

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
October 6, 2020**

AGENDA

- 2:00 **Done** Matters Presented by Board Members
- 2:00 **Done** Items Presented by the County Executive

**ADMINISTRATIVE
ITEMS**

- 1 **Approved** Additional Time to Obtain a Non-Residential Use Permit (Non-RUP) for Special Exception SE 2006-SU-024, Wolseley Investments, Inc. (Sully District)
- 2 **Approved** Extension of Review Period for 2232 Application (Lee and Springfield Districts)
- 3 **Approved** Additional Time to Commence Construction for Special Exception SE 2013-LE-014, Mohammad Hajimohammad, Trustee, and Flora Hajimohammad, Trustee of the Hajimohammad Revocable Trust (Lee District)
- 4 **Approved** Additional Time to Commence Construction for Special Exception Amendment SEA 76-C-152-04, Exxon Mobil Corporation (Hunter Mill District)
- 5 **Approved** Additional Time to Commence Construction for Special Exception SE 2015-SU-018, Chantilly Auto Care Center, LLC (Sully District)
- 6 **Approved** Additional Time to Commence Construction for Special Exception SE 2013-LE-005, Franconia Square, LLC (Lee District)

ACTION ITEMS

- 1 **Approved** Adoption of a Resolution Designating the Springfield Community Business Center (CBC) Commuter Parking Garage as a Revenue Sharing Project (Lee District)
- 2 **Approved with
modifications** Approval of Fairfax County’s Comments on the Washington Metropolitan Area Transit Authority’s Proposed FY 2021 Budget Amendments and Service Reductions
- 3 **Approved** Adoption of an Uncodified Emergency Ordinance to Provide a Method to Assure Continuity in Fairfax County Government During the COVID-19 Emergency, as Authorized by Virginia Code § 15.2-1413, by Approving Temporary County-Operated Hypothermia Prevention Shelters and Authorizing a Streamlined Process for Approving Temporary Use Modifications in Response to the Emergency

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
October 6, 2020**

**PUBLIC
HEARINGS**

3:30	Approved	Public Hearing on PCA 2005-PR-039-03 (Dunn Loring Development Company LLC) (Providence District)
3:30	Approved	Public Hearing to Consider Adopting an Ordinance to Establish the Idylwood Community Parking District (Providence District)
3:30	Approved	Public Hearing to Consider Extending Parking Restrictions on Sullyfield Circle (Sully District)
3:30	Held; Action to be taken on 11/17/20	Public Hearing to Consider Entering into an Interim Agreement with Alpine-X LLC for Fairfax Peak Development at I-95 Lorton Landfill (Mount Vernon District)
3:30	Done	Closed Session

Board Agenda Item
October 6, 2020

2:00 p.m.

Matters Presented by Board Members

Board Agenda Item
October 6, 2020

2:00 p.m.

Items Presented by the County Executive

Board Agenda Item
October 6, 2020

ADMINISTRATIVE - 1

Additional Time to Obtain a Non-Residential Use Permit (Non-RUP) for Special Exception SE 2006-SU-024, Wolseley Investments, Inc. (Sully District)

ISSUE:

Board consideration of additional time to obtain a Non-RUP for SE 2006-SU-024, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve thirty (30) months additional time for SE 2006-SU-024 to January 1, 2023.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On May 7, 2007, the Board of Supervisors approved Special Exception SE 2006-SU-024, subject to development conditions. The application was filed in the name of Wolseley Investments, Inc., to permit outdoor storage in association with a warehousing establishment for a plumbing supply and warehouse operation in the Sully Historic Overlay District. The development was shown in two phases. Phase I permitted the construction of a one-story warehouse/office building and a paved outdoor storage area. Phase II permitted an expansion of the proposed warehouse/office building. The site is in the I-5 zoning district and the Sully Historic (HD) and Water Supply Protection (WS) Overlay Districts at 13890 Lowe Street, Tax Map 34-2 ((1)) 17E pt. (see Locator Map in Attachment 1). Outdoor storage in association with warehousing establishments in the Sully Historic Overlay District, a Category 6 special exception use, is permitted pursuant to Section 9-621 of the Fairfax County Zoning Ordinance. SE 2006-SU-024 was

Board Agenda Item
October 6, 2020

approved subject to the requirement that Phase II must be established, as evidenced by the issuance of a Non-Residential Use Permit (Non-RUP), within 5 years after the date of approval, unless the Board granted additional time. The development conditions for SE 2006-SU-024 are included as part of the Clerk to the Board's letter contained in Attachment 2.

In conformance with the expiration provision, the approved Phase II use was required to be established and obtain a Non-RUP by May 7, 2012. However, §15.2-2209.1 of the *Code of Virginia* permitted an automatic extension of this deadline to July 1, 2020. On June 30, 2020, the Department of Planning and Development (DPD) received a letter dated June 29, 2020, from John C. McGranahan, Jr., agent for the Applicant, requesting five (5) years of additional time to establish Phase II (see Attachment 3). The approved Special Exception will not expire pending the Board's action on the request for additional time.

In the June 29, 2020, request for additional time, Mr. McGranahan stated that although the outdoor storage use had been established earlier this year, the language of the approval permitted him to request additional time to construct and obtain the Non-RUP for the Phase II, 7,200 square foot building addition to the existing office/warehouse use. According to Mr. McGranahan, the requestor requests a five (5) year extension to establish Phase II. Mr. McGranahan states that while the requestor intends to proceed with the future building expansion, he has not been able to do so given the uncertainty created by the coronavirus pandemic, and therefore, would like additional time to plan and implement the Phase II expansion. However, staff has reviewed the overall timing and has determined that a more appropriate timeline would be thirty (30) additional months to obtain a Non-RUP. The request for thirty (30) months of additional time will allow the requestor to satisfy development conditions, construct the Phase II building addition, and ultimately obtain a new Non-RUP.

Staff has reviewed Special Exception SE 2006-SU-024 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit outdoor storage in association with a warehousing establishment within an I-5 zoning district and HD and WS overlay districts. However, the requestor must still obtain Architectural Review Board (ARB) approval prior to issuance of the building permit for the Phase II addition. Further, staff knows of no change in land use circumstances that affects compliance of SE 2006-SU-024 with the special exception standards applicable to this use, or which should cause the filing of a new special exception application and review through the public hearing process. The Comprehensive Plan recommendation for the property has not changed since approval of the Special Exception. Finally, the conditions associated with the Board's approval of SE 2006-SU-024 are still appropriate and remain in full force and effect. Staff believes

Board Agenda Item
October 6, 2020

that approval of the request for thirty (30) months additional time is in the public interest and recommends that it be approved.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Letter dated June 8, 2007, to Michael E. Kinney

Attachment 3: Letter dated June 29, 2020, to Leslie B. Johnson

STAFF:

Rachel Flynn, Deputy County Executive

Barbara A. Byron, Director, Department of Planning & Development (DPD)

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPD

Suzanne Wright, Chief, Conformance Review & Acceptance Branch, ZED, DPD

Denise James, Chief, Environment & Development Review Branch, Planning Division, DPD

Laura O'Leary, Staff Coordinator, ZED, DPD



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

June 8, 2007

Michael E. Kinney
Hunton & Williams, LLP
1751 Pinnacle Drive, Ste 1700
McLean, VA 22102

Re: Special Exception Application SE 2006-SU-024
(Amended applicant name)

Dear Mr. Kinney:

At a regular meeting of the Board of Supervisors held on May 7, 2007, the Board approved Special Exception Application SE 2006-SU-024 in the name of Wolseley Investments, Inc. The subject property is located at 13890 Lowe Street on approximately 4.6 acres of land zoned I-5, HD, and WS in the Sully District [Tax Map 34-2 ((1)) 17E pt]. The Board's action allows outdoor storage in association with a warehousing establishment in the Sully Historic Overlay District pursuant to Section 9-621 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception plat approved with the application, as qualified by these development conditions. Other Permitted or Special Permit uses may be allowed on the site without amending this special exception so long as the proposed use is in substantial conformance with the SE Plat and all Zoning Ordinance requirements have been met.
3. This Special Exception is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special exception shall be in substantial conformance with the approved Special Exception Plat entitled "Ferguson Waterworks", prepared by Rinker Design Associates, P.C. and Arencibia Architects Inc., consisting of 8 sheets with Sheets 1 through 5 dated August 14, 2006 as revised through March 2, 2007, Sheets 6, 7 and 8 dated November 27, 2006 as revised through March 2, 2007, and these conditions. Minor modifications to the approved special exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.

Office of Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903
Email: clerktothebos@fairfaxcounty.gov
<http://www.fairfaxcounty.gov/bosclerk>

May 7, 2007

4. The proposed warehouse/ office building in Phase 1, shown as the "Proposed" on the SE Plat, shall be a maximum of 15,200 gross square feet.
5. The proposed warehouse/ office building expansion in Phase 2, shown as the "Future Expansion" on the SE Plat, shall be a maximum of 7,200 gross square feet.
6. The office/warehouse shall be constructed in substantial conformance with the elevations provided in the SE Plat. Modifications to the appearance of the building shall be permitted subject to the approval of the Architectural Review Board prior to issuance of the building permit. The northern elevation of the future expansion in Phase 2 shall incorporate building materials and colors that are in substantial conformance with the south, east and west elevations as depicted in the SE Plat or as modified subject to the approval of the Architectural Review Board prior to issuance of the building permit for this addition.
7. On demand or prior to Site Plan approval, whichever comes first, the right-of-way along the application's Lowe Street frontage shall be dedicated in fee simple at no cost to the Board of Supervisors. Prior to final bond release for Phase I shown as the "Proposed" on the SE Plat, improvements to Lowe Street shall be constructed in conformance with VDOT design standards or as otherwise determined necessary by DPWES or DOT.
8. A 5 foot wide crosswalk shall be provided across the interparcel connection, which is located on the southeast corner of the site, to connect the proposed sidewalk to the main entrance of the building.
9. The proposed gate at the entrance on Centerview Drive shall be constructed so that it does not open out towards Centerview Drive. All gates shall include permanently mounted reflectors to increase visibility.
10. Storage of materials and equipment within the outdoor storage area shall not exceed 15 feet in height.
11. The type of materials stored on site shall be limited to High Density Polyethylene (HDPE), Polyvinyl Chloride (PVC) and cast iron waterworks products, in addition to underground conduit products, and erosion control products limited to rolls of synthetic fabric products.
12. All landscaping shown on the SE Plat shall be constructed as determined by DPWES except for additional utility crossings not shown on the SE Plat. Additional utility crossings not shown on the SE Plat shall be constructed in the least disruptive manner to the proposed landscaping and buffering as determined by Urban Forest Management (UFM).

May 7, 2007

13. All lighting, including streetlights, security lighting, signage lighting, and pedestrian or other incidental lighting shall be in conformance with Article 14, Part 9 of the Zoning Ordinance.
14. All signage shall meet the requirements of Article 12 of the Zoning Ordinance.
15. Retaining walls shall be constructed at the minimum height necessary as determined by Department of Public Works and Environmental Services (DPWES). In no instance shall the retaining wall shown to the north of the interparcel connection located at the southeast corner of the site be more than five feet (5') in height.
16. Any tree proposed to be removed during the construction of the interparcel connection located at the southeast corner of the site shall be replaced with new trees. The species, size and location of the replacement trees shall be determined by Urban Forest Management in DPWES at the time of Site Plan Review.
17. All delivery and supply trucks shall be instructed to depart the site at the access point on Centerview Drive and shall be limited to a right turn only onto Centerview Drive. Appropriate signage shall be placed at the Centerview Drive access point subject to approval of VDOT and FCDOT.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established. A non-residential use permit for Phase II shown as the "Future Expansion" on the SE Plat must be issued within 5 years after the date of approval to establish Phase II, unless additional time is granted. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

The Board also:

- **Modified the transitional screening yard requirement along the southern boundary and modification of the barrier requirement along the southern and western boundaries, in favor of that shown on the SE Plat, and as conditioned.**

SE 2006-SU-024
May 7, 2007

4

If you have questions regarding the expiration of this Special Exception or filing a request for additional time, they should be directed to the Zoning Evaluation Division in the Department of Planning and Zoning at 703-324-1290. The mailing address for the Zoning Evaluation Division is Suite 801, 12055 Government Center Parkway, Fairfax, Virginia 22035.

Sincerely,



Nancy Vehrs
Clerk to the Board of Supervisors

NV/dms

Cc: Chairman Gerald E. Connolly
Supervisor Michael Frey, Sully District
Janet Coldsmith, Director, Real Estate Division. Dept. of Tax Administration
Regina Coyle, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Thomas Conry, Dept. Manager. – GIS - Mapping/Overlay
Angela K. Rodeheaver, Section Chief, Transportation. Planning Division
Ellen Gallagher, Capital Projects and Operations Div., Dept. of Transportation
Audrey Clark, Director – Building Plan Review, DPWES
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
District Planning Commissioner
Barbara J. Lippa, Executive Director, Planning Commission
Jose Comayagua, Director, Facilities Management
Gary Chevalier, Office of Capital Facilities/Fairfax County Public Schools
Dale Castellow, Chief Capital Projects Sections, Dept. of Transportation



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JOHN C. MCGRANAHAN, JR.
DIRECT DIAL: 703 • 714 • 7464
EMAIL: jmcgranahan@HuntonAK.com

FILE NO: 034225.0004005

June 29, 2020

**BY EMAIL AND
OVERNIGHT DELIVERY**

Leslie B. Johnson, Zoning Administrator
Zoning Administration Division
Fairfax County Department of Planning and Development
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035

**Request for Additional Time for SE 2006-SU-024
Wolseley Investments, Inc.
Tax Map Parcel 34-2-((1))-17E (part)**

Dear Leslie:

On May 7, 2007, the Board of Supervisors approved special exception SE 2006-SU-024 (the "Special Exception") for outdoor storage in association with a warehousing establishment on the property located at 13890 and 13900 Lowe Street, on approximately 4.6 acres of land zoned I-5, HD, and WS in the Sully District (Tax Map Parcel 34-2-((1))-17E (part)).

The development conditions attached to the Special Exception approval provide that, pursuant to Section 9-015 of the Zoning Ordinance, the Special Exception shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established. Pursuant to the terms of Va. Code Ann. § 15.2-2209.1 (2018), the Special Exception was extended until July 1, 2020.

The Applicant has established the outdoor storage use. However, the Special Exception included approval of a Phase II 7,200 square foot building addition to the existing office/warehouse use. The Special Exception approval states that "[a] non-residential use permit for Phase II shown as the 'Future Expansion' on the SE Plat must be issued within 5 years after the date of the approval to establish Phase II, unless additional time is granted." The Applicant has not constructed and obtained a Non-RUP for the Phase II expansion of the building.

Leslie B. Johnson, Zoning Administrator
June 29, 2020
Page 2

The Applicant requests a five (5) year extension, consistent with the initial approval timeframe, to establish the Phase II use. The expansion area is internal to the site and will have no adverse impact on neighboring properties or the views from the surrounding public streets. The approved future expansion space provides this longstanding corporate citizen the flexibility to grow in this location in furtherance of the County's economic development goals. Given the uncertainty created by the coronavirus pandemic, the Applicant needs additional time to plan for and implement the Phase II expansion.

I have enclosed, for your convenience, the following:

1. An outline of the subject property on Fairfax County Zoning Map Section Sheets 34-2 and 34-4 (**Attachment 1**);
2. A copy of the final approval letter for SE 2006-SU-024 dated June 8, 2007 (**Attachment 2**); and
3. A copy of a reduction of the approved Special Exception Plat prepared by Rinker Design Associates, P.C. and Arencibia Architects Inc. (**Attachment 3**).

The approved uses remain appropriate at this location. All uses shall be in conformance with site plan approval, approved conditions, the Zoning Ordinance and all other applicable County requirements.

Please call me if you have any questions or require additional information. Thank you in advance for your attention to this matter.

With best regards,



John C. McGranahan, Jr.

Enclosures

cc: The Honorable Kathy Smith
Tracy Strunk, Director, Zoning Evaluation Division
Steven R. Adcox, Esquire



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

June 8, 2007

Michael E. Kinney
Hunton & Williams, LLP
1751 Pinnacle Drive, Ste 1700
McLean, VA 22102

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(Amended applicant name)

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May 7, 2007

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May 7, 2007

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This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established. A non-residential use permit for Phase II shown as the "Future Expansion" on the SE Plat must be issued within 5 years after the date of approval to establish Phase II, unless additional time is granted. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

The Board also:

- **Modified the transitional screening yard requirement along the southern boundary and modification of the barrier requirement along the southern and western boundaries, in favor of that shown on the SE Plat, and as conditioned.**

SE 2006-SU-024
May 7, 2007

4

If you have questions regarding the expiration of this Special Exception or filing a request for additional time, they should be directed to the Zoning Evaluation Division in the Department of Planning and Zoning at 703-324-1290. The mailing address for the Zoning Evaluation Division is Suite 801, 12055 Government Center Parkway, Fairfax, Virginia 22035.

Sincerely,

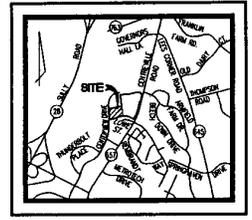
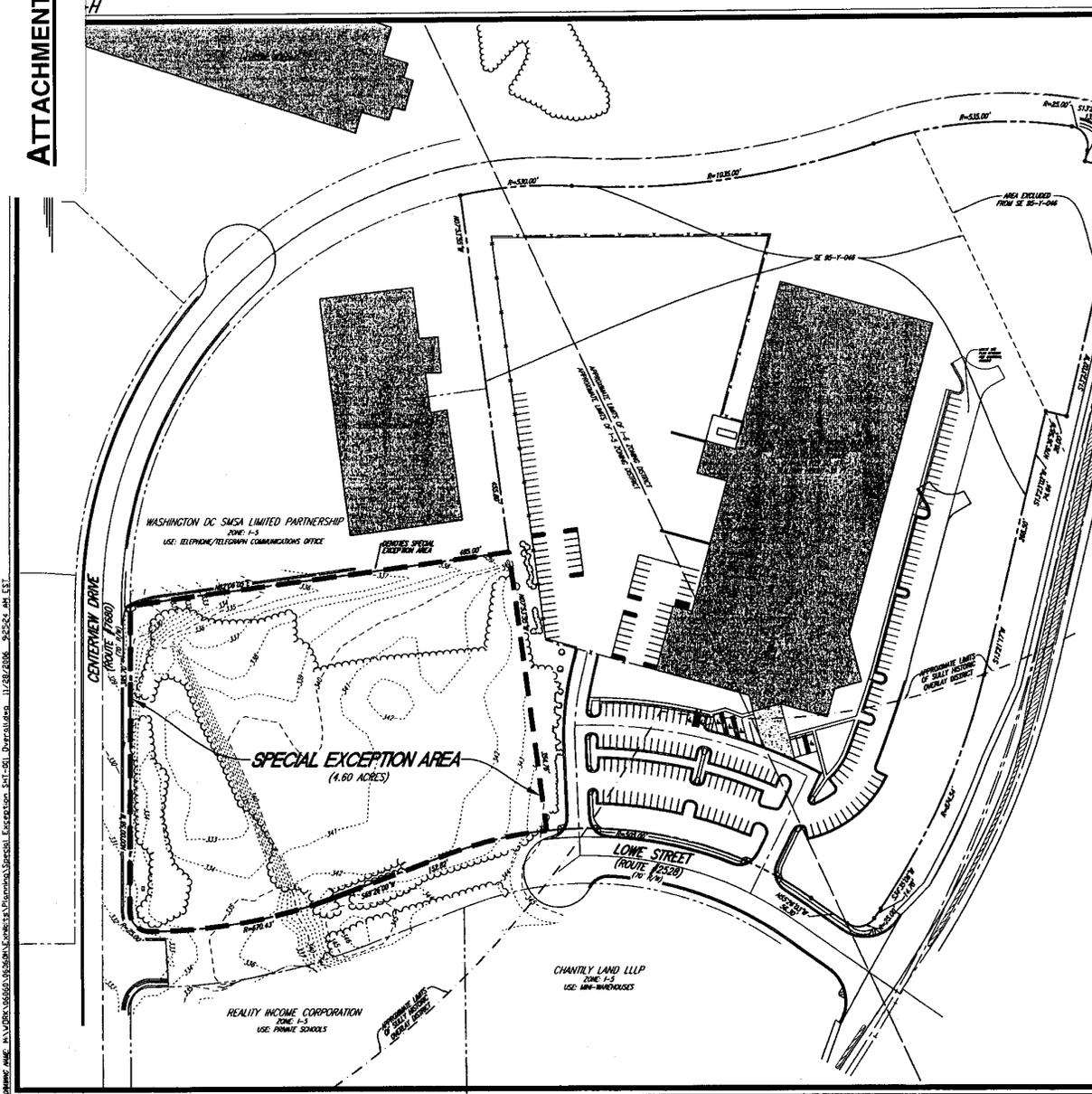


Nancy Vehrs
Clerk to the Board of Supervisors

NV/dms

Cc: Chairman Gerald E. Connolly
Supervisor Michael Frey, Sully District
Janet Coldsmith, Director, Real Estate Division. Dept. of Tax Administration
Regina Coyle, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Thomas Conry, Dept. Manager. – GIS - Mapping/Overlay
Angela K. Rodeheaver, Section Chief, Transportation. Planning Division
Ellen Gallagher, Capital Projects and Operations Div., Dept. of Transportation
Audrey Clark, Director – Building Plan Review, DPWES
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
District Planning Commissioner
Barbara J. Lippa, Executive Director, Planning Commission
Jose Comayagua, Director, Facilities Management
Gary Chevalier, Office of Capital Facilities/Fairfax County Public Schools
Dale Castellow, Chief Capital Projects Sections, Dept. of Transportation

ATTACHMENT 3



VICINITY MAP
SCALE: 1"=200'

SITE TABULATIONS

TOTAL SITE AREA	208,743 SF
RESERVATION AREA	548 SF
REMAINING AREA	198,717 SF

OVERALL TABULATIONS

AREAS	PARCEL I/II	PROPOSED SE	SE 85-T-046	TOTAL
1-5 DISTRICT	78,141 SF or 18.21 AC	188,717 SF or 4.30 AC	188,717 SF	188,717 SF
1-6 DISTRICT	8.34 AC	4.80 AC	3.71 AC	3.71 AC
SULLY HISTORIC DISTRICT	8.87 AC	4.80 AC	5.65 AC	5.65 AC
RESERVED	16.78 AC	4.80 AC	16.44 AC	16.44 AC
	18.21 AC	4.80 AC	17.85 AC	17.85 AC

BULK REGULATIONS

	REQUIRED/ALLOWED	1-5	EXISTING	1-6	PROPOSED SE	FUTURE EXPANSION	TOTAL
MIN LOT AREA	20,000 SF	143,441 SF	35 FT	428,737 SF	188,717 SF	188,717 SF	172,825 SF
MIN LOT HEIGHT	7.5 FT	25 FT	25 FT	25 FT	25 FT	25 FT	25 FT
DRY SPACE	150	2,348	2,226	2,226	2,226	2,226	2,226
MAX FLOOR	6.50	6.21	6.21	6.21	6.21	6.21	6.21
CR	N/A	175,742 SF	15,000 SF	7,800 SF	7,800 SF	7,800 SF	141,342 SF

EXISTING PARKING TABULATIONS

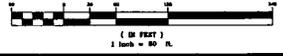
USE	SEI	SPEED	DUAL	PROMISED SPACES	FUTURE EXPANSION	TOTAL
EXISTING BUILDING	100	10	221	221	0	221
OFFICE	100	10	34	34	0	34
PROPOSED SE	100	10	244	257	0	257

LEGEND

- DENOTES SPECIAL EXCEPTION AREA
- DENOTES EXISTING TREE LINE



OVERVIEW
OF A
SPECIAL EXCEPTION
FOR
FERGUSON WATERWORKS
SULLY HISTORIC DISTRICT
FARMAS COUNTY, MISSOURI
AUGUST 14, 2006
REVISED: OCTOBER 4, 2006
REVISED: NOVEMBER 2, 2006
REVISED: NOVEMBER 27, 2006
REVISED: DECEMBER 22, 2006
REVISED: MARCH 2, 2007



Rinker Design Associates, P.C.
 Engineering • Surveying • Land Planning • Transportation • Environmental Services
 200 West Concord Street, Suite 200, St. Louis, MO 63102
 Phone: (314) 241-2000 Fax: (314) 241-2001
 "Turning Challenges into Opportunities"

STORMWATER MANAGEMENT NARRATIVE
 STORMWATER REQUIREMENTS FOR THIS PROJECT SHALL BE ADDRESSED THROUGH THE PROPOSED CONSTRUCTION OF AN APPROXIMATELY 1,600 GPM FLOW SWM DETENTION POND. THE POND SHALL BE AN ON-SITE POND OF APPROXIMATELY 4.6 ACRES AS WELL AS AN OFF-SITE AREA OF APPROXIMATELY 380 ACRES. THE POND WILL BE LOCATED IN THE NORTHWESTERN PORTION OF THE SITE AND WILL OBTAIN FLOOD-DEVELOPMENT RAINFALL RESULTING FROM BOTH ON-SITE IMPROVEMENTS AND THE CONSTRUCTION ASSOCIATED WITH THE EXTENSION OF LOW STREET (ROUTE 2820) PROPOSED BY THIS PLAN. THE PROPOSED POND DETENTION WILL MEET PRE-DEVELOPMENT CONDITIONS. MAINTENANCE OF THE PROPOSED DETENTION POND WILL BE THE RESPONSIBILITY OF THE APPLICANT.

IN COMPLIANCE WITH THE CHESTERFIELD PRESENTATION ORDINANCE, RAINFALL WILL BE RETAINED WITH A STORMWATER UNDERDRAIN BMP FACILITY (APPROXIMATELY 10' x 24.5'). THE SITE IS LOCATED WITHIN THE CUB RUN WATERSHED AND THE WATER SUPPLY PROTECTION OVERLAY DISTRICT (WPOD) PER COUNTY REQUIREMENTS. A SITE PREPARATION MANUAL WILL BE ADDED THROUGH THE PROCESSING OF THE PERMIT BY THE DEVELOPER. FACILITY MAINTENANCE OF THE PROPOSED STORMWATER SHALL BE THE RESPONSIBILITY OF THE APPLICANT.

STORMWATER MANAGEMENT NARRATIVE
 THE SPECIAL EXCEPTION AREA CONSISTS OF MATURE DECIDUOUS AND EVERGREEN TREES AND HEAVY UNDERGROWTH ALONG THE WESTERN PORTION OF THE SPECIAL EXCEPTION AREA. DRAINAGE IS OVERLAND FLOW TO AN EXISTING SWALE ALONG THE NORTHERN PROPERTY LINE. THIS SWALE THEN DISCHARGES WATER TO THE NORTHWEST CORNER OF THE SITE INTO AN EXISTING STORM DRAIN. THE STORM DRAIN IS PART OF AN EXISTING UNDERGROUND STORM SEWER SYSTEM ALONG CENTERVIEW DRIVE.

THE REMAINDER OF THE SPECIAL EXCEPTION AREA FLOWS AN OVERLAND FLOW TO THE NORTHWEST PORTION OF THE SITE. A PORTION OF THIS RUN-OFF DRAINS THE SAME EXISTING STORM DRAIN IN THE NORTHWEST CORNER OF THE SITE AS PREVIOUSLY MENTIONED. THE REMAINING RUN-OFF ENTERS THE EXISTING UNDERGROUND STORM SEWER SYSTEM ALONG CENTERVIEW DRIVE. AN EXISTING CURB ALLEYS, RUN-OFF IS THEN COLLECTED OFF-SITE AND DOWN CENTERVIEW DRIVE IN THE UNDERGROUND STORM SEWER SYSTEM. FLOW IS THEN THROUGH A SERIES OF 24"-72" TOP STORM SEWERS AND OUTFALLS INTO AN EXISTING DRY DETENTION POND LOCATED APPROXIMATELY 100' FROM THE NORTHWEST CORNER OF THE SITE. THIS EXISTING DRY POND WAS ACCORD TO ACCURATELY BEYOND RUN-OFF FROM THE SPECIAL EXCEPTION AREA. THE POND THEN DETAILS APPROXIMATELY 200' SOUTHWEST INTO A CANAL WHICH FLOWS TO THE SOUTH THROUGH A BRANCH AND TO THE SOUTHWEST WHERE IT ENTERS CUB RUN AND FLOWS TO THE SOUTHERN CHANNELS OF FARRON CREEK. DEVELOPMENT ASSOCIATED WITH THE SITE IF OF THE PROFESSIONAL OPINION OF THIS PLAN THAT IMPROVEMENTS ASSOCIATED WITH THE DEVELOPMENT WILL NOT NEGATIVELY IMPACT THE ADJACENCY OF THE EXISTING DRY POND LOCATED OFF-SITE.

STORMWATER MANAGEMENT NARRATIVE
 THIS PROJECT PROPOSES SWM PLAN MEASURES TO ALLOW FOR ADEQUATE DRAINAGE IN ACCORDANCE WITH FPM REGULATIONS. ALL PROPOSED IMPROVEMENTS WILL CONTRIBUTE TO IMPROVE THE EXISTING DRAINAGE. IN COMPLIANCE WITH FPM REGULATIONS, OVERLAND RAINFALL FOR THE 100-YEAR STORM EVENT SHALL BE PROVIDED THROUGH THE PROPOSED DRAINAGE SYSTEM. THE DRAINAGE SYSTEM SHALL INVOLVE THE SITE, FURTHERMORE, THE EXISTING STORM SEWER LOCATED SOUTHWEST AND ADJACENT TO THE PROPERTY BEING THE SITE. IF OF THE PROFESSIONAL OPINION OF THIS PLAN THAT IMPROVEMENTS ASSOCIATED WITH THE DEVELOPMENT WILL NOT NEGATIVELY IMPACT THE DRAINAGE SYSTEM.

MINIMUM STORMWATER INFORMATION FOR REDZONING, SPECIAL EXCEPTION, SPECIAL PERMIT AND DEVELOPMENT PLAN APPLICATIONS

The following information is required to be shown or provided in all zoning applications, or a written request for the submission required with justification shall be obtained. Note: Information will be added upon receipt. Failure to adequately address the required submission information may result in a delay in processing the application.

The information is required under the following zoning Ordinance paragraphs:
 Revised Permit (9-011.2 & 3) Revised Exceptions (9-011.21 & 3.1)
 Charter Subdivision (9-018.1 & 9.6) Commercial Rehabilitation District (9-422.24 (1) & (14))
 Development Plans (9-023.2 & 4.4) PRC Plan (18-202.16 & 1.2)
 Form 9 (9-024.1) except (9-024.1.1 & 9.2) Antiquarian (17-020.1 & 1.2)

- 1. Plan to be at a minimum scale of 1"=50' (unless 8 1/2" is depicted on one sheet with a minimum scale of 1"=100').
- 2. A graphic depicting the stormwater management facility(ies) and details of design and grading accordance with the stormwater management facility, storm drainage pipe systems and outfall protection, pond spillways, access roads, site details, energy dissipation devices, and stream stabilization measures as shown on these sheets.

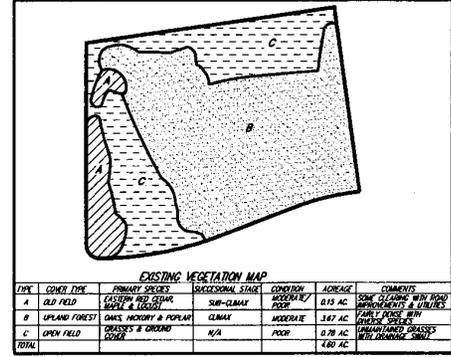
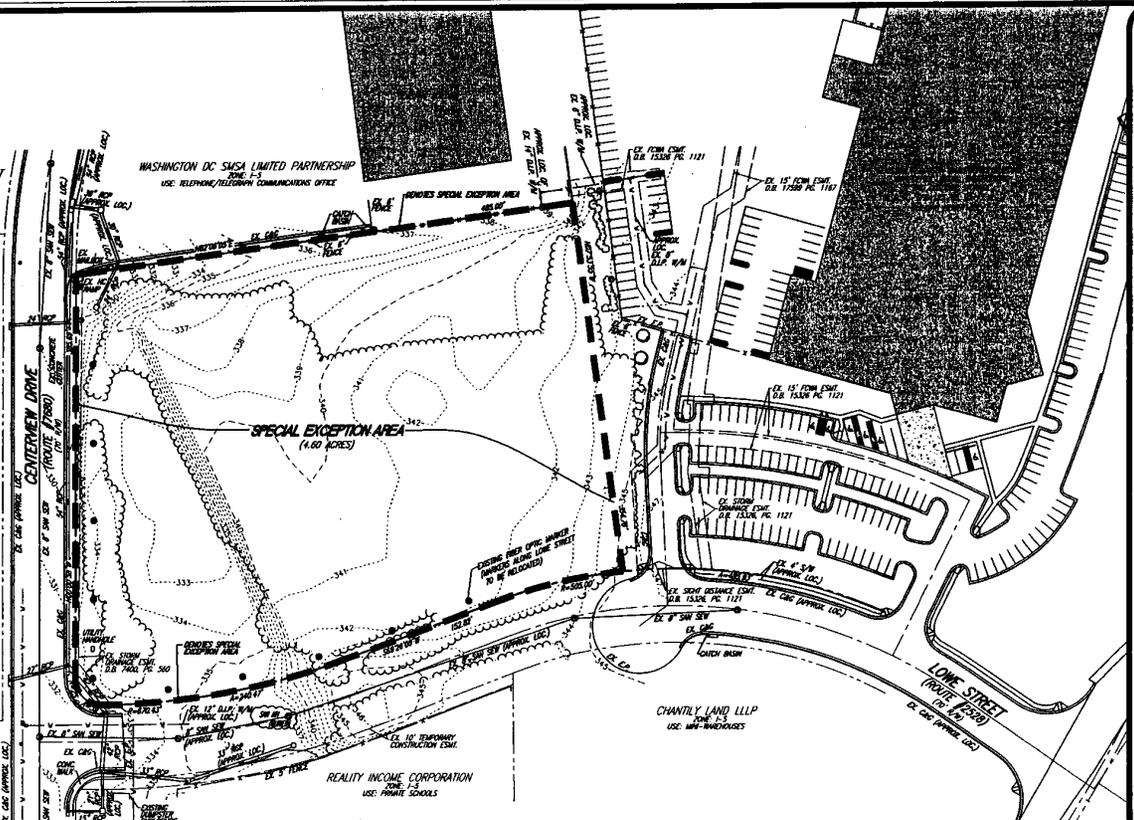
Plat No.	Over-site area (acres)	On-site area (acres)	Drainage area (acres)	Facilities (acres)	Storage Volume (cu ft)	Peak Flow (cfs)
100-000000	3.60	3.64	5,354	5,000	15,000	N/A
100-000000	4.60	4.64	5,354	245		

- 3. Create drainage channels, outfalls and pipe systems are shown on Sheet _____. Pond inlet and outlet pipe systems are shown on Sheet _____.
 4. Maintenance access (road) to stormwater management facility(ies) are shown on Sheet _____. Type of maintenance access road surface noted on the plan is: (asphalt, gravel, etc.).
 5. Landscaping and tree preservation shown in and near the stormwater management facility is shown on Sheet _____.
 6. A stormwater management narrative which contains a description of how detention and best management practices requirements will be met is provided on Sheet _____.
 7. A description of the existing conditions of each watershed site outlet situated downstream from the site to a water body is to be provided for the site or which has a drainage area of at least one square mile (840 acres) is provided on Sheet _____.
 8. A description of how the site outlet requirements, including contributing drainage areas of the Plat is provided is shown on Sheet _____.
 9. Existing topographic data (contour intervals of two (2) feet and a note as to whether it is an air survey or field run) is provided on Sheet _____.
 10. A subdivision value is requested for: N/A.
 11. Stormwater management is not required because: N/A.

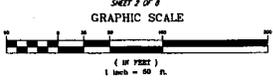
WASHINGTON REAL ESTATE INVESTMENT TRUST
 ZONE: P-5
 USE: LOW RISE OFFICE

WASHINGTON DC SMSA LIMITED PARTNERSHIP
 ZONE: L-3
 USE: TELEPHONE/TELECOMMUNICATIONS OFFICE

WASHINGTON REAL ESTATE INVESTMENT TRUST
 ZONE: L-3
 USE: LOW RISE OFFICE



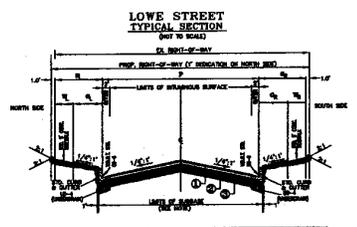
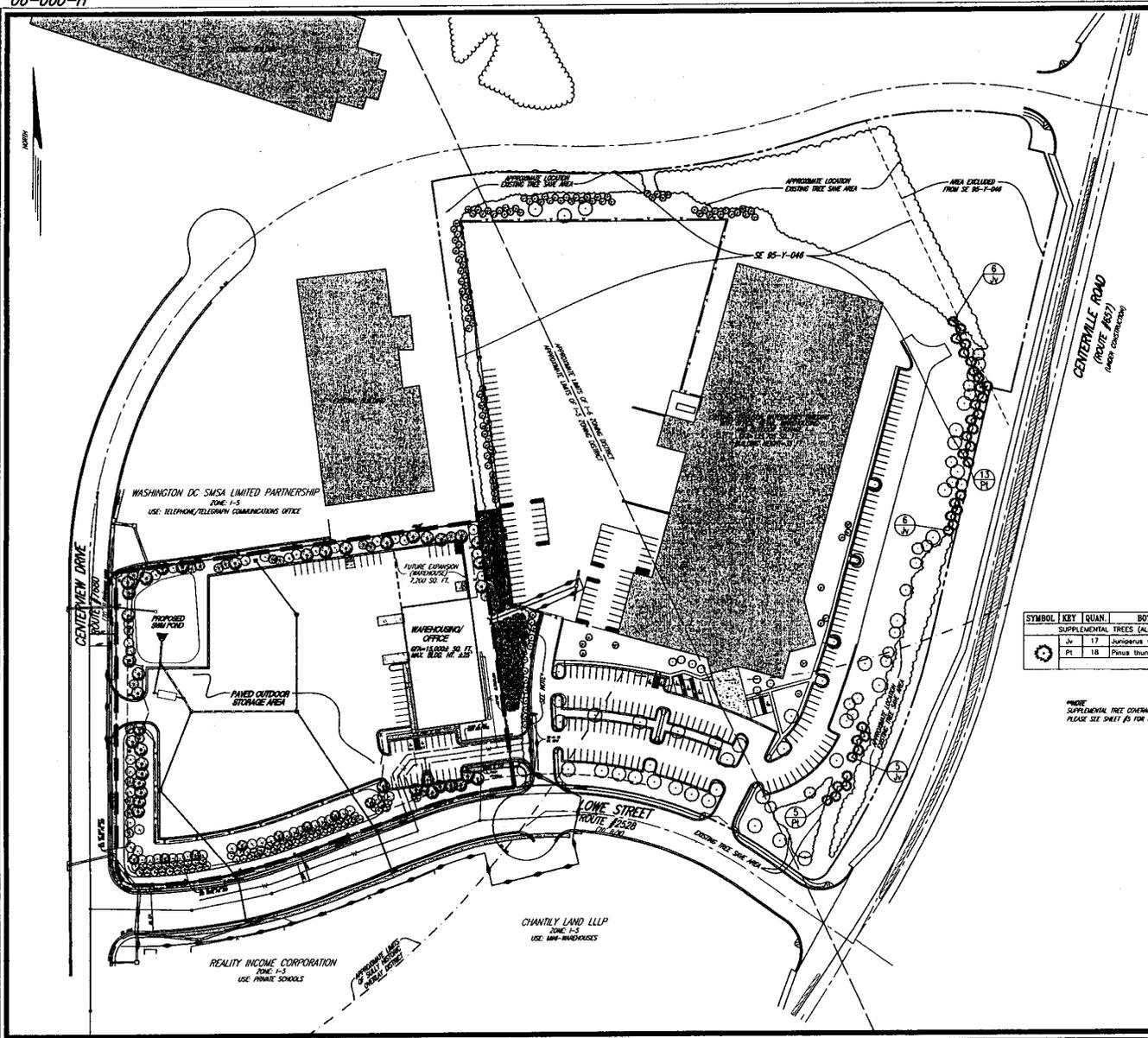
EXISTING CONDITIONS
FERGUSON WATERWORKS
 SALLY WATSON DISTRICT
 CHESTER COUNTY, VIRGINIA
 AUGUST 14, 2006
 REVISED OCTOBER 6, 2006
 REVISED NOVEMBER 21, 2006
 REVISED DECEMBER 22, 2006
 REVISED MARCH 2, 2007



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Rinker Design Associates, P.C.

DRAWING NAME: H:\WORK\06060\06060.PLC\06060.Dwg Date: 11/28/2006 9:32:48 AM EST



STREET SECTION

NO. TREES	SPACING	TYPE	SIZE	PLACEMENT
17	12'	JUNIPERUS VIRGINIANA	8'	ALONG CENTREVIEW ROAD FRONTAGE
18	18'	PINUS THUNBERGIANA	8'	ALONG CENTREVIEW ROAD FRONTAGE

* SUBGRADE NOTE: SUBGRADE DEPTH IS BASED ON A SUBGRADE SLOPE VALUE OF 1% AND A SUBGRADE WIDTH OF 10'. THE DEPTH OF SUBGRADE WILL VARY TO ACCOMMODATE DIFFERENT SLOPES AND WIDTHS. THE DEPTH OF SUBGRADE WILL VARY TO ACCOMMODATE DIFFERENT SLOPES AND WIDTHS. THE DEPTH OF SUBGRADE WILL VARY TO ACCOMMODATE DIFFERENT SLOPES AND WIDTHS.

- DENOTES EXISTING DECIDUOUS TREE
- DENOTES EXISTING ORNAMENTAL TREE
- DENOTES EXISTING EVERGREEN TREE
- DENOTES PROPOSED DECIDUOUS TREE
- DENOTES PROPOSED ORNAMENTAL TREE
- DENOTES PROPOSED EVERGREEN TREE
- DENOTES PROPOSED SUPPLEMENTAL EVERGREEN TREE (TO BE PLANTED ALONG CENTREVIEW ROAD)

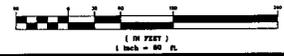
NOTE: DUE TO CHANGING UTILITY RELOCATIONS AND FINAL ENGINEERING, THIS AREA WILL BE RELOCATED WITH A SINGLE ROW OF MEDIUM EVERGREEN TREES, SUBJECT TO URBAN FOREST MANAGEMENT APPROVAL.

SUPPLEMENTAL PLANTING SCHEDULE

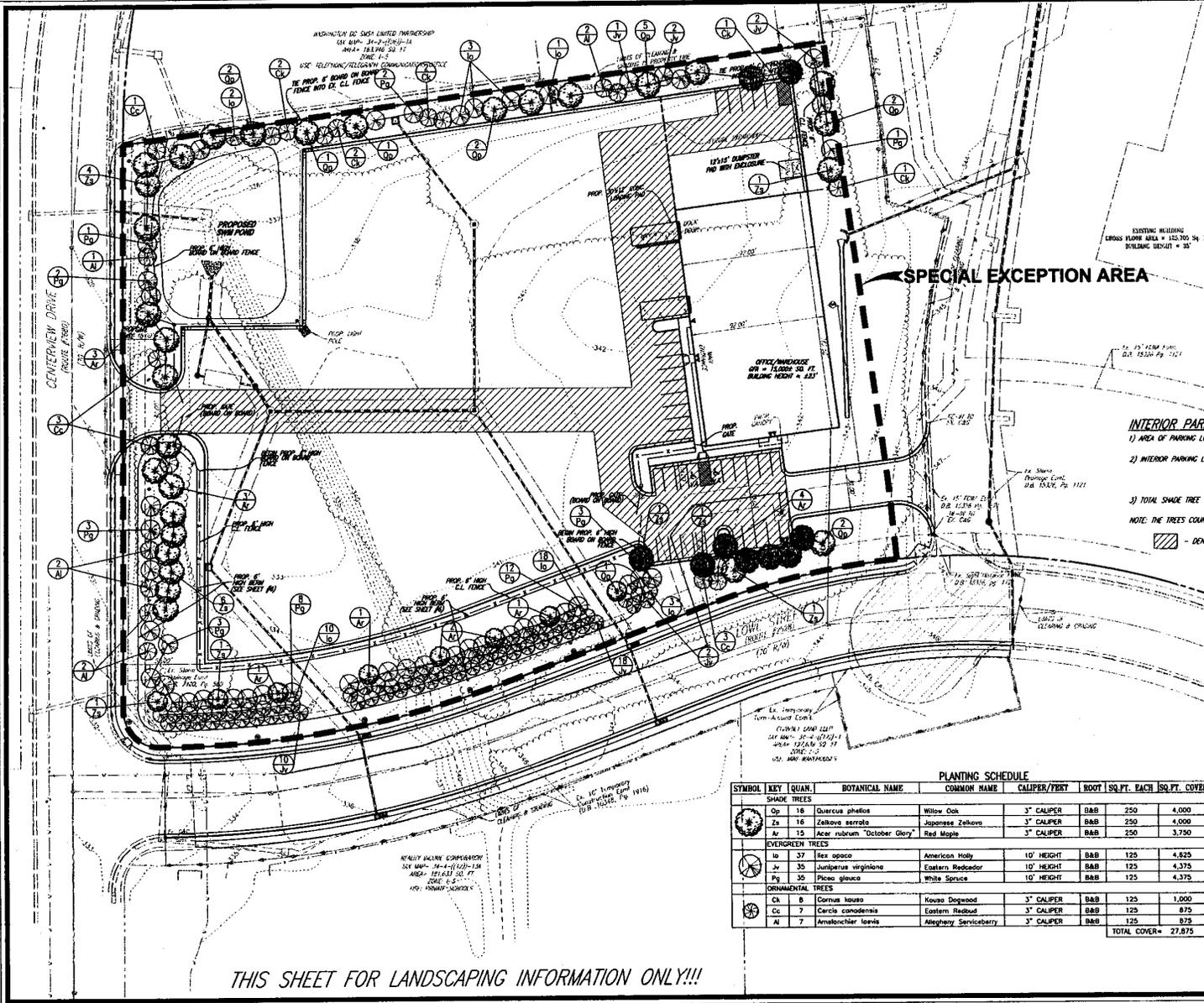
SYMBOL	KEY	QUAN.	BOTANICAL NAME	COMMON NAME	CALIPER/FEET	ROOT SQ. FT. EACH	SQ. FT. COVER	
Jv	17	Juniperus virginiana	Eastern Redcedar	8" HEIGHT	B&B	125	2,125	
Pt	18	Pinus thunbergiana	Japanese Black Pine	8" HEIGHT	B&B	125	2,250	
SUPPLEMENTAL PLANTINGS TREE COVER**							TOTAL COVER=	4,375

NOTE: SUPPLEMENTAL TREE COVERAGE IS NOT COUNTED TOWARD THE TREE COVER REQUIREMENTS FOR THE PROPOSED SE AREA. PLEASE SEE SHEET #5 FOR PLANT SCHEDULE AND TREE COVER COMPUTATIONS ASSOCIATED WITH THE PROPOSED SE AREA.

OVERALL LANDSCAPE PLAN
 LOWE STREET TYPICAL SECTION
 OF A
 SPECIAL EXCEPTION
 FOR
FERGUSON WATERWORKS
 SULLY WASHINGTON DISTRICT
 FAIRFAX COUNTY, VIRGINIA
 AUGUST 14, 2006
 REVISED: OCTOBER 4, 2006
 REVISED: NOVEMBER 2, 2006
 REVISED: NOVEMBER 27, 2006
 REVISED: DECEMBER 22, 2006
 REVISED: MARCH 2, 2007
 SHEET # 10' x 8'
 GRAPHIC SCALE



Engineering • Surveying • Land Planning • Transportation • Environmental Services
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SITE TABULATIONS

TOTAL SITE AREA	200,245 SQ. FT.
DEVELOP AREA	548 SQ. FT.
REMAINING AREA	199,717 SQ. FT.

- TREE COVER CALCULATIONS**
- ZONING CATEGORY= I-3
 - GROSS SITE AREA = 199,717 SQ. FT.
 - BUILDING FOOTPRINT AREA= 15,000 SQ. FT.
 - ADJUSTED SITE AREA= 199,717 SQ. FT. - 15,000 SQ. FT. = 184,717 SQ. FT.
 - 10% TREE COVER REQUIRED IN I-3 ZONE = 18,472 SQ. FT.
 - TREE COVER PROVIDED= 21,875 SQ. FT.
 - EXCESS TREE COVER= 3,403 SQ. FT.

- INTERIOR PARKING LOT LANDSCAPING CALCULATIONS**
- AREA OF PARKING LOT= 34,415 SQ. FT.
 - INTERIOR PARKING LOT LANDSCAPING REQUIRED: 5% OF PARKING LOT = 1,721 SQ. FT.
 - TOTAL SHADE TREE COVER PROVIDED= 2,250 SQ. FT. (8 TREES AT 250 SQ. FT.)
- NOTE: THE TREES COUNTED TOWARD INTERIOR PARKING LOT LANDSCAPING ARE SHADED.
- ▨ DENOTES AREA COUNTED AS "PARKING LOT AREA"

PLANTING SCHEDULE

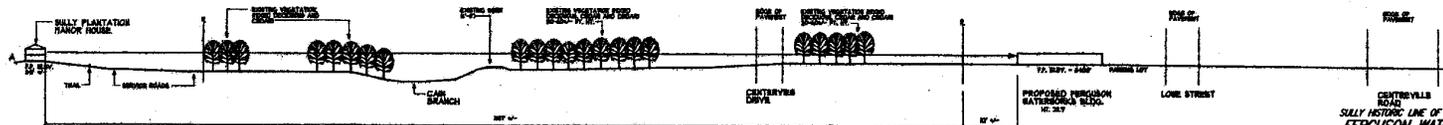
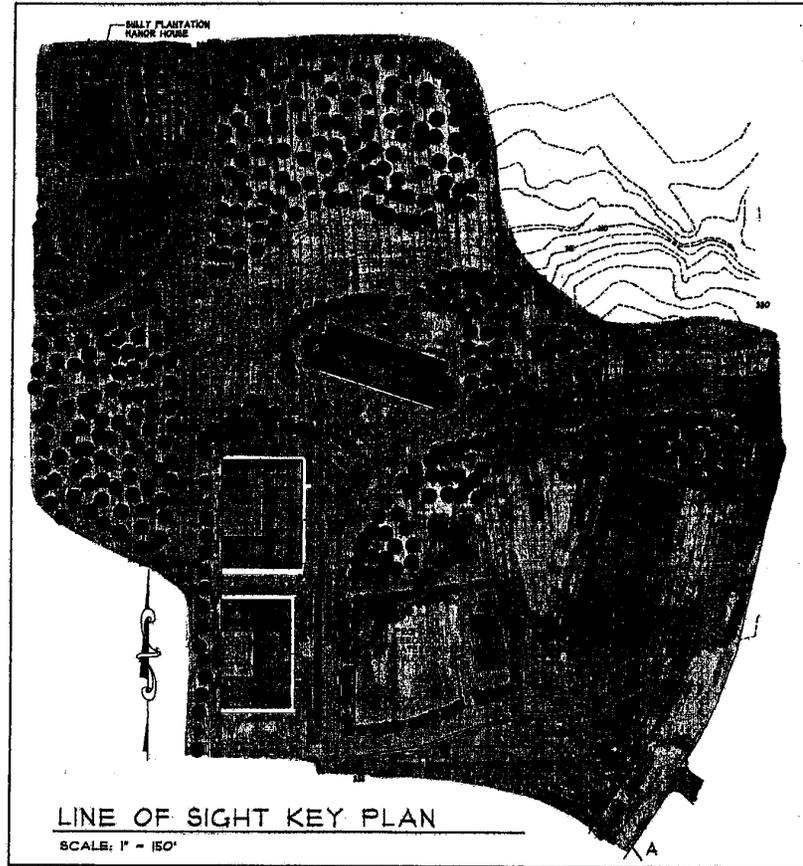
SYMBOL	KEY	QUAN.	BOTANICAL NAME	COMMON NAME	CALIPER/TYEST	ROOT SQ.FT. EACH	ISO.FT. COVER
SHADE TREES							
Op	18	18	Quercus phellos	Willow Oak	3" CALIPER	B&B 250	4,500
Za	18	18	Zelkova serrata	Japanese Zelkove	3" CALIPER	B&B 250	4,500
Ar	15	15	Acer rubrum "October Glory"	Red Maple	3" CALIPER	B&B 250	3,750
EVERGREEN TREES							
Id	37	37	Ilex opaca	American Holly	10' HEIGHT	B&B 125	4,625
Jv	35	35	Juniperus virginiana	Eastern Redcedar	10' HEIGHT	B&B 125	4,375
Pg	35	35	Pinus glauca	White Spruce	10' HEIGHT	B&B 125	4,375
ORNAMENTAL TREES							
Ck	8	8	Cornus kousa	Kousa Dogwood	3" CALIPER	B&B 125	1,000
Ce	7	7	Cercis canadensis	Eastern Redbud	3" CALIPER	B&B 125	875
Al	7	7	Amelanchier laevis	Allegheny Serviceberry	3" CALIPER	B&B 125	875
						TOTAL COVER=	27,875

**ARCHITECTURAL REVIEW BOARD PLAN
FERGUSON WATERWORKS**

SMITH MASTERS ENGINEERS
FARLEIGH COUNTY, VIRGINIA
AUGUST 14, 2008
REVISED OCTOBER 6, 2008
REVISED NOVEMBER 2, 2008
REVISED NOVEMBER 25, 2008
REVISED MARCH 27, 2009
SHEET 5 OF 8

GRAPHIC SCALE
1" = 30' FT.

THIS SHEET FOR LANDSCAPING INFORMATION ONLY!!!



SECTION A-A LINE OF SIGHT
SCALE: 1" = 100'

FOR INFORMATION ONLY!!
NOT TO SCALE!!

SULLY HISTORIC LINE OF SIGHT EXHIBIT
FERGUSON WATERWORKS
SULLY HISTORIC DISTRICT
HARRIS COUNTY, TEXAS
REVISED: DECEMBER 22, 2008
REVISED: MARCH 2, 2007
SHEET 7 OF 8

DATE:
30 OCT. 2004

Arencibia Architects Inc.
109-193-090
19348 First Rider Lane
Harrison, Virginia 20111

FERGUSON WATERWORKS
SULLY HISTORIC OVERLAY DISTRICT
CHANTILLY, VIRGINIA

AI
JOB NO. 04-2
FERGUSON
WATERWORKS

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Board Agenda Item
October 6, 2020

ADMINISTRATIVE - 2

Extension of Review Period for 2232 Application (Lee and Springfield Districts)

ISSUE:

Extension of review period for 2232 applications to ensure compliance with review requirements of *Section 15.2-2232* of the *Code of Virginia*.

RECOMMENDATION:

The County Executive recommends that the Board extend the review period for the following applications: 2232-L20-3, 2232-S20-4

TIMING:

Board action is required by October 6, 2020, to extend the review period for the application noted above before its expiration date.

BACKGROUND:

Subsection F of Section 15.2-2232 of the Code of Virginia states: "Failure of the commission to act on any such application for a telecommunications facility under subsection A submitted on or after July 1, 1998, within 90 days of such submission shall be deemed approval of the application by the commission unless the governing body has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The governing body may extend the time required for action by the local commission by no more than 60 additional days. If the commission has not acted on the application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the commission." Additional time is requested to ensure that there is sufficient time available within which to process the request. The need for the full time of an extension may not be necessary and is not intended to set a date for final action.

The review period for the following applications should be extended:

Board Agenda Item
October 6, 2020

2232-L20-3 Department of Public Works and Environmental Services
Tax Map Nos. 19-3 ((8)) A and B
Between Beulah Street, Silverlake Boulevard, and Interparcel Road
Alexandria, VA
Lee District
Accepted August 5, 2020
Extend to July 5, 2021

2232-S20-4 Milestone Communications and Verizon Wireless
Tax Map No. 87-4 ((1)) 1A
7200 Ox Road
Fairfax Station, VA
Springfield District
Accepted August 12, 2020
Extend to January 9, 2021

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
None.

STAFF:
Rachel Flynn, Deputy County Executive
Barbara A. Byron, Director, Department of Planning and Development (DPD)
Michelle K. Stahlhut, Chief, Facilities Planning Branch, Planning Division, DPD
Bryan D. Botello, Planner, Facilities Planning Branch, Planning Division, DPD

Board Agenda Item
October 6, 2020

ADMINISTRATIVE - 3

Additional Time to Commence Construction for Special Exception SE 2013-LE-014, Mohammad Hajimohammad, Trustee, and Flora Hajimohammad, Trustee of the Hajimohammad Revocable Trust (Lee District)

ISSUE:

Board consideration of additional time to commence construction for a use permitted by SE 2013-LE-014, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve eighteen (18) months additional time for SE 2013-LE-014, to January 1, 2022.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception (SE) shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On May 13, 2014, the Board of Supervisors approved Special Exception SE 2013-LE-014, subject to development conditions, to permit the continued operation of an existing vehicle sales, rental and ancillary service establishment on a property located at 5630 South Van Dorn Street, Tax Map Parcel 81-2 ((3)) 8A (See Locator Map, Attachment 1). Specifically, the SE permitted Select Auto Imports, Inc. to continue operations, subject to the imposition of development conditions. (See Clerk's Letter, Attachment 2). The property is zoned C-6. A vehicle sales, rental and ancillary service establishment is a Category 5 special exception use and is permitted pursuant to Section 4-604 of the Fairfax County Zoning Ordinance.

Board Agenda Item
October 6, 2020

The SE was approved with the condition that the approved use was required to commence construction and be diligently prosecuted within eighteen (18) months of the approval date unless the Board granted additional time, or specifically in this case, by November 13, 2015. The Board of Supervisors granted two separate additional time requests, for 12 months each, such that a new expiration date was established as November 13, 2017. Thereafter, §15.2-2209.1 of the *Code of Virginia* permitted an automatic extension for a new expiration date of July 1, 2020.

On June 11, 2020, the Department of Planning and Development (DPD) received a letter, dated June 8, 2020, from Lynne J. Strobel, agent for the applicant, requesting eighteen (18) months of additional time. (See Request Letter, Attachment 3.) While the current expiration date was July 1, 2020, the approved Special Exception will not expire pending the Board's action on the request for additional time.

In the additional time request letter, Ms Strobel notes that the applicants, as required by the SE conditions, had prepared, submitted and pursued approval of a site plan for this property. However, results of the geotechnical report presented unforeseen challenges regarding the building, its foundation and site/stormwater management requirements. In addition, the building official determined that the existing building would have to be replaced in its entirety instead of just retrofitted or renovate, based on its location adjacent to the railroad right-of-way. The challenges associated with conforming with the site and building plan requirements were such that the applicant determined that an amendment to this SE would be required to move forward. The applicant has submitted this request and SEA 2013-LE-014 which will be scheduled for the Planning Commission this spring. This extension is requested to assure that the underlying Special Exception would not expire. Staff further notes that the applicant has indicated that pertinent development conditions which contained specific timing requirements have been completed or otherwise resolved.

Staff notes that while the property subject to SE 2013-LE-014 was ultimately intended to accommodate improvements to the South Van Dorn Street/Capital Beltway interchange, this request for additional time has been reviewed by the Fairfax County Department of Transportation (FCDOT) and that the noted transportation improvements remain unfunded and there is no timeframe identified for funding. This issue has also been discussed during the review of the SEA. As such, FCDOT indicates that the status of this road improvement would not preclude the granting of the requested additional time.

Staff reviewed SE 2013-LE-014 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance. Staff knows of no changes in land use circumstances which affect the compliance of SE 2013-LE-014 with the standards applicable to this use and notes that a SEA application has been filed for review through the public hearing process. Should that SEA not be approved, this SE would expire unless the Board granted further additional time.

Board Agenda Item
October 6, 2020

Additionally, staff finds the development conditions associated with the Board's approval of SE 2013-LE-014 are still appropriate and should remain in full force and effect. Therefore, staff has determined that granting eighteen (18) months of additional time to commence construction would be in the public interest and recommends that the request be approved.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Clerk's Letter dated May 14, 2014, to Lynne J. Strobel

Attachment 3: Request Letter dated June 8, 2020, to Leslie B. Johnson

STAFF:

Rachel Flynn, Deputy County Executive

Barbara A. Byron, Director, Department of Planning and Development (DPD)

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPD

Suzanne Wright, Chief, Conformance Review & Acceptance Branch, ZED, DPD

Denise James, Chief, Environment & Development Review Branch, Planning Division,
DPD

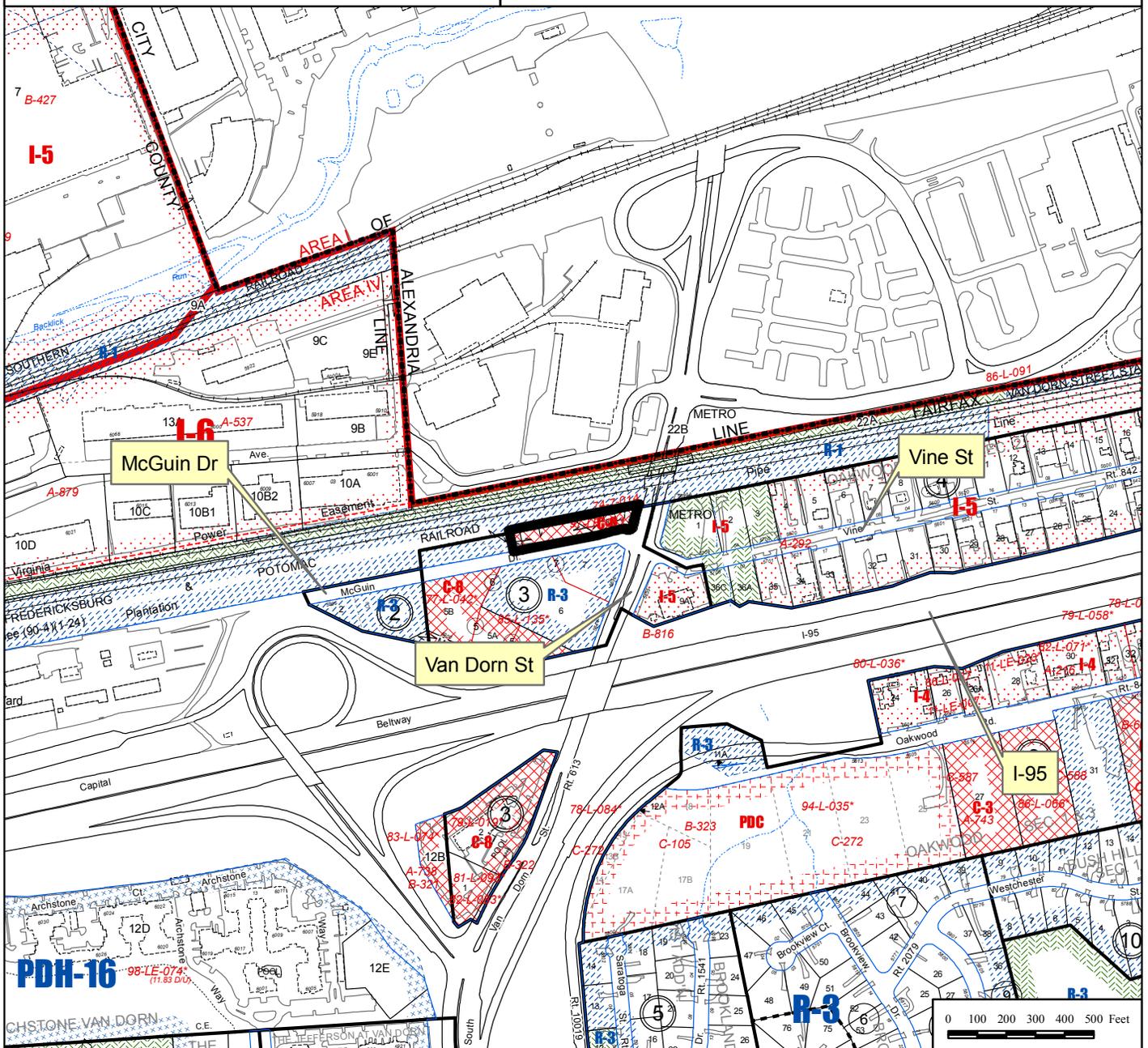
Special Exception

SE 2013-LE-014



Applicant: MOHAMMAD HAJIMOHAMMAD, TRUSTEE AND FLORA HAJIMOHAMMAD, TRUSTEE OF THE HAJIMOHAMMAD REVOCABLE TR
Accepted: 08/28/2013
Proposed: VEHICLE SALES, RENTAL AND ANCILLARY SERVICE ESTABLISHMENT, WAIVER OF THE MINIMUM LOT SIZE, LOT WIDTH AND OPEN SPACE REQUIREMENTS

Area: 31451 SF OF LAND; DISTRICT - LEE
Zoning Dist Sect: 09-061009-061204-0604
Art 9 Group and Use: 6-06 6-09 5-25
Located: 5630 SOUTH VAN DORN STREET, ALEXANDRIA, VA 22310
Zoning: C-6
Plan Area: 4,
Map Ref Num: 081-2- /03/ /0008A





County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

May 14, 2014

Lynne J. Strobel
Walsh, Colucci, Lubeley & Walsh, P.C.
2200 Clarendon Blvd., 13th Floor
Arlington, VA 22201

Re: Special Exception Application SE 2013-LE-014

Dear Ms. Strobel:

At a regular meeting of the Board of Supervisors held on May 13, 2014, the Board approved Special Exception Application SE 2013-LE-014 in the name of Mohammad Hajimohammad, Trustee, And Flora Hajimohammad, Trustee, of the Hajimohammad Revocable Trust. The subject property is located 5630 South Van Dorn Street, on 31,451 square feet, zoned C-6 in the Lee District [Tax Map 81-2 ((3)) 8A]. The Board's action permits a vehicle sales, rental and ancillary service establishment, waiver of minimum lot size and lot width and waiver of open space requirement, pursuant to Section 4-604, 9-518, 9-610 and 9-612 of the Fairfax County Zoning, by requiring conformance with the following development conditions:

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. A copy of the Special Exception conditions and the Non-Residential Use Permit (Non-RUP) shall be posted in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
3. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception plat approved with the application, as qualified by these development conditions.

Office of the Clerk to the Board of Supervisors

12000 Government Center Parkway, Suite 533

Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903

Email: clerktothebos@fairfaxcounty.gov

<http://www.fairfaxcounty.gov/bosclerk>

4. This Special Exception is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to the special exception shall be in substantial conformance with the approved Special Exception (SE) Plat entitled "Select Auto Imports," consisting of five sheets, prepared by Tri-Tek Engineering, dated March 19, 2013, as revised through February 25, 2014, and these conditions. Minor modifications to the approved special exception may be permitted as determined by the Zoning Administrator.
5. This Special Exception shall remain valid for five years from the date of issuance of a Non-RUP. Extensions beyond that time may be granted by the Zoning Administrator for two-year increments only if the continuation of the use would not interfere with the Van Dorn Street and Capital Beltway transportation improvements. Any request for such extension shall be submitted by the applicants to the Zoning Administrator in writing.
6. Within 120 days of approval of the Special Exception and prior to the issuance of a Non-RUP, the applicants shall demonstrate through the submission of an approved Virginia Department of Transportation (VDOT) permit to the Fairfax County Department of Transportation (FCDOT) that they have obtained written permission from VDOT to allow the private features within the right-of-way to remain, such as aluminum fencing, columns, stone walls, and gates. A one-time extension of 60 days beyond the 120 days may be granted by the Zoning Administrator if the applicants can demonstrate they have diligently pursued such permission from VDOT. If any or all private features in the right-of-way are not permitted by VDOT, the applicants shall remove these features outside the right-of-way or relocate them on the property as generally shown in Attachment A of these conditions, provided this relocation does not interfere with sight distance. The applicants shall complete removal or relocation within six months of denial of a permit by VDOT. If the applicants remove or relocate the private objects in a manner that is not in substantial conformance with the SE/SP Plat or Attachment A, a Special Exception Amendment and/or a Special Permit Application will be required, as determined by the Zoning Administrator.
7. The applicants shall provide wheel stops for the vehicle storage and display area on the application property along McGuin Drive as generally shown on the SE/SP Plat for the purpose of ensuring that no portion of any vehicle for sale is located or overhanging within the right-of-way. The final location of the wheel stops shall be determined by VDOT and the Department of Public Works and Environmental Services (DPWES) at the time of site plan. The final location of the wheel stops shall allow for adequate circulation on the site, as determined by DPWES at the time of site plan. If the applicants must reconfigure this parking area in a manner that is not in substantial conformance with the SE/SP Plat in order to provide for such adequate circulation, a Special Exception Amendment and/or a Special Permit Amendment will be required, as determined by the Zoning Administrator.
8. Within 90 days of approval of the Special Exception, the applicants shall remove any signs prohibited by the Zoning Ordinance and any signs that have been installed without permit approval. The applicants shall obtain permits for all signs located on

the subject property. The applicants may install up to one building-mounted sign and one freestanding sign in accordance with Article 12 of the Zoning Ordinance prior to the issuance of a Non-RUP.

9. All freestanding signs shall be located in conformance with Section 2-505 of the Zoning Ordinance and shall not conflict with vehicle sight distance.
10. Prior to the issuance of a Non-RUP and if requested by VDOT at the time of site plan, the applicants shall install signs along the McGuin Drive frontage to ensure that vehicles are not parked in this area.
11. Prior to site plan approval, the applicants shall demonstrate that any existing or proposed fences and columns do not interfere with sight distance, as determined by VDOT.
12. The area devoted to vehicle storage and display shall be limited to that area so designated on the SE/SP Plat. Such areas shall not be used for the storage or display of vehicles that are not in operating condition. No parking shall be permitted within the adjacent right-of-way.
13. The applicants shall extend the existing curb and gutter from the intersection of South Van Dorn Street and McGuin Drive to the easternmost entrance along McGuin Drive. The applicants shall upgrade the existing rolled asphalt curb from the easternmost entrance along McGuin Drive to the western property line to meet the standards of the Public Facilities Manual (PFM), as determined by DPWES at the time of site plan.
14. Prior to site plan approval, the applicants shall provide a detailed comparison of existing versus proposed impervious area tabulation/map. The existing impervious area shall be established based on Special Exception SE 87-L-002, which was approved on September 14, 1997. Based on this, stormwater detention requirements and Best Management Practices shall be met pursuant to the Public Facilities Manual, unless waived by DPWES.
15. The applicants shall submit a site plan within 120 days of approval of this application. The applicants shall obtain site plan approval within eight months of the approval of this application. Extensions of up to 90 days may be granted by the Zoning Administrator if the applicants can demonstrate they have diligently pursued site plan approval.
16. All applicable permits and final inspections shall be obtained for the existing building within 120 days of site plan approval.
17. Within 120 days of site plan approval and prior to the issuance of a Non-RUP, the applicants shall remove the portion of the building that encroaches onto the adjacent property to the north.

18. The applicants shall obtain the necessary approvals from the adjacent property owner to the north (Tax map 90-4 ((1)) 24) prior to the removal of the portion of the structure that encroaches onto that property.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, eighteen (18) months after the date of approval unless, at a minimum, the use has been established or construction has commenced and been diligently prosecuted for one of the proposed buildings. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

The Board also:

- Modified the minimum lot size and lot width requirements in accordance with Sect. 9-610 of the Zoning Ordinance to permit a 31,451 square foot lot with a width of 82 feet
- Modified the open space requirements in accordance with Sect. 9-612 of the Zoning Ordinance to allow 13.4% open space
- Modified the transitional screening requirements to the south and west and the barrier requirements to the south pursuant to Sect. 13-305 of the Zoning Ordinance in favor of that shown on the SE/SP Plat
- Modified the peripheral parking lot landscaping requirements along the eastern boundary of the property in accordance with Sect. 13-203 of the Zoning Ordinance in favor of that shown on the SE/SP Plat

May 14, 2014

- Increased the height of the fence, walls, gates, and gate posts to that shown on the SE/SP Plat in accordance with Par. 3.H of Sect. 10-104 of the Zoning Ordinance.

Sincerely,



Catherine A. Chianese
Clerk to the Board of Supervisors

cc: Chairman Sharon Bulova
Supervisor Jeffrey McKay, Lee District
Tim Shirocky, Acting Director, Real Estate Division, Dept. of Tax Administration
Barbara C. Berlin, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Thomas Conry, Dept. Manager, GIS, Mapping/Overlay
Angela K. Rodeheaver, Section Chief, Transportation Planning Division
Donald Stephens, Transportation Planning Division
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
Jill Cooper, Executive Director, Planning Commission
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation



WALSH COLUCCI
LUBELEY & WALSH PC

Lynne J. Strobel
(703) 528-4700 Ext. 5418
lstrobel@thelandlawyers.com

June 8, 2020

Via E-mail and Federal Express

Leslie B. Johnson, Zoning Administrator
Zoning Administration Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035

Re: SE 2013-LE-014
Applicants: Hajimohammad Revocable Trust, Mohammad Hajimohammad,
Trustee and Flora Hajimohammad, Trustee
Fairfax County Tax Map Reference: 81-2 ((3)) 8A
Address: 5630 South Van Dorn Street

Dear Ms. Johnson:

Please accept this letter as a request for additional time to commence construction in accordance with Section 9-015 of the Fairfax County Zoning Ordinance (the "Zoning Ordinance").

The referenced application was approved by the Board of Supervisors (the "Board") at its hearing held on May 13, 2014. The Board granted SE 2013-LE-014 subject to development conditions, including a requirement that the use be established or construction commenced and diligently prosecuted within 18 months of the approval. The Board granted twelve (12) months of additional time to establish the use and SE 2013-LE-014 was further extended by State legislation to July 1, 2020. Please accept this letter as a request for eighteen (18) months of additional time to commence construction of the improvements approved in conjunction with SE 2013-LE-014.

The approval granted by the Board permits a vehicle sales, rental, and ancillary service establishment to be located on property identified among the Fairfax County tax assessment records as 81-2 ((3)) 8A (the "Subject Property"). Upon approval of SE 2013-LE-014, the Applicants began the process to prepare a site plan. The Applicants prepared, submitted, and diligently prosecuted a site plan, which is referenced by Fairfax County as 1292-SP-002-1 (the "Site Plan").

The Site Plan process took much longer and was more expensive than anticipated. Unfortunately, the results of the geotechnical report presented the Applicants with additional

ATTORNEYS AT LAW

703 528 4700 • WWW.THELANDLAWYERS.COM
2200 CLARENDON BLVD. • SUITE 1300 • ARLINGTON, VA 22201-3359

LOUDOUN 703 737 3633 • WOODBRIDGE 703 680 4664

challenges regarding the building, its foundation, and site/stormwater management requirements. Further, due to determinations by the building department following review of the building plan submittal, and the denial of a waiver request by Fairfax County for consideration of the treatment of a wall rating against the adjacent railroad right-of-way, the cost of building construction significantly increased as the existing building was required to be replaced in its entirety.

After thoughtful consideration, including a possible relocation of the business, the Applicants elected to file a special exception amendment. The application, which is referenced as SEA 2013-LE-014, is being reviewed by Fairfax County staff and is scheduled for a public hearing in October. In the interim, I request that the Board grant additional time to establish SE 2013-LE-014. Should the pending special exception amendment application encounter difficulties in the approval process, the Applicants will be forced to implement the original special exception approval and continuing processing the submitted Site Plan.

In accordance with Section 9-015 of the Zoning Ordinance, I would appreciate the acceptance of this letter as a request for eighteen (18) months of additional time to commence construction of the improvements approved with SE 2013-LE-014. The Applicants have faced a number of challenges regarding the preparation and submission of a site plan at considerable expense and are now pursuing a special exception amendment. All of the actions pursued by the Applicants have taken much longer than anticipated. There have been no changes in circumstances that would render the prior approval inconsistent with the Comprehensive Plan or the public interest.

Should you have any questions regarding this request, or require additional information, please do not hesitate to contact me. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.



Lynne J. Strobel

LJS/kae

cc: Mike Hajimohammad
Ted Britt

Board Agenda Item
October 6, 2020

ADMINISTRATIVE - 4

Additional Time to Commence Construction for Special Exception Amendment SEA 76-C-152-04, Exxon Mobil Corporation (Hunter Mill District)

ISSUE:

Board consideration of additional time to Commence Construction for SEA 76-C-152-04, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve twenty-four (24) months additional time for SEA 76-C-152-04 to July 1, 2022.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On January 7, 2008, the Board of Supervisors approved Special Exception Amendment SEA 76-C-152-04, subject to development conditions. The application was filed in the name of Exxon Mobil Corporation, to amend the previously approved special exception for a service station, quick-service food store, and car wash, to permit an expansion of a quick service food store and the replacement of the existing car wash. The site is now managed by 7-Eleven, Inc. dba APlus Convenience Stores. The site is in the I-5 zoning district and is located at 1818 Wiehle Avenue, Tax Map 17-4 ((5)) 4 (see Locator Map in Attachment 1). The service station, car wash, and quick service food store, a Category 5 special exception use, is permitted pursuant to Section 5-504 of the Fairfax County Zoning Ordinance. SEA 76-C-152-04 was approved with a condition that the use be established or construction commenced within thirty (30) months, unless the Board

Board Agenda Item
October 6, 2020

granted additional time. The development conditions for SEA 76-C-152-04 are included as part of the Clerk to the Board's letter contained in Attachment 2.

In conformance with the expiration provision, the approved use was required to commence construction by July 7, 2010. However, §15.2-2209.1 of the *Code of Virginia* permitted a series of automatic extensions of this deadline to July 1, 2020. On June 29, 2020, the Department of Planning and Development (DPD) received an email dated June 29, 2020, from Barbara Milfelt, agent for the Applicant, requesting twenty-four (24) months of additional time (see Attachment 3). This email was then followed up with a formal written request for additional time on August 20, 2020. The approved Special Exception will not expire pending the Board's action on the request for additional time.

In the June 29, 2020 email and August 20, 2020 follow-up letter for a request for additional time, Ms. Milfelt stated that although construction plans are in the planning stages, they have encountered challenges, to include pandemic-related issues, that have delayed the commencement of construction. While the requestor intends to proceed with the expansion of the quick service food store and the replacement of the existing car wash, they indicate that they have not been able to do so given the uncertainty created by the coronavirus pandemic, and therefore, would like additional time to plan and implement the expansion. The request for twenty-four (24) months of additional time will allow the requestor to satisfy development conditions and construct the building addition.

Staff has reviewed Special Exception Amendment SEA 76-C-152-04 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit an expansion of a quick service food store and the replacement of an existing car wash within an I-5 zoning district. Further, staff knows of no change in land use circumstances that affects compliance of SEA 76-C-152-04 with the special exception standards applicable to this use, or which should cause the filing of a new special exception application and review through the public hearing process. The Comprehensive Plan recommendation for the property has not changed since approval of the Special Exception Amendment. Finally, the conditions associated with the Board's approval of SEA 76-C-152-04 are still appropriate and remain in full force and effect. Staff believes that approval of the request for twenty-four (24) months additional time is in the public interest and recommends that it be approved.

FISCAL IMPACT:
None

Board Agenda Item
October 6, 2020

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Letter dated January 16, 2008, to Sara Mariska

Attachment 3: Letter dated August 20, 2020, to Leslie B. Johnson

STAFF:

Rachel Flynn, Deputy County Executive

Barbara A. Byron, Director, Department of Planning & Development (DPD)

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPD

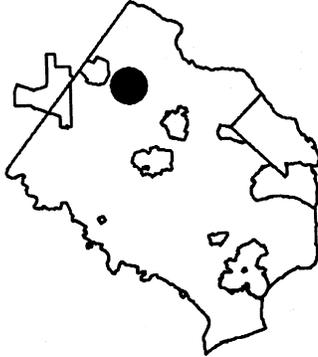
Suzanne Wright, Chief, Conformance Review & Acceptance Branch, ZED, DPD

Denise James, Chief, Environment & Development Review Branch, Planning Division, DPD

Laura O'Leary, Staff Coordinator, ZED, DPD

Special Exception Amendment

SEA 76-C-152-04



Applicant:
Accepted:
Proposed:

EXXON MOBIL CORPORATION
06/28/2007
AMEND SE 76-C-152 PREVIOUSLY APPROVED FOR SERVICE STATION, QUICK SERVICE FOOD STORE, AND CAR WASH TO PERMIT SITE MODIFICATIONS AND CHANGES IN DEVELOPMENT CONDITIONS.

Area:

1.07 AC OF LAND; DISTRICT - HUNTER MILL

Zoning Dist Sect: 05-050405-050405-0504

Art 9 Group and Use: 5-03 5-20 5-21

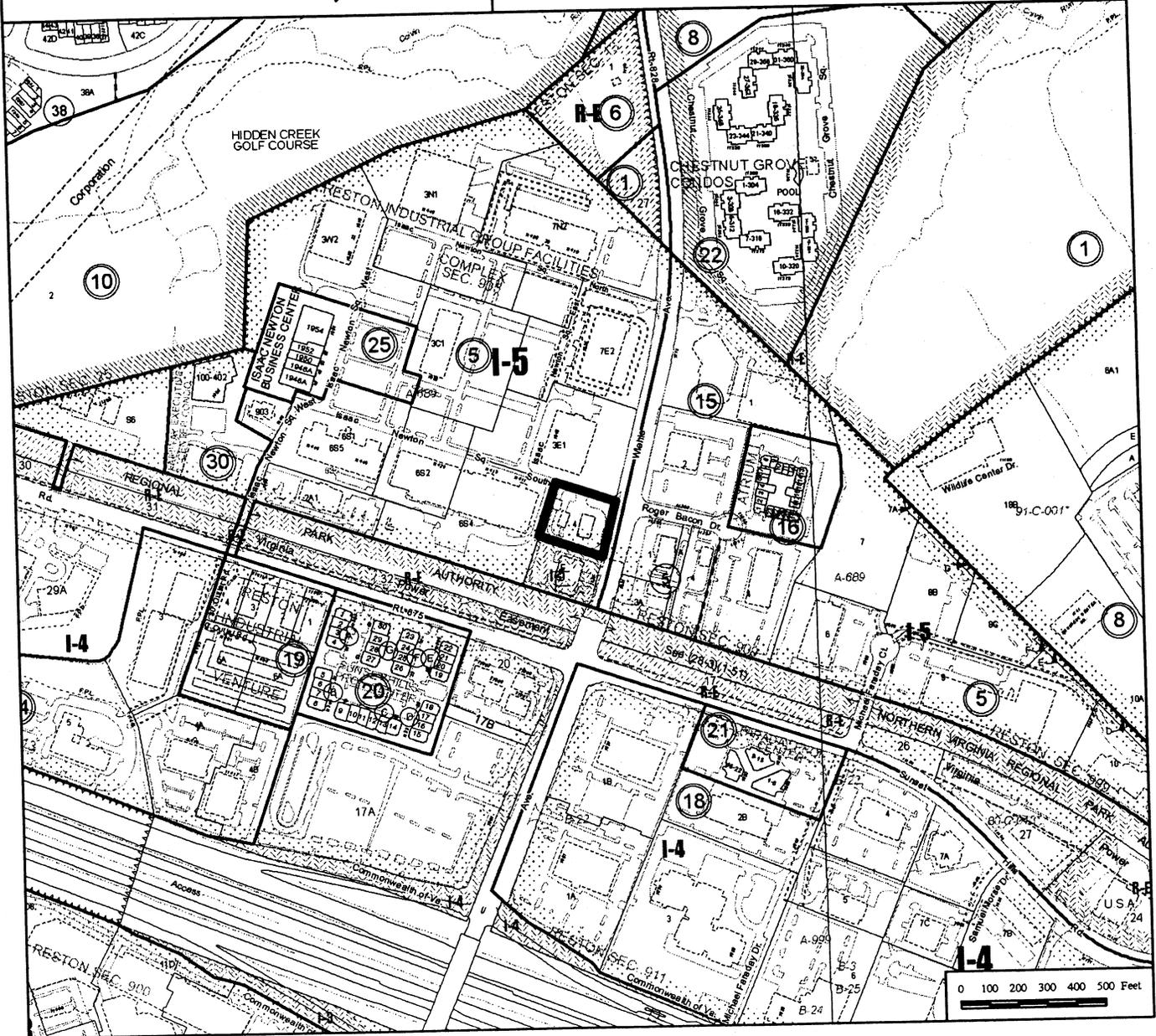
Located: 1818 WIEHLE AVENUE

Zoning: I-5

Plan Area: 3,

Overlay Dist:

Map Ref Num: 017-4 /05/ /0004





County of Fairfax, Virginia

ATTACHMENT 2

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

January 16, 2008

Sara Mariska
Walsh, Colucci, Lubely, Emrich & Walsh, P.C.
2200 Clarendon Boulevard, 13th Floor
Arlington, Virginia 22201

Re: Special Exception Amendment Application SEA 76-C-152-04

Dear Ms. Mariska:

At a regular meeting of the Board of Supervisors held on January 7, 2008, the Board approved Special Exception Amendment Application SEA 76-C-152-04 in the name of Exxon Mobil Corporation. The subject property is located at 1818 Wiehle Avenue on approximately 1.07 acres of land zoned I-5 in the Hunter Mill District [Tax Map 17-4 ((5)) 4]. The Board's action amends Special Exception Application SE 76-C-152, previously approved for a service station to permit a service station, car wash, quick service food store, and associated modifications to site design pursuant to Section 5-504 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions. Previously approved conditions or those with minor modifications are marked with an asterisk (*).

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.*
2. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Exception Amendment plat approved with the application, as qualified by these development conditions.*
3. This Special Exception Amendment is subject to the provisions of Article 17, Site Plans, as may be determined by DPWES. Any plan submitted pursuant to this Special Exception Amendment shall be in conformance with the approved Special Exception Amendment plat entitled "1818 Wiehle Avenue", consisting of 11 sheets prepared by Core States Engineering which is dated April 4, 2007, as revised through September 19, 2007, and these conditions. Minor modifications to the approved Special Exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.

Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903
Email: clerktothebos@fairfaxcounty.gov
<http://www.fairfaxcounty.gov/bosclerk>

4. Landscaping shall be provided both within the interior and along the perimeter of the site to maintain a high quality site design subject to review and approval by Urban Forest Management (UFM)*. At a minimum, the landscaping will be in substantial conformance with that depicted on the Special Exception Amendment Plat approved with this Special Exception Amendment, as determined by the UFM.*
5. The trash dumpster enclosure shall be either brick, board on board construction, or other suitable material as determined appropriate by the DPWES to fully screen the dumpster, as depicted within the SEA Plat.*
6. The facade of the facility shall be constructed of materials which are compatible in terms of color and design with those depicted within the SEA Plat, as determined by the DPWES.
7. There shall be a minimum of two (2) employees on site between the hours of 8:00 am and 6:00 pm.*
8. A ten foot (10') wide TX-2 Type I asphalt trail within a twelve (12) foot wide public access easement shall be provided along the frontage of the property adjacent to Wiehle Avenue, subject to review and approval by DPWES.*
9. "Do Not Enter" signs shall be posted at the exit of the car wash bypass lane and the car wash exit.*
10. The car wash shall be equipped to capture 80% of the wastewater associated with a single cycle of the car wash operation. All wastewater discharged from the car wash shall be discharged to the sanitary sewer system.*
11. If not already completed, a left-turn deceleration lane on northbound Wiehle Avenue shall be provided to Isaac Newton Square South subject to Virginia Department of Transportation (VDOT) and DPWES approval.*
12. In order to reduce hydrocarbon concentrations in runoff from the site, hydrocarbon removal measures shall be provided. Possible hydrocarbon removal methods include the use of vegetated filter strips, infiltration trenches and other methods that promote infiltration, created artificial wetland best management practices (BMPs), wet stormwater detention BMPs and extended dry BMPs. The qualifications of the maintenance operator shall be reviewed and approved by the appropriate Fairfax County agency as determined by DPWES.*
13. The size of the quick service food store structure shall not exceed 3,250 square feet.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required permits through established procedures, and this Special Exception Amendment shall not be valid until this has been accomplished.

Pursuant to Sect. 9-015 of the Zoning Ordinance, this special exception amendment shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the Special Exception Amendment. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Sincerely,



Nancy Vehrs
Clerk to the Board of Supervisors

NV/dms

cc: Chairman Gerald E. Connolly
Supervisor Catherine Hudgins, Hunter Mill District
Janet Coldsmith, Director, Real Estate Division, Dept. of Tax Administration
Regina Coyle, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Thomas Conry, Dept. Manager. – GIS - Mapping/Overlay
Angela K. Rodeheaver, Section Chief, Transportation. Planning Division
Ellen Gallagher, Capital Projects and Operations Div., Dept. of Transportation
Audrey Clark, Director – Building Plan Review, DPWES
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
District Planning Commissioner
Barbara J. Lippa, Executive Director, Planning Commission
Jose Comayagua, Director, Facilities Management
Denise James, Office of Capital Facilities/Fairfax County Public Schools
Karyn Mooreland, Chief Capital Projects Sections, Dept. of Transportation



August 20, 2020

VIA EMAIL TO: DPZMailforZPRB@fairfaxcounty.gov

Leslie B. Johnson
Fairfax County, Department of Planning and Zoning
Zoning Administration Division (ZED)
12055 Government Center Pkwy., Suite 801
Fairfax, VA 22035

RE: SEA 76-c-152-04
7-Eleven, Inc. dba APlus #40057H
1818 Wiehle Avenue, Reston, VA 20190

Dear Ms. Johnson,

In connection with our convenience store referenced above, please accept this letter as our formal request for additional time to complete the SEA requirements at this location. Construction plans are and have been in the planning stages, however, due to many items of delay – to include the pandemic-related issues we are all experiencing – we respectfully request an additional twenty-four (24) months.

If you have any questions, please feel free to contact me directly at 361-813-1641 or via email @ barbara.milfelt@7-11.com.

Yours very truly,

A handwritten signature in black ink, appearing to read "Barbara A. Milfelt".

Barbara A. Milfelt
Senior Compliance Analyst – Compliance/Legal Dept.
7-Eleven, Inc. dba APlus Convenience Stores
(972) 828-8010

cc via email: Laura.O'Leary@fairfaxcounty.gov



2020-2969



Oh, Young

From: Milfelt, Barbara <Barbara.Milfelt@7-11.com>
Sent: Monday, June 29, 2020 2:53 PM
To: DPZ Mail for ZPRB; DPZ ORDADMIN
Subject: Special Exception Amendment SEA 76-C-152-04 - 7-Eleven, Inc. dba APlus #40057H (Exxon branded fuel)
Attachments: 1589_001.pdf

Dear Ms. Johnson,

We are in receipt of the attached correspondence in connection with our convenience store located at 1818 Wiehle Ave., Reston, VA 20190.

By this email, we are hereby requesting additional time to complete the SEA requirements at this location. Construction plans are and have been in the works, however, due to many things – to include the pandemic-related issues we are all experiencing at present – we would like to request an additional 24 months.

Please contact the undersigned with any questions or concerns regarding this matter.

Thank you,

Barbara A. Milfelt
Senior Compliance Analyst
7-Eleven, Inc. – Corporate Compliance/Legal Department
3200 Hackberry Road
Irving, TX 75063
972-828-8010 - office
361-813-1641 - cell



**WALSH COLUCCI
LUBELEY & WALSH PC**

June 1, 2020

Lynne J. Strobel
(703) 528-4700 Ext. 5418
lstrobel@thelandlawyers.com

Via Certified Mail/Return Receipt Requested

7-Eleven, Inc.
1900 Dalrock Road
c/o K E Andrews & Company
Rowlette, Texas 75088

Re: SEA 76-C-152-04
Applicant: Exxon Mobil Corporation
1818 Wiehle Avenue, Reston, Virginia 20190

To Whom It May Concern:

Your company is listed in the tax assessment records as the current owner of property located in Fairfax County, Virginia and identified as 17-4 ((5)) 4 (the "Subject Property"). In 2008, this firm represented Exxon Mobil Corporation, as the owner of the Subject Property, in the processing and approval of a special exception amendment referenced as SEA 76-C-152-04. The approval permits, in part, the expansion of a quick service food store and the replacement of an existing car wash.

The Fairfax County Board of Supervisors granted the approval for a period of thirty (30) months during which construction was required to commence and be diligently prosecuted. As a result of amendments adopted by the Virginia General Assembly, the approval granted in 2008 was periodically extended. In accordance with the enclosed letter issued by Erika Castillo of the Zoning Permits Branch, the approval will now expire on July 1, 2020 unless additional time is granted to commence construction. The Board of Supervisors may consider a grant of additional time to commence construction if a written request is filed with the Zoning Administrator prior to the expiration date of July 1, 2020.

Please contact me should you have any questions regarding this letter or the enclosed.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.

Lynne J. Strobel

Enclosure

A0919205.DOCX / 1 Ltr to 7-Eleven, Inc. (Current Owner of 1818 Wiehle Avenue) re: Additional Time Request 000113 000032

ATTORNEYS AT LAW

703 528 4700 • WWW.THELANDLAWYERS.COM
2200 CLARENDON BLVD. • SUITE 1300 • ARLINGTON, VA 22201-3359

LOUDOUN 703 737 3633 • WOODBRIDGE 703 680 4664



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

April 28, 2020

Sara Mariska
Walsh, Colucci, Lubely & Walsh, PC
2200 Clarendon Blvd., Suite 1300
Arlington, VA 22201

Re: Special Exception Amendment SEA 76-C-152-04 – Exxon Mobil Corporation
1818 Wiehle Avenue
Tax Map Ref: 17-4 ((5)) 4
Zoning District(s): I-5

Dear Ms. Mariska:

A review of the above-referenced special exception amendment indicates that the Board of Supervisors (BOS) adopted SEA 76-C-152-04 to permit the expansion of a quick service food store and the replacement of an existing car wash. In accordance with Sect. 9-015 of the Zoning Ordinance, the above-referenced special exception was to expire, without notice, thirty (30) months after the date of approval unless construction had commenced and been diligently prosecuted. As a result of the Virginia General Assembly action, § 15.2-2209.1 of the *Code of Virginia* was amended thereby allowing the applicant until July 1, 2020 to commence construction or establish the use on the property.

Pursuant to Sect. 9-012 of the Fairfax County Zoning Ordinance, the BOS may grant additional time to commence construction if a written request is filed with the Zoning Administrator prior to the expiration date of July 1, 2020.

Should additional time be needed to establish the use, the applicant should submit a written request to the Zoning Administrator, Leslie B. Johnson, prior to the expiration date. This request must specify the amount of additional time requested and why additional time is required. This request can be mailed to the address below, or emailed to dpzmailforzprb@fairfaxcounty.gov.

If you have any questions, please feel free to contact me at 703-324-1359.



PLANNING & DEVELOPMENT

Department of Planning and Development
Zoning Administration Division
12055 Government Center Parkway, Suite 250
Fairfax, Virginia 22035-5507
Phone 703-324-1359
Fax 703-803-6372
www.fairfaxcounty.gov/planning-development

Board Agenda Item
October 6, 2020

ADMINISTRATIVE - 5

Additional Time to Commence Construction for Special Exception SE 2015-SU-018,
Chantilly Auto Care Center, LLC (Sully District)

ISSUE:

Board consideration of additional time to commence construction for SE 2015-SU-018, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve twelve (12) months additional time for SE 2015-SU-018 to July 1, 2021.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On October 20, 2015, the Board of Supervisors approved SE 2015-SU-018, subject to development conditions. This application was filed in the name of Chantilly Auto Care Center, LLC, to permit site layout improvements to an existing service station/mini mart in a Highway Corridor Overlay District. The approximately 1.06-acre property is located at 13704 Lee Jackson Memorial Highway in Chantilly, Tax Map 34-4 ((5)) A (see locator map in Attachment 1). A service station/mini-mart in a highway corridor overlay district is a Category 6 Special Exception in the C-8 Zoning District, but the use had been operating without such SE approval. The owner of the service station filed SE 2015-SU-018 to update certain site conditions, including onsite circulation, landscaping, and sidewalk improvements, and to bring the existing service station into conformance with the Zoning

Board Agenda Item
October 6, 2020

Ordinance. The special exception was approved with a provision that the use would be established, or construction commenced and diligently prosecuted, within 24 months of the approval date unless the Board grants additional time. The development conditions for SE 2015-SU-018 are included as part of the Clerk to the Board's letter contained in Attachment 2.

The Special Exception was due to expire, without notice, on October 20, 2017, however, §15.2-2209.1 of the *Code of Virginia* permitted an automatic extension of this deadline to July 1, 2020. On June 11, 2020, the Department of Planning and Development (DPD) received a letter dated June 6, 2020, from Pranisha Karanjit, agent for the Applicant, requesting twelve (12) months of additional time (see Attachment 3). While the current expiration date was July 1, 2020, the special exception will not expire pending the Board's action on the request for additional time.

The applicant has been working to fulfill all development conditions associated with SE 2015-SU-018. Pranisha Karanjit states that the applicant has an approved site plan, but that bonding, dedication, and site development permits have not been completed. The applicant would like the additional time to secure financing and to allow for competitive contractor bidding post COVID.

Staff has reviewed Special Exception SE 2015-SU-018 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit a service station/mini mart in a highway corridor overlay district in the C-8 zoning district. Further, staff knows of no change in land use circumstances that affects the compliance of SE 2015-SU-018 with the special exception standards applicable to this use, or which should cause the filing of a new special exception application and review through the public hearing process. Finally, the conditions associated with the Board's approval of SE 2015-SU-018 are still appropriate and remain in full force and effect. Staff believes that approval of the requested twelve (12) months additional time is in the public interest and recommends that it be approved. In absence of demonstrated efforts to commence construction, further requests for an additional time may not be appropriate.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Clerk's Letter dated October 21, 2015, to Keith C. Martin

Attachment 3: Letter dated June 6, 2020, to Leslie Johnson

Board Agenda Item
October 6, 2020

STAFF:

Rachel Flynn, Deputy County Executive

Barbara A. Byron, Director, Department of Planning and Development (DPD)

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPD

Suzanne Wright, Chief, Conformance Review & Acceptance Branch, ZED, DPD

Denise James, Chief, Environment & Development Review Branch, Planning Division,
DPD

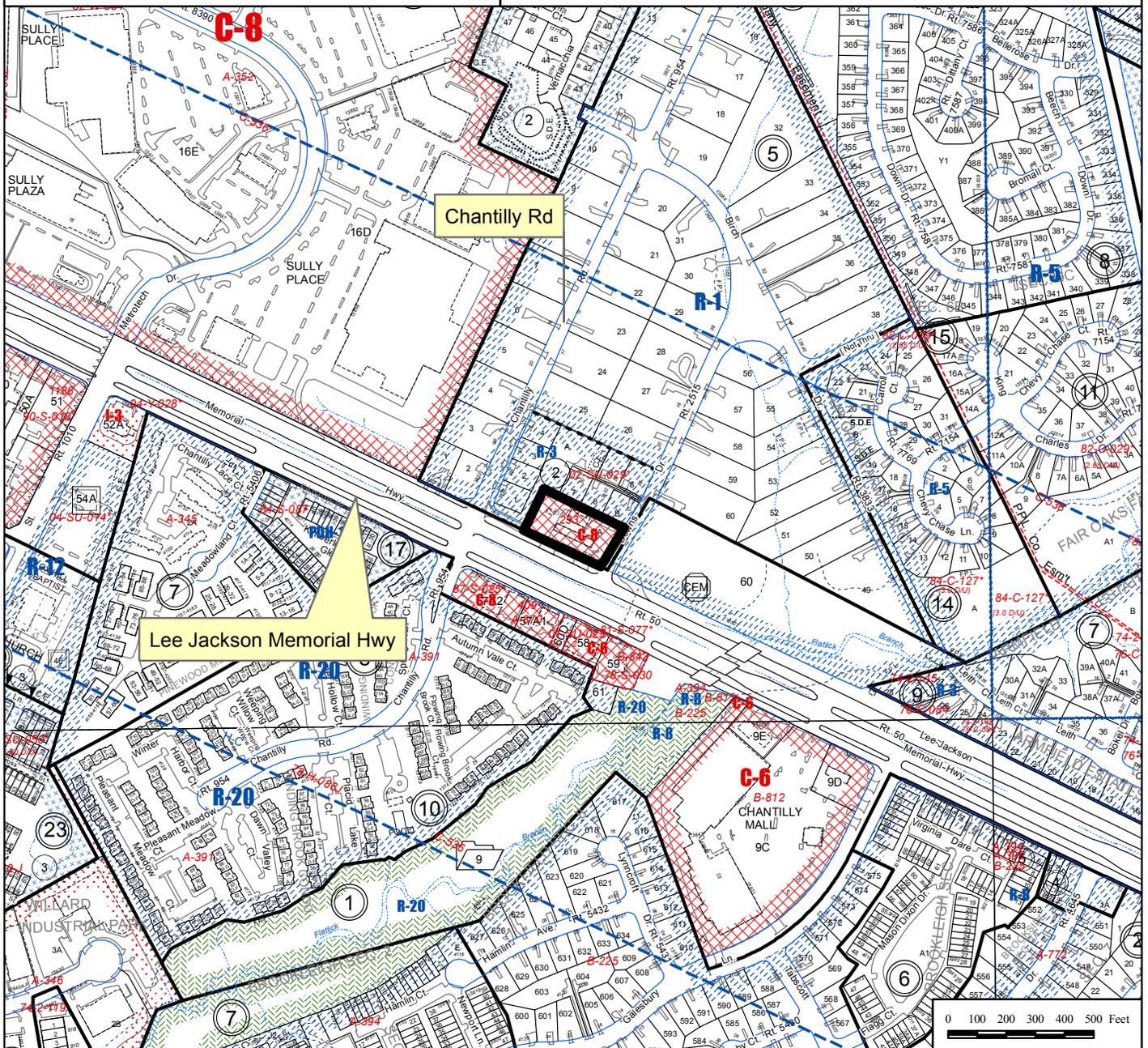
Jerrell Timberlake, Staff Coordinator, ZED, DPD

Special Exception

SE 2015-SU-018

Applicant: CHANTILLY AUTO CARE CENTER, LLC
 Accepted: 05/08/2015
 Proposed: SERVICE STATION/MINI MART IN A HIGHWAY CORRIDOR OVERLAY DISTRICT AND WAIVER OF THE MINIMUM LOT WIDTH REQUIREMENT FOR THE C-8 ZONING DISTRICT

Area: 1.06 AC OF LAND; DISTRICT - SULLY
 Zoning Dist Sect: 07-060709-061004-0804
 Located: 13704 LEE JACKSON MEMORIAL HIGHWAY, CHANTILLY, VA 20151
 Zoning: C- 8
 Plan Area: 3,
 Overlay Dist: WS HC
 Map Ref Num: 034-4- /05/ / A





County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

October 21, 2015

Keith C. Martin
Tramonte, Yeonas, Roberts and Martin
8245 Boone Boulevard, Suite 400
Vienna, VA 22182

Re: Special Exception Application SE 2015-SU-018

Dear Mr. Martin:

At a regular meeting of the Board of Supervisors held on October 20, 2015, the Board approved Special Exception Application SE 2015-SU-018 in the name of Chantilly Auto Care Center, LLC. The subject property is located at 13704 Lee Jackson Memorial Highway, on approximately of 1.06 acres land, zoned C-8, WS, and HC in the Sully District [Tax Map 34-4 ((5)) A]. The Board's action permits a service station/mini-mart in a highway corridor overlay district and waiver of the minimum lot width requirements for the C-8 zoning district, pursuant to Sections 4-804 and 7-607 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. These Special Exceptions are granted for and run with the land indicated in this application and are not transferable to other land.
2. These Special Exceptions are granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception plat approved with these applications, as qualified by these development conditions.
3. These Special Exceptions are subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan (which may include a minor site plan) submitted pursuant to these special exceptions shall be in substantial conformance with the approved Special Exception Plat entitled "Chantilly Service Station," prepared by Walter Philips Inc. consisting of eight sheets and dated September 9, 2015 and these conditions. Minor modifications to the approved special exceptions may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.

Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 711

Email: clerktothebos@fairfaxcounty.gov

<http://www.fairfaxcounty.gov/bosclerk>

4. The stormwater management facilities shown on the SE Plat shall be in conformance with the County Stormwater Management Ordinance and shall be reviewed for adequacy by DPWES at the time of site plan review; if any inadequacies are identified, appropriate corrective measures shall be employed to the satisfaction of DPWES, prior to final site plan approval; provided those measures are in substantial conformance with the SE Plat, no SEA shall be required.
5. Parking spaces shall meet the provisions of Article 11 of the Zoning Ordinance and the geometric design standards in the Public Facilities Manual, as determined by DPWES; a parking tabulation which demonstrates that parking requirements are met shall be submitted to DPWES prior to issuance of a Non-Residential Use Permit (Non-RUP). Vehicle storage spaces shall not be subject to these standards.
6. Right-of-way shown on the SE Plat along Route 50 (Lee Jackson Memorial Highway) shall be dedicated to the Board of Supervisors. All dedications shall be in fee simple for public street purposes, for no consideration, monetary or otherwise, and shall occur at the time of site plan approval.
7. The hours of operation for the service station fuel sales and mini-mart may be 24 hours a day; however, the service station service bays shall be limited to 7:30 A.M. to 5:00 PM Monday through Friday and 8 A.M. to 2 P.M. on Saturday.
8. No major mechanical or body work; repair of transmissions or differentials; straightening of body parts; painting, welding, or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in service stations, or to an extent that the use would be considered a Vehicle Major Service Establishment by the County of Fairfax, shall be permitted.
9. In no event shall any one abandoned, wrecked or inoperable vehicle be stored outdoors for a period exceeding 72 hours.
10. All servicing of vehicles shall be performed within an enclosed service bay and shall not be performed elsewhere on the Property, except for limited procedures such as changing windshield wipers or filling tires with air. Doors to the service bays shall be closed when performing any service that generates excessive noise.
11. There shall be no outside storage of materials except for the outdoor storage or display of goods permitted at a service station by the Zoning Ordinance, which is a maximum of fifty (50) square feet of accessory outdoor storage and display area for goods offered for sale

12. Prior to the issuance of a Non-Rup, a building permit for the existing service station building expansion shown on the SE Plat shall be obtained.
13. Landscaping shall be provided in general as shown on the SE Plat. The exact number, size and spacing of trees and other plant materials shall be submitted at the time of final site plan review and shall be subject to the review and approval UFM.
14. The Applicant shall conform strictly to the limits of clearing and grading as shown on the SE Plat, subject to allowances specified in these conditions and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and trails in areas protected by the limits of clearing and grading as shown on the SE Plat, they shall be located in the least disruptive manner necessary, as determined by the UFMD, DPWES. A replanting Plan shall be developed and implemented, subject to approval by UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.

All trees shown to be preserved on the SE plat shall be protected by tree protection fencing and shall be erected at the limits of clearing and grading as shown on the SE plat prior to any demolition or land-disturbing activity on the site. Tree protection fencing in the form of four foot high, 14 gauge welded wire attached to six foot steel posts driven 18 inches into the ground and placed no further than ten feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees,. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFM, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by the UFM, DPWES. If it is determined to be necessary by UFMD, DPWES at the time of the inspection, the Applicant shall retain the services of a certified arborist or registered consulting arborist to monitor all construction and demolition work and tree preservation efforts in order to ensure that the existing vegetation on site is adequately protected, as determined by UFMD, DPWES.

15. All signage on the subject property shall comply with Article 12 of the Zoning Ordinance.
16. All lighting on the subject property shall comply with the performance standards set forth in Article 14 of the Zoning Ordinance.

SE 2015-SU-018
October 21, 2015

This approval, contingent on the above noted conditions, shall not relieve the Applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The Applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-015 of the Zoning Ordinance, this Special Exception shall automatically expire, without notice twenty four (24) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Supervisors may grant additional time to establish the use of to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

The Board also modified:

- Modified the transitional screening and barrier requirements to the north, west and east, in favor of the landscaping treatments depicted on the SE plat and as conditioned
- The peripheral parking lot landscaping in favor of the landscaping treatments depicted on the SE plat and as conditioned
- The trail requirements on Route 50 (Lee Jackson Memorial Highway) in favor of the existing 8 foot wide trail and the proposed 10 foot wide trail shown on the SE Plat

Sincerely,



Catherine A. Chianese
Clerk to the Board of Supervisors

SE 2015-SU-018
October 21, 2015

cc: Chairman Sharon Bulova
Supervisor Michael Frey, Sully District
Tim Shirocky, Acting Director, Real Estate Division, Dept. of Tax Administration
Barbara C. Berlin, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Thomas Conry, Dept. Manager, GIS, Mapping/Overlay
Michael Davis, Section Chief, Transportation Planning Division
Donald Stephens, Transportation Planning Division
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
Jill Cooper, Executive Director, Planning Commission
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation



June 06, 2020

Leslie Johnson,
Zoning Administrator
Department of Planning and Zoning
12055 Government Center
Fairfax, VA 22035

Subject: Request for extension of Special Exception SE 2015-SU-018- Chantilly Auto Care Center, LLC

Dear Ms. Johnson,

On behalf of our client, Chantilly Auto Care Center LLC, we hereby request an extension of the above referenced special exception validity for one year.

We are requesting this extension, given the fact that the SE 2015-SU-018 is valid till July 1, 2020. The applicant has prepared the necessary site plans and they are approved at this time. However, bonding, dedication and site development permits have not yet been completed. Difficulties with the building review department have delayed the applicant's ability to secure satisfactory inspection of the two repair bays even though they have been operational for several years. Further work with County cooperation is necessary. In the meantime, the applicant requests your cooperation to allow a one-year extension so that financing can be secured, and post COVID competitive contractor bidding can be achieved.

Should you have any questions, I shall be happy to clarify any issues.

Regards,
Pranisha Karanjit,
The Plan Source, Inc
571-565-9888

Board Agenda Item
October 6, 2020

ADMINISTRATIVE - 6

Additional Time to Commence Construction for Special Exception SE 2013-LE-005,
Franconia Square, LLC (Lee District)

ISSUE:

Board consideration of additional time to commence construction for SE 2013-LE-005, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve eighteen (18) months additional time for SE 2013-LE-005 to January 1, 2022.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On December 3, 2013, the Board of Supervisors approved Special Exception SE 2013-LE-005, subject to development conditions. This application was filed in the name of Franconia Square, LLC to resolve a notice of violation and permit a service station within the C-5 and Highway Corridor Overlay zoning district to remain at a property located at 6136 Franconia Road, Tax Map 81-3 ((4)) 4A (see locator Map in Attachment 1). The service station, a Category 6 special exception use, is permitted pursuant to Section 4-504 of the Zoning Ordinance. SE 2013-LE-005 was approved with a condition that the use be established or construction commenced and diligently prosecuted within eighteen (18) months of the approval date unless the Board grants additional time, or in this case, June 3, 2015. The development conditions for SE 2013-LE-005 are included as part of the Clerk to the Board's letter contained in Attachment 2.

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The Board of Supervisors approved several additional time requests which permitted extensions to June 3, 2017. However, §15.2-2209.1 of the *Code of Virginia* permitted an automatic extension of this deadline to July 1, 2020. On April 21, 2020, the Department of Planning and Development (DPD) received a letter dated April 20, 2020, from Roland Joun, agent for the Applicant, requesting eighteen (18) months of additional time (see Attachment 3). While the current expiration date is July 1, 2020, the Special Exception will not expire pending the Board's action on the request for additional time.

The applicant has been working to commence construction to relocate the entrance and the parking lot but has not been able to obtain the necessary permits. Mr. Joun states that the site plan was approved, but during the site plan and special exception, the property was owned by Nova Petroleum Realty LLC, and subsequently was transferred to GTY-CPG VA DC Leasing Inc., which is a publicly-traded company. Mr. Joun states the applicant has been working with the County and has hired a lawyer who has been coordinating with the new owners to secure all needed signatures for the required permits but he notes that since this is a publicly-traded company, and because of the change of ownership, it has been difficult and time-consuming to obtain the required signatures. Mr. Joun states that the eighteen (18) months of additional time to commence construction would provide the Applicant enough time to secure needed signatures and pursue permitting to bring the site into compliance.

Staff has reviewed Special Exception SE 2013-LE-005 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit a service station in the C-5 and HC zoning district. Further, staff knows of no change in land use circumstances that affects the compliance of SE 2013-LE-005 with the special exception standards applicable to this use, or which should cause the filing of a new special exception application and review through the public hearing process. Finally, the conditions associated with the Board's approval of SE 2013-LE-005 are still appropriate and remain in full force and effect. Staff believes that approval of the requested eighteen (18) months additional time is in the public interest and recommends that it be approved.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Clerk's Letter dated December 4, 2013, to John Manganello

Attachment 3: Letter dated April 20, 2020, to Leslie Johnson

Board Agenda Item
October 6, 2020

STAFF:

Rachel Flynn, Deputy County Executive

Barbara A. Byron, Director, Department of Planning and Development (DPD)

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPD

Suzanne Wright, Chief, Conformance Review & Acceptance Branch, ZED, DPD

Denise James, Chief, Environment & Development Review Branch, Planning Division,
DPD

Jerrell Timberlake, Staff Coordinator, ZED, DPD

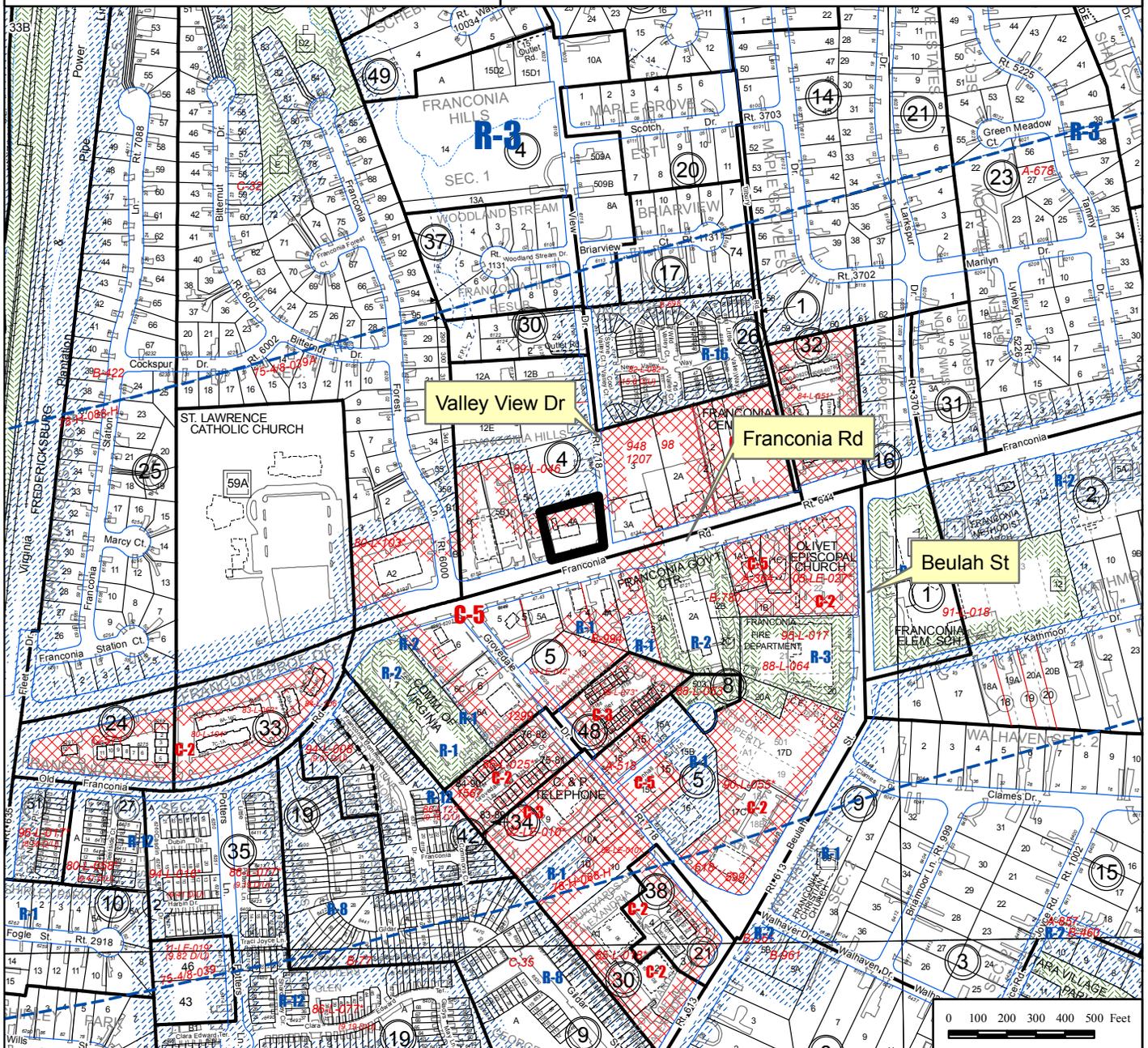
Special Exception

SE 2013-LE-005



Applicant: FRANCONIA SQUARE, LLC
Accepted: 04/05/2013
Proposed: SERVICE STATION
Area: 32088 SF OF LAND; DISTRICT - LEE
Zoning Dist Sect: 07-0607
Art 9 Group and Use: 6-07
Located: 6136 FRANCONIA ROAD, ALEXANDRIA, VA 22310

Zoning: C-5
Plan Area: 4,
Overlay Dist: HC
Map Ref Num: 081-3- /04/ /0004A





County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

December 4, 2013

John Manganello
Land Development Consultants, Inc.
10805 Main Street, Suite 700
Fairfax, VA 22030

Re: Special Exception Application SE 2013-LE-005

Dear Mr. Manganello:

At a regular meeting of the Board of Supervisors held on December 3, 2013, the Board approved Special Exception Application SE 2013-LE-005 in the name of Franconia Square, LLC. The subject property is located at 6136 Franconia Road, on approximately 32,088 square feet of land, zoned C-5 and HC in the Lee District [Tax Map 81-3 ((4)) 4A]. The Board's action permits a service station, pursuant to Section 7-607 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This Special Exception is granted only for the purpose(s), structure(s), and/or use(s) indicated on the Special Exception Plat approved with this application, as qualified by these development conditions. A copy of the Special Exception conditions shall be displayed in a visible location to customers.

This Special Exception is subject to the provisions of Article 17 of the Zoning Ordinance, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any site plan submitted pursuant to this special exception shall be in substantial conformance with the approved Special Exception plat entitled Franconia Shell and prepared by Land Development Consultants, Inc., containing seven sheets dated February 14, 2013 and revised through August 29, 2013 and these conditions. Minor modifications to the approved special exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.

Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903
Email: clerktothebos@fairfaxcounty.gov
<http://www.fairfaxcounty.gov/bosclerk>

4. Sales of food and other items indoors shall be limited to those permitted by the definition of a "Service Station" in Article 20 of the Zoning Ordinance and shall be limited to 250 square feet of gross floor area. There may be up to 50 square feet of accessory outdoor storage and display areas for goods offered for sale, but outdoor display and storage of items for sale, other than automobile fuel and oil, shall be prohibited.
5. The maximum number of service bays on site shall be limited to five as depicted on the Special Exception Plat. Vehicle repairs shall be performed within interior service bays only. No Virginia State emission testing shall be conducted in either of the two rear service bays.
6. No outdoor vehicle lifts shall be permitted.
7. No major vehicle repairs are permitted and outside storage of more than two abandoned, wrecked or inoperable vehicles on the site for more than 72 hours is prohibited.
8. The outdoor trash dumpster shall be enclosed by a board-on-board fence or other material that shall screen the trash dumpster from view. Such enclosure shall be provided within 60 days of this Special Exception approval.
9. The hours of operation for the service station shall be between 6:00 a.m. and 12:00 a.m., seven days a week; however, automotive repairs shall be limited to between 7:00 a.m. and 7:00 p.m., Monday through Friday and between 8:00 a.m. and 4:00 p.m. on Saturday and Sunday.
10. All exterior lighting, security, pedestrian and/or other incidental lighting, shall be in conformance with Part 9 of Article 14 of the Zoning Ordinance.
11. All signs shall be in conformance with Article 12 of the Zoning Ordinance and Section 10-4.1 of the Fairfax County Code, and Part 9 of Article 14 of the Zoning Ordinance. All non-conforming signs shall be removed within 60 days of the Special Exception approval. No pole-mounted signs shall be permitted.
12. No temporary signs (including "popsicle" style paper or cardboard signs), which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on-site or off-site.
13. A sidewalk five feet in width with handicap accessible ramps shall be constructed within 60 days of site plan approval along the site's Valley View Drive frontage.
14. Tree Preservation. The applicant shall submit a Tree Preservation Plan and Narrative as part of the first and all subsequent site plan submissions. The preservation plan and narrative shall be prepared by a Certified Arborist or a

Registered Consulting Arborist, and shall be subject to the review and approval of UFMD.

The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees to be preserved, as well as all on and off-site trees, living or dead with trunks 12 inches in diameter and greater (measured at 4 1/2 -feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) located within 25 feet to either side of the limits of clearing and grading. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the Special Exception Plat and those additional areas in which trees can be preserved as a result of final engineering. The tree preservation plan and narrative shall include all items specified in PFM 12-0507 and 12-0509. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

15. Tree Appraisal. The Applicant shall retain a professional arborist with experience in plant appraisal, to determine the replacement value of all trees 12 inches in diameter or greater located on the Application Property that are shown to be saved on the Tree Preservation Plan. These trees and their value shall be identified on the Tree Preservation Plan at the time of the first submission of the respective site plan(s). The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the so-called "Trunk Formula Method" contained in the latest edition of the Guide for Plan Appraisal published by the International Society of Arboriculture, subject to review and approval by UFMD.

At the time of the respective site plan approvals, the Applicant shall post a cash bond or a letter of credit payable to the County of Fairfax to ensure preservation and/or replacement of the trees for which a tree value has been determined in accordance with the paragraph above (the "Bonded Trees") that die or are dying due to unauthorized construction activities. The letter of credit or cash deposit shall be equal to 50% of the replacement value of the Bonded Trees. At any time prior to final bond release for the improvements on the Application Property constructed adjacent to the respective tree save areas, should any Bonded Trees die, be removed, or are determined to be dying by UFMD due to unauthorized construction activities, the Applicant shall replace such trees at its expense. The replacement trees shall be of equivalent size, species and/or canopy cover as approved by UFMD. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any Bonded Tree that is dead or dying or improperly removed due to unauthorized construction activity. This payment shall be determined based on the Trunk Formula Method and paid to a fund established by the County for furtherance of tree preservation objectives.

Upon release of the bond for the improvements on the Application Property constructed adjacent to the respective tree save areas, any amount remaining in the tree bonds required by this proffer shall be returned/released to the Applicant.

16. **Tree Preservation Walk-Through.** The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFMD, DPWES, representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.
17. **Limits of Clearing and Grading.** The Applicant shall conform strictly to the limits of clearing and grading as shown on the Special Exception Plat, subject to allowances specified in these conditions and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the Special Exception Plat, they shall be located in the least disruptive manner necessary as determined by the UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by the UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.
18. **Tree Preservation Fencing.** All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four foot high, 14 gauge welded wire attached to six foot steel posts driven 18 inches into the ground and placed no further than 10 feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" proffer below.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by the UFMD, DPWES.

19. **Root Pruning.** The Applicant shall root prune, as needed to comply with the tree preservation requirements of these proffers. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:
 - Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
 - Root pruning shall take place prior to any clearing and grading, demolition of structures.
 - Root pruning shall be conducted with the supervision of a certified arborist.
 - An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.
20. **Site Monitoring.** During any clearing or tree/vegetation/structure removal on the Applicant Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by the UFMD. The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation proffers, and UFMD approvals. The monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.
21. The applicant shall demonstrate at time of site plan that the proposed Magnolia Virginiana (Sweetbay Magnolia) plantings shall not be located within a four foot restrictive planting area and shall not conflict with street planting regulations of the Virginia Department of Transportation (VDOT).
22. If 10-year tree canopy credits are taken, at the time of site plan, the applicant shall

- provide a letter certifying that all native trees planted on the site for additional 10-year tree canopy credits as provided by §12-0510.4B(5) have been propagated from seed or non-genetically modified germoplasm collected within the mid-Atlantic region.
23. Prior to site plan approval, approximately 211 square feet of right-of-way at the northeast corner of the site as shown on the Special Exception Plat shall be dedicated to the Board of Supervisors in fee simple in conformance with the policies and requirements of Fairfax County and VDOT.
 24. If a waiver of the design standard for the site's easternmost access point on Franconia Road is not granted at the time of site plan, the applicant shall construct the entrance as directed by VDOT.
 25. Vehicles parked on-site shall be parked only in designated, striped parking spaces at all times. Design of such parking spaces shall meet Zoning Ordinance and Public Facilities Manual requirements.
 26. Prior to site plan approval, the applicant shall provide a detailed comparison of existing versus proposed impervious area tabulation/map. The existing impervious area shall be established based on Special Permit S-168-74, which was approved on November 13, 1974. Based on this, stormwater detention and requirements shall be met, if not waived pursuant to the Public Facilities Manual and the applicant shall establish the impervious area of the site, recalculate the phosphorus removal, and provide additional Best Management Practices as necessary.
 27. The site shall be patrolled daily by the service station employees to pick up any trash on the site.
 28. The selling, renting or leasing of trucks, trailers or automobiles on-site shall be prohibited.
 29. If not already provided, an automotive fluid separator and/or underground fluid container shall be installed within 60 days of this Special Exception approval and designed such that any areas that could have oil or other vehicular fluid spills shall be contained. Such facility shall be properly maintained and properly drained and any liquids contained within shall be properly disposed of on a routine basis.
 30. The applicant shall provide a separate container or enclosed container or enclosed area within the two storage trailers where automotive fluid or liquids are stored in order to capture spillage that may leak onto the floor of the storage trailer or onto the ground. Such container or enclosed area shall be provided within 60 days of this Special Exception approval.

31. To reduce the noise levels associated with any impact guns used for vehicle service, the employees of the vehicle light service establishment shall use "quiet gun" impact guns in the two rear service bays. This model of impact guns shall be the only model used during all hours of operation.
32. All applicable trade permits and final inspections shall be obtained for the existing additions (two rear service bays) and new construction prior to Non-Residential Permit approval.
33. No outdoor containers for clothing, books, etc. shall be permitted on-site.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Sect. 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, 18 months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

The Board also:

- Modified the Countywide trails plan for a major paved trail along Franconia Road in favor of the existing five-foot wide concrete sidewalk.
- Modified Section 13-303 of the Zoning Ordinance for the transitional screening requirement along the northern property line to that shown on the Special Exception plat.
- Waived Section 13-203 of the Zoning Ordinance for peripheral parking lot landscaping along Franconia Road and Valley View Drive.

Sincerely,



Catherine A. Chianese
Clerk to the Board of Supervisors

cc: Chairman Sharon Bulova
Supervisor Jeffrey McKay, Lee District
Tim Shirocky, Acting Director, Real Estate Division, Dept. of Tax Administration
Barbara C. Berlin, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Thomas Conry, Dept. Manager, GIS, Mapping/Overlay
Angela K. Rodeheaver, Section Chief, Transportation Planning Division
Donald Stephens, Transportation Planning Division
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
Jill Cooper, Executive Director, Planning Commission
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation

WILKERSON & ASSOCIATES, INC.
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rjoun@wilkersonassociates.com

*Received
4-21-2020
Zoning
evaluation
DIV
[Signature]*

April 20, 2020

Leslie Johnson, Zoning Administrator
Office of the Zoning Administrator
12055 Government Center Parkway, Suite 801
Fairfax, VA 22035-5509

Tracy Strunk, AICP
Fairfax County
Department of Planning and Zoning
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, VA 22035-5509
Tracy.strunk@fairfaxcounty.gov

RE: Time Extension
Special Exception SE 2013-LE-005
6136 Franconia Road
Franconia Square, LLC
Tax Map Ref: 81-3 ((A)) 4A
Zoning District: C-5

Dear Ms. Johnson and Ms. Strunk:

On behalf of Franconia Square, LLC, I am writing you this letter requesting an 18 months extension for the above referenced special exception which is due to expire on July 1, 2020. We have made our best efforts to commence construction of the site work for relocating the entrance and the parking lot but have not been able to obtain the necessary permits.

At the time of the site plan and the special exception approval process was approved, the above referenced property was owned by Nova Petroleum Realty LLC and subsequently was transferred to GTY-CPG VA DC LEASING INC., which is a publicly traded company with an address 2 Jericho PLZ Suite 110 Wing C, NY 11753.

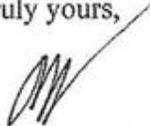
James Bacon of Allred, Bacon, Halfill & Young, P.C., has represented Franconia Square, LLC and been working with GTY-CPG VA DC LEASING INC. to secure all needed signatures for the required permits to comply with the Special Exception requirements and to obtain any

required permits for the improvements. Mr. Bacon has also sought the assistance of Paulk Emmert, Esq. from the Office of the County Attorney in this regard. Since this a publicly traded company, and because there had been a change in ownership since the Special Exception was initially granted, it has been difficult and taking a long time to get the required signatures.

As this issue is not under the control of Franconia Square, LLC we are asking you to grant this time extension request.

Thank you in advance for your cooperation in this matter and please let me know if you need any additional information in this matter.

Very truly yours,



Roland Joun, P. E.

Cc: Franconia Square, Franconiashell@hotmail.com
Jim Bacon, jbacon@abhylaw.com

Board Agenda Item
October 6, 2020

ACTION - 1

Adoption of a Resolution Designating the Springfield Community Business Center (CBC) Commuter Parking Garage as a Revenue Sharing Project (Lee District)

ISSUE:

Approval of a resolution designating the Springfield CBC Commuter Parking Garage as a Revenue Sharing project.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the resolution, substantially in the form of Attachment 1, designating the Springfield CBC Commuter Parking Garage as a Revenue Sharing project, as required by the Commonwealth Transportation Board, and transferring available revenue sharing funds to this project.

TIMING:

Board approval is requested on October 6, 2020, before the construction contract for the Springfield CBC Commuter Parking Garage project is awarded in November 2020.

BACKGROUND:

The Revenue Sharing program is administered by VDOT, in cooperation with the participating localities, under the authority of Section 33.2-357 of the *Code of Virginia* and the Commonwealth Transportation Board's Revenue Sharing Program Policy. An annual allocation of funds for this program is designated by the Commonwealth Transportation Board.

The Revenue Sharing Program provides additional funding for use by a county, city, or town to construct, reconstruct, improve or maintain the highway systems within such county, city, or town, and for eligible rural additions in certain counties of the Commonwealth. Local funds are required to match state funds, dollar for dollar, with statutory limitations on the amount of state funds authorized per locality.

The following projects were completed with a remaining balance in Revenue Sharing funds of \$4,174,200:

- Preliminary Engineering for Bus Stops and Safety Improvements on Route 1 (UPC 67772) - \$332,338 (\$166,169 in state match and \$166,169 local match)

Board Agenda Item
October 6, 2020

- Route 29 Widening from Legato Road to Shirley Gate Road (UPC 105397) - \$3,841,862 (\$1,920,931 state match and \$1,920,931 local match).

Staff recommends designating the Springfield CBC Commuter Parking Garage as a Revenue Sharing project, so that these available funds in the amount of \$4,174,200 can be transferred to the project. The timing of the construction contract award for the Springfield CBC Commuter Parking Garage project meets the requirements for transferring Revenue Sharing funds, because the construction contract award is anticipated within the next year. The actual award date is anticipated in November 2020.

FISCAL IMPACT:

Funding for the local cash match will be provided by Fund 40010 - County and Regional Transportation, as previously identified. There is no fiscal impact on the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution Designating the Springfield CBC Commuter Parking Garage as a Revenue Sharing Project and transferring available funds to this project.

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
W. Todd Minnix, Chief, Transportation Design Division, FCDOT
Michael Guarino, Chief, Capital Projects Section, FCDOT
Ray Johnson, Chief, Funding Section, FCDOT
Smitha Chellappa, Transportation Planner, Funding Section, FCDOT

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, October 6, 2020, at which a quorum was present and voting, the following resolution was adopted.

PROJECT ENDORSEMENT RESOLUTION

WHEREAS, Fairfax County desires to construct the Springfield Community Business Center (CBC) Commuter Parking Garage (Lee District); and,

WHEREAS, Fairfax County supports this project as a priority; and,

WHEREAS, Fairfax County desires to designate the above project as a Revenue Sharing Project and requests that Revenue Sharing funds in the total amount of \$4,174,200 (including state and local match) be transferred from UPC 67772, Preliminary Engineering for Bus Stops and Safety Improvements on Route 1, and UPC 105397, Route 29 Widening from Legato Road to Shirley Gate Road, to the Springfield CBC Commuter Parking Garage project, UPC 106274; and,

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, designates the Springfield CBC Commuter Parking Garage (UPC 106274) as a Revenue Sharing project and that VDOT is hereby requested to transfer all remaining available funds (\$4,174,200) in previously allocated Revenue Sharing Funds and previously committed Local Match from UPC 67772 and UPC 105397 to UPC 106274; and

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby commits to fund its local share of preliminary engineering, right-of-way and construction (as applicable) of all project(s) under agreement with the Virginia Department of Transportation in accordance with the project financial document(s); and

BE IT FURTHER RESOLVED that the Fairfax County Department of Transportation is authorized to execute all agreements and/or addendums for any approved projects with the Virginia Department of Transportation.

Adopted this 6th day of October 2020, Fairfax, Virginia.

A Copy — Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

Board Agenda Item
October 6, 2020

ACTION - 2

Approval of Fairfax County's Comments on the Washington Metropolitan Area Transit Authority's Proposed FY 2021 Budget Amendments and Service Reductions

ISSUE:

Board approval of the attached comments on the Washington Metropolitan Area Transit Authority's (WMATA) proposed FY 2021 budget amendments and related service reductions (Attachment 1).

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the attached letter on WMATA's proposed FY 2021 budget amendments and related service reductions for FY 2021 (Attachment 1).

TIMING:

The Board of Supervisors is requested to act on this item on October 6, 2020, so that the County can submit a formal response to the WMATA Board regarding the proposed service reductions related to the FY 2021 amended budget prior to the end of the period scheduled for late October. The exact date has yet to be announced.

BACKGROUND:

The WMATA budget outlook for the remainder of FY 2021 is worse than anticipated when the budget was revised on May 28, 2020. This negative outlook is primarily attributable to the impact of Covid-19 on travel patterns throughout the National Capital Region. The ridership outlook for the remainder of the fiscal year continues to be significantly lower than original projections. In addition, Federal CARES Act funds are projected to be entirely depleted in advance of the end of the fiscal year based on the current spend rate. Consequently, the expected budget gap, absent additional federal assistance, or a significant improvement in ridership, is expected to be as much as \$212 million by the end of FY 2021. The budget outlook for FY 2022 is even more severe. The projected FY 2022 budget gap could be as high as \$716 million, unless immediate action is taken.

On September 18, 2020, the WMATA Board proposed the following service changes and cost saving measures:

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For Metrorail, the proposed service changes include:

- Delaying the opening of Phase 2 of the Silver Line from April 1, 2021, to July 1, 2021 (\$53.8 million);
- Standardizing weekday rail service frequency to 12 minutes on each line (\$29.7 million);
- Reducing the number of trains/operators by shortening trips where possible (i.e. “turnbacks” on the Red and Yellow Lines) (\$2.8 million); and
- Shortening the span of service by ten hours/week, so that the system closes at 9 pm Sun-Thu (11 pm Fri/Sat) (\$5.5 million).

For Metrobus, WMATA is proposing retaining the August (current) Service Plan which is about 80 percent of pre-Covid-19 service levels. This action will result in \$62.6 million in savings. Also, beginning January 1, 2021, WMATA proposes to reinstitute the collection of bus fares, which will generate approximately \$5.6 million in savings. The proposed service changes are contained in Attachment 2. These changes affect the following lines in Fairfax County:

1A, 1B, 1C, 2A, 2B, 3A, 3T, 4A, 4B, 5A, 7W, 10A, 11Y, 15K, 16A, 16C, 16E, 16L, 17G, 17H, 17K, 17L, 18G, 18H, 18J, 21D, 23A, 23T, 26A, 28F, 28G, 29C, 29G, 29W

County staff is reviewing options for converting some Metrobus routes (3A, 3T, 15K, and 29W) to Fairfax Connector service beginning July 1, 2021.

In addition to proposed service changes, WMATA is also proposing to defer \$30 million in capital projects and implement \$43 million in Management Initiative savings in the following areas:

- Contractor Cost Reductions;
- Paratransit Contracts;
- Eliminate Runners for Station Managers;
- Assign Only 1 Station Manager per Station;
- Defer non-represented Pay for Performance; and
- Furlough/Layoff non-represented personnel.

In response to the proposed service and fare collection changes and to coincide with the beginning of the open comment period, the Department of Transportation has drafted the proposed letter (Attachment 1) from Fairfax County Board of Supervisors to the WMATA Board, outlining the County’s position. Highlights of the letter are:

- Silver Line Phase 2 Opening – The budgetary impacts of the Covid-19 pandemic may necessitate a proposed delay in initiating revenue service, but the construction of the project should proceed as scheduled toward substantial

Board Agenda Item
October 6, 2020

completion at the end of 2020, so no additional delays in the revenue service date occur.

- Metrorail Service Changes – The equal distribution of reduced headways, combined with a tolerable level of service on all Metrorail lines seems appropriate and reasonable, given current demand and the need to generate confidence in the system and generate some level of revenues.
- Metrobus Service Changes – The proposed Metrobus service cuts maintain the current levels of service being provided by WMATA. These cuts are understandable, as long as the proposed reductions are only temporary. The Board expects all Metrobus services to resume at the pre-March 2020 service levels once the threat of Covid-19 abates.
- Fare Collection Changes – The Board supports the decision to reimplement front door boarding and the collection of fares on Metrobus routes beginning January 1, 2021, assuming drivers' shields have been installed. However, the Board remains concerned about public health and reserves the right to revisit this endorsement if the pandemic worsens.
- Marketing WMATA's Covid-19 Response – The Board encourages the WMATA management team to make a concerted effort to market more widely the safety and cleaning protocols that have been put in place to provide a safe environment and encourage transit riders to return to the system.

FISCAL IMPACT:

There is no immediate impact to Fund 30000 Metro Operations and Construction or the County's General Fund, because there is no change in subsidy levels in the WMATA Budget. This means the County is paying the same subsidy currently budgeted for FY 2021, but receiving less service through the balance of the year, unless additional federal funds become available or ridership increases significantly.

ENCLOSED DOCUMENTS:

Attachment 1: Fairfax County's Comments on the Washington Metropolitan Transit Authority's Proposed Budget Amendments and Service Cuts for FY 2021
Attachment 2: Resolution: Approval of Reinstatement of Metrobus Fare Collection and Front Door Boarding and Authorization of Public Hearings on Proposed Service Changes for FY 2021

Board Agenda Item
October 6, 2020

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT

Dwayne Pelfrey, Chief, Transit Services, FCDOT

Brent Riddle, Sr. Transportation Planner, Coordination and Funding Division, FCDOT



JEFFREY C. MCKAY
CHAIRMAN

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

BOARD OF SUPERVISORS
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FAX 703-324-3955

chairman@fairfaxcounty.gov

October 6, 2020

Mr. Paul J. Wiedefeld
General Manager and Chief Executive Officer
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Reference: Washington Metropolitan Area Transit Authority’s (WMATA) Proposed FY 2021 Budget Amendment and Service and Fare Collection Changes

Dear Mr. Wiedefeld:

On October 6, 2020, the Fairfax County Board of Supervisors approved the following comments regarding the proposed budget amendments and proposed service changes included in the proposed FY 2021 Budget Update and FY 2022 Outlook.

- *Silver Line Phase II Opening* – Due to Covid-19 and in an effort to balance the FY 2021 budget, the WMATA Board proposes to delay the anticipated opening of the Silver Line Phase II to Dulles Airport from April 1, 2021, to July 1, 2021. While this proposal is understandable, the Board wants to emphasize the need for the entire system to be ready to operate as soon as possible. The Silver Line expansion is already more than a year overdue, and efforts should be made to reach substantial completion by the end of 2020, so that additional delays in the start of revenue service do not occur.
- *Metrorail Service Changes* – The Board is appreciative of the even-handedness of the service changes proposed for all of the Metrorail lines. By offering consistent and “frequent-enough” levels of service on all lines, customers throughout the Metrorail service area will still be able to rely on the system for commuting and other types of trips. Most importantly, the Board believes that this level of service will help restore customer confidence and mitigate the loss of fare revenues that more drastic measures might have incurred.
- *Metrobus Service Cuts* – In general, the Board is understanding of the service changes being proposed for Metrobus service, with the understanding that the proposed service cuts are only considered temporary. The use of the word “Discontinued” in describing the proposed service reductions, seems to imply a permanent reduction. In that event, the Board objects. Fairfax County, like all jurisdictions in the compact, has budgeted for a level of service that

Mr. Paul Wiedefeld
February 25, 2020
Page 2 of 2

is significantly higher than what is operating. Once the effects of the pandemic subside to an acceptable level, the Board will want all FY 2021 budgeted Metrobus services to operate at pre-March 2020 levels. Reinstating these Metrobus services should not result in increases to local subsidies.

- *Fare Collection Changes* – Given WMATA’s severe financial situation, the Board supports the decision to reimplement fares and front door boarding on Metrobus routes beginning on January 1, 2021, assuming that drivers’ shields have been installed. That said, the Board remains sensitive to the health concerns of all our citizens, so we will be monitoring the pandemic as things evolve. We reserve the right to revisit this decision in the event that the situation worsens.

The Fairfax County Board is committed to ensuring the long-term success of the Metro system. To that end, we appreciate the need to take significant steps to shore up the current and future budget outlook. In addition to the measures already proposed, the County also hopes that the WMATA management team makes a concerted effort to market more widely the safety and cleaning protocols that have been put in place to provide a safe environment and encourage transit ridership to come back.

Thank you again for the opportunity to comment on these proposed actions.

Sincerely,

Jeffery C. McKay
Chairman

cc: Members, Fairfax County Board of Supervisors
The Honorable Tim Kaine, Senator, United States Senate
The Honorable Mark Warner, Senator, United States Senate
The Honorable Donald Beyer, Congressman, United States House of Representatives
The Honorable Gerry Connolly, Congressman, United States House of Representatives
The Honorable Jennifer Wexton, Congresswoman, United States House of Representatives
Members, Fairfax County Delegation to the General Assembly
Bryan J. Hill, County Executive
Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Department of Transportation
Todd Wigglesworth, Chief, Coordination and Funding Division, Department of Transportation
Brent Riddle, Transportation Planner IV, Department of Transportation

SUBJECT: APPROVAL OF REINSTATEMENT OF METROBUS FARE COLLECTION AND FRONT DOOR BOARDING AND AUTHORIZATION OF PUBLIC HEARINGS ON PROPOSED SERVICE CHANGES FOR FISCAL YEAR 2021

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, Pursuant to WMATA Compact § 60, the Board of Directors has sole authority over fares to be charged by WMATA; and

WHEREAS, Compact § 62 requires the Board to conduct public hearings prior to implementation of a major service reduction; and

WHEREAS, In Resolution 2020-08, the Board waived for 60 days the payment of all fares on Metrobus, including cash payments, and required rear-door only boarding and exiting, except for customers who use wheelchairs who will continue to board via the wheelchair lift at the front door; and

WHEREAS, In Resolution 2020-19, the Board extended the fare waiver and rear-door boarding for the duration of the coronavirus pandemic health emergency or until the General Manager and Chief Executive Officer (GM/CEO) recommends reinstatement of fare collection and front door boarding on Metrobus; and

WHEREAS, The GM/CEO now recommends reinstatement of fare collection and front door boarding and multi-door exiting on Metrobus; and

WHEREAS, The Board seeks public comment on implementation of proposed major service changes to Metrorail and Metrobus as shown in Attachments A and B;

NOW, THEREFORE, be it

RESOLVED, That effective January 1, 2021, the Board of Directors reinstates Metrobus fare collection, including cash payments, and front door boarding and multi-door exiting; and be it further

RESOLVED, That the Board of Directors authorizes staff to conduct Compact public hearings on proposed Metrorail and Metrobus service changes as more fully detailed in Attachments A and B; and be it further

RESOLVED, That subject to the Board of Directors' actions on the Staff Report from this public hearing, it is expected that the revised fiscal year 2021 budget will be reduced by certain management actions, approved service changes, and deferred capital projects with no expected change to jurisdictional subsidy payments; and be it finally

RESOLVED, That in order to conduct a public hearing and allow public participation on proposed service changes as soon as possible, this Resolution shall take effect immediately.

Reviewed as to form and legal sufficiency,

/s/ Patricia Y. Lee

Patricia Y. Lee
Executive Vice President and General Counsel

WMATA File Structure Nos.:
9.12.9 Tariff (WMATA Fare Structure)
18.8 Public Hearings and Meetings

Attachment A

Proposed Metrorail Service Changes

1 Operate Saturday Headways on Weekdays

Blue, Orange, Green, Yellow and Silver Line weekday headways would increase from 8 minutes to 10 minutes during peak periods, and weekday off-peak headways would be reduced from 15 minutes to 12 minutes.

Red Line weekday headways change from 5 minutes to 6 minutes all day.

2 Implement Turnbacks on the Red Line

On weekdays only, 50 percent of Red Line trips operate between Grosvenor-Strathmore and Silver Spring only

3 Implement Turnbacks on the Yellow Line

All Yellow Line trains operate between Huntington and Mt. Vernon 7-days per week.

4 Close Rail Earlier Sunday Through Thursday

The Metrorail system would close at 9 pm Sunday through Thursday instead of 11 pm; Friday and Saturday closure would remain at the current 11 pm.

Attachment B

Proposed Metrobus Service Changes

Discontinue Late Night Service

All trips (on all lines) starting after 12 am will be discontinued

Saturday and Sunday span will be reduced (in excess of the systemwide 12 am cut-off) on the following lines:

K12 – Forestville

G12, G14 – Greenbelt-New Carrollton

H11, H12, H13 – Marlow Heights-Temple Hills (see also frequency reductions)

R1, R2 – Riggs Road

K6 – New Hampshire Avenue-Maryland (see also Saturday/Sunday frequency reductions)

Saturday and Sunday frequency will be reduced on the following lines:

23A, 23B, 23T – McLean-Crystal City

K6 – New Hampshire Avenue-Maryland (see also Saturday/Sunday span reductions)

Y2, Y7, Y8 – Georgia Avenue-Maryland

Saturday and Sunday service will be discontinued on the following lines:

M6 – Fairfax Village

30N, 30S – Friendship Heights-Southeast

NH2 – National Harbor-Alexandria

V12 – District Heights-Suitland (discontinue Sunday service only, Saturday service will still operate)

T14 – Rhode Island Avenue-New Carrollton (discontinue Sunday service only, Saturday service will still operate with a reduced span)

Z6 – Calverton-Westfarm

Weekday span will be reduced (in excess of the systemwide 12am cut-off) on the following lines:

89, 89M – Laurel

T2 – River Road

Frequencies will be reduced on the following lines:

42,43 – Mt. Pleasant

74 – Convention Center-SW Waterfront

D4 – Ivy City-Franklin Square

E4 – Military Road-Crosstown

H2, H3, H4 – Crosstown

D8 – Hospital Center
H6 – Brookland-Fort Lincoln
H8, H9 – Park Road-Brookland
U4 – Sheriff Road-River Terrace
U5, U6 – Marshall Heights
U7 – Deanwood–Minnesota Avenue
W2, W3 – United Medical Center-Anacostia
W6, W8 – Garfield-Anacostia Loop
D6 – Sibley Hospital-Stadium Armory
2A – Washington Blvd.-Dunn Loring
3A – Annandale Road
5A – DC-Dulles
22A, 22C, 22F – Barcroft-South Fairlington
MW1 – Metroway-Potomac Yard
C11, C13 – Clinton
H11, H12, H13 – Marlow Heights-Temple Hills (see also Saturday/Sunday span reductions)
F12 – Ardwick Industrial Park Shuttle
F8 – Langley Park-Cheverly
F13 – Cheverly-Washington Business Park
83, 86 – College Park
C8 – College Park-White Flint
F6 – New Carrollton-Fort Totten
Z2 – Colesville-Ashton
J4 – College Park-Bethesda
L8 – Connecticut Avenue-Maryland
J1, J2 – Bethesda-Silver Spring
Q1, Q2, Q4, Q5, Q6 – Viers Mill Road

Weekday frequencies will be reduced and service will be discontinued on Saturdays and Sundays on the following lines:

D2 – Glover Park-Dupont Circle
G2 – P Street-LeDroit Park
62,63 – Takoma-Petworth
E2 – Ivy City-Fort Totten
X8 – Maryland Avenue
C12, C14 – Hillcrest Heights
R12 – Kenilworth Avenue
R4 – Queens Chapel Road

The following lines will be discontinued:

37 – Wisconsin Avenue Limited

D1 – Glover Park-Franklin Square
D5 – Macarthur Blvd.-Georgetown
E6 – Chevy Chase
H1 – Brookland-Potomac Park
S1 – 16 th Street-Potomac Park
B8, B9 – Fort Lincoln Shuttle
G9 – Rhode Island Avenue Limited
V1 – Benning Heights-M Street
X1, X3 – Benning Road
39 – Pennsylvania Avenue Limited
A9 – Martin Luther King Jr. Ave. Limited
W1 – Shipley Terrace-Fort Drum
3T – Pimmit Hills
3Y – Lee Highway-Farragut Square
15K – Chain Bridge Road
26A – Annandale-East Falls Church
16L – Annandale-Skyline City-Pentagon
16Y – Columbia Pike-Farragut Square
29W – Braeburn Drive-Pentagon Express
7C,7P – Park Center-Pentagon
8S, 8W, 8Z – Foxchase-Seminary Valley
11Y – Mt. Vernon Express
18G, 18H, 18J – Orange Hunt
21A, 21D – Landmark-Bren Mar Park-Pentagon
28F, 28G – Skyline City
B29 – Crofton-New Carrollton
C28 – Pointer Ridge
87 – Laurel Express
B30 – Greenbelt-BWI Airport Express

Modifications are proposed to the following lines as follows:

L1, L2 Connecticut Avenue

- Discontinue all service on route L1
- Reduce frequency weekdays and weekends on route L2

N2, N4, N6 Massachusetts Avenue

- Discontinue all service on routes N2, fN4
- Add route N6 trips all day on weekdays
- Reduce frequency weekdays and weekends

60, 64 Fort Totten-Petworth

- Discontinue all service on route 60
- Reduce frequency weekdays and weekends on route 64

<p>96, 97 East Capitol Street-Cardozo</p> <ul style="list-style-type: none"> - Discontinue all service on route 97 - Operate route 96 to Capitol Heights Station at all times
<p>V7, V8 – Benning Heights-Alabama Avenue</p> <ul style="list-style-type: none"> - Discontinue all service on route V7 - Reduce frequency on weekdays
<p>1A, 1B Wilson Blvd.-Vienna</p> <ul style="list-style-type: none"> - Discontinue all service on route 1B
<p>1C – Fair Oaks-Fairfax Blvd.</p> <ul style="list-style-type: none"> - Eliminate route segment between Fair Oaks Mall and Alliance Drive - Reduce frequency on weekdays
<p>2B – Fair Oaks-Jermantown Road</p> <ul style="list-style-type: none"> - Eliminate route segment between Fair Oaks Mall and Alliance Drive - Reduce frequency on weekdays
<p>4A, 4B – Pershing Drive-Arlington Blvd.</p> <ul style="list-style-type: none"> - Discontinue all service on route 4A - Reduce frequency on Saturdays & Sundays
<p>16A, 16C, 16E - Columbia Pike</p> <ul style="list-style-type: none"> - Eliminate route 16C route segment between Pentagon and Downtown DC - Reduce frequency on Saturdays & Sundays
<p>7W – Lincolnia-Pentagon</p> <ul style="list-style-type: none"> - Discontinue entire line - Add new route 7A,7F to Lincolnia during weekday peak periods
<p>10A, 10E, 10N – Alexandria-Pentagon</p> <ul style="list-style-type: none"> - Discontinue all service on routes 10E & 10N
<p>17G, 17H, 17K, 17L – Kings Park Express</p> <ul style="list-style-type: none"> - Discontinue all service on routes 17K & 17L
<p>29C, 29G – Annandale</p> <ul style="list-style-type: none"> - Discontinue all service on route 29C
<p>P18, P19 – Oxon Hill-Fort Washington</p> <ul style="list-style-type: none"> - Discontinue all service on route P19 - Reduce frequency
<p>C21, C22, C26, C29 – Central Avenue</p> <ul style="list-style-type: none"> - Eliminate route C29 route segment between Pointer Ridge and Bowie State University
<p>K9 – New Hampshire Avenue MD Limited</p> <ul style="list-style-type: none"> - Discontinue entire line - Add new route K6 trips during weekday peak periods to improve frequency

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ACTION - 3

Adoption of an Uncodified Emergency Ordinance to Provide a Method to Assure Continuity in Fairfax County Government During the COVID-19 Emergency, as Authorized by Virginia Code § 15.2-1413, by Approving Temporary County-Operated Hypothermia Prevention Shelters and Authorizing a Streamlined Process for Approving Temporary Use Modifications in Response to the Emergency

ISSUE:

Virginia Code § 15.2-1413 authorizes the County to adopt ordinances that “provide a method to assure continuity in its government” in the event of a disaster. The COVID-19 emergency is a type of disaster contemplated by this statute, and this ordinance approves temporary County-operated hypothermia prevention shelters and authorizes a streamlined process for approving temporary use modifications in response to the emergency.

RECOMMENDATION:

The County Executive and County Attorney recommend that the Board adopt the emergency ordinance provided as Attachment 1.

TIMING:

Board action is requested on October 6, 2020, to assure the County’s ability to establish hypothermia prevention shelters in time to have them begin opening on November 1 and to assure the Zoning Administrator’s ability to allow a temporary modifications to activities, uses, and structures where they are needed to comply with state or other governmental COVID-related guidelines and requirements.

BACKGROUND:

As this Board is aware, on March 12, the Governor declared a State of Emergency due to COVID-19, and on March 30, he ordered all individuals in Virginia to remain at their place of residence until June 10. He also extended prior orders limiting gatherings to no more than ten people and closing certain businesses until that same date. The Governor later extended the State of Emergency indefinitely.

On May 8, 2020, the Governor issued Executive Order 61, introducing Phase One in the state’s strategy to ease some of the temporary restrictions instituted in Second

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Amended Executive Order 53 and Executive Order 55 (orders referred to collectively as Phase Zero). On May 12, 2020, the Governor issued Executive Order 62 extending Phase Zero for Northern Virginia through May 28, 2020. That order was amended on May 14, 2020, to extend Phase Zero for certain other jurisdictions.

The Governor allowed Amended Executive Order 62 to expire, moving Northern Virginia into Phase One on May 28, 2020. In Executive Order 65, issued on June 2, the Governor ordered that most of the Commonwealth, but not including Northern Virginia, would move into Phase Two on June 5. On June 9, 2020, the Governor amended Executive Order 65 to order Northern Virginia's entry into Phase Two on June 12.

In Executive Order 67, issued on June 30, the Governor ordered the Commonwealth's entry into Phase Three. While Phase Three further relaxed restrictions on activities, they are not completely lifted. In addition, there is no assurance against a retightening of state restrictions—as happened with the Eastern Region of the Commonwealth in Executive Order 68, issued on July 28 and not lifted until September 10.

Although the Governor's executive orders have typically included exceptions for the operation of government and for access to essential services for low-income residents, the County has nonetheless endeavored to observe and encourage sound public health and safety practices in all its operations. Between the Governor's executive orders and state guidelines for all business sectors, the practices required or recommended involve such measures as physical distancing, enhanced cleaning and disinfection, health screening, occupancy limits, and other limits on the size of groups. Together, these practices significantly increase the amount of space needed for various activities.

Executive Order 68, like earlier such orders, recognizes the need "to protect the health, safety, and well-being of Virginians experiencing homelessness during this pandemic." To that end, the Hypothermia Prevention Program is an integral part of Fairfax County's Housing Crisis Response System. Serving over 1,000 people who seek shelter from cold every winter, the program operates from November through March. It operates in some full-time emergency shelters and a series of overflow shelters, the latter typically located in churches and County-owned or -leased buildings. In past years, faith communities have typically provided temporary hypothermia prevention shelters. But in the pandemic, they face new challenges that render them either unable to participate in the program or able to do so only at significantly reduced capacity. To accommodate COVID-related protective measures and a potential increase in the number of people needing this service, the County anticipates enlarging the program to include more locations and larger facilities. Given the imminent cold weather, it is impractical to

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subject those sites to the time-consuming, individualized approval processes that might ordinarily apply.

Similarly, the Governor's executive orders subject a wide range of businesses to requirements that might necessitate various modifications to uses, activities, and structures. In a separate ordinance, the Board addressed these impacts on restaurants and exercise facilities. But these requirements have broader impacts, and we might face additional requirements in the future. In the midst of the COVID 19 emergency, the cost and time to meet such requirements would compound the stress on economically challenged businesses, hinder opportunities to revitalize the County's economy, and risk the closure of such businesses. At the same time, processing and deciding such a multitude of applications on an urgent basis would be extremely difficult, if not impossible, for the County government and would consume extraordinary amounts of time and attention on the part of the County's staff and its deliberative bodies, at a time when they are also strained by the emergency. These factors, separately and collectively, would threaten the County's continuity in government.

The Board of Supervisors has expressed its desire to remove unnecessary obstacles to businesses that seek to stay in business while following state and other governmental COVID-related requirements. To that end, this ordinance would suspend any proffer, development condition, or ordinance provision to the extent it would otherwise preclude a temporary modification to an activity, use, or structure where the Zoning Administrator determines the modification is needed to comply with state or other governmental COVID-related guidelines and requirements. Given existing and potential state requirements, the unknown scope of modifications they might prompt, the importance of business continuity to the County's economic success, the time-consuming nature of governmental approvals those modifications would typically require, and the potentially high volume of applications, this ordinance is needed to establish a clear, simple process for determining the permissibility of such modifications under zoning regulations. Without such a process, there would likely be increased noncompliance, leading to yet more avoidable expenditures of staff time and resources to enforce.

Virginia Code § 15.2-1413 expressly authorizes the adoption of the attached ordinance, which provides a means for assuring continuity in County government by on multiple fronts. By enabling the County's Hypothermia Prevention Program to address the unique challenges presented by the COVID-19 emergency, the ordinance furthers an essential function of local government—to protect and preserve the health and safety of its citizens. And by authorizing the Zoning Administrator to approve use modifications needed to meet similar challenges to the private sector, the ordinance will also advance public health, safety, and welfare—without unduly burdening the various agencies and

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deliberative bodies that would be involved in processing and approving countless individualized applications.

The proposed ordinance will become effective upon adoption, but it may only be enforced for 60 days from the date of adoption unless readopted before then. The ordinance contains an enactment clause directing the Clerk for the Board of Supervisors to advertise a public hearing within the 60-day period, at which time the Board will consider readopting the emergency ordinance or a similar ordinance that assures continuity in Fairfax County Government during the COVID-19 pandemic.

FISCAL IMPACT:

Adoption of the proposed ordinance has no fiscal impact. Implementation of hypothermia shelters will include security and operations costs that would have otherwise been borne by the county's community partners. Staff will advise the Board with respect to any further fiscal impact, beyond already appropriated funds, as that information becomes available.

ENCLOSED DOCUMENTS:

Attachment 1— Uncodified Emergency Ordinance to Provide a Method to Assure Continuity in Fairfax County Government During the COVID-19 Emergency, as Authorized by Virginia Code § 15.2-1413, by Approving Temporary County-Operated Hypothermia Prevention Shelters and Authorizing a Streamlined Process for Approving Temporary Use Modifications in Response to the Emergency

STAFF:

Tisha Deeghan, Deputy County Executive
Barbara A. Byron, Director, Department of Planning and Development (DPD)
Thomas E. Fleetwood, Director, Department of Housing and Community Development (HCD)
Thomas M. Barnett, Deputy Director, HCD
John L. Walser, Battalion Chief, Fire and Rescue Department
Brian F. Foley, P.E., C.B.O., Building Official, Department of Land Development Services
Leslie B. Johnson, Zoning Administrator, DPD

ASSIGNED COUNSEL:

Elizabeth D. Teare, County Attorney
T. David Stoner, Deputy County Attorney

1 **AN UNCODIFIED EMERGENCY ORDINANCE TO PROVIDE A METHOD TO**
2 **ASSURE CONTINUITY IN FAIRFAX COUNTY GOVERNMENT DURING THE NOVEL**
3 **CORONAVIRUS DISEASE 2019 (COVID-19) EMERGENCY BY APPROVING**
4 **TEMPORARY COUNTY-OPERATED HYPOTHERMIA SHELTERS AND**
5 **AUTHORIZING A STREAMLINED PROCESS FOR APPROVING TEMPORARY USE**
6 **MODIFICATIONS IN RESPONSE TO THE EMERGENCY**

7
8
9 AN UNCODIFIED EMERGENCY ORDINANCE to provide a method to assure continuity
10 in Fairfax County government during the COVID-19 Emergency, as authorized by
11 Virginia Code § 15.2-1413, by approving temporary County-operated hypothermia
12 prevention shelters and authorizing a streamlined process for approving temporary use
13 modifications in response to the emergency.

14 Be it ordained by the Board of Supervisors of Fairfax County:

15 **1. That the following uncodified ordinance is hereby adopted:**

16 **A. Purpose of the Ordinance.**

17 This ordinance is intended to provide a method to assure continuity in Fairfax County
18 government during the COVID-19 emergency. Fairfax County government comprises
19 not only the Board of Supervisors, but also numerous County agencies and deliberative
20 bodies that fulfill essential government functions and provide essential government
21 services within the locality. These provisions are intended to sustain the County’s
22 economy and ensure the continued ability of County agencies and deliberative bodies to
23 carry out their functions during this emergency without compromising public safety.

24 This ordinance is being adopted in response to the COVID-19 outbreak. The World
25 Health Organization declared COVID-19 a global pandemic on March 11, 2020. On
26 March 13, 2020, the President of the United States declared that the COVID-19
27 outbreak in the United States constitutes a National Emergency beginning March 1,
28 2020. On March 12, 2020, Governor Ralph Northam issued a Declaration of a State of
29 Emergency due to Novel Coronavirus (COVID-19). The Governor declared the
30 emergency “to continue to prepare and coordinate our response to the potential spread
31 of COVID-19, a communicable disease of public health threat” and he found that “[t]he
32 anticipated effects of COVID-19 constitute a disaster as described in § 44-146.16 of the
33 Code of Virginia.” The Governor’s Declaration of a State of Emergency remains in
34 effect indefinitely, until amended or rescinded. Effective March 16, 2020, Governor
35 Northam and the State Health Commissioner jointly issued an Order declaring a state
36 public health emergency. On March 17, 2020, the Fairfax County Director of
37 Emergency Management, with the consent of the Board of Supervisors, declared a local
38 state of emergency due to the potential spread of COVID-19. The local Declaration of

39 Emergency remains in effect until the Board of Supervisors takes appropriate action to
40 end the declared emergency.

41 The Public Health Emergency Order issued jointly by the Governor and the State Health
42 Commissioner effective March 16, 2020, consistent with all other expert opinions,
43 observes that COVID-19 spreads from person to person, transmitted via respiratory
44 droplets, and can be spread from an infected person who does not have symptoms to
45 another person. The Order states that no vaccine or known treatment options exist at
46 this time.

47 On March 23, 2020, the Governor issued Executive Order 53, which ordered all public
48 and private schools closed for the remainder of the 2019–20 school year and imposed
49 temporary restrictions on restaurants, recreational entertainment, public and private
50 gatherings, and non-essential retail businesses. By virtue of amendments on April 15
51 and May 4, 2020, the restrictions on restaurants and non-essential businesses
52 remained in effect until May 14, 2020. On March 30, 2020, the Governor issued
53 Executive Order 55, which ordered all individuals in Virginia to remain at their places of
54 residence until June 10, 2020, except as set forth in that order and Executive Order 53.

55 On May 8, 2020, the Governor issued Executive Order 61, introducing Phase One in the
56 state’s strategy to ease some of the temporary restrictions instituted in Second
57 Amended Executive Order 53 and Executive Order 55 (orders referred to collectively as
58 Phase Zero). On May 12, 2020, the Governor issued Executive Order 62 extending
59 Phase Zero for Northern Virginia through May 28, 2020. That order was amended on
60 May 14, 2020, to extend Phase Zero for certain other jurisdictions.

61 The Governor allowed Amended Executive Order 62 to expire, moving Northern Virginia
62 into Phase One on May 28, 2020. In Executive Order 65, issued on June 2, the
63 Governor ordered that most of the Commonwealth, but not including Northern Virginia,
64 would move into Phase Two on June 5. On June 9, 2020, the Governor amended
65 Executive Order 65 to order Northern Virginia’s entry into Phase Two on June 12.

66 In Executive Order 67, issued on June 30, the Governor ordered the Commonwealth’s
67 entry into Phase Three. While Phase Three further relaxed restrictions on activities,
68 they are not completely lifted. In addition, there is no assurance against a retightening
69 of state restrictions—as happened with the Eastern Region of the Commonwealth in
70 Executive Order 68, issued on July 28 and not lifted until September 10.

71 Although the Governor’s executive orders have typically included exceptions for the
72 operation of government and for access to essential services for low-income residents,
73 the County has nonetheless endeavored to observe and encourage sound public health
74 and safety practices in all its operations. Between the Governor’s executive orders and
75 state guidelines for all business sectors, the practices required or recommended involve
76 such measures as physical distancing, enhanced cleaning and disinfection, health

77 screening, occupancy limits, and other limits on the size of groups. Together, these
78 practices significantly increase the amount of space needed for various activities.

79 Executive Order 68, like earlier such orders, recognizes the need “to protect the health,
80 safety, and well-being of Virginians experiencing homelessness during this pandemic.”
81 To that end, the Hypothermia Prevention Program is an integral part of Fairfax County’s
82 Housing Crisis Response System. Serving over 1,000 people who seek shelter from
83 cold every winter, the program operates from November through March. It operates in
84 some full-time emergency shelters and a series of overflow shelters, the latter typically
85 located in churches and County-owned or -leased buildings. In past years, faith
86 communities have typically provided temporary hypothermia prevention shelters. But in
87 the pandemic, they face new challenges that render them either unable to participate in
88 the program or able to do so only at significantly reduced capacity. To accommodate
89 COVID-related protective measures and a potential increase in the number of people
90 needing this service, the County anticipates enlarging the program to include more
91 locations and larger facilities. Given the imminent cold weather, it is impractical to
92 subject those sites to the time-consuming, individualized approval processes that might
93 ordinarily apply.

94 Similarly, the Governor’s executive orders subject a wide range of businesses to
95 requirements that might necessitate various modifications to uses, activities, and
96 structures. In a separate ordinance, the Board addressed these impacts on restaurants
97 and exercise facilities. But these requirements have broader impacts, and we might face
98 additional requirements in the future. In the midst of the COVID-19 emergency, the cost
99 and time to meet such requirements would compound the stress on economically
100 challenged businesses, hinder opportunities to revitalize the County’s economy, and
101 risk the closure of such businesses. At the same time, processing and deciding such a
102 multitude of applications on an urgent basis would be extremely difficult, if not
103 impossible, for the County government and would consume extraordinary amounts of
104 time and attention on the part of the County’s staff and its deliberative bodies, at a time
105 when they are also strained by the emergency. These factors, separately and
106 collectively, would threaten the County’s continuity in government.

107 The Board of Supervisors desires to remove unnecessary obstacles to businesses that
108 seek to stay in business while following state and other governmental COVID-related
109 requirements. To that end, this ordinance suspends any proffer, development condition,
110 or ordinance provision to the extent it would otherwise preclude a temporary
111 modification to an activity, use, or structure where the Zoning Administrator determines
112 the modification is needed to comply with state or other governmental COVID-related
113 guidelines and requirements. Given existing and potential state requirements, the
114 unknown scope of modifications they might prompt, the importance of business
115 continuity to the County’s economic success, the time-consuming nature of
116 governmental approvals those modifications would typically require, and the potentially
117 high volume of applications, this ordinance is needed to establish a clear, simple

118 process for determining the permissibility of such modifications under zoning
119 regulations. Without such a process, there would likely be increased noncompliance,
120 leading to yet more avoidable expenditures of staff time and resources to enforce.

121 It is not the intent of this ordinance to infringe on the ability of any town—Clifton,
122 Herndon, or Vienna—to provide a method to assure continuity in its own government.
123 For that reason, the ordinance will not apply in any of those towns unless and until the
124 town’s governing body, by ordinance, decides to be subject to this ordinance.

125 **B. Virginia Statutory Authority for the Ordinance.**

126 Virginia Code § 15.2-1413 authorizes localities to adopt an ordinance to “provide a
127 method to assure continuity in its government, in the event of an enemy attack or other
128 disaster,” “[n]otwithstanding any contrary provision of law, general or special.” The
129 Governor’s Declaration of a State of Emergency found that “[t]he anticipated effects of
130 COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia.”

131 The Virginia Attorney General has defined “continuity in government” as coordinated
132 efforts undertaken to assure the continuation of local government’s essential functions
133 during an emergency.

134 Virginia Code § 15.2-1427 authorizes counties to adopt emergency ordinances without
135 prior notice; however, no such ordinance may be enforced for more than 60 days unless
136 readopted in conformity with the provisions of the Virginia Code.

137 **C. Definitions.**

138 “Continuity in Fairfax County government” includes, without limitation, those actions,
139 and the coordination of actions, that are necessary to assure the continuation of the
140 County’s essential functions and services. By way of example and not limitation, such
141 necessary actions include those related to (1) the County’s finances, such as the public
142 hearings and adoption of the FY 2021 budget, tax rate, and utilities fees; appropriations
143 of funds; and funding requests; (2) contracts that need Board action; (3) applications,
144 appeals, or other requests that are subject to mandatory or directory time frames for
145 action; (4) satisfying due process or other constitutional requirements; (5) public health
146 and safety; and (6) measures that help sustain the County’s economy.

147 “Emergency” means the outbreak of the respiratory illness referred to as the novel
148 coronavirus or COVID-19, as described in the Governor’s Declaration of a State of
149 Emergency and the local Declaration of Emergency, and the spread and effects of
150 COVID-19, which constitute a disaster as defined in Virginia Code § 44-146.16.

151 “Hypothermia prevention shelter” means any facility that provides a temporary shelter
152 for people experiencing homelessness, does not require occupants to sign leases or
153 occupancy agreements, and is operated by Fairfax County during the fall and winter

154 seasons to prevent injury, illness, and death due to cold weather. This use includes
155 providing transportation to or from the shelter via van or other means; space for
156 overnight stays; warming centers during the day; and provision of meals or other food to
157 shelter occupants, staff, and volunteers.

158 “Temporary” means not exceeding the period this emergency ordinance, together with
159 any corresponding nonemergency ordinance, is in effect.

160 “Zoning Administrator” means the County’s Zoning Administrator or her designee within
161 the Department of Planning and Development.

162 **D. Hypothermia prevention shelters.**

163 1. The Board of Supervisors hereby approves, on an emergency basis, the
164 establishment of one or more temporary, hypothermia prevention shelters on any
165 of the sites identified in **Appendix A** from November 1, 2020, until April 1, 2021.
166 The use in such a location is hereby deemed a feature shown on the
167 Comprehensive Plan. No further administrative approval, proffer condition
168 amendment, special exception amendment, special permit amendment, or any
169 other development approval is required as long as the hypothermia prevention
170 shelter complies with all of the conditions of this ordinance.

171 2. For purposes of this ordinance, the Board hereby temporarily suspends any
172 proffer, development condition, or ordinance provision that would otherwise
173 restrict the establishment of a hypothermia shelter under this emergency
174 ordinance.

175 3. Any hypothermia prevention shelter established under this emergency ordinance,
176 must operate primarily within one or more existing buildings.

177 4. Operating a hypothermia prevention shelter changes the application of the state
178 building code such that the facility would temporarily become one of transient
179 overnight housing. In doing so, additional life safety measures apply. Review,
180 inspection, and approval of each building, or portion thereof, by the building
181 official and fire official is required to ensure that the temporary use is safe and
182 meets the spirit and functional intent of the current Uniform Statewide Building
183 Code. Approval is not guaranteed and may be conditional, such as, but not
184 necessarily limited to, requiring the installation of smoke and carbon monoxide
185 detectors/alarms, requiring panic hardware on doors, and limiting the occupant
186 load.

187 **E. Temporary, COVID-necessitated use modifications.**

- 188 1. The Board of Supervisors hereby suspends any proffer, development condition,
189 or ordinance provision to the extent it would otherwise preclude a temporary
190 modification to an activity, use, or structure where the Zoning Administrator
191 determines the modification is needed to comply with state or other governmental
192 COVID-related guidelines and requirements. In making such a determination the
193 Zoning Administrator may impose reasonable conditions. Any request for a
194 modification must be submitted in writing to the Zoning Administrator, who may
195 require additional submission material.
- 196 2. This provision does not generally apply to property zoned to any R district or to
197 the residential portion of any P district; however, it does apply to any public use,
198 child care center, independent or assisted living facility, school, place of worship,
199 or other place of public assembly.
- 200 3. The Zoning Administrator may revoke an approval given under this emergency
201 ordinance if the Zoning Administrator determines that an establishment is being
202 operated in a manner that is inconsistent with the approval or that otherwise
203 adversely impacts the health, safety and welfare of the community.

204 **F. Scope of Application.**

205 It is not the intent of this ordinance to infringe on the ability of any town—Clifton,
206 Herndon, or Vienna—under Virginia Code § 15.2-1413 to provide a method to assure
207 continuity in its own government. For that reason, the ordinance will not apply in any of
208 those towns unless and until the town’s governing body, by ordinance, decides to be
209 subject to this ordinance.

210 **G. Supersession of Inconsistent Requirements.**

211 The provisions of this Ordinance apply notwithstanding any contrary provision of law,
212 general or special, as authorized in Virginia Code § 15.2-1413.

213 **2. That this ordinance will become effective upon adoption.**

214 **3. That this ordinance is being adopted on an emergency basis as allowed by**
215 **Virginia Code § 15.2-1427(F), and may be enforced for no more than 60 days**
216 **from the date of adoption, unless the Board readopts this ordinance in**

217 conformity with all applicable provisions of state law and following the
218 procedures established in this ordinance.

219 4. That the Clerk for the Board of Supervisors will schedule a public hearing for
220 November 17, 2020, at which the Board will consider readopting this ordinance
221 or a similar ordinance that assures continuity in Fairfax County Government
222 during the COVID-19 pandemic. Any such ordinance will be limited in its
223 effect to a period not exceeding six months after the emergency and will
224 provide for a method for the resumption of normal governmental authority by
225 the end of the six-month period. The Clerk will publish descriptive notice of
226 the Board's intention to propose the ordinance for passage once a week for
227 two successive weeks in accordance with Virginia Code §§ 15.2-1427
228 and -2204.

229 5. That the sections, subsections, paragraphs, sentences, clauses, phrases, and
230 words of this ordinance are severable. If any section, subsection, paragraph,
231 sentence, clause, phrase, or word is declared unconstitutional or otherwise
232 invalid by the lawful judgment or decree of any court of competent
233 jurisdiction, its unconstitutionality or invalidity shall not affect the validity of
234 any of the remaining sections, subsections, paragraphs, sentences, clauses,
235 phrases, and words of this ordinance, since the same would have been
236 enacted by the Board of Supervisors without and irrespective of any
237 unconstitutional or otherwise invalid section, subsection, paragraph,
238 sentence, clause, phrase or word being included.

239 GIVEN under my hand this _____ day of _____ 2020.

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245
246

Jill G. Cooper
Clerk for the Board of Supervisors
Department of Clerk Services

AN UNCODIFIED EMERGENCY ORDINANCE TO PROVIDE A METHOD TO ASSURE CONTINUITY IN FAIRFAX COUNTY GOVERNMENT DURING THE NOVEL CORONAVIRUS DISEASE 2019 (COVID-19) EMERGENCY BY APPROVING TEMPORARY COUNTY-OPERATED HYPOTHERMIA SHELTERS AND AUTHORIZING A STREAMLINED PROCESS FOR APPROVING TEMPORARY USE MODIFICATIONS IN RESPONSE TO THE EMERGENCY

Appendix A

Potential Hypothermia Prevention Shelter Sites by Human Services Region

Region 1:

1. South County Building – 8350 Richmond Highway, Alexandria, VA 22309

Region 2:

2. Lincolnia Senior Center – 4710 N Chambliss Street, Alexandria, VA 22312

Region 3:

3. North County Human Services Building – 1850 Cameron Glen Drive, Reston, VA 20190

Region 4:

4. Braddock Glen (Senior Center) – 4027-B Olley Lane, Fairfax, VA 22032

Countywide Backup:

1. Government Center – 12000 Government Center Parkway, Fairfax, VA 22035
2. Pennino Building – 12011 Government Center Parkway, Fairfax, VA 22035
3. Herrity Building – 12055 Government Center Parkway, Fairfax, VA 22035

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3:30 p.m.

Public Hearing on PCA 2005-PR-039-03 (Dunn Loring Development Company LLC) to Amend the Proffers Previously Approved with RZ 2005-PR-039, as Amended by PCA 2005-PR-039 and PCA 2005-PR-039-02, Located on Approximately 14.06 Acres of Land Zoned PRM (Providence District)

This property is located on the north side of Prosperity Avenue, west side of Gallows Road, and south side of I-66. Tax Map 49-1 ((1)) 27C (pt.) and 27L (pt.), 49-1 ((32)) 1, 2, 3, 4 and 5.

PLANNING COMMISSION RECOMMENDATION:

On September 23, 2020, the Planning Commission voted 11-0 (Commissioner Jimenez was absent from the meeting) to recommend to the Board of Supervisors approval of PCA 2005-PR-039-03, subject to the execution of proffered conditions consistent with those dated September 17, 2020.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Wanda Suder, Planner, DPD

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3:30 p.m.

Public Hearing to Consider Adopting an Ordinance to Establish the Idylwood Community Parking District (Providence District)

ISSUE:

Proposed amendment to Appendix M, of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to establish the Idylwood Community Parking District (CPD).

RECOMMENDATION:

The County Executive recommends that the Board adopt the amendment to the Fairfax County Code shown in Attachment I to establish the Idylwood CPD.

TIMING:

On September 15, 2020, the Board authorized advertisement of a public hearing to consider the proposed amendment to Appendix M of the *Fairfax County Code* to take place on October 6, 2020, at 3:30 p.m.

BACKGROUND:

Fairfax County Code Section 82-5B-2 authorizes the Board to establish a CPD for the purpose of prohibiting or restricting the parking of the following vehicles on the streets in the CPD: watercraft; boat trailers; motor homes; camping trailers; and any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds, except school buses used on a current and regular basis to transport students; any vehicle designed to transport 16 or more passengers including the driver, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4.

No such CPD shall apply to (i) any commercial vehicle when discharging passengers or when temporarily parked pursuant to the performance of work or service at a particular location, (ii) utility generators located on trailers and being used to power network facilities during a loss of commercial power, (iii) restricted vehicles temporarily parked on a public street within any such CPD for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip, or (iv) restricted vehicles that are temporarily parked on a public street within any such CPD for use by federal, state, or local public

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October 6, 2020

agencies to provide services.

Pursuant to Fairfax County Code Section 82-5B-3, the Board may establish a CPD if: (1) the Board receives a petition requesting establishment and such petition contains the names, addresses, and signatures of petitioners who represent at least 60 percent of the addresses within the proposed CPD, and represent more than 50 percent of the eligible addresses on each block of the proposed CPD, (2) the proposed CPD includes an area in which 75 percent of each block within the proposed CPD is zoned, planned, or developed as a residential area, (3) the Board receives an application fee of \$10 for each petitioning property address in the proposed CPD, and (4) the proposed CPD must contain the lesser of (i) a minimum of five block faces or (ii) any number of blocks that front a minimum of 2,000 linear feet of street as measured by the centerline of each street within the CPD.

Staff has verified that the requirements for a petition-based CPD have been satisfied.

The parking prohibition identified above for the Idylwood CPD is proposed to be in effect seven days per week, 24 hours per day.

FISCAL IMPACT:

The cost of sign installation is estimated to be \$600. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Amendment to the *Fairfax County Code*, Appendix M (CPD Restrictions)
Attachment II: Area Map of Proposed Idylwood CPD

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Gregg Steverson, Deputy Director, FCDOT
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Henri Stein McCartney, Sr. Transportation Planner, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Patrick Foltz, Assistant County Attorney

PROPOSED CODE AMENDMENT
THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA
APPENDIX M

M-93 Idylwood Community Parking District

(a) *District Designation.*

- (1) The restricted parking area is designated as the Idylwood Community Parking District.
- (2) Blocks included in the Idylwood Community Parking District are described below:

Colonel Lindsay Court (Route 10027)
From Idylwood Road to the cul-de-sac inclusive.

Colonel Lindsay Drive (Route 10028)
From Colonel Lindsay Court to the end.

Idylwood Road (Route 695)
From the eastern boundary of Fairfax County Park Authority property, Ruckstuhl Park, to the western boundary of parcel 40-3 01 0125 (south side).

(b) *District Provisions.*

- (1) This District is established in accordance with and is subject to the provisions set forth in Article 5B of Chapter 82.
- (2) Parking of watercraft; boat trailers; motor homes; camping trailers; any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds except school buses used on a current and regular basis to transport students; any vehicle designed to transport 16 or more passengers including the driver, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4 is prohibited at all times on the above-described streets within the Idylwood Community Parking District.
- (3) No such Community Parking District shall apply to (i) any commercial vehicle when discharging passengers or when

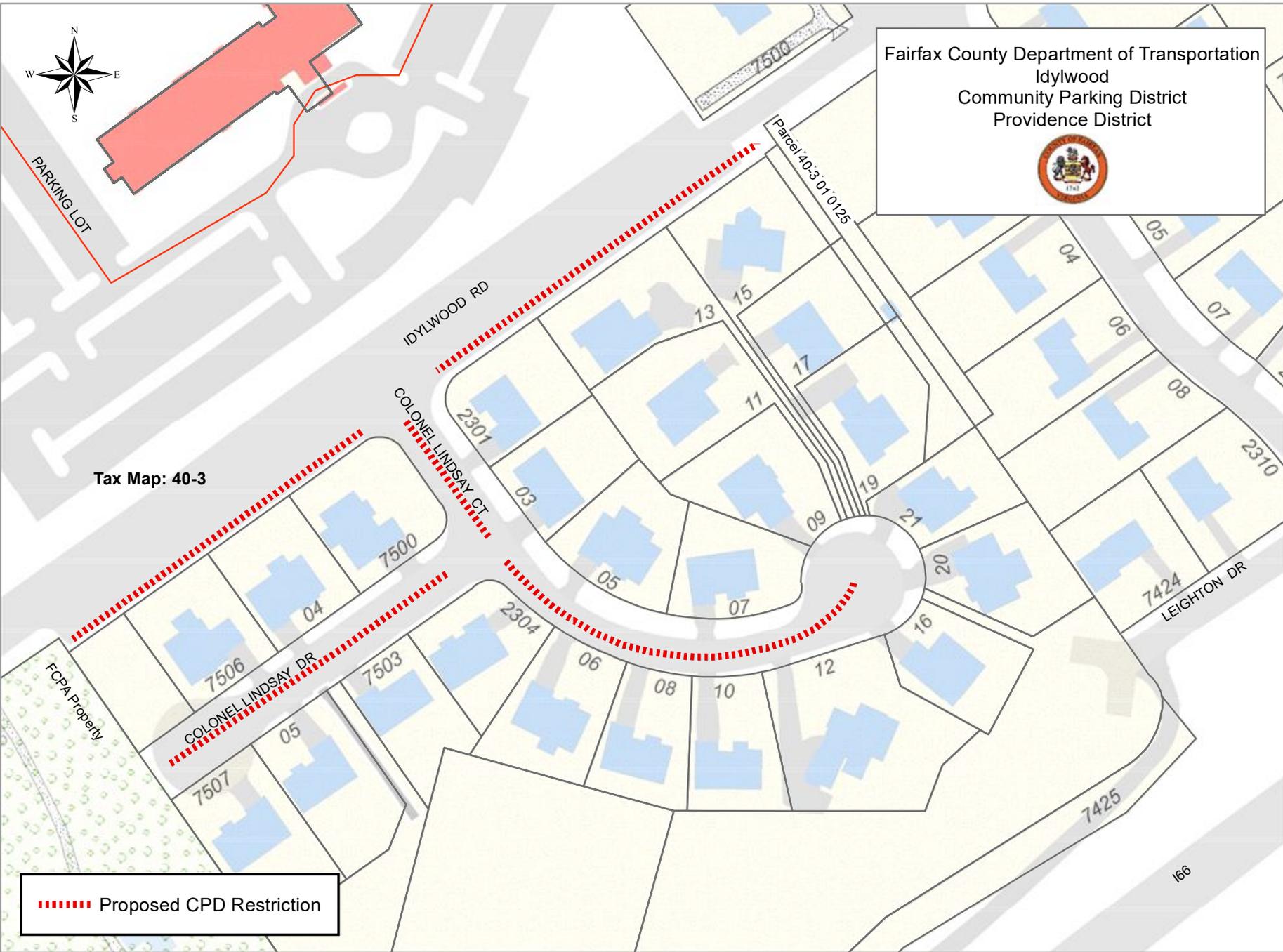
temporarily parked pursuant to the performance of work or service at a particular location or (ii) utility generators located on trailers and being used to power network facilities during a loss of commercial power or (iii) restricted vehicles temporarily parked on a public street within any such District for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip or (iv) restricted vehicles that are temporarily parked on a public street within any such District for use by federal, state, or local public agencies to provide services.

- (c) *Signs.* Signs delineating the Idylwood Community Parking District shall indicate community specific identification and/or directional information in addition to the following:

NO PARKING
Watercraft
Trailers, Motor Homes
Vehicles \geq 3 Axles
Vehicles GVWR \geq 12,000 lbs.
Vehicles \geq 16 Passengers

FAIRFAX COUNTY CODE §82-5B

Fairfax County Department of Transportation
Idylwood
Community Parking District
Providence District



Tax Map: 40-3

Proposed CPD Restriction

Board Agenda Item
October 6, 2020

3:30 p.m.

Public Hearing to Consider Extending Parking Restrictions on Sullyfield Circle (Sully District)

ISSUE:

Proposed amendment to Appendix R of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to extend parking restrictions on Sullyfield Circle in the Sully District.

RECOMMENDATION:

The County Executive recommends that the Board adopt an amendment (Attachment I) to Appendix R of the Fairfax County Code. The amendment will prohibit commercial vehicles, recreational vehicles and trailers as defined, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50) from parking on portions of Sullyfield Circle from 9:00 p.m. to 6:00 a.m., seven days per week.

TIMING:

On September 15, 2020, the Board of Supervisors authorized the Public Hearing for October 6, 2020, at 3:30 p.m.

BACKGROUND:

Fairfax County Code Section 82-5-37(5) authorizes the Board of Supervisors to designate restricted parking in non-residential areas where long term parking of vehicles diminishes the capacity of on-street parking for other uses.

A representative of the properties along Sullyfield Circle contacted the Sully District office seeking relief from the long-term parking that is occurring and impacting their businesses. They specifically requested that the existing parking restrictions posted on the inner circle of Sullyfield Circle prohibiting all commercial vehicles, recreational vehicles, and all trailers from 9:00 p.m. to 6:00 a.m., seven days per week, be extended to additional portions of the outer loop of Sullyfield Circle, as shown on the attached map (Attachment II).

Staff has viewed this area over a period of time in excess of 30 days and has observed long term parking of out-of-area large commercial vehicles, recreational vehicles and trailers.

Board Agenda Item
October 6, 2020

FISCAL IMPACT:

The cost of sign installation is estimated to be \$500. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Proposed Amendment to Fairfax County Code, Appendix R (General Parking Restrictions)

Attachment II: Area Map of Proposed Parking Restriction

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Gregg Steverson, Deputy Director, FCDOT

Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Henri Stein McCartney, Sr. Transportation Planner, FCDOT

Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Patrick Foltz, Assistant County Attorney

PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA
APPENDIX R

Amend *The Code of the County of Fairfax, Virginia*, by modifying the following to Appendix R, in accordance with Section 82-5-37:

Sullyfield Circle (Route 7680).

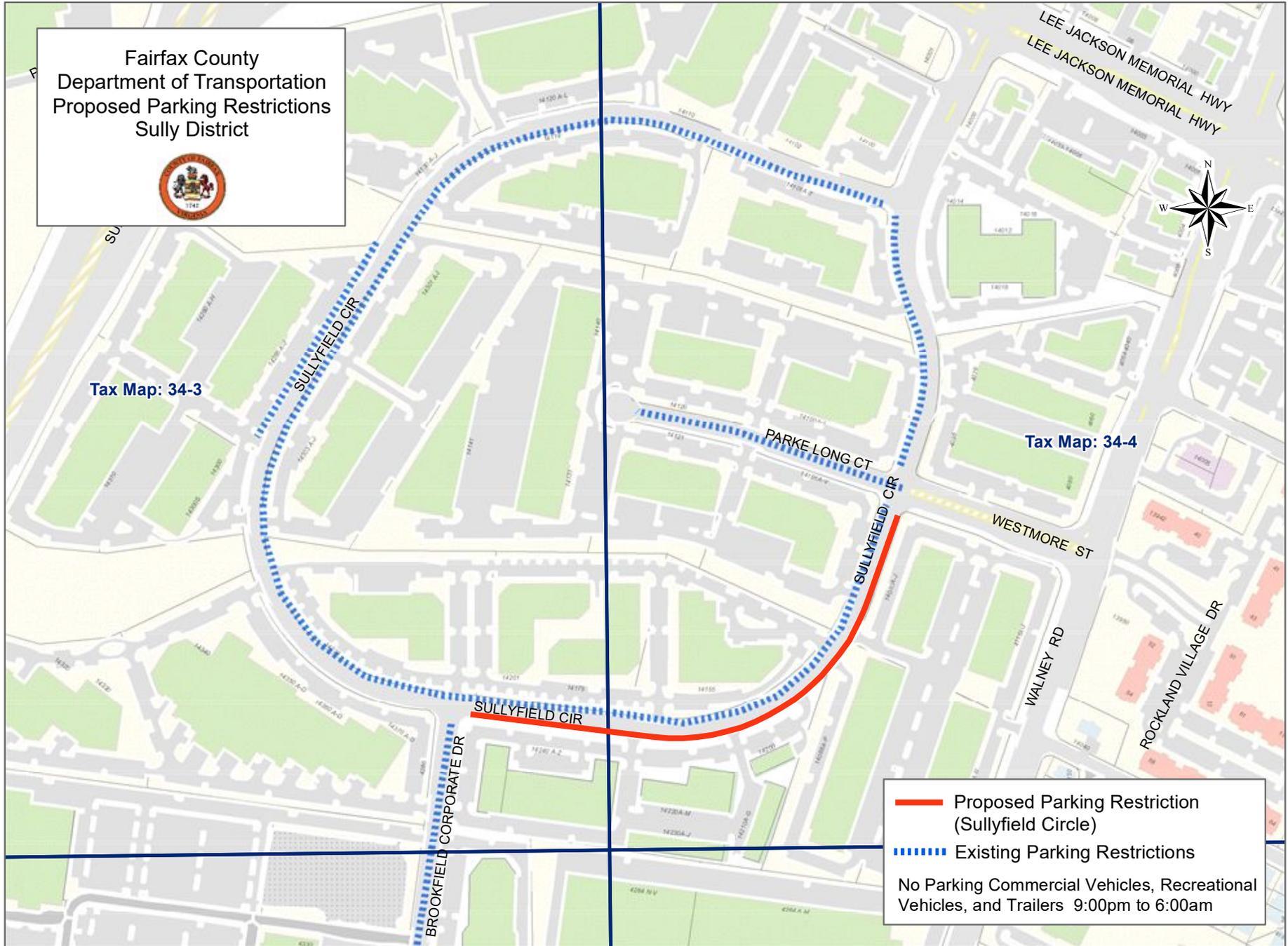
Commercial vehicles, recreational vehicles, and trailers as defined in ~~Fairfax County Code Chapter 82, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50)~~, shall be restricted from parking on the entire inner circle of Sullyfield Circle, and as well as the outer circle of Sullyfield Circle along the entire road frontage with 14280 Sullyfield Circle and from Brookfield Corporate Drive to Westmore Street, from 9:00 p.m. to 6:00 a.m., seven days per week.

Fairfax County
Department of Transportation
Proposed Parking Restrictions
Sully District



Tax Map: 34-3

Tax Map: 34-4



— Proposed Parking Restriction (Sullyfield Circle)
- - - Existing Parking Restrictions
No Parking Commercial Vehicles, Recreational Vehicles, and Trailers 9:00pm to 6:00am

Board Agenda Item
October 6, 2020

3:30 p.m.

Public Hearing to Consider Entering into an Interim Agreement with Alpine-X LLC for Fairfax Peak Development at I-95 Lorton Landfill (Mount Vernon District)

ISSUE:

Board of Supervisors (Board) public hearing on an Interim Agreement between the Board and Alpine-X LLC regarding the an indoor ski facility and related development on the I-95 Lorton landfill, located on Fairfax County Tax Map 113-1 ((1)), Parcel 14 (the Site).

RECOMMENDATION:

The County Executive recommends that the Board hold a public hearing on the Interim Agreement. Request for authorization to allow the County Executive to enter into an Interim Agreement with Alpine-X LLC will return to the Board as a future action item, no sooner than 30 days following the public hearing.

TIMING:

Board action is requested to allow consideration of authorizing the County Executive to enter an Interim Agreement with Alpine-X LLC on November 17, 2020.

The Board of Supervisors authorized advertisement of the public hearing on September 15, 2020.

BACKGROUND:

On December 21, 2018, Alpine-X LLC (Developer) submitted an unsolicited proposal (Proposal) to the County for the redevelopment of portions of the Board-owned I-95 Lorton landfill, pursuant to the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq., as amended (PPEA).

The Proposal named the project “Fairfax Peak” and generally envisions the construction of an indoor ski facility, hotel and commercial development, and other complimentary recreational facilities (Project), as listed below:

- Multiple ski slopes, inside a structure, at approximately a 20-degree angle, including a slope compliant with the Fédération Internationale de Ski’s standards, ensuring it can be used for competitions;

Board Agenda Item
October 6, 2020

- A specially designed area for skiing and snowboarding with a variety of ramps, jumps, rails, boxes and other features, capable for use in national snowboarding and freestyle skiing competitions;
- A bunny slope for beginners, snow tubing run and area for skiers and snowboarders to perform tricks;
- Restaurants, ski shop and dining terrace at the summit;
- A 100-plus room hotel at the base of the indoor snow facility;
- A gravity-powered, mountain coaster that will slide from the summit to Occoquan Regional Park; and,
- A ropes course and other outdoor activity areas.

The proposal also envisions other amenities that could be added in the future, including a water park, a “gravity ropes course” and passive recreation areas. Additional detail on the Project scope can be found online (Attachment 1).

In May 2019, the County accepted the Proposal for review and, pursuant to the PPEA, issued a “Request for Competing Proposals” (RCP). The RCP sought competing proposals for the development of recreational uses on portions of the Property. The County did not receive any responses to the RCP that were determined as responsive.

Due to the complexity of the Project, the Developer needs to perform feasibility and other studies to confirm the construction viability of the Project. To that end, the County approved a Right of Entry Agreement on May 11, 2020 (“ROE”) to permit the Developer and its contractors to enter onto portions of the Property and to perform limited initial due diligence work on the site through December 31, 2020.

The proposed Interim Agreement (Attachment 2) establishes certain additional terms to allow the Developer to advance its due diligence for the Project. Those include:

- Extends the term of the ROE until December 31, 2021.
- Confirms the potential area of study for the Project (Attachment 3);
 - The Agreement also allows – upon mutual agreement of the County and the Developer – to expand the study area to the remainder of Parcel 14 as well as the adjacent Parcel 15.
- Provides an exclusive negotiation period in which the County agrees to not convey nor lease any portion of the Project Area to a third party before December 31, 2021;
 - The County and the Developer may mutually agree to extend the exclusive period, as well as the ROE term, for up to one year, through December 31, 2022.
 - The Developer also acknowledges the County is considering the use of land adjacent to the Project for a solar power generation facility.

Board Agenda Item
October 6, 2020

Future development of the project will be contingent on the Developer successfully achieving future regulatory review and permission for the Project, which will include any required land use entitlements and state regulatory requirements, which are not included in the scope of the proposed Interim Agreement and no rights to apply for these are granted to the Developer at this time under the Interim Agreement.

The Board of Supervisors authorized the Public Hearing on September 15, 2020.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Alpine-X Unsolicited PPEA Proposal can be found online at:

<https://www.fairfaxcounty.gov/procurement/ppea/fairfaxpeak/alpinexproposal>

Attachment 2 – Interim Agreement between Board of Supervisors and Alpine-X LLC

Attachment 3 – Extent of Area within the Interim Agreement

STAFF:

Rachel Flynn, Deputy County Executive

Randy Bartlett, Director, Dept. of Public Works and Environmental Services (DPWES)

Rebecca Moudry, Director, Department of Economic Initiatives

John Kellas, Deputy Director, Solid Waste Management, DPWES

Eric Forbes, Division Director, Solid Waste Compliance, DPWES

Scott Sizer, P3/Joint-Venture Policy Coordinator, Department of Economic Initiatives

Chase Suddith, Management Analyst, Department of Economic Initiatives

ASSIGNED COUNSEL:

Cynthia Bailey, Deputy County Attorney

Ryan Wolf, Assistant County Attorney

INTERIM AGREEMENT

THIS **INTERIM AGREEMENT** (“Agreement”) is made this ___ day of November, 2020 (“Effective Date”), by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“County”), and **ALPINE-X LLC**, a Virginia limited liability company (“Developer”; together with the County, the “Parties”).

RECITALS

- R-1. The County is the fee simple owner of an approximately 490-acre parcel of land located in Fairfax County, Virginia, having Fairfax County Tax Map # 113-1 ((1)), parcel 14 and further described on Exhibit A (“Parcel 14”) and an adjacent, approximately 418-acre parcel of land located in Fairfax County, Virginia, having Fairfax County Tax Map # 113-1 ((1)), parcel 15 and further described on Exhibit B (“Parcel 15”; together with Parcel 14, the “Property”).
- R-2. The County acquired the Property, together with other property, from the federal government, acting through the General Services Administration (“GSA”) pursuant to that certain Quitclaim Deed dated July 11, 2002, and recorded among the Fairfax County land records in Deed Book 13112, at Page 2169 (the “GSA Master Deed”).
- R-3. The County currently uses Parcel 14 as the I-95 Landfill Complex and has ground leased the majority of Parcel 15 to the Northern Virginia Regional Park Authority (“NVRPA”) for use as a regional park, pursuant to that certain Deed of Ground Lease, dated December 22, 2010 and recorded among the Fairfax County land records in Deed Book 21521 at Page 1147 (as such lease may be amended from time to time, the “NVRPA Lease”).
- R-4. On December 21, 2018, Developer submitted an unsolicited proposal to the County for the redevelopment of portions of the Property (the “Proposal”), pursuant to the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq., as amended (“PPEA”). The Proposal preliminarily named the project “Fairfax Peak” and generally envisioned the construction of an indoor ski facility and related hotel and commercial space, as well as other recreational facilities, such as a wave pool, a ropes course, and zip lines (collectively, the “Project”).
- R-5. In May of 2019, the County formally accepted the Proposal for review. Pursuant to the PPEA, the County then issued a “Request for Competing Proposals” also in May of 2019 (the “RCP”). The RCP sought competing proposals for the development of recreational uses on portions of the Property. The County did not receive any responsive responses to the RCP.
- R-6. The Parties entered into that certain Right of Entry Agreement on May 11, 2020 (“ROE”) to permit the Developer and its contractors to enter onto portions of the Property and to perform certain initial due diligence work on the site.

R-7. The Parties desire to enter into this Agreement to initiate certain additional actions, set forth below, in furtherance of the Proposal and the Project and the negotiations conducted to date. In recognition of the complexity of the Proposal and the Project, the Parties wish to begin these efforts prior to entering into a final Comprehensive Agreement pursuant to the PPEA.

NOW, THEREFORE, in consideration of the mutual promises in this Agreement, and other valuable consideration, the receipt and legal sufficiency of which are acknowledged by the Parties, the Parties agree to the following:

Section 1: Property & Project Area.

- A. Project Area. The development area for the Project will be limited to those portions of the Parcel 14 as described on Exhibit C (the “Project Area”). The Parties may agree in writing to expand the Project Area to the remainder of Parcel 14 and/or – with the consent of NVRPA, to the extent required by the NVRPA Lease – some or all of Parcel 15.
- B. Solar Project. The Developer acknowledges that the County is considering the possibility of developing land adjacent to the Project Area (and/or potentially portions of the Project Area) as a solar power generation facility (the “Solar Project”), as further described in the Landfill Solar Feasibility Memo from HDR Engineering, Inc., dated July 3, 2019 (the “Solar Memo”), and that Developer has received a copy of the Solar Memo from the County. In designing the Project, the Developer will not seek any easements or other rights through the Solar Project area, except as may be specifically approved by the County in writing. In designing the Solar Project, the County reserves the right to locate the Solar Project and/or easements or other rights supporting the Solar Project through the Project Area. The County will provide regular updates on the Solar Project to the Developer and promptly notify the Developer of any potential encroachments of the Solar Project onto the Project Area.
- C. NVRPA Lease. The County has leased a portion of Parcel 15 to NVRPA pursuant to the NVRPA Lease. Developer acknowledges that it has received a copy of the NVRPA Lease and that, except for certain limited development rights retained by the County, it will need to obtain NVRPA’s approval for any portion of the Project to be located on land subject to the NVRPA Lease. The Parties agree to coordinate on outreach to NVRPA regarding the Project.
- D. DEQ Coordination. Developer acknowledges that the Project will require the Virginia Department of Environmental Quality (“DEQ”) to approve a “Major Permit Modification” for the Property. The Parties agree to coordinate on outreach to DEQ regarding the Project.
- E. GSA Master Deed. Developer acknowledges that the Property is subject to the GSA Master Deed. The Parties agree to coordinate on outreach to the applicable entities regarding the Project as may be required by the GSA Master Deed.

Section 2: Exclusive Negotiation Period.

- A. **No County Transfer.** Except as permitted in Section 2(A)(i) below, the County will neither convey or lease nor agree to convey or lease any portion of the Project Area to a third party before December 31, 2021 (the “Outside Date”), without the prior written consent of the Developer.
- i. Notwithstanding Section 2(A), the County may (a) convey such interests in the Project Area as are reasonably necessary in connection with the Solar Project, as discussed in Section 1(B) above, (b) so long as the term of such agreement is not extended past March 1, 2023, agree to allow the Northern Virginia Radio Control Club (the “Airplane Club”) the use of the runway, “pits area”, and parking area identified in that certain “Memorandum of Agreement-RC Model Aircraft Use at the I-95 Sanitary Landfill”, dated February 23, 2015 (collectively, the “Airplane Area”) for radio controlled airplane uses, and (c) convey such interests in the Project Area as may be reasonably necessary in connection with the operation of the landfill.
 - ii. The County and the Developer may mutually agree to extend the Outside Date for up to one year (i.e., up to December 31, 2022), neither party being under any obligation to do so.
- B. **Exclusive Negotiation Period.** The County will not negotiate with any third party regarding the development of the Project Area until December 31, 2021. For purposes of this Section 2(B), “the County” means each of Scott Sizer, P3 / Joint-Ventures Policy Coordinator, Office of Economic Initiatives; John Kellas, Deputy Director of Solid Waste Management, Department of Public Works and Environmental Services; and Jose Comayagua, Director, Department of Facilities Management.
- C. The Parties intend to negotiate in good faith to reach subsequent agreements regarding the actual development of the Property. Neither the County nor the Developer, however, is under no obligation to enter into any subsequent agreement. It is anticipated that further development of the Project will involve at least two separate additional agreements. The first agreement, which is anticipated to be an amendment to this Agreement (“Second Interim Agreement”), will address the pursuit of the land use actions for the Project. While land use approvals are pursued under the terms of the Second Interim Agreement, the Parties will negotiate in good faith to reach a Comprehensive Agreement for the actual physical implementation of the redevelopment. The Second Interim Agreement and the Comprehensive Agreement (which may consist of one or more contracts) will be presented to the Board of Supervisors for approval in accordance with the provisions of the PPEA.

Section 3: Developer Diligence Work in Project Area.

- A. **ROE.** The ROE is attached to this Agreement as Exhibit D and remains in full force and effect in accordance with its terms, except (i) that its term shall be extended to the

Outside Date (as may be extended pursuant to Section 2(A)(ii)), and (ii) in accordance with Section 3(B) of this Agreement.

- B. Coordination with Airplane Club regarding Airplane Area. Notwithstanding anything in the ROE, the Developer will use reasonable efforts to avoid performing Feasibility Studies in the Airplane Area. If the Developer nonetheless determines that it must perform one or more of the Feasibility Studies in the portion of the Airplane Area that is within the Project Area, it will provide the County with at least seven (7) business days' advance notice. The Developer acknowledges that if Developer is required by the ROE to restore any portion of the Airplane Area that is within the Project Area to its pre-existing condition following a Feasibility Study, that the pre-existing condition of such area (e.g., runway) may be different than elsewhere on the Project Area site.

Section 4: Notice.

- A. Except as set forth in Paragraph 3 of the ROE, all notices, demands or other communications sent under this Agreement ("Notice") must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally recognized, next-day courier service, addressed as follows:

If to the County:

Fairfax County Department of Public Works & Environmental Services
12000 Government Center Parkway, Suite 548
Fairfax, VA 22035
Attention: John Kellas, Director of Solid Waste & Recycling
john.kellas@fairfaxcounty.gov

With a copy to:

Fairfax County Facilities Management Department
12000 Government Center Parkway, Suite 424
Fairfax, VA 22035
Attention: Michael Lambert, Assistant Director
michael.lambert@fairfaxcounty.gov

and

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035
Attention: County Attorney
ryan.wolf@fairfaxcounty.gov

If to the Developer:

Niels ten Berge
1308 Vincent Place
McLean, VA 22101
Niels@alpine-X.com

and:

Brad Ryan
1308 Vincent Place
McLean, VA22101
Brad@alpine-X.com

With a copy to:

Cooley LLP
11951 Freedom Drive, Suite 1400
Reston, VA 20190
Attention: Mark C. Looney
mlooney@cooley.com

- B. A Notice given in accordance with this Agreement will be effective upon receipt or refusal by the Party to which it is given.
- C. For convenience, Notices may be sent via email; however, such email Notice will not be considered effective until the original Notice is received by the Party to which it is given pursuant to one of the delivery methods described in Section 11(a) above.
- D. Either Party may change its Notice address from time to time by informing the other Party in writing of such new address.

Section 5: Miscellaneous.

- A. Entire Agreement. This Agreement, together with its Recitals and the attached Exhibits, all of which are incorporated by reference, is the entire agreement between the Parties. The terms of this Agreement may be amended or modified only by a written instrument executed by the Parties.
- B. Severability. If any provision of this Agreement or its application to any party or circumstances is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, will not be affected, and each provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law.
- C. Applicable Law. This Agreement and any dispute, controversy, or proceeding arising out of or relating to this Agreement (whether in contract, tort, common or statutory law, equity

or otherwise) will be governed by Virginia law, without regard to conflict of law principles of Virginia or of any other jurisdiction that would result in the application of laws of any jurisdiction other than Virginia.

- D. Venue. All claims and litigation arising out of or related to this Agreement must be brought and resolved in the courts of the Commonwealth of Virginia located in the County of Fairfax, Virginia, or U.S. District Court for the Eastern District of Virginia, Alexandria Division.
- E. Assignability. The Developer does not have the right to assign this Agreement. An “assignment” for purposes of this Section 5(E) will include any change in the direct or indirect control of the Developer.
- F. Captions; Interpretation. The captions of this Agreement are for reference only and do not describe the intent of this Agreement or otherwise alter the terms of this Agreement. When a reference is made in this Agreement to an Article, a Section, or an Exhibit, such reference is to an Article of, a Section of, or an Exhibit to this Agreement. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms and to the masculine, feminine, and non-genders of such terms. Whenever the context requires, any pronouns used in this Agreement include the corresponding masculine, feminine, or non-gender forms.
- G. No Partnership. Nothing contained in this Agreement will be construed to create a partnership or joint venture between the Parties or their successors or permitted assigns.
- H. Time of Essence. Time is of the essence with respect to the performance of the obligations of the Parties under this Agreement.
- I. Counterparts and Distribution. This Agreement may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.
- J. Waiver. No waiver of any breach of this Agreement will be deemed a waiver of any preceding or succeeding breach under this Agreement or any other agreement. No extension of time for the performance of any obligation or act will be deemed an extension of time for the performance of any other obligation or act.
- K. Business Days. If any date set forth in this Agreement for the performance of any obligations by the Parties or for the delivery of any instrument or notice falls on a Saturday, Sunday, Legal Holiday, or day in which Fairfax County governmental offices are closed, the compliance with such obligations or delivery will be deemed acceptable on the next business day following such Saturday, Sunday, Legal Holiday, or closing. The term “Legal

Holiday” will mean any Fairfax County, Commonwealth of Virginia, or federal holiday on which post offices are closed in Virginia.

- L. Waiver of Jury Trial. The Parties each waive all rights to a trial by jury in any claim, action, proceeding or counterclaim arising out of or in any way connected with this Agreement.
- M. Disclosure of Materials and Studies. Unless approved in writing by the County, the Developer may not sell or give to any individual or organization (exempting the Developer’s consultants, partners, and agents involved in the Project and its design) any information, reports, or other materials given to, prepared or assembled by the Developer or its consultants under this Agreement or otherwise publicize Developer’s role and involvement with the Property. Any public announcement of the proposed Project must be fully coordinated with the County.
- N. Americans with Disabilities Act.
 - 1. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities, and services. Fairfax County government contractors, subcontractors, vendors, and suppliers are subject to this ADA policy. The Developer must make the same commitment and the Developer’s execution of this Agreement is an express acknowledgement of the Developer’s commitment and compliance with ADA.
 - 2. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Anyone requesting special accommodations should call the Department ADA representative at 703-324-3201 or TTY 1-800-828-1140. Please allow seven working days in advance of the event to make the necessary arrangements.
- O. Authorization to Conduct Business in the Commonwealth. In accordance with mandatory County policy, the Developer shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. The Developer shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of this Agreement. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this Section.
- P. Drug Free Workplace. During the performance of this Agreement, the Developer agrees to (i) provide a drug-free workplace for the Developer’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or

use of a controlled substance or marijuana is prohibited in the Developer's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Developer that the Developer maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this Section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to the Developer in accordance with this Section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

- Q. Immigration Reform and Control Act. The Developer agrees that it does not, and shall not during the performance of this Agreement in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
- R. Survival. All representations, warranties, and indemnities contained in this Agreement or in any instrument, document, or agreement delivered pursuant to this Agreement will survive termination of this Agreement unless otherwise provided herein.

Signatures appear on the following page.

[Signature Page to Interim Agreement – Fairfax Peak]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

COUNTY:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA,
a body corporate and politic

By: _____
Name:
Title:

DEVELOPER:

ALPINE-X LLC,
a Virginia limited liability company

By: _____
Name:
Title:

EXHIBIT A – PARCEL 14

Please see the attached document.



GENERAL CIVIL
TRANSPORTATION
ENVIRONMENTAL
GEOGRAPHIC SCIENCES

January 10, 2002

**METES AND BOUNDS DESCRIPTION OF
PARCEL "H"
LORTON CORRECTIONAL COMPLEXES (LCC)
PLAT OF DIVISION
BASED ON THE BOUNDARY SURVEY PREPARED BY
GREENHORNE & O'MARA, INC.
MOUNT VERNON DISTRICT
FAIRFAX COUNTY, VIRGINIA**

Beginning at a corner to the lands of George M. Neall II, Trustee ~ Deed Book 7139 at Page 1987, said point also being the northwest corner of Lot 27, Section 1, Shirley Acres ~ Deed Book 966 at Page 128, and a corner of Parcel "E" of the Plat of Division; thence departing said lands of George M. Neall II, Trustee, and said Parcel "E", and with said Shirley Acres, Section 1, and then with the lands of Edward Katz, Trustee, ~ Deed Book 7198 at Page 1068, and then with the lands of Furnace Associates, Inc. ~ Deed Book 4777 at Page 164,

South 03°09'19" East, a distance of 1899.18 feet (passing through a found concrete monument at 343.62 feet, through a found concrete monument at 693.62 feet, through a found concrete monument at 1099.25 feet, and through a found concrete monument at 1499.13 feet) to a point, said point being South 60°39'16" East, 2.00 feet from a twin Maple tree; thence continuing with said lands of Furnace Associates, Inc.

South 37°21'19" West, a distance of 2387.36 feet (passing through a set concrete monument at 600.00 feet, through a set concrete monument at 1195.74 feet, through a found concrete monument at 1242.11 feet, through a found concrete monument at 1422.24 feet, and through a found concrete monument at 1922.24 feet) to an iron pipe set, said pipe being a corner to Parcel "T" of the Plat of Division; thence departing the lands of Furnace Associates, Inc. and with the lands of said Parcel "T" the following thirty four (34) courses and distances:

North 55°56'38" West, a distance of 271.77 feet; thence
South 37°54'47" West, a distance of 295.00 feet; thence
North 52°30'56" West, a distance of 229.91 feet; thence
South 88°23'40" West, a distance of 520.61 feet; thence
South 24°59'42" West, a distance of 1418.18 feet; thence
South 47°46'12" East, a distance of 480.18 feet; thence
South 37°20'28" West, a distance of 42.32 feet; thence
South 52°24'19" East, a distance of 57.08 feet; thence

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North 37°51'08" East, a distance of 41.01 feet; thence
South 37°16'07" East, a distance of 28.10 feet; thence
South 20°08'55" West, a distance of 543.64 feet; thence
South 67°27'15" West, a distance of 533.64 feet; thence
North 50°35'38" West, a distance of 91.54 feet; thence
North 74°44'56" West, a distance of 545.00 feet; thence
South 84°42'12" West, a distance of 538.01 feet; thence
South 07°27'10" West, a distance of 256.37 feet; thence
North 79°31'19" West, a distance of 300.26 feet; thence
North 08°45'40" East, a distance of 166.22 feet; thence
South 80°24'03" West, a distance of 212.78 feet; thence
South 76°40'38" West, a distance of 54.54 feet; thence
South 67°24'52" West, a distance of 98.52 feet; thence
South 19°26'56" West, a distance of 45.63 feet; thence
South 62°32'56" West, a distance of 71.18 feet; thence
North 54°36'03" West, a distance of 139.55 feet; thence
South 85°11'41" West, a distance of 63.29 feet; thence
North 43°07'53" West, a distance of 357.74 feet; thence
North 14°48'40" West, a distance of 364.50 feet; thence
North 03°49'08" East, a distance of 539.91 feet; thence
North 12°05'16" East, a distance of 1020.06 feet; thence
North 19°46'56" East, a distance of 664.11 feet; thence
North 10°21'43" East, a distance of 221.13 feet; thence
North 05°08'31" West, a distance of 228.25 feet; thence
North 15°14'38" West, a distance of 607.84 feet; thence

North 22°24'06" East, a distance of 568.17 feet to an iron pipe set, said pipe being a corner to Parcel "G" of the Plat of Division; thence departing the lands of said Parcel "T" and with the lands of said Parcel "G" the following four (4) courses and distances:

North 00°29'44" West, a distance of 290.34 feet; thence
North 06°53'35" West, a distance of 261.70 feet; thence
North 55°15'02" East, a distance of 486.80 feet; thence

North 01°42'33" West, a distance of 445.36 feet to an iron pipe set, said pipe being a corner to Parcel "E" of the Plat of Division; thence departing the lands of said Parcel "G" and with the lands of said Parcel "E" the following three (3) courses:

South 89°16'28" East, a distance of 980.05 feet; thence
South 77°59'25" East, a distance of 1633.25 feet; thence

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North 59°16'42" East, a distance of 1291.92 feet to a point in the centerline of Furnace Road ~ Virginia State Route #611 ~ 30' prescriptive right-of-way, thence departing centerline of said Furnace Road and continuing with the lands of said Parcel "E",

North 80°18'59" East, a distance of 1122.32 feet to the Point of Beginning

Containing 512.6690 ACRES of land, more or less.

DMD/em

EXHIBIT B – PARCEL 15

Please see the attached document.



GENERAL CIVIL
 TRANSPORTATION
 ENVIRONMENTAL
 GEOGRAPHIC SCIENCES

January 10, 2002

**METES AND BOUNDS DESCRIPTION OF
 PARCEL "G"
 LORTON CORRECTIONAL COMPLEXES (LCC)
 PLAT OF DIVISION
 BASED ON THE BOUNDARY SURVEY PREPARED BY
 GREENHORNE & O'MARA, INC.
 MOUNT VERNON DISTRICT
 FAIRFAX COUNTY, VIRGINIA**

Beginning at a point in the centerline of Ox Road ~ Virginia State Route #123 ~ 30' prescriptive right-of-way, said point being a corner to the lands of Fairfax County Water Authority and Parcel "G" of the Plat of Division; thence departing the centerline of said Ox Road and the lands of said Fairfax County Water Authority and with the lands of said Parcel "G" the following two (2) courses:

South 77°50'42" East, a distance of 33.77 feet; thence

South 64°43'24" East, a distance of 923.51 feet to an iron pipe set, said pipe being a corner to Parcel "H" of the Plat of Division; thence departing said Parcel "G" and with the lands of said Parcel "H" the following thirty five (35) courses and distances:

South 22°24'06" West, a distance of 568.17 feet; thence
 South 15°14'38" East, a distance of 607.84 feet; thence
 South 05°08'31" East, a distance of 228.25 feet; thence
 South 10°21'43" West, a distance of 221.13 feet; thence
 South 19°46'56" West, a distance of 664.11 feet; thence
 South 12°05'16" West, a distance of 1020.06 feet; thence
 South 03°49'08" West, a distance of 539.91 feet; thence
 South 14°48'40" East, a distance of 364.50 feet; thence
 South 43°07'53" East, a distance of 357.74 feet; thence
 North 85°11'41" East, a distance of 63.29 feet; thence
 South 54°36'03" East, a distance of 139.55 feet; thence
 North 62°32'56" East, a distance of 71.18 feet; thence
 North 19°26'56" East, a distance of 45.63 feet; thence
 North 67°24'52" East, a distance of 98.52 feet; thence
 North 76°40'38" East, a distance of 54.54 feet; thence
 North 80°24'03" East, a distance of 212.78 feet; thence
 South 08°45'40" West, a distance of 166.22 feet; thence

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South 79°31'19" East, a distance of 300.26 feet; thence
North 07°27'10" East, a distance of 256.37 feet; thence
North 84°42'12" East, a distance of 538.01 feet; thence
South 74°44'56" East, a distance of 545.00 feet; thence
South 50°35'38" East, a distance of 91.54 feet; thence
North 67°27'15" East, a distance of 533.64 feet; thence
North 20°08'55" East, a distance of 543.64 feet; thence
North 37°16'07" West, a distance of 28.10 feet; thence
South 37°51'08" West, a distance of 41.01 feet; thence
North 52°24'19" West, a distance of 57.08 feet; thence
North 37°20'28" East, a distance of 42.32 feet; thence
North 47°46'12" West, a distance of 480.18 feet; thence
North 24°59'42" East, a distance of 1418.18 feet; thence
North 88°23'40" East, a distance of 520.61 feet; thence
South 52°30'56" East, a distance of 229.91 feet; thence
North 37°54'47" East, a distance of 295.00 feet; thence

South 55°56'38" East, a distance of 271.77 feet to an iron pipe set in the line of the lands of Furnace Associates, Inc. ~ Deed Book 4777 at Page 164; thence departing said Parcel "HP" and with the lands of said Furnace Road Associates,

South 37°21'19" West, a distance of 35.13 feet to a set concrete monument; thence continuing with said lands of Furnace Associates, Inc. the following two (2) courses and distances:

South 41°58'22" East, a distance of 443.56 feet; thence

South 42°25'22" East, a distance of 673.99 feet (passing 1.27 feet right of a found concrete monument at 299.87 feet, and through a set concrete monument at 650.00 feet) to a point in the centerline of Furnace Road ~ Virginia State Route #611 ~ variable width and prescriptive right-of-way; thence with the centerline of said Furnace Road the following five (5) courses and distances:

South 01°18'52" East, a distance of 105.29 feet; thence
South 05°01'05" East, a distance of 95.61 feet; thence
South 07°31'01" East, a distance of 100.92 feet; thence
South 12°48'08" East, a distance of 98.08 feet; thence

South 22°37'27" East, a distance of 66.96 feet to a point; thence departing the centerline of said Furnace Road, and with the lands of W. & N. Company ~ Deed Book 6404 at Page 331, and then with another parcel of the lands of W. & N. Company ~ Deed Book 6404 at Page 331,

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Parcel "T"
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South 41°44'13" West, a distance of 950.11 feet (passing through a found iron pipe at 16.69 feet, and through a found concrete monument at 450.17 feet) to a point, said point being North 42°31'18" East, 0.26 feet from a found iron pipe; thence continuing with the lands of W. & N. Company, and then with another parcel of the lands of Furnace Associates, Inc. ~ Deed Book 5227 at Page 780,

South 82°20'26" East, a distance of 1123.85 feet (passing through a found concrete monument at 79.84 feet, through a found concrete monument at 500.01 feet, 0.22 feet left of a disturbed found concrete monument at 975.47 feet, and through a found concrete monument at 1100.46 feet) to a point in the centerline of the aforesaid Furnace Road; thence with the centerline of said Furnace Road the following eight (8) courses and distances:

South 27°39'53" East, a distance of 30.20 feet; thence
South 30°07'37" East, a distance of 329.82 feet; thence
South 31°46'16" East, a distance of 259.93 feet; thence
South 29°54'30" East, a distance of 83.90 feet; thence
South 23°59'33" East, a distance of 92.22 feet; thence
South 19°40'27" East, a distance of 91.41 feet; thence
South 16°27'08" East, a distance of 85.45 feet; thence

South 13°52'07" East, a distance of 37.20 feet to a point; thence departing the centerline of said Furnace Road, and with the lands of Colchester Land Company, L.L.C. ~ Deed Book 9445 at Page 109, the following twenty-one (21) courses and distances:

South 53°09'11" West, a distance of 3130.36 feet (passing through a found concrete monument at 21.29 feet, through a found concrete monument at 351.61 feet, through a found concrete monument at 745.88 feet, through a found concrete monument at 1107.55 feet, through a found concrete monument at 1515.88 feet, through a found concrete monument at 2000.95 feet, through a found concrete monument at 2516.05 feet, and through a found concrete monument at 3085.37 feet; thence

North 14°46'18" West, a distance of 183.98 feet; thence
North 27°03'12" West, a distance of 81.00 feet; thence
North 05°56'12" West, a distance of 82.17 feet; thence
North 61°47'22" West, a distance of 30.14 feet; thence
North 60°50'42" West, a distance of 192.62 feet; thence
North 76°29'42" West, a distance of 156.75 feet; thence
North 55°30'02" West, a distance of 84.25 feet; thence
North 65°47'22" West, a distance of 272.55 feet; thence
North 37°39'02" West, a distance of 203.48 feet; thence
North 81°58'02" West, a distance of 32.17 feet; thence
South 45°58'28" West, a distance of 91.19 feet; thence

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 Parcel "P"
 Lorton Correctional Complexes (LCC)
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South 18°27'48" West, a distance of 135.13 feet; thence
 South 67°16'38" West, a distance of 148.76 feet; thence
 South 30°44'52" East, a distance of 428.59 feet; thence
 South 65°03'12" East, a distance of 54.00 feet; thence
 South 31°54'32" East, a distance of 206.66 feet (passing through a found concrete monument at
 156.66 feet); thence
 South 82°54'18" West, a distance of 64.78 feet; thence
 South 29°00'18" West, a distance of 355.81 feet; thence
 South 13°20'38" West, a distance of 167.10 feet; thence

South 46°50'32" East, a distance of 182.95 feet to a point on the shore line of the Occoquan River;
 thence with the shore line of said Occoquan River the following thirty-four (34) courses and distances:

North 82°20'12" West, a distance of 230.20 feet; thence
 North 68°37'22" West, a distance of 257.19 feet; thence
 North 88°19'02" West, a distance of 187.17 feet; thence
 North 75°52'52" West, a distance of 227.31 feet; thence
 North 58°11'57" West, a distance of 276.78 feet; thence
 North 41°22'51" West, a distance of 105.87 feet; thence
 North 01°56'11" East, a distance of 211.90 feet; thence
 North 00°21'53" East, a distance of 89.79 feet; thence
 North 21°36'37" West, a distance of 306.42 feet; thence
 North 06°31'39" East, a distance of 106.97 feet; thence
 North 06°46'42" West, a distance of 194.29 feet; thence
 North 15°38'46" West, a distance of 94.85 feet; thence
 North 02°02'48" West, a distance of 214.07 feet; thence
 North 31°12'18" West, a distance of 240.82 feet; thence
 North 18°46'13" West, a distance of 92.58 feet; thence
 North 29°19'35" West, a distance of 132.29 feet; thence
 North 50°10'28" West, a distance of 124.39 feet; thence
 North 24°50'24" West, a distance of 129.16 feet; thence
 North 59°56'35" West, a distance of 86.38 feet; thence
 North 28°31'35" West, a distance of 99.93 feet; thence
 North 44°57'08" West, a distance of 114.06 feet; thence
 North 46°54'20" West, a distance of 122.60 feet; thence
 North 38°49'36" West, a distance of 460.53 feet; thence
 North 27°20'38" West, a distance of 70.45 feet; thence
 North 39°30'51" West, a distance of 132.59 feet; thence
 North 38°32'03" West, a distance of 334.42 feet; thence
 North 22°40'25" West, a distance of 166.84 feet; thence
 North 41°56'50" West, a distance of 87.14 feet; thence
 North 47°42'17" West, a distance of 58.00 feet; thence
 North 47°00'18" West, a distance of 78.64 feet; thence

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Parcel "I"
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North 52°12'39" West, a distance of 61.84 feet; thence
North 44°09'33" West, a distance of 243.03 feet; thence
North 52°25'52" West, a distance of 169.70 feet; thence

North 60°04'15" West, a distance of 123.27 feet to a point on the eastern right-of-way line of Ox Road ~ Virginia State Route #123 ~ variable right-of-way and prescriptive right-of-way; thence departing shoreline of said Occoquan River, and with eastern right-of-way line of said Ox Road the following six (6) courses and distances:

North 05°55'12" East, a distance of 144.04 feet; thence
North 23°00'49" East, a distance of 142.57 feet; thence
North 04°24'36" West, a distance of 153.14 feet; thence
North 02°39'12" West, a distance of 284.03 feet; thence
North 05°33'04" East, a distance of 239.80 feet; thence

North 01°27'04" West, a distance of 45.60 feet to a found concrete monument, said monument being a corner of the lands of Newton Asphalt Company Incorporated of Virginia ~ Deed Book 5431 at Page 1105; thence departing eastern right-of-way line of said Ox Road, and with lands of said Newton Asphalt Company Incorporated of Virginia and then with the lands of Virginia Public Service Company ~ Deed Book C-11 at Page 279,

North 24°15'38" East, a distance of 1959.29 feet (passing through a set concrete monument at 458.62 feet, through a found concrete monument at 958.55 feet, and through a found concrete monument at 1458.51 feet) to a found concrete monument; thence continuing with the lands of said Virginia Public Service Company,

North 65°07'31" West, a distance of 553.88 feet to a point in the centerline of the aforesaid Ox Road, said point also being a corner of the lands of Fairfax County Water Authority ~ Deed Book 10373 at Page 1122; thence departing said Virginia Public Service Company and with the centerline of said Ox Road and the lands of said Fairfax County Water Authority the following ten (10) courses and distances:

North 17°25'01" East, a distance of 135.23 feet; thence
North 08°58'36" East, a distance of 140.49 feet; thence
North 01°57'18" West, a distance of 94.46 feet; thence
North 05°25'49" West, a distance of 237.79 feet; thence
North 08°37'53" West, a distance of 66.29 feet; thence
North 18°54'17" West, a distance of 107.03 feet; thence
North 25°41'36" West, a distance of 84.80 feet; thence
North 20°25'45" West, a distance of 61.62 feet; thence
North 07°47'07" West, a distance of 51.65 feet; thence
North 06°41'12" East, a distance of 48.34 feet to the Point of Beginning

Containing 417.5254 ACRES of land, more or less.

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EXHIBIT C – PROJECT AREA

The “Project Area” is the area within the yellow boundary on the attached document.

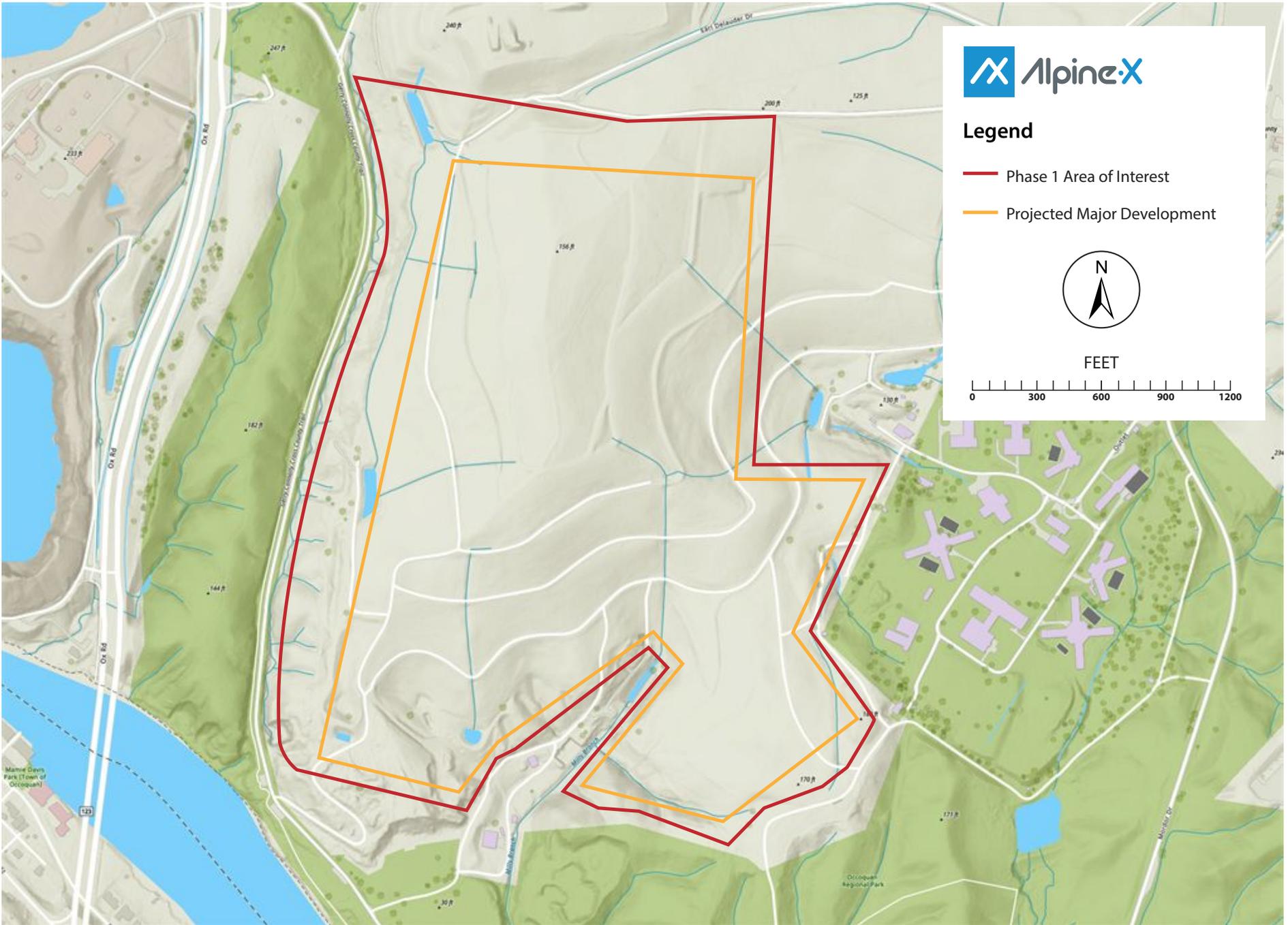


EXHIBIT D – RIGHT OF ENTRY AGREEMENT

Please see the attached document.

EFFECTIVE DATE: May 11, 2020

**FAIRFAX COUNTY
RIGHT OF ENTRY AGREEMENT**

RE: I-95 Landfill Complex, Lorton

THIS RIGHT OF ENTRY AGREEMENT (“Agreement”) by and between **THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA** (the “County”) and **ALPINE-X LLC** (the “Developer”).

RECITALS

WHEREAS, the County owns that certain parcel of real property having Fairfax County Tax Map Parcel Number 113-1 ((1)), Parcel 14 (“Parcel 14”); and

WHEREAS, Developer desires to enter that portion of Parcel 14 contained within the golden boundary line on graphic on the attached Exhibit A (such portion, the “Property”) for the purpose of performing certain Feasibility Studies (as defined below) in anticipation of negotiating an agreement with the County for the development of the Property pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, Chapter 22.1 of Title 56 of the Virginia Code (“PPEA”).

NOW, THEREFORE, in consideration of the Recitals, which are incorporated into this Agreement by reference, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Right of Entry. Subject to the terms and conditions of this Agreement, starting on the Effective Date and continuing until the Expiration Date, the County grants the Developer and its employees, agents, contractors, and invitees (collectively, “Agents”) the right to enter the Property at any time during daylight hours Monday through Saturday for performing the tasks described on Exhibit B to this Agreement (the “Feasibility Studies”). For clarity, the Property includes only those portions of Parcel 14 within the golden boundary line on the graphic on Exhibit A; it does not include other areas within Parcel 14 that are outside the golden line on Exhibit A. Other than the Feasibility Studies, Developer shall make no other use of the Property and shall perform no other activities on the Property without the County’s prior written approval.

2. Expiration; Termination. This Agreement will automatically expire (without further action by the County) at 11:59 p.m. on December 31, 2020 (the “Expiration Date”). The County and the Developer may mutually agree in writing to extend the Expiration Date, but neither party is under any obligation to do so. Notwithstanding the foregoing, the County may revoke this Agreement

at any time by notice delivered to Developer at the address set forth in Section 11 of this Agreement.

3. Prerequisites to Entry. Before entering the Property for each component of the Feasibility Studies (whether conducted individually or collectively), Developer must:

a. Provide proof of insurance as required in Section 10 of this Agreement; and

b. Provide advance notice (via email to each of John Kellas (john.kellas@fairfaxcounty.gov), Eric Forbes (eric.forbes@fairfaxcounty.gov), and Robert Glenn (robert.glenn@fairfaxcounty.gov)) and receive the County's approval (by email from one of the three named recipients) to proceed, such approval not to be unreasonably withheld or delayed.

4. Performance of Feasibility Studies.

a. During initial clearing and grubbing, Developer and its Agents will identify all County monitoring wells, whether active or abandoned, that are located within the areas of actual work or investigation pursuant to the Feasibility Studies and surround them with orange construction fencing to prevent disturbance.

b. If, as a result of Developer's Feasibility Studies, subsurface trash or waste is disturbed or exposed, Developer will document, photograph, and locate via GPS each area of exposed trash, including the depth discovered and the surface area of the waste. The Developer will remove at its cost any such exposed or disturbed trash to an active portion of the landfill, if any, the adjacent resource recovery facility, or to another facility appropriate to receive the material(s). Developer and its Agents will use its best efforts to cap areas of exposed waste by the end of each working day with clay or synthetic material to seal the waste areas. The cap will comply with the Property's closure plan and applicable permits. When daily cap repair is not practically achievable, the Developer will provide a temporary cover of either 6" of dirt, a tarp or other approved material to minimize infiltration and prevent surface litter, provided that such temporary measure is replaced with a permanent cap within three (3) days. No stock piling of waste is authorized. Developer and its Agents must notify the County at the close of business of each working day of the discovery of any subsurface waste or trash disturbed or exposed by Developer or its Agents.

c. The Developer and its Agents will coordinate with the County to allow the County to arrange for site inspection during all work associated with the Feasibility Studies. The Developer and its Agents will, upon request, (i) allow the County and its designated consultant(s) (as identified by the County to the Developer) such access to the Feasibility Study work areas as the County or its consultant may deem necessary from time to time to monitor the work of the Feasibility Studies and (ii) provide the County's consultant with such information regarding the work of the Feasibility Studies as the consultant may reasonably require.

d. Developer and its Agents will coordinate with the County for any temporary modifications to the existing drainage systems if impacted by the Feasibility Studies. Developer

and/or its Agents will modify and connect any underground pipes that become exposed to daylight by new slopes to new project drainage features that meet County and DEQ requirements.

e. Encountering methane should be expected. When conducting the Feasibility Studies, Developer and its Agents will employ appropriate methane detection and mitigation measures at all times in accordance with industry standards for comparable studies or investigative work.

f. The County will provide Developer with a copy of the I-95 safety plan. Developer and its Agents must immediately stop work upon notification from County staff that work is being conducted in an unsafe manner and, in the view of the County, poses a risk to the Property and/or the surrounding area. In such event, Developer and its Agents may not resume work until County staff and the Developer agree upon modifications or measures intended to address the alleged deficiencies.

g. Developer and its Agents will comply with all applicable laws, ordinances and OSHA safety protocols related to construction-related activities while conducting the Feasibility Studies on the Property. Developer and its Agents will provide and adequately maintain any barricades, fences, signs, lanterns and other suitable devices as deemed necessary by OSHA guidelines for employee and public safety with respect to the Feasibility Studies performed under this Agreement.

h. During periods of actual work related to the Feasibility Studies, Developer and its Agents will maintain the security of each of its work sites on the Property to the reasonable satisfaction of the County for the purpose of limiting access to the Feasibility Study work areas to only Developer and its Agents. Developer and its Agents will each maintain all its work areas on the Property in a clean and presentable manner.

i. The County and the Developer may add to the scope of the Feasibility Studies by amending this Agreement (including Exhibits A and B) in writing, neither party being under any obligation to do so.

j. Notwithstanding anything in this Agreement to the contrary, Developer and its Agents will not dig or drill to, or otherwise disturb, existing subgrade or landfill base. If the depth of the subgrade and/or landfill base cannot be determined at given location, Developer and its Agents will not dig or drill in or otherwise disturb such location without the County's prior written approval.

5. Restoration. Except as provided in Section 4 above regarding the potential installation of new caps, Developer, at its own expense, will promptly restore, as near as reasonably possible, those portions of the Property disturbed by Developer and/or its Agents to their original condition(s) in accordance with the Property's closure plan and applicable permits. Developer and its Agents will coordinate with the County before commencing any such restoration work.

6. Hazardous Materials.

a. Developer acknowledges that the Property is the site of a closed landfill and may contain Hazardous Materials (as defined below). If Developer or its Agents discovers any Hazardous Materials on the Property that would not otherwise reasonably be expected to be discovered when conducting the Feasibility Studies on a closed landfill, such as evidence of potential chemical contamination or leak, it or they will immediately notify the County.

b. "Hazardous Materials" means (a) asbestos and any asbestos containing material and any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law (as defined below) or any other applicable law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (b) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (c) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Property or hazardous to health or the environment.

i. "Environmental Law" means any present and future law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities applicable to the Property and relating to the environment and environmental conditions or to any Hazardous Material (including, without limitation, CERCLA, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 1101 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; and any so-called "Super Fund" or "Super Lien" law, any law requiring the filing of reports and notices relating to hazardous substances, environmental laws administered by the Environmental Protection Agency and any similar state and local Laws, all amendments thereto and all regulations, orders, decisions and decrees now or hereafter promulgated thereunder concerning the environment, industrial hygiene or public health or safety

7. Election Not to Proceed; Reports. In the event either the County or the Developer notifies the other of its intent not to proceed with execution of a Interim Agreement pursuant to the PPEA process, Developer must, promptly following such notice, deliver to the County or destroy all materials or reports in Developer's possession prepared or obtained through the Feasibility Studies and must deliver to the County a certified statement that all work that could give rise to a lien against the Property has been paid in full. Before any such notice, the County may request information and/or reports prepared or obtained through the Feasibility Studies as part of PPEA negotiations.

8. Equipment.

a. Developer and its Agents may store equipment on the Property during the term of this Agreement; provided, however, that Developer and its Agents shall be solely responsible for securing such equipment on the Property, and the County will not be liable for any theft or damage to any equipment stored by Developer on the Property.

b. At the expiration or termination of this Agreement, the Developer will remove all tools, equipment, and other personal property from the Property at its sole cost. This provision survives the expiration or earlier termination of this Agreement.

9. Indemnification. Developer will indemnify and hold harmless the County and its officials, officers, employees, and agents:

a. From and against any and all claims, demands, damages, suits, actions, proceedings, judgments, decrees, orders, fines, costs, and expenses (including reasonable attorney's fees) due to any damage to property, injury or death of any person, or otherwise as a result of the entry upon or activities within the Property by the Developer, its employees, Agents, or independent contractors occurring in connection with, or arising out of the performance of the work permitted by this Agreement; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of the County;

b. From all liabilities, remedial costs, environmental claims, fees, or other expenses directly related to, arising from, or attributable to (i) any Hazardous Materials introduced by the Developer on the Property or (ii) Developer's activities involving Hazardous Materials on the Property, to the extent that Developer is either negligent in such activities or in breach of the terms of this Agreement (e.g., failure to appropriately install a cap). The foregoing indemnity excludes any claims or liabilities caused by the gross negligence or willful misconduct of the County; and

c. From any claims by contractors or subcontractors who perform any activity on the Property; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of the County. This Agreement must not be construed as granting the Developer or any contractor of the Developer the right to place any lien, mechanic's lien, or any charge on the Property.

10. Insurance.

a. Developer and/or its Agents will obtain and maintain throughout the term of this Agreement the following types of insurance:

i. Statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$1,000,000 to protect from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.

ii. Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Developer, its Agents, and the interest of the County, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work.

iii. Owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Developer or its Agents. In addition, all mobile equipment used by the Developer or its Agents in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy.

b. The County and its officials, officers, employees, and agents will be named as “additional insured” on the General Liability and automobile policies.

c. Each of the insurance policies required by this Section 10 must be issued by companies licensed and authorized to do business in the Commonwealth of Virginia and having a Best’s Key Rating of at least A:VII.

d. For so long as this Agreement remains effective, Developer may not cancel, terminate or modify (except to increase the amount of coverage) the required insurance policies without providing thirty (30) days’ prior written notice from Developer to the County. If the required insurance policies should be canceled, terminated, or modified, so that the insurance is not in full force and effect, then the County may terminate this Agreement immediately, without prior notice or right to cure by the Developer

e. Evidence of the requisite insurance policies in the form of certificates of insurance must be submitted to the County before entry by Developer or its Agents onto the Property and from time to time at the County’s request. The insurance certificates must state that the coverage “is primary to all other coverage the County may possess.”

11. Notice.

a. Except as set forth in Paragraph 3 above, all notices, demands or other communications sent under this Agreement (“Notice”) must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally recognized, next-day courier service, addressed as follows:

If to the County:

Fairfax County Department of Public Works & Environmental Services
12000 Government Center Parkway, Suite 548
Fairfax, VA 22035
Attention: John Kellas, Director of Solid Waste & Recycling
john.kellas@fairfaxcounty.gov

With a copy to:

Fairfax County Facilities Management Department
12000 Government Center Parkway, Suite 424
Fairfax, VA 22035
Attention: Michael Lambert, Assistant Director
michael.lambert@fairfaxcounty.gov

and

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035
Attention: County Attorney
ryan.wolf@fairfaxcounty.gov

If to the Developer:

Niels ten Berge
1308 Vincent Place
McLean, VA22101
Niels@alpine-X.com

and:

Brad Ryan
1308 Vincent Place
McLean, VA22101
Brad@alpine-X.com

With a copy to:

Cooley LLP
11951 Freedom Drive, Suite 1400
Reston, VA 20190
Attention: Mark C. Looney
mlooney@cooley.com

b. A Notice given in accordance with this Agreement will be effective upon receipt or refusal by the party to which it is given.

c. For convenience, Notices may be sent via email; however, such email Notice will not be considered effective until the original Notice is received by the party to which it is given pursuant to one of the delivery methods described in Section 11(a) above.

d. Either party may change its Notice address from time to time by informing the other party in writing of such new address.

12. Miscellaneous.

a. Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia without regard to its conflict of laws statutes.

b. Survival. The obligations of Sections 4(b), 5, 8(b), and 9 will survive the expiration or other termination of this Agreement.

c. Waiver, Modification. Failure by either party to insist upon or enforce any of its rights hereto shall not constitute a waiver thereof, except where non-action is expressly described herein as such a waiver. This Agreement shall not be modified, amended, or altered except by a written agreement signed by the County and the Developer.

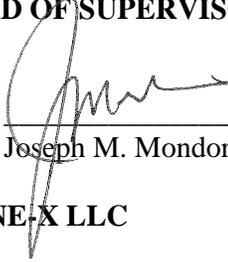
d. No Right, Title, or Interest. Nothing contained in this Agreement and no action or inaction by the County shall be deemed or construed to mean that the County has granted the Developer any right, power, or permission to do any act or make any agreement that may create, give rise to, or be the foundation for any right, title, interest, lien, or charge to the Property, including, but not limited to, the grant of an easement in the Property.

e. Time. With respect to all time periods contained in this Agreement, it is expressly understood that time is of the essence.

f. Appropriations. To the extent this Agreement is construed to impose any financial obligations upon the County, any such financial obligations shall be binding to the extent of appropriations by the Fairfax County Board of Supervisors.

g. Counterparts; Electronic Signature. This Agreement may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: 

Joseph M. Mondoro, Chief Financial Officer

ALPINE X LLC

By: _____
Niels ten Berge, Chief Executive Officer

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BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: _____
Joseph M. Mondoro, Chief Financial Officer

ALPINE-X LLC

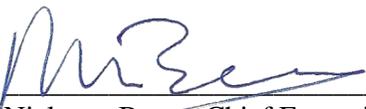
By:  _____
Niels ten Berge, Chief Executive Officer

EXHIBIT A

DESCRIPTION OF PROPERTY

Please see attached graphic.

EXHIBIT B

SCOPE OF WORK

Please see attached document.



The current scope of the project is marked with the burgundy red line. The yellow area will be used for further exploration of the feasibility of building large construction on the landfill.

Expected Feasibility Surveys:

- ALTA (American Land Title Association) Survey
- UAV (unmanned aerial vehicle) topographical survey
- Ground Penetrating Radar (GPR) and Electrical Resistivity Testing
- Cone penetrometer test (CPT)
- Standard Penetration Testing
- Test pits (not expected)
- Geotechnical sampling of waste properties
- In-situ Permeability Testing and Evaluation (Pumping Tests)
- Soil/Groundwater/Surface Water/Leachate Sampling and Analysis
- Confirm access to utilities (grey water, water, heat, sewer, etc.)
- Groundwater and Seepage Analysis and Design
- Lateral Earth Pressure Estimates (Field Load Tests)
- Settlement Analyses and Monitoring
- Hydrologic Investigation and Analyses
- Erosion Inspections
- Hydraulic Analyses of Pipes, Channels, Ditches, etc.
- Phase 1 ESA (Environmental Site Assessments)



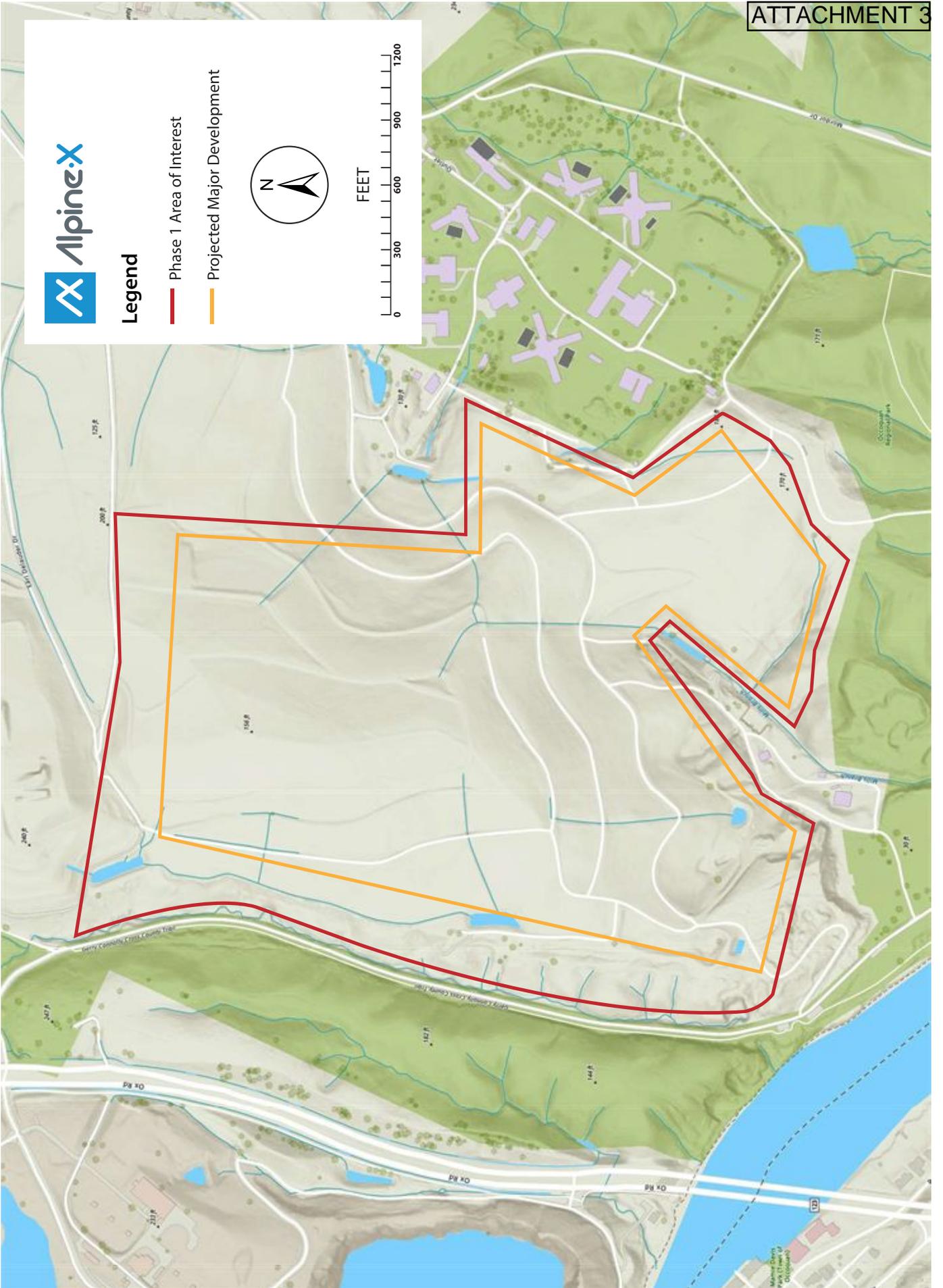
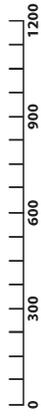
Legend

— Phase 1 Area of Interest

— Projected Major Development



FEET



3:30 p.m.

CLOSED SESSION:

- (a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).
- (b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).
- (c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).
 - 1. *Mathieu Ghirardo v. Jarryd Blackford*, Case No. GV20-011457 (Fx. Co. Gen. Dist. Ct.)
 - 2. *Randy Pope v. Carl J. Pumphrey and Fairfax County*, Case No. GV20-005877(Fx. Co. Gen. Dist. Ct.)
 - 3. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Thien Tho Ngoc Nguyen and Kim-Uyen Mai Pham*, Case No. CL-2020-0014216 (Fx. Co. Cir. Ct.) (Braddock District)
 - 4. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Catherine Suk Young An and Soo Min Jung* GV-20-011622 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
 - 5. *Christopher Farrell v. Fairfax County Board of Supervisors and Virginia Department of Transportation*, Case No. CL-2020-0000569 (Fx. Co. Cir. Ct.) (Mason District)
 - 6. *Leslie B. Johnson, Zoning Administrator v. Kaylan A. Baban and Brandon Jordan*, Case No. GV 20-13419 (Fx. Co. Gen. Dist. Ct.) (Mason)
 - 7. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ivett Alejandra Leyva and Brian Holm-Hansen*, Case No. GV20-013325 (Fx. Co. Gen. Dist. Ct.) (Mason District)
 - 8. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Potomac Crossroads, LLC*, Case No. CL-2020-0012959 (Fx. Co. Cir. Ct.) (Mount Vernon District)

9. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Michael A. Ficco and Pamela G. Ficco, Case No. GV20-013327 (Fx. Co. Gen. Dist. Ct.) (Springfield District)*

10. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Mark Allen Smith; Case Number GV19-042699 (Fx. Co. Gen. Dist. Ct.) (Springfield District)*