

BE IT RESOLVED That the Lynchburg City Council hereby adopts the Citizen Participation Plan for the Community Development Block Grant and HOME Programs dated November 11, 2008.

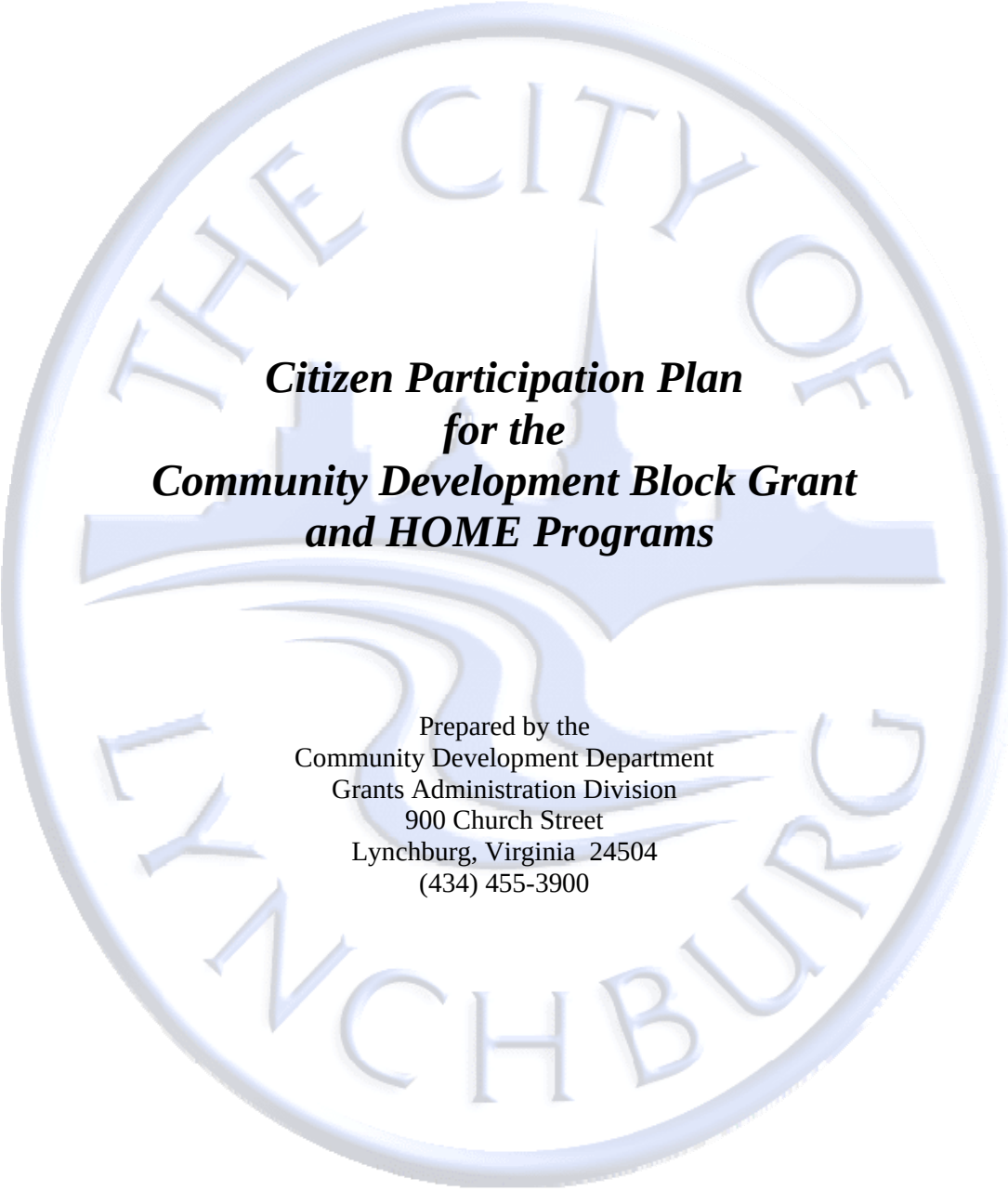
Adopted:

Certified:

Clerk of Council

133L

City of Lynchburg, Virginia



Citizen Participation Plan for the Community Development Block Grant and HOME Programs

Prepared by the
Community Development Department
Grants Administration Division
900 Church Street
Lynchburg, Virginia 24504
(434) 455-3900

Approved by City Council on _____

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CITIZEN PARTICIPATION PLAN

City of Lynchburg, Virginia

INTRODUCTION

This Citizen Participation Plan was prepared in accordance with Section 104(a) of the Housing and Community Development Act of 1974, as amended. The 24 CFR 91.105 federal regulations outline the “citizen participation” requirements. This document has been developed in order for the City of Lynchburg, Virginia to be in compliance with the requirements of the regulations.

The Plan sets forth the City’s policies and procedures by which it encourages local citizens to participate and comment on the federally funded Community Development Block Grant (CDBG) and HOME programs. The provisions concerning citizen involvement in implementing and assessing the CDBG and HOME programs apply to all activities that are ongoing, as well as to all future activities. This plan shall remain in affect until all activities are completed, or until this Plan is superseded by a new Plan.

In accordance with the City of Lynchburg’s mission of responsive, effective local government and vision principles that include engaging the community, the City will follow the Citizen Participation Plan detailed in this document. This Plan will help the City to determine and prioritize the needs of neighborhoods and communities, administer programs intended to address those needs, and involve the public in the Consolidated Plan, Annual Action Plan and Consolidated Annual Performance and Evaluation Report (CAPER) process.

CERTIFICATION OF COMPLIANCE

As a part of the City’s submission of its Five-Year Consolidated Plan, and any amendments thereto, the City will submit certification to the U.S. Department of Housing and Urban Development (HUD) that the City is following an approved Citizen Participation Plan, which:

1. Provides for and encourages citizen participation with particular emphasis on participation by persons of low and moderate income who are residents of slum and blighted areas and of areas in which funds are proposed to be used;
2. Provides for participation by residents in low and moderate income neighborhoods or targeted revitalization areas as defined by the City;
3. Provides for and encourages citizen participation of residents of public and assisted housing developments, as well as providing information to the housing agency about Consolidated Plan activities related to its development;
4. Provides for and encourages citizen participation of persons with disabilities as well as provides a copy of the participation plan in a format accessible to persons with disabilities, upon request;
5. Provides for and encourages citizen participation of all of the City of Lynchburg citizens, including minorities and non-English speaking persons, and identifies how the needs of non-English speaking residents will be met in the case of public hearings where a

significant number of non-English speaking residents can be reasonably expected to participate;

6. Provides citizens with reasonable and timely notification and access to local meetings, information, and records relating to the City's proposed and actual use of federal CDBG and HOME funds;
7. Provides for technical assistance to groups/organizations representative of persons of low and moderate income that request such assistance in developing proposals, with the level and type of assistance to be determined by the City;
8. Provides for public hearings to obtain citizen views, and to respond to proposals and questions at all stages of the community development program process, including at least the development of needs, the review of proposed activities, and the review of the programs annual performance. The hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodations for the disabled; and
9. Provides for timely written response to written complaints and grievances where applicable.

CITIZEN PARTICIPATION PLAN

The U.S. Department of Housing and Urban Development requires the City of Lynchburg to have and follow a Citizen Participation Plan as a condition of receiving federal funds. This Plan contains the City's policies and procedures for involving the community in:

- the development of the Annual Action Plan and the Five-Year Consolidated Plan;
- the review of the Consolidated Annual Performance and Evaluation Report; and
- the use of Community Development Block Grant (CDBG) and HOME program funds.

Included in this Citizen Participation Plan are policies and procedures for amending these documents and local programs. The Citizen Participation Plan will apply to the Section 108 loan program and other HUD programs that would require citizen participation. (See Appendix A for a definition of the Annual Action Plan, Consolidated Plan and CAPER and Appendix B for a description of the CDBG and HOME programs).

This Plan was prepared by the Community Development Department, Grants Administration Division, which is the lead entity for the administration of the CDBG and HOME programs for the City of Lynchburg.

Encouragement of Citizen Participation

Participation by residents in low and moderate income neighborhoods, as well as minorities, non-English speaking persons, and persons with mobile, visual and hearing disabilities is encouraged throughout the development of the Consolidated Plan, Annual Action Plan, the CAPER, and any amendments to these plans. Residents of public and housing developments are also encouraged to participate.

Methods of Citizen Involvement

The City provides three methods of citizen involvement in the development of the Five-Year Consolidated Plan and the Annual Action Plan.

Deleted: four

1. Local community involvement;
2. Community Development Advisory Committee (CDAC) review and hearings; and
3. City Council public hearings.

Deleted: <#>Technical assistance workshops for prospective applicants;¶

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RESPONSIBILITIES AND OBLIGATIONS

This section of the Citizen Participation Plan provides guidance to the various stakeholders in the activities required to develop and implement the Consolidated Plan, Annual Action Plan and the CAPER. These guidelines are provided to be inclusive and protect the fairness and integrity of the Community Development Block Grant and HOME programs. They are not intended, in any way, to exclude or limit access to the process.

Assignments

The City of Lynchburg Citizen Participation Plan describes the roles of the City Council, Community Development Advisory Committee, City staff and others involved in developing and evaluating progress toward implementation of the Consolidated Plan and Annual Action Plan.

The **Lynchburg City Council** serves as the body of elected community-wide representatives responsible for addressing policy issues related to the Consolidated Plan and Annual Action Plan. The City Council gives direction to City staff as to how to proceed in assessing Lynchburg's housing and community development needs and a strategy to address the needs identified. It must approve the Consolidated Plan and the Annual Action Plan prior to submission to HUD. The City Council must also comment and approve revisions to the Citizen Participation Plan and amendments to the Consolidated Plan.

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The City Council will appoint and oversee the **Community Development Advisory Committee (CDAC)**. The CDAC will review the development of the Consolidated Plan and the Annual Action Plan, apply strategies developed in the Consolidated Plan and make recommendations to the City Council for funding activities and programs under the CDBG and HOME programs. The committee will also annually review the Consolidated Annual Performance and Evaluation Report (CAPER) and review and comment on the development of the Citizen Participation Plan. (A detailed description of the CDAC is provided on page 5 of this document).

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City staff will facilitate the process by assisting the City Council and the CDAC in meeting the City's obligations and responsibilities as an entitlement City for the CDBG and HOME programs. This will include preparing and submitting the required reports and documents to HUD and providing other support as required.

Other interested **citizens and groups** are encouraged to participate in the process via public input. The City and HUD recognize community input as an important component in identifying high priority needs in the community and ensuring that CDBG and HOME funds are used for activities that address those issues and concerns. These groups include the following:

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- public and private entities, both nonprofit and for-profit, particularly those whose purpose relates to housing, homelessness, neighborhoods, community development and economic development;
- The community-at-large, civic organizations, particularly those from low and moderate income neighborhoods, civic associations and tenant associations;
- The business community;
- Public Housing residents and agency staff;
- Lynchburg City schools;
- Clients, program users, program operators; and
- Residents and organizations in the CDBG target area.

Public Meetings

It is the policy of the City of Lynchburg to give citizens timely notice of local meetings and reasonable and timely access to local meetings, information, performance reports, and records relating to the City's proposed and actual use of CDBG and HOME program funds.

All meetings will be published at least once in the local paper at least 15 days in advance of the meeting date. Those meetings requiring more than 15 day notice in advance, will meet the required advance notice timeline. The published information will include:

- Description of the activity;
- What entity is conducting the meeting;
- Amount of source of funds;
- Where and how information may be obtained;
- The date, time and location of the public meetings(s);
- Timeframe for the public to submit public comments;
- How and in what format comments will be accepted; and
- Contact person for additional information.

The City wants to ensure that all people are able to participate in public meetings. Therefore, the City will make reasonable efforts to provide translators, upon request, to help non-English speaking persons at public hearings, working sessions and public meetings. Likewise, the City will make reasonable efforts to provide special accommodations for persons with disabilities so they can participate. The City will schedule meetings in locations that are accessible and at times that are convenient for the community. Persons needing special accommodations or translators should make their requests **one week** before the meeting so that the City can assure that the special needs are met. These requests should be made to the Community Development Department, Grants Administration Division at (434) 455-3900.

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Public Notices

Public Notices will be published at least once as a legal ad in the local newspaper. These notices will include: a statement of program objectives; amount of grant funds and program income anticipated; range of activities that may be undertaken; estimated amount of grant funds and program income proposed to be used for activities that will benefit low and moderate income persons; any proposed activities likely to result in displacement; and the City's plan for minimizing displacement.

Documents that require a Public Comment period will be available for review at the following locations:

- Community Development Department, Grants Administration Division, Second Floor, City Hall, 900 Church Street, Lynchburg, Virginia 24504
- Lynchburg Public Library, 2311 Memorial Avenue, Lynchburg, Virginia
- Downtown Branch Library, City Hall, Basement Floor, 900 Church Street, Lynchburg, Virginia 24504
- Community Development Department, Grants Administration Division website

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Access to Records

The City will provide access to public records related to the Consolidated Plan, Annual Action Plan and the CAPER and the use of assistance under the programs covered by the Plans during the proceeding five years. The City may charge a fee for copies to recover cost of materials. The City may require an appointment to view records and may require City staff to be present during the inspection of records.

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COMMUNITY DEVELOPMENT ADVISORY COMMITTEE

The Community Development Advisory Committee (CDAC) will serve as a primary mechanism for facilitating citizen participation throughout all stages of the federal government consolidated planning, implementation and evaluation process. The committee shall make recommendations to the City Council regarding plans and projects for the CDBG and HOME programs. The CDAC will act in an advisory capacity to the City Council in reference to the CDBG and HOME programs and related project activities.

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The CDAC will meet at least four times during the program year and will offer advice and recommendations on development of the Annual Action Plan, implementation and evaluation of the CDBG and HOME programs, proposed amendments to the Consolidated Plan and/or Annual Action Plan, and allocations of unprogrammed CDBG and HOME funds. No member of the advisory committee may vote on a proposal initiated by a neighborhood organization of which he or she is a member.

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At each meeting of the CDAC, City staff will report on the progress of current projects and programs. These meetings shall be open to the public. The agenda for any regular or other public CDAC meeting will be provided to all Committee members in writing five (5) days prior to the meeting. Meeting dates and times shall be determined by consent of the Committee members. The time and place of the CDAC meetings can be obtained by calling the Community Development Department, Grants Administration Division, at (434) 455-3900.

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The Chair may, when it is deemed necessary and expedient, call a special meeting of the CDAC for the purpose of transacting business. No business shall be considered other than as designated in the call. The special meeting shall be called by written notice to the members of the Committee.

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Membership and Composition: The CDAC shall consist of nine (9) members. The composition of the committee shall be as follows:

- a. Five (5) members shall be citizens of predominately low and moderate income neighborhoods, and/or other slum and blighted areas of the City. No more than one representative from a single neighborhood shall be allowed to serve at a time.

- b. Two (2) members shall be representatives from the community at-large and represent the business community, health care industry or other special interest groups such as the disabled, homeless, elderly, residents of public or subsidized housing, etc.
- c. Two (2) members shall be current members of the Lynchburg City Council.

Terms: All members of the CDAC will be appointed by the City Council to serve four year terms, not to exceed two consecutive terms. Annually, the CDAC members will participate in a training workshop on the CDBG and HOME programs. The training workshop will include information on the current status of programs and agencies receiving federal funds.

Officers: The officers of the CDAC shall consist of a Chair and Vice-Chair. The Chair and Vice-Chair shall be members of City Council and selected by City Council.

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Chair: The Chair shall preside at all meetings of the Committee. Except as otherwise authorized by resolution of the CDAC, the Chair shall sign all official documents and other instruments to be executed by the Committee.

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Vice-Chair: In the absence or incapacity of the Chair, the Vice-Chair shall preside at all meetings of the Committee, and may perform such other duties as may be required by the Chair.

Recording Secretary: The Recording Secretary shall keep the records of the Committee, act as Secretary to all meetings of the Committee, record all votes and shall keep a record of the proceedings of the Committee. The Grants Administrator, or designee, shall act as Recording Secretary. The Recording Secretary shall not be a member, and will have no voting power; however, he or she may participate in discussions, and provide such information as requested by the Committee.

Quorum: At all meetings of the Committee, a majority of the total membership shall constitute a quorum for the purpose of transacting business.

Rules of Procedure: The Committee will operate under “Roberts Rules of Order”, as revised. The Community Development Director and Grants Administration staff will provide technical assistance and support to the CDAC. This support includes notice of meetings, provision of meeting space, minutes, interpretation of HUD policies and requirements, and program status reports. Community Development staff may also prepare letters, reports, responses and other documents for the Committee, as requested, and shall attend all CDAC meetings and hearings.

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REQUIRED SUBMISSIONS

Although both the Five-Year Consolidated Plan and the Annual Action Plan seek community involvement on many levels, the involvement levels differ for the two plans. Efforts to involve local citizens, non-profit entities and other interested stakeholders, is more intensive during the Five-Year Consolidated Plan preparation process, than in the Annual Action Plan process. The purpose of the Five-Year Plan is to identify needs and develop a multi-year strategy to address those needs. The primary purpose of the Annual Action Plan is to identify specific activities to be funded or actions to be taken during a particular fiscal year to address needs that were identified in the Five-Year Consolidated Plan. Therefore, the citizen involvement process for each plan is described separately below.

Annual Action Plan

At the beginning of the Annual Action Plan process, the City will prepare an Application for Funding and Information Guide that describes the City's funding application processes. The Application for Funding and Information Guide will include the objectives and eligible uses of the CDBG and HOME programs and the amount of funds expected to be received by the City, including program income. This document will also provide a tentative time schedule that the City is expected to follow in the preparation of the Plan.

Local Community Involvement: The City will make every effort to involve the community, especially low and moderate income persons and those who live in areas eligible for CDBG funds, in the annual planning and funding process within reasonable limits of staffing and budgetary constraints. (See Appendix C for a map of eligible areas).

The City wants to ensure that all people are able to participate in all public meetings. Therefore, the City will make reasonable efforts to provide translators, upon request, to assist non-English speaking persons at public hearings, workshops and public meetings. Likewise, the City will make special accommodations for persons with disabilities so they can participate. The City will schedule meetings in locations that are free from accessibility problems and at times that are convenient for the community. Persons needing special accommodations or translators should make their requests **one week** before the meeting so the City can assure that the special needs are met. These requests should be made to the Grants Administration Division, of the Department of Community Department at (434) 455-3900 or by writing to: City of Lynchburg, Grants Administration Division, 900 Church Street, Lynchburg, Virginia 24504.

For the community as a whole, the City will publish a public notice in the *News and Advance* that the City is starting the Annual Action Plan process. This notice will include information regarding the application process and technical assistance workshop. The City's Community Development Department website will also contain information about the City's application process and the time schedule.

Community Development Advisory Committee (CDAC) meeting: The CDAC, a citizen advisory group appointed by the City Council, is responsible for reviewing and making recommendations on the funding applications described in the Annual Action Plan. The CDAC will conduct at least one meeting at the onset of the planning process for the Annual Action Plan. At this meeting, the CDAC will review program accomplishments as described in the Consolidated Annual Performance and Evaluation Report (CAPER) and obtain citizen input on housing and community development needs. A notice of this meeting will be published in the local newspaper, the *News and Advance*, at least 15 days prior to the meeting. If needed, the CDAC will conduct a second meeting to review applications, prior to making recommendations to the City Council. At the discretion of the CDAC, entities with eligible applications, including the City, may be invited to present their projects at the CDAC meeting and to answer questions. The CDAC may also at its discretion, seek information and clarity from City staff. At the conclusion of the CDAC process, the committee chair will prepare funding recommendations which will be submitted to the City Council. The CDAC recommendations will be included in the final adopted Annual Action Plan for information.

Thirty-Day Public Review Period: After the CDAC recommendations, the City will prepare a draft Annual Action Plan which will include the projects and programs funded with CDBG and

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Technical Assistance Workshop:
Annually, the City will conduct at least one technical assistance workshop on the CDBG and HOME funding application submittal process.¶
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While attendance at the technical assistance workshop is not mandatory, persons, groups, and agencies interested in applying for funds will be strongly encouraged to attend. The workshop is intended to familiarize persons on the eligibility requirements of the CDBG and HOME programs. Community Development staff will also describe the funding application forms and the application review and approval process. After attending the workshop, applicants may also contact appropriate staff regarding eligibility issues and the application process.¶
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In addition to notifying persons and agencies that have expressed an interest in applying in the past, the City will also publish a notice in the *News and Advance* at least 15 days prior to the workshop.¶

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HOME funds. The City will then publish a legal notice in the *News and Advance* that the draft Annual Action Plan is available for public review and written comment. Any written comments must be submitted to the Department of Community Development, Grants Administration Division, prior to the end of the thirty day review period. During the review period, the draft Annual Action Plan will be available for review at the Department of Community Development and the Lynchburg Public Library.

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City Council Public Hearings: The City Council will hold at least one public hearing on the Annual Action Plan. This public hearing must be advertised in the local newspaper, the *News and Advance*, at least 15 days prior to the hearing. After the City Council adoption, staff will submit the Annual Action Plan to HUD for the required 45-day review period.

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HUD Review Period: After adoption of the Annual Action Plan, the City will attach a summary of any written or oral comments received during the public review period and the public hearings. If the City does not incorporate a recommendation received from the public, the City will attach the reasons why that recommendation was not included. The City will then send the Annual Action Plan to the U.S. Department of Housing and Urban Development for review and approval. The HUD approval process takes 45 calendar days. If the Plan has included all of the required sections and has gone through the required public comment and review, HUD approval is considered routine. The City may incur costs at the beginning of the program year which starts on July 1st, but may not draw down any funds until HUD has completed its 45 day review period and a grant agreement has been fully executed with HUD.

Consolidated Plan

As stated earlier, the City is required to prepare a multi-year Consolidated Plan. Consolidated Plans are usually prepared for a three to five year period. The City of Lynchburg has traditionally prepared a Five-Year Consolidated Plan. The purpose of the Consolidated Plan is to identify the needs of lower income persons, establish funding priorities and develop a multi-year strategy to address those needs. The Annual Action Plan must be consistent with the Consolidated Plan.

Local Community Involvement: The City will make every effort to involve the community, particularly low to moderate income persons and those living in areas eligible for CDBG funds, during the preparation of the Consolidated Plan. Community involvement will be at the planning and the funding processes and will be within the reasonable limits of staff time and cost considerations. This involvement will include people and groups that participate in the preparation of the Annual Action Plan. In addition to those traditionally included in the preparation of the Annual Action Plan, the City will seek input from other groups that might not be eligible for funding, particularly housing industry representatives, such as lenders and real estate professionals. In that the Consolidated Plan is concerned with identifying citywide needs and trends, the City will seek information, data and input from these groups to assist the City decision makers in identifying and prioritizing needs and developing strategies in addressing those needs.

The City will use the following procedure in developing the list of agencies and individuals that the City will consult with during the Consolidated Plan preparation process:

- The City will identify all agencies and individuals that have applied for HUD funds from the City since the previous Consolidated Plan was prepared.
- The City will identify and involve nonprofit and governmental agencies that might have useful information about the City's overall housing, community development, health

services and economic development needs. This will include agencies that represent persons with special needs.

- The City will request housing industry associations to appoint a person to represent that group in working with the City.
- The City will involve the CDAC and other committees and groups that may be affected by the CDBG and HOME programs.
- The City will retain a list of agencies, groups and individuals who have requested information about the programs and have requested to be put on the City's mailing list for input into the Consolidated Plan. The City will periodically verify that the agencies and persons are still interested in the program and that addresses and telephone numbers are current.
- The City will encourage the Lynchburg Redevelopment and Housing Authority residents and staff to participate in the planning process.
- The City will notify appropriate City of Lynchburg departments that the Grants Administration Division is preparing a description of non-housing community needs. In addition, the City will consult with the Health Department and other relative agencies regarding data on lead based paint hazards and poisonings.
- The City will send press releases and notices to the local newspapers and other media. This will include publishing a notice in the *News and Advance* advising the public that the planning process has begun and encourage participation.

After compiling a list of interested participants, the City will invite these agencies and individuals to attend one of several working sessions. Each working session will involve a certain topic or funding category, so that persons with similar interests, but not necessarily similar perspectives, can fully discuss the citywide needs for that particular topic area or funding source.

Thirty-Day Review Period: Upon completion, the City will notify the working session participants that the proposed Consolidated Plan is available for public review for a thirty-day period. A public notice in the *News and Advance* will also notify the public of the thirty-day public review period by publishing a short summary of the Consolidated Plan. This summary will briefly describe the contents and purposes of the Plan. The notice will include the locations where copies of the Plan can be reviewed. Copies of the Plan will also be available to the public, upon request, in the Community Development Department.

Community Development Advisory Committee (CDAC) meetings: The citizen involvement process includes a public meeting by the CDAC on the overall needs and priorities to be recommended as a part of the Consolidated Plan at the beginning of the planning process. The CDAC will review the Plan at various stages of development. At a public hearing, the CDAC will review and make recommendations on the final draft of the Consolidated Plan prior to the Plan being presented to the City Council for adoption. The CDAC will consider public comments on the Plan at that meeting. The public hearing may be held toward the end of the required thirty-day review period.

City Council Hearing: The City Council will conduct at least one public hearing on the Consolidated Plan prior to adoption. This hearing may or may not be in conjunction with the hearing on the Annual Action Plan. CDAC members and working session participants will be notified of the public hearing. This hearing will also be noticed in the *News and Advance* and listed in the City Council's Agenda. The notice may be included in the thirty day notice and the CDAC public hearing notice. The ultimate responsibility for the Consolidated Plan adoption is with the City Council.

After adoption, the City will attach to the Consolidated Plan a summary of any written or oral comments received during the public review period, including the public hearings. If the City does not incorporate a recommendation from the public, the City will attach reasons why that recommendation was not included when the Consolidated Plan is sent to HUD. The City will send the Consolidated Plan to the U.S. Department of Housing and Urban Development for review and approval.

CONSOLIDATED ANNUAL EVALUATION AND PERFORMANCE REPORT (CAPER)

On or about September 28th of each year, the City is required to submit a performance report to HUD for the previous program year. This report is called the Consolidated Annual Performance and Evaluation Report (CAPER). The CAPER provides a description of the following:

- Resources available to the City;
- Investment of those resources, the geographic distribution and location of investments;
- Number of families and persons assisted (including the racial and ethnic status of persons assisted);
- Actions taken to affirmatively further fair housing;
- Evaluation of other actions and activities, such as infrastructure projects, indicated in the strategic plan of the Consolidated Plan and the Annual Action Plan;
- Evaluation of the jurisdiction's progress in meeting its specific objectives of providing affordable housing, including the number and types of families served; and
- A summary of any written comments or views received from citizens regarding the City-funded programs and performance as well as any oral testimony at public hearings for City-funded programs and performance.

The City will publish a legal notice in the *News and Advance* at least 15 days before submittal of the CAPER to HUD so that citizens may comment on the report. Additionally, a public hearing is conducted by the City on performance and needs at the onset of the program planning process. At this hearing, the City will consider public comments on the CAPER.

AMENDMENT PROCESS

During the program year, the City may amend the Consolidated Plan and/or the Annual Action Plan. These amendments may be minor or substantial. HUD requires minor or substantial amendments to the Plan, whenever the City makes one of the following decisions:

1. Changes its CDBG or HOME funding allocation priorities;
2. Changes the City's program and activity funding selection process;
3. Carries out an activity, using funds from any program covered by the Consolidated Plan (including program income), not previously described in the Action Plan; or
4. Changes the purpose, scope, location or beneficiaries of an activity.

Minor amendments for any of these programs do not require public review or any additional action by the City.

Federal regulations require that the Citizen Participation Plan define when an amendment is considered substantial and what the citizen process will be when there is a substantial amendment. The process for amending either the Consolidated Plan or the Annual Action Plan

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will differ from program to program based on the definition of substantial change for that particular program, whether it be the CDBG or HOME program.

In the Consolidated Plan, there are priority goals and each goal has several action items. An amendment will be considered substantial, if the City will add, delete or modify a priority goal category currently in the adopted Plan. The addition, deletion or modification of a specific action item would not be considered a substantial change when the change would not result in an addition or deletion of a priority goal.

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In the Consolidated Plan, most activities funded with CDBG and HOME funds have units of measure, such as the number of houses rehabilitated or the linear feet of curb and gutter constructed. These production projections in the Consolidated Plan are considered estimates and changes would not be considered, by themselves, substantial. The addition, deletion or modification of programs described in the Consolidated Plan will not necessarily be considered a substantial change, even if that change were considered substantial for the Annual Action Plan. The reason is that unlike the Annual Action Plan, the Consolidated Plan does not commit to specific programs and funding amounts. Instead the Consolidated Plan focuses on overall City needs and goals.

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For the City's CDBG and HOME programs, a change in the Annual Action Plan will be considered substantial whenever costs increase by \$25,000 or 25% of the project's budget, whichever is greater. Costs savings or the deletion of work items to keep a particular project within budget will not constitute a substantial change, if the purpose, scope, location or beneficiaries of the project remain essentially the same. Modifications to program requirements would constitute a substantial amendment if the beneficiaries remain the same. Such modification would be reviewed by the Grants Administration staff prior to being presented to the City Council.

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Whenever the City proposes a substantial amendment, the Grants Administration staff will review and make a recommendation regarding the proposal. The City Council will consider the staff recommendation and take final action regarding the proposed amendment.

The CDAC and public will also be encouraged to provide input. A legal notice will be placed in the local newspaper advising the public of the proposed amendment thirty days before action by the City Council. The legal notice will include the date the City Council will consider the proposed amendment. City Council approval of the addition, deletion or modification of the project will constitute approval of the substantial amendment.

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Amendments to the Citizen Participation Plan will be handled in a similar manner as substantial changes to the Consolidated Plan or Annual Action Plan.

SUBMITTAL TO HUD

The Consolidated Plan and the Annual Action Plan will be submitted to the U.S. Department of Housing and Urban Development for a 45-day review period. Since project selection and program priorities are strictly local decision, HUD approval is considered routine, provided that the Plan includes all of the required sections and has gone through the required public review.

Persons having concerns about the City federal programs should first express those concerns locally, because final programmatic decisions are the responsibility of the City. It should be

noted that HUD officials will consider public concerns anytime regarding the City's plans and programs described in this Citizen Participation Plan, preferably during the 45-day HUD review period.

COMPLAINT PROCESS

HUD requires thirty-day public review periods for the Consolidated Plan and the Annual Action Plan. The review period for the CAPER is fifteen days. Questions, concerns, comments and complaints may be directed to the following City department during these review periods, and at any times of the year:

**City of Lynchburg
Community Development Department
Grants Administration Division
900 Church Street
Lynchburg, Virginia 24504
(434) 455-3900**

The City will respond, in writing, to concerns and complaints in a timely manner.

ANTI-DISPLACEMENT/RELOCATION POLICY

The City will minimize temporary and permanent displacement of persons as a result of the CDBG and HOME program activities. However, there may be occasions where relocation may be necessary to achieve the City's overall housing and community development goals. In these cases, the City has adopted an Anti-displacement Plan to describe how the City intends to assure that the rights of the affected residents are protected. The City's Anti-Displacement Plan is included in the Consolidated Plan and the CAPER.

APPENDIX A

Definitions

Annual Action Plan – The City is required to prepare an Annual Action Plan which describes how it will use CDBG and HOME funds during each new fiscal year to address the needs discussed in the Consolidated Plan. The Annual Action Plan must be consistent with the multi-year Consolidated Plan. The Annual Action Plan must be submitted to HUD 45 days prior to the beginning of the program year. For the City of Lynchburg, this is July 1st.

Community Development Block Grant (CDBG) Program – See Appendix B for a description of the program.

Community Housing Development Organizations (CHDO) – CHDOs are housing nonprofit organizations that meet certain requirements set forth by HUD under the HOME program. The federal government requires the City to set aside 15% of its HOME Program allocation for CHDOs.

Consolidated Annual Performance and Evaluation Report (CAPER) – This report describes the accomplishments of the City’s CDBG and HOME programs at the end of each fiscal year. The Plan is an assessment of the City’s progress in accomplishing the goals of the Annual Action Plan and the Consolidated Plan. There is also a discussion of some of the additional funds that the City has accessed during the year to leverage the HUD funding.

Consolidated Plan – The City is required to prepare a five year Consolidated Plan to receive Community Development Block Grant (CDBG) and HOME funds. The Plan includes a description of the housing and community development needs of the City, the City’s priorities given the limited financial resources available to the City, and a strategy toward addressing those needs.

Home Investment Partnerships (HOME) Program – See Appendix B for a description of the program.

Low and Moderate Income – Low and moderate income means family or household annual income less than the Section 8 Low Income Limit, generally 80 percent of the area median income (established by HUD and adjusted for family size).

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Substantial Amendment – An addition, deletion, or modification of a priority goal category in the Consolidated Plan or Annual Action Plan.

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U.S. Department of Housing and Urban Development (HUD) – HUD is the federal agency which administers the CDBG and HOME funds. The City must abide by HUD regulations for these programs as a condition for receiving these funds. Some changes in the regulations can be accomplished by HUD, but many of the requirements are part of the legislation passed by Congress and would require action by Congress if the requirements were to be modified or waived.

APPENDIX B

DESCRIPTION OF CDBG AND HOME PROGRAMS

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)

The Community Development Block Grant (CDBG) Program is administered by HUD and is authorized under Title 1 of the Housing and Community Development Act of 1974, as amended. The purpose of the CDBG Program is to enhance and maintain viable urban communities through the provision of decent housing, a suitable living environment, and the expansion of economic opportunities, principally for low and moderate income persons.

To be eligible for CDBG funding, a project or activity must qualify by meeting **one** of the following three national objectives.

National Objective No. 1 – Activities Benefiting Lower Income Persons/Households

The definition of a lower income person or household is one having an income equal to or less than 80% of Lynchburg's median income. A minimum of 70% of the City's total allocation must be used to address the needs of lower income persons. Projects must be either a direct benefit activity or an area benefit activity.

Direct Benefit Activities – To qualify as a direct benefit activity, there must be documentation that the public service program is benefiting lower income residents. At least 51% of the recipients of public service programs must have incomes equal to or below 80% of the median income. Certain other activities, such as housing rehabilitation, require all program participants to be lower income households.

HUD presumes certain groups meet the lower income criteria. Therefore, a record of the beneficiaries would not be required. HUD has defined these groups as abused children, battered spouses, elderly persons, adults with severe disabilities, homeless persons, illiterate adults, persons living with AIDS, and migrant workers.

Area Benefit Activities – These are activities that serve geographic areas in which at least 51% of the households are lower income, based on census data. To meet these criteria, 51% of household incomes must be equal to or less than 80% of the median income of the project's service area. See Appendix D for a map of the eligible areas in the City.

Examples of Area Benefit Activities include public improvements, i.e., street, sidewalk, curb, and gutter improvements (including related design and engineering work), park improvements, community centers, and public facilities.

Public Services – A maximum of 15% of the City's total annual CDBG allocation may be used for public service activities.

The Agency must be able to document that at least 51% of a public service activity's clientele are lower income residents. Public service projects must be a new service or an increase in the existing level of service. Examples of public services include crime prevention, child care, and drug-abuse related services.

Housing Activities – Housing activities include acquisition or rehabilitation of properties. CDBG funds may not be used for new housing construction, but may be used for property acquisition and construction of off-site improvements in conjunction with new construction.

The City currently has a housing rehabilitation program for lower income owner- and renter-occupied units.

National Objective No. 2 – Activities That Aid in the Prevention or Elimination of Slum/ Blight

If a project cannot meet the low income objective, a project may qualify if it benefits a slum or blighted area. State or local laws define slum and blighted areas as those that contain a high number of deteriorating or dilapidated buildings or infrastructures within the area. Redevelopment project areas generally qualify under this category. **Note:** Most blighted areas also qualify under national objective No. 1 (Activities Benefiting Lower Income Persons/Households). It is **not** necessary to meet the special requirements for slums and blight if the project already addresses the needs of low income persons.

To meet this Objective, the activity must be located in a City redevelopment area and in an area where there is a substantial number of deteriorated buildings, and designed to address one or more of the conditions that qualified the area as “slum/blighted.”

Projects may qualify outside a slum or blighted area on a spot blight basis. Activities include acquisition, demolition, rehabilitation, relocation, and historic preservation. Under this standard, rehabilitation of a building or a house is limited to the extent necessary to eliminate substandard conditions detrimental to public health and safety.

National Objective No. 3 – Activities Designated to Meet Needs Having a Particular Urgency

Activities must be designed to alleviate existing conditions that pose a serious and immediate threat to the health or welfare of the community that became urgent within the past 18 months. No other funding sources are available to address the problem. Again, projects that meet either National Objective No. 1 or 2 do not need to meet this objective. **Note:** This objective is difficult to achieve because the City must demonstrate that it has used all of its available resources prior to qualifying. This occurs only in a major disaster.

ELIGIBLE CDBG ACTIVITIES

In addition to meeting one of the above national objectives, the activity must also be eligible, according to HUD-approved criteria. Eligible activities include the following:

Acquisition, design, construction, rehabilitation, or installation of certain publicly-owned facilities such as:

- Parks, playgrounds and recreational facilities
- Senior centers, except 24-hour care facilities
- Centers for the handicapped, except 24-hour care facilities
- Neighborhood facilities
- Parking facilities
- Street improvements including curbs, gutters, sidewalks, lights and street pavement
- Water system improvements including fire hydrants
- Flood, drainage, or sewer facilities

Expansion and improvement in the quantity and quality of public services, principally for lower income persons (15% limitation).

Acquisition of property that is of historic value; appropriate for beautification or conservation of open spaces; or appropriate for low- or moderate-income housing.

- Demolition of buildings and clearance of land that may be a health hazard to the community
- Interim assistance or temporary help to alleviate harmful or dangerous conditions
- Removal of architectural barriers that restrict mobility of persons with disabilities
- Code enforcement in designated targeted areas

Historic preservation activities such as restoring and preserving properties formally designated as historic structures.

Conservation and improvement of the housing stock through rehabilitation of homes belonging to lower income persons.

Assistance to lower income first-time home buyers.

Rehabilitation and preservation of buildings and improvements, both publicly and privately owned.

Eligible planning and environmental design cost.

Eligible economic development activities such as creation of jobs for persons of low- and moderate-income through the expansion of business opportunities by providing financial incentives to small businesses. Note: there are additional federal requirements for qualifying projects under this provision. Interested persons should discuss their proposal with City staff prior to submitting an application.

INELIGIBLE CDBG ACTIVITIES

- Buildings for the general conduct of government such as city halls, courthouses, and police stations (Note: Police substations may be built in CDBG-eligible areas);
- Stadiums, sports arenas, auditoriums, museums, and central libraries (Note: Branch libraries and community centers may be built in CDBG-eligible areas);
- Airports, subways, bus or other stations;
- Expenses of general government for operation and maintenance of public facilities;
- Political activities;
- Direct income payments to residents;
- New housing construction (except when done by a community-based development organization recognized by HUD).

HOME PROGRAM

HUD also administers the Home Investment Partnerships (HOME) Program as authorized by the 1990 National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992. The intent of the HOME Program is to expand the supply of decent, safe, sanitary and affordable housing. This is done through the following:

- Community Housing Development Organizations (CHDO). HUD requires that 15% of the City's HOME funds be set aside for CHDO activities. Funds are restricted to qualified nonprofit organizations with 501(c)(3) tax status and other special requirements;
- Home ownership assistance;
- Rehabilitation;
- New Construction of affordable housing;
- Tenant-based rental assistance;
- Acquisition of property for affordable housing.

HOME PROGRAM ELIGIBILITY

In order for an activity or program to be eligible for HOME funding, it must qualify by meeting the following guidelines:

- 100% of all funding must be used to benefit households or persons with incomes less than 80% of Lynchburg's median income.
- All HOME-funded projects must have 25% non-federal matching funds.

- The HOME program has strict long-term affordability requirements which differ based on the type of project and the amount of funding requested per unit.
- Prevailing wage requirements are different from the CDBG program. Federal prevailing wages (Davis-Bacon) are triggered when there are 8 or more units assisted with CDBG funds. For the HOME program, it is 12 or more units.

INELIGIBLE HOME ACTIVITIES

- Emergency repair programs;
- Project reserve accounts;
- Public housing projects;
- Properties receiving Rental Rehabilitation Program funds;
- Commercial properties;
- Homeless shelters;
- Project-based rental assistance or substitution of Section 8 assistance for troubled HUD-insured projects;
- Preservation of affordable housing projects;
- Matching funds as the non-federal match for other programs except to match McKinney Act funds;
- During the period of affordability, properties previously assisted with HOME funds;
- Temporary shelters;
- Other properties that do not constitute permanent housing such as residential health care facilities and publicly run residential ; or
- Acquisition of City or agency-owned properties.

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 11, 2008**

AGENDA ITEM NO.: 13

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Governor's Opportunity Fund Award to assist with an expansion at R. R. Donnelley & Sons Company**

RECOMMENDATION:

Adopt a resolution to amend the FY 2009 City/Federal/State Aid Fund budget and appropriate \$500,000 with resources from the Commonwealth of Virginia's Governor's Opportunity Fund to assist with an expansion at R. R. Donnelley and Sons Company (R. R. Donnelley). These funds will then be disbursed to the Lynchburg Economic Development Authority for distribution to R. R. Donnelley when the Performance Agreement obligations are fulfilled.

SUMMARY:

The City received a grant award in April 2006 from the Governor's Opportunity Fund in the amount of \$500,000 to provide R. R. Donnelley with an incentive to expand its operation in the City.

The \$500,000 was given to the City by the State to distribute to R. R. Donnelley when the measures outlined in the Performance Agreement dated June 30, 2008 (attached) have been met. The funds will be transferred to the Lynchburg Economic Development Authority (LEDA) to hold until R. R. Donnelley provides proof that the measures have been met.

Funds were received by the City in May 2008 but never appropriated. This action simply appropriates the funding for transfer to the LEDA.

PRIOR ACTION(S):

October 28, 2008, Finance Committee

FISCAL IMPACT:

None

CONTACT(S):

Marjette L. Glass, Director of the Office of Economic Development, 455-4492

ATTACHMENT(S):

Resolution

Application

Performance Agreement

REVIEWED BY: lkp

RESOLUTION:

BE IT RESOLVED that the FY 2009 City/Federal/State Aid Fund budget is amended and \$500,000 is appropriated with resources from the Commonwealth of Virginia's Governor's Opportunity Fund to assist with an expansion at R. R. Donnelley and Sons Company (R. R. Donnelley). These funds will then be disbursed to the Lynchburg Economic Development Authority for distribution to R. R. Donnelley when the Performance Agreement obligations are fulfilled.

Introduced:

Adopted:

Certified:

Clerk of Council

135L

PERFORMANCE AGREEMENT

THIS **PERFORMANCE AGREEMENT**, concluded this 30th day of June, 2008, by and among **R.R. DONNELLEY & SONS COMPANY**, a Delaware corporation authorized to transact business in the Commonwealth of Virginia (“RRD”), the **CITY OF LYNCHBURG, VIRGINIA** (the “City”), and the **LYNCHBURG INDUSTRIAL DEVELOPMENT AUTHORITY** (“LIDA”), each of which is a political subdivision of the Commonwealth of Virginia (the “Commonwealth”).

WITNESSETH

WHEREAS, the City expects to receive \$500,000 in the form of a Governor’s Opportunity Fund (GOF) grant approved by Governor Kaine on April 11, 2006, for the purpose of inducing RRD to expand its three facilities in Virginia, located in the City, Roanoke County, and Rockingham County; and

WHEREAS, these expansions in the three Virginia locations will create and maintain at least 70 net new jobs paying an average annual salary of at least \$32,760, in addition to retaining existing jobs, and will entail a cumulative new capital investment of at least \$42,617,000, all by the date which is 36 months after the City receives the GOF grant (the “Performance Compliance Date”); and

WHEREAS, the City is willing to provide the funds to RRD, provided RRD agrees to undertake this expansion and meet the above job creation and capital investment standards; and

WHEREAS, RRD is required to return to the City (for further remittance to the Commonwealth) all or a portion of the funds so received if RRD fails to meet the above performance criteria; and

WHEREAS, the parties hereto wish to set forth their respective rights and responsibilities with regard to these expansions; and

WHEREAS, this increased employment and capital investment, and the additional tax revenue such actions generate for the local governments and the Commonwealth, constitute a valid public purpose for the expenditure of public funds:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

Section 1. GOF Grant Payment. The City expects to receive a \$500,000 GOF grant, which it will provide to RRD for site development, utility enhancements and training costs for RRD’s employees, all in accordance with the requirements of Section

2.2-115(C) of the Code of Virginia of 1950, as amended. The City will request disbursement to it of the GOF grant on or before June 30, 2008. If not so requested by that date, the Commonwealth's obligation to pay the GOF grant shall expire. The City and RRD would then need to reapply for a GOF grant under the terms and conditions and availability of funds that may be applicable at the time of reapplication.

At the City's option, the City will forward the GOF grant payment to RRD at any time on or before the Performance Compliance Date.

Section 2. Lynchburg Expansion. Between April 11, 2006 and the Performance Compliance Date, RRD will invest \$25,965,126.46 in real property and/or machinery and equipment in the expansion of its Lynchburg catalog printing facility, in addition to the investment existing as of April 11, 2006, which is valued at \$130,500,000. This new investment will result in the creation of 50 new jobs in addition to the 505 employees already in place as of April 11, 2006. These 50 new jobs will pay an average annual salary of at least \$32,760. The prevailing average annual wage for the City is \$34,318 and 85% of that prevailing average annual wage is \$30,833. For the year ended October 31, 2007, the City's unemployment rate of 3.7% exceeded the statewide average of 3.0%.

"New job" means permanent employment of an indefinite duration for which the standard fringe benefits are paid by RRD for the employee, requiring a minimum of either (i) 35 hours of an employee's time a week for the entire normal year of the firm's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in this Commonwealth, and positions with contractors, suppliers and similar multiplier or spin-off jobs shall not qualify as new jobs.

Section 3. Other Statewide Expansion. Between April 11, 2006 and the Performance Compliance Date, RRD will invest \$13,317,000 in real property and/or machinery and equipment in the expansion of its facilities in Roanoke County and Rockingham County, in addition to the investment existing as of April 11, 2006, which is valued at \$82,901,600. This new investment will result in the creation of 20 new jobs, in addition to the 1,584 employees already in place in facilities in the Commonwealth as of April 11, 2006, and in addition to the 50 new jobs described in Section 2. These 20 new jobs will pay an average annual salary of at least \$32,760. The prevailing average annual wages for Roanoke County and Rockingham County are \$31,479 and \$30,952, respectively.

Section 4. Lynchburg Incentives. The LIDA will invest up to \$519,302.53 in the project through a Strategic Initiatives Grant (SIG) upon completion of the Lynchburg expansion. This amount will serve as a match for the \$500,000 GOF grant. This Agreement acknowledges that RRD has already received \$519,302.53 of this SIG as of the date of this Agreement.

Section 5. GOF Requirements. By the Performance Compliance Date, RRD shall invest a total of \$42,617,000 (of which at least \$25,965,126.46 shall be in the City) in

real property and machinery and equipment. By the Performance Compliance Date, RRD shall create *and maintain* 70 net new jobs (of which at least 50 shall be in the City). Except as noted in Section 2, these new jobs and this capital investment may be realized at any combination of RRD facilities in the City, Roanoke County, or Rockingham County, so long as RRD achieves the statutory minimum job and investment criteria for the Governor's Opportunity Fund program in the City, which is an urban core. Those statutory minimums are \$5,000,000 in capital investment and 50 new jobs. For purposes of this Agreement, "maintain" means that the jobs created pursuant to the GOF grant will continue without interruption from the date of creation through the Performance Compliance Date.

Section 6. Records Available. RRD shall provide, at its own expense, detailed verification reasonably satisfactory to the City and the Virginia Economic Development Partnership ("VEDP"), of RRD's progress on the capital investment and employment goals contemplated herein. Such progress reports will detail for each of the City, Roanoke County and Rockingham County the capital investment made since April 11, 2006, the number of new full-time jobs created, and the average annual wages paid for those jobs. Without further investigation, the City may accept as accurate the information provided by RRD in such progress reports. Further, VEDP is authorized to request from the Virginia Employment Commission records of the VEC detailing the numbers of employees and payroll for RRD. The progress reports shall be provided by RRD at twelve months, twenty-four months and thirty-six months from the date the City receives the GOF Grant, and at such other times as VEDP or the City may require.

Section 7. Repayment Obligation. For purposes of this Agreement, the GOF grant of \$500,000 is allocated in equal shares to capital investment (\$250,000) and job creation (\$250,000).

If RRD has failed to achieve and maintain in the City new capital investment of at least \$5,000,000 and new jobs of at least 50 new full-time permanent jobs at an average annual wage of at least \$32,760, RRD will be obligated to repay to the City the entire amount of the GOF grant by no later than June 30, 2011. If RRD fails to repay amounts owed by it, the City has no obligation to repay VEDP or the Commonwealth such amount on behalf of RRD.

If RRD has met at least the following targets and maintained that level of capital investment and employment through the Performance Compliance Date, then RRD is no longer obligated to repay either portion of the GOF grant: (1) 90% of total statewide capital investment target of \$42,617,000 (or \$38,355,300) of which at least \$23,368,613.81 (90% of \$25,965,126.46) must be in the City and (2) 90% of its statewide new jobs target of at least 70 (or 63) new jobs at an average annual wage of at least \$32,760 of which at least 50 of such jobs must be in the City.

If, however, RRD has met the statutory performance standards specified in the second prior paragraph but has failed to meet the performance standards specified in the

prior paragraph, RRD shall be required to repay to the City a proportional amount of the GOF grant as determined by VEDP by no later than June 30, 2011.

For example, if RRD achieves the investment targets for the Commonwealth and the City, but only creates 55 net new jobs (including at least 50 net new jobs in the City), RRD shall be required to repay \$52,500 (21% of \$250,000). RRD will pay such amount to the City for remittance by the City to VEDP for the GOF.

RRD acknowledges and agrees to the repayment obligation in accordance with the terms of this Agreement. If, as permitted by Section 1, the City has not disbursed all of the GOF grant proceeds to RRD, the City will credit to RRD's repayment obligation any amount not yet disbursed to RRD, and will remit the amount so credited to VEDP for the GOF.

Section 8. Notices. Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail not accepted by the addressee):

if to RR Donnelley, to:

NAME: John Pecaric, Senior Vice President, Book Group
ADDRESS: 111 South Wacker Drive
Chicago, IL 60606-4301

if to the City of Lynchburg, to:

NAME: L. Kimball Payne, III, City Manager
ADDRESS: 900 Church Street
Lynchburg, Virginia 24504

if to the Lynchburg Industrial Development Authority, to:

NAME: Massie G. Ware, Jr., Chairman
ADDRESS: 828 Main Street, 10th Floor
Lynchburg, VA 24504

Section 9. Entire Agreement; Governing Law; Venue. This Agreement constitutes the entire agreement between the parties hereto as to the subject matter contained herein and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement is made, and intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth.

Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, or the Circuit Court of the City of Lynchburg, and such litigation shall be brought only in such court.

Section 10. Counterparts; Assigns; Severability. This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. RRD may not, however, assign its rights and responsibilities hereunder without the prior written consent of the City and VEDP. If any provision of this Agreement is determined to be unenforceable, then the remaining provisions of this Agreement shall be interpreted as in effect as if such unenforceable provisions were not included therein.

Section 11. Survival. The provisions of this Agreement are intended to and shall survive closing, the delivery of any deed or other instrument, and any other event.

Section 12. Future Appropriations. This Agreement and any payment of public funds by the City or LIDA are subject to future appropriations by the City's City Council.

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IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

CITY OF LYNCHBURG

By: Kimball Pymmer
Title: City Manager
Date: 6/30/08

R. R. DONNELLEY & SONS COMPANY

By: Charles Martin
Title: VP & Div. G.S.
Date: June 30, 2008

LYNCHBURG INDUSTRIAL
DEVELOPMENT AUTHORITY

By: Maureen Gowan
Title: CHAIRMAN, LIDA
Date: July 1, 2008



THE CITY OF LYNCHBURG, VIRGINIA

900 Church Street, Lynchburg, VA 24504
www.lynchburgva.gov
TEL: 434-455-3990
FAX: 434-847-1536

OFFICE OF THE
CITY MANAGER

June 30, 2008

Mr. Jeffrey M. Anderson
Executive Director
Virginia Economic Development Partnership
P.O. Box 798
Richmond, VA 23218-0798

Dear Mr. Anderson:

I am writing to request the release of the \$500,000 Governor's Opportunity Fund grant for the R.R. Donnelley & Sons Company. Therefore, in accordance with the payment procedures, a request is formally submitted for the release of these funds, and we certify the following:

1. The City of Lynchburg has taken the necessary steps to implement its commitment to the local financial participation as outlined in our Opportunity Fund application of March 27, 2006.
2. These funds will be expended only for those purposes outlined in the Opportunity Fund application of March 27, 2006.
3. All funds are expected to be obligated and spent by June 30, 2011.
4. Any funds not used will be returned to the Commonwealth.
5. A copy of the performance agreement between the locality and the company is included with this letter.

Thank you for your assistance.

Sincerely,

L. Kimball Payne, III
City Manager

cc: Marjette Glass, Director of Economic Development

Lynchburg City Council

Agenda Item Summary

MEETING DATE: **November 11, 2008**

AGENDA ITEM NO.: 14

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Replacement Seats for City Stadium**

RECOMMENDATION:

Adopt a resolution to amend the FY 2009 Stadium Fund budget and appropriate \$22,000 with resources from the Stadium Fund fund balance to purchase replacement seats and hinge assemblies.

SUMMARY:

At the end of baseball season, it was determined that a number of the seats in City Stadium need to be replaced. The Stadium Fund fund balance was created to serve as a reserve for capital items. Lynchburg Baseball Corporation, Inc. will purchase 400 seats and 24 hinge assemblies to replace or repair broken seats and provide an inventory for future replacements.

PRIOR ACTION(S):

Finance Committee, October 28, 2008

FISCAL IMPACT:

\$22,000 reduction in the Stadium Fund fund balance

CONTACT(S):

Donna Witt, Director of Financial Services, 455-3968

ATTACHMENT(S):

Resolution

REVIEWED BY: lkp

RESOLUTION:

BE IT RESOLVED That the FY 2009 Stadium Fund budget is amended and \$22,000 is appropriated with resources from the Stadium Fund fund balance to purchase replacement seats and hinge assemblies.

Introduced:

Adopted:

Certified:

Clerk of Council

132L