

LEXINGTON PLANNING COMMISSION

October 14, 2021 - 5:00 P.M
 Second Floor Conference Room, Lexington City Hall
 300 East Washington Street, Lexington, VA 24450

AGENDA

1. **CALL TO ORDER**
2. **APPROVAL OF THE AGENDA**
3. **APPROVAL OF MINUTES**
 Minutes from September 23, 2021*
4. **CITIZENS' COMMENTS ON MATTERS NOT ON THE AGENDA**
5. **NEW BUSINESS**
 - A. ZO 2021-03: Annual Zoning Ordinance Amendments, Small Cell facilities.
 - 1) Continued discussion of Small Cell text amendment*
 - 2) Public Comment
 - B. ZO 2021-04: Annual Zoning Ordinance Amendments. Planned Unit Development (PUD).
 - 1) Discussion of PUD text amendment summary*
 - 2) Public Comment
6. **OTHER BUSINESS**
 - A. Zoning and Planning Report – If applicable
 - B. Catalyst Project Updates – If applicable
 - 1) Bike/Ped Plan: Ongoing
 - 2) Increase Sidewalk Connectivity: Ongoing; Green Infrastructure Working Group
 - 3) Accessory Dwelling Unit Ordinance: Starting soon
 - 4) Jordan's Point Park Plan Implementation
 - 5) Reprogram Traffic Signals Downtown: Complete
 - 6) Assess Stormwater Fees: Tabled until next year
 - C. Key Annual PC Milestones: Ongoing. Remaining items:
 - 1) Zoning Text Amendments: Ongoing. Remaining items:
 - a. Small Cell
 - b. Planned Unit Development
 - c. Accessory Dwelling Unit
 - d. Cottage Housing
 - e. What else, if any?
 - 2) Comp Plan Review: Ongoing

D. Threshold Commission joint session update

7. CITY COUNCIL REPORT

8. ADJOURN

*indicates attachment

MINUTES

**The Lexington Planning Commission
Thursday, September 23, 2021 – 5:00 p.m.
Second Floor Conference Room – City Hall
300 East Washington Street**

Planning Commission:

Presiding: Jamie Goodin, Chair,
Present: Blake Shester, Vice-Chair
Nicholas Betts
Pat Bradley
John Driscoll
Leslie Straughan, Council Liaison
Matt Tuchler

City Staff:

Arne Glaeser, Planning Director
Kate Beard, Administrative Assistant

CALL TO ORDER

Chair Goodin called the meeting to order at 5:03 p.m.

AGENDA

The agenda was approved unanimously. (N. Betts / J. Driscoll)

MINUTES

Minutes from the September 9, 2021 meeting were unanimously approved as presented.
(N. Betts / L. Straughan)

CITIZENS' COMMENTS ON MATTERS NOT ON THE AGENDA

None

NEW BUSINESS

A. EC COA 2021-07: An application by Brian Torrence for new signs for the Lexington Pancake House business at 465 East Nelson Street, Tax Map # 30-1-9, owned by RBSA, LLC.

- 1) Staff Report – This request is for one wall sign and one freestanding sign at the Lexington Pancake House location in the Rockbridge Square Shopping Center. The parcel is located in the Commercial Shopping Centers (C-2) zoning district and in the Entrance Corridor Overlay District (EC). The proposed wall sign will be a 40 square foot (8 feet wide and 5 feet high) flat pane made of PVC, plastic and metal. An example of the proposed sign graphic is included in the application. It will feature blue, black and red type face on a white background. It will not be illuminated. The applicant also proposes a similar, appropriately scaled panel be placed in the existing multi-tenant free standing sign adjacent to East Nelson Street. Staff finds the proposal meets zoning criteria. M. Tuchler noted there is an existing window sign located on the property not mentioned in the application. Mr. Torrence, the applicant, stated the window sign would be removed. He also clarified that the two temporary wall signs will be removed and the new wall sign will be located on the wall above the entrance. J. Driscoll asked how the Commission should apply the criteria regarding consistency and harmonious

color schemes. A. Glaeser replied that the nature of the parcel (one parcel containing several buildings and multiple tenant businesses) and the fact that it does not have an overall sign plan or color scheme make it essentially impossible for the Commission to apply this criteria.

- 2) Applicant Statement – Brian Torrence, business owner – indicated that he did not have to have his sign proposals approved by the property owner or management.
- 3) Public Comment – None
- 4) Commission Discussion & Decision – **B. Shester moved to approve the Entrance Corridor Certificate of Appropriateness application EC COA 2021-07 for a wall sign and an illuminated freestanding sign panel for the Lexington Pancake House business at 465 East Nelson Street as proposed by the applicant. P. Bradley seconded, and the motion passed unanimously. (7-0)**

B. EC COA 2021-08: An application by the Brian Torrence for new signs for the Ugly Doug's Deli business at 453 East Nelson Street, Tax Map # 30-1-9, owned by RBSA, LLC.

- 1) Staff Report/Applicant Statement – This request is for one wall sign and one freestanding sign at the new Ugly Doug's Deli location in the Rockbridge Square Shopping Center. The parcel is located in the Commercial Shopping Centers (C-2) zoning district and in the Entrance Corridor Overlay District (EC). Ugly Doug's Deli will be located in the old Uptown Smoothies storefront between Cookout and Pack and Mail. The proposed wall sign is a 30 square feet (6 feet wide and 5 feet high) internally illuminated panel made of PVC, metal and plastic. An example of the proposed sign graphic is included in the application. The proposed panel for the freestanding multi-tenant sign adjacent to E. Nelson Street is 7.5 square feet (7 feet wide and 1.5 feet high). The proposed graphics for each sign are included in the application. Staff finds the proposal meets zoning criteria.
- 2) Applicant Statement – Brian Torrence, business owner – stated that since submitting this application he has been unable to reach the sign manufacturer he had intended to have make the signs. For that reason he is now requesting to hang a 32 square feet (8 feet wide and 4 feet high), flat, non-illuminated wall sign beneath the existing lights which will be used for illumination, rather than the internally illuminated sign proposed in the application. A. Glaeser asked how the appearance of the sign graphic would be affected by the change in wall sign's orientation. Mr. Torrence said the graphic would be smaller in size, but would otherwise remain the same. In response to a question from M. Tuchler, A. Glaeser confirmed the applicant would be required to submit a new application for Commission's approval should he wish to have an internally illuminated wall sign in the future.
- 3) Public Comment – None
- 4) Commission Discussion & Decision - **L. Straughan moved to approve the Entrance Corridor Certificate of Appropriateness application EC COA 2021-08 for an illuminated freestanding sign panel and for an externally illuminated wall sign for the Ugly Doug's Deli business at 453 East Nelson Street as**

amended by the applicant. N. Betts seconded, and the motion passed unanimously. (7-0)

C. ZOA 2021-03: Annual Zoning Ordinance Amendments, Small Cell facilities

- 1) Continued discussion of Small Cell text amendment – A. Glaeser began by suggesting the Commission focus on approval of the structure of the proposed amendment to the Zoning Chapter rather than a line by line text analysis for this meeting. He reported the Architectural Review Board has begun discussion of amendments to the Historic District Design Guidelines and there was discussion of how the ARB was approaching the subject. He also reported that he is waiting to receive feedback from the Public Works Director on the suggested amendment to the Streets & Sidewalks Chapter, and that he hoped to provide the Commission at its next meeting with a side-by-side comparison of that proposed language with the state code. He then led the Commission through the report staff prepared using language adopted by the City of Chesapeake in June 2019 to update the use and design standards for communication towers in their zoning ordinance. J. Driscoll questioned why a broadcasting or communication tower is a conditional use in the R-1 and R-2 districts but not in the R-M and R-LC districts and suggested the Commission review the Use Matrix. J. Goodin noted the definition of communication tower does not include internet and suggested it be added. There were several suggestions as to how the definition might be amended to cover as many technologies as possible. There did not appear to be any objection to the proposed structure of the draft Communication Tower use and design standards.
- 2) Public Comment – Charles Aligood suggested contacting a legislative aide for the legislator responsible for the Virginia small cell legislation and ask what the trick is for undergrounding, etc.
- 3) Additional zoning text amendment discussion – A. Glaeser suggested that an initial scoping discussion for the Planned Unit Development text amendment be added to the agenda for the next meeting and asked for Commissioners' feedback. There was general agreement to the addition. J. Goodin asked that the PUD summary drafted by Commissioner Driscoll be recirculated.

OTHER BUSINESS

A. Zoning Report – A. Glaeser reported the following:

- A new short term rental on S. Jefferson Street was approved.
- Staff received a couple of inquiries about possible first floor dwelling units in the C-1 district. Currently first floor residential units are a conditional use in the C-1. Perhaps the Commission would like to entertain limiting this requirement to only certain streets within the district.
- A. Glaeser attended a virtual DHCD training for affordable and special needs housing. While he does not highly recommend it, he wanted to let Commissioners know it is available.
- A. Glaeser attended the quarterly meeting with the Office of Intermodal Planning and Investment and monthly meeting with consultants for the Bike/Ped Plan. Invitations for

- stakeholder meetings will go out soon. Also a survey, similar to the one done for Jordan's Point, will be drafted and widely disseminated.
- The request for the addition of a Comprehensive Plan line item to the CIP form has been passed on to the Interim Finance Director.
 - The Comp Plan Implementation spreadsheet provided in this meeting's packet is a follow up to a request made at the last meeting.
 - Recent code enforcement items include a taxi cab driver and an overgrown lot.
 - A. Glaeser met with an architect about a project on Jackson Avenue.
 - There was an inquiry about a food truck.
- B. Catalyst Projects Update – Chair Goodin asked if there were any thoughts to be added. A. Glaeser said the only item he knew of was the Bike/Ped Plan which was already mentioned. L. Straughan asked if the charging station slated to go in at Sheetz and mentioned at the last meeting was being funded by grant money. A. Glaeser said the company that had been working on installing charging stations with the Volkswagen money ran into issues with the State. The Sheetz charging station is a separate proposal which came from Tesla and will be privately funded. A Site Plan Application has not yet been filed, but when it is it will come to the Planning Commission for approval. J. Goodin noted that, as is the case with the Sheetz project, a single project frequently addresses more than one Comp Plan Implementation strategy. J. Driscoll asked how the Commission wished to highlight issues to be addressed in the annual report. He suggested the Commission plan a work session to go through the Comp Plan systematically to determine priorities to recommend to Council for next year. J. Goodin suggested input from other departments and groups may be helpful. L. Straughan suggested that current priorities be completed before adopting too many new ones. J. Goodin noted the outcome of such a discussion could be that priorities have not changed.
- C. Key Dates – No comments
- D. Threshold Commission joint session update – A. Glaeser presented the draft scope/agenda proposed by Commissioner Driscoll and Threshold Commissioner Marilyn Alexander for the proposed joint work session. He reported the Threshold Commission expressed general acceptance of the proposal and discussed working with the speaker to schedule the session, inviting Threshold partners as well as members of other jurisdictions with interest in such work, drafting a press release and advertising to make the public aware of the educational opportunity, and looking into an appropriately sized meeting location. He requested input from the Commission and suggested a poll could be done to help with scheduling. J. Driscoll said he would soon reach out to the proposed speaker who had suggested a topic of housing cost overburden. L. Straughan suggested that, given the apparent level of interest, perhaps Zoom would be the appropriate meeting venue. There appeared to be general agreement that Zoom would be the preferred format for the session, provided it was acceptable to the speaker.
- E. Green Infrastructure Working Group update – J. Driscoll explained the proposal is to reconvene the group for approximately six months to provide advice and recommendations during the development of the Bike/Ped Plan and to provide feedback on the Green Infrastructure Chapter of the Comp Plan. He provided the Commission with a list of suggested group members to include Commissioners Driscoll and Bradley as liaisons. He noted there were a couple of openings on the list and asked that Commissioners suggest additional nominees. There seemed to be agreement that the group membership should

include City residents who would provide some diversity in age and race. J. Driscoll asked how the group could logistically best advise the Baker Group. A. Glaeser stated the contract with the Baker Group limited the stakeholder meetings to ten. He indicated that several members of the Green Infrastructure Group such as Dave Walsh of Red Newt's Bike Shop, VMI and W&L would likely be invited separately to stakeholder meetings and suggested that perhaps the Green Infrastructure Group receive an invitation for a stakeholder meeting as a group.

CITY COUNCIL REPORT

L. Straughan reported that at its last meeting, City Council had a presentation by Chad Coffey, the new Executive Director of RARO. There was a public hearing to approve an emergency declaration allowing the City Boards and Commissions to meet virtually. Council also had public hearings for the South Main Street boundary line adjustment and Spotswood subdivision reviewed by the Planning Commission at its last meeting. The City Attorney gave a presentation concerning the lack of deed restrictions for the Spotswood Property and members of the public shared comments addressing their understanding of the historical intent for the property to be used to enlarge the cemetery.

ADJOURN

The meeting was adjourned at 6:45 pm with unanimous approval (B. Shester/P. Bradley).

J. Goodin, Chair, Planning Commission

Draft amendments for Small Cell Facilities

In their 2017 session, the General Assembly passed SB1282 which impacts how the City assesses and approves wireless facilities both on and off city property. Small cell facility regulations are proposed to be added to a) the Lexington Zoning Chapter, b) to the Historic District Design Guidelines, and c) to the Streets and Sidewalks Chapter in accordance with the state regulations for small cell facilities.

The following report is divided into three sections and the **highlighted** items indicate proposed, amended language. The following table of contents for the Zoning Chapter identifies the two historic districts and the use and design standards for Broadcasting or Communication Tower that are proposed to be amended.

Chapter 420. Zoning Ordinance Table of Contents

Article I. In General

Article II. Review and Approval Procedures

Article III. Use Matrix.

Article IV. Zoning District Regulations

Article V. Planned Unit Development (PUD)

Article VI. Entrance Corridor Overlay District (EC)

Article VII. Institutional District I-1

Article VIII. **Historic Downtown Preservation District**

Article IX. **Residential Historic Neighborhood Conservation District**

Article X. General Floodplain District FP

Article XI. Use and Design Standards

§420-11.1. Residential Uses

§420-11.2. Civic Uses

§420-11.3. Commercial Uses

§420-11.4. Industrial Uses

§420-11.5. Miscellaneous Uses

1. Parking Facility

2. Portable buildings

3. Portable Storage Container

4. **Broadcasting or Communication Tower**

Article XII. Off-Street Parking and Loading Requirements

Article XIII. Signs

Article XIV. Landscaping

Article XV. Exterior Lighting

Article XVI. Nonconforming Uses

Article XVII. Amendments

Article XVIII. Enforcement

Article XIX. Board of Zoning Appeals

Article XX. Definitions

A. Proposed Amendments to the Zoning Chapter

The City of Chesapeake, VA updated their use and design standards for communication towers on June 18, 2019 to include the limitations adopted by the State of Virginia in 2017 and 2018, and the following draft is based on the use and design standards from the Chesapeake, VA zoning ordinance. The draft language on the next few pages will require adjustments to fit Lexington.

The drafted language remains unwieldy and staff composed the following summary in an effort to orientate the reader.

Structure of the draft Communication Tower use and design standards.

A. Definitions and Scope

- ❖ All communication towers (i.e. tower or antenna) shall be classified as an administrative review-eligible or standard process project.
- ❖ All state definitions are included.

B. Conditional Use Permit required

- ❖ All towers and antennas require a conditional use permit with exceptions for:
 - Administrative review-eligible projects,
 - Temporary portable towers,
 - Small cell facilities, and
 - Micro wireless facilities
- ❖ A pre-application meeting is required prior to the submittal of a conditional use permit application.
- ❖ Additional information is required for a communication tower conditional use permit application.
- ❖ Multiple use of communications towers is required whenever feasible.
- ❖ Additional evaluation criteria are included for communication tower conditional use permits (in addition to the conditions of issuance for conditional use permits in Sec. 420-1.11.C of the zoning ordinance).

C. Setback Requirements

- ❖ Provides setback requirements for towers and antennas for which a conditional use permit is required

Article XI. Use and Design Standards (Lexington Zoning Chapter)

The following additional regulations apply to specific uses as set forth below. These regulations are intended to serve as the minimum standards for these uses, and are not intended to be in substitution for other provisions of this ordinance that may apply.

§420-11.5. Miscellaneous Uses.

4. ~~Broadcasting or~~ Communication Tower.

A. ~~Applicability. The requirements set forth in this section shall control all antennas and broadcasting or communication towers except any antenna that is under 75 feet in height and is owned and operated by a federally licensed amateur radio station operator.~~ (Language in blue is deleted here but included elsewhere in this section.)

B. ~~General guidelines and requirements.~~

1. ~~A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or towers on that lot. Antennas or towers may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this section shall not be deemed to constitute the expansion of a nonconforming use or structure.~~

2. ~~Inventory of existing sites. Each applicant for an antenna and/or tower shall provide to the City an inventory of its existing facilities that are either within the City or within five miles of the City limits, including specific information about the location, height, and design of each tower. The City may share such information with other applicants applying for approvals or conditional use permits under this section or other organizations seeking to locate antennas within the City; provided, however, that the City is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.~~

C. ~~Setbacks. The following setback requirements shall apply to all towers and antennas for which a conditional use permit is required; provided, however, that the City may reduce the standard setback requirements if the goals of this section would be better served thereby:~~

1. ~~Towers must be set back a distance equal to 200% of the height of the tower from any off-site residential structure and in no case less than 400 feet.~~

2. ~~Towers, guys, and accessory facilities must satisfy the minimum zoning district setback requirements for primary structures.~~

(The following language is from the Chesapeake, VA zoning supplemental regulations for communication towers and this language will require adjustments to fit Lexington.)

A. Definitions and Scope

1. Communication tower is defined as a tower or antenna which supports communication (broadcasting and/or receiving) equipment utilized by commercial, government or other corporate, public and quasi-public users. Towers include radio, television, cellular telephone, personal communication services (PCS), microwave and other similar communications facilities, satellite earth station and building-supported antennas which are more than twenty-two (22) feet in height, measured from the highest point of the roof of the building to

~~which the antenna is attached.~~ The towers may be self-supporting or guy-supported. The regulations set out below do not apply to the following: (1) amateur radio communications antennas under 75 feet in height owned and operated by a federally licensed amateur radio station operator; (2) antennas and dishes limited exclusively to home use; and (3) towers owned by the city. All communication towers shall be classified as an administrative review-eligible or standard process project, as defined below.

a. Project means (i) the installation or construction by a wireless services provider or wireless infrastructure provider of a new structure or (ii) the co-location on any existing structure of a wireless facility that is not a small cell facility. "Project" does not include the installation of a small cell facility by a wireless service provider or wireless infrastructure provider on an existing structure to which the provisions of subsection 420-11.5.4.B.2.c of this ordinance apply.

(1) Administrative review-eligible project means a project that provides for:

(a) The installation or construction of a new wireless support structure, as defined below, that is no more than fifty (50) feet above ground level, provided that the structure with attached wireless facilities is (i) not more than ten (10) feet above the tallest existing utility pole located within five hundred (500) feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located within the boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional boundaries of a locality having expended a total amount equal to or greater than thirty-five (35) percent of its general fund operating revenue, as shown in the most recent comprehensive annual financial report, on undergrounding projects since 1980; and (iv) the new wireless support structure is designed to support small cell facilities; or

(b) The co-location on any existing structure of a wireless facility that is not a small cell facility.

(2) Standard process project means any project other than an administrative review-eligible project. All such projects shall require a conditional use permit in accordance with this ordinance.

2. Antenna means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

3. Base station means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

4. Co-locate means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. For purposes of this ordinance, "co-location" shall have the same meaning.

5. Department means the Department of Transportation.

6. Existing structure means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department of an agreement with the owner of the structure to co-locate equipment on that structure. "Existing structure" includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles, flag poles, signs, and water towers. It shall also include the replacement of a structure, located within a six (6) foot perimeter of the original placement of the structure, with structures that are the same size or smaller.
7. Micro-wireless facility is defined as a small cell facility that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, no longer than eleven (11) inches.
8. New structure means a wireless support structure that has not been installed or constructed, or approved for installation or construction, at the time a wireless services provider or wireless infrastructure provider applies to a locality for any required zoning approval.
9. Small cell facility means a wireless facility that meets both of the following qualifications:
 - a. each antenna is located inside an enclosure of no more than six (6) cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and 2) all other wireless equipment associated with the facility has a cumulative; and
 - b. all other wireless equipment associated with the facility has a cumulative volume of no more than twenty eight (28) cubic feet, or such higher limit as established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume calculation: electric meters, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.
10. Utility pole means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.
11. "Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.
12. "Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

13. "Wireless infrastructure provider" means any person that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.
14. "Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless facilities.
15. "Wireless services provider" means a provider of wireless services.
16. Wireless support structure means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

B. Conditional Use Permit required

1. Except as provided below, all communication towers shall be handled as standard process projects and shall require a conditional use permit, obtained in accordance with the provisions of Article 1 of this ordinance. Standard process projects shall be reviewed pursuant to the criteria put forth in Virginia Code Section 15.2-2316.4:2, as amended. The processing of a standard process project application shall be subject to the following parameters:
- a. Within ten (10) days after receipt of a conditional use permit application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. All such applications shall be approved or denied within the following specified time periods:
- (1) For a new structure, as defined by this ordinance, within the lesser of one hundred and fifty (150) days of receipt of the completed application or the period required by federal law for such approval or disapproval; or
- (2) For the co-location of any wireless facility that is not a small cell facility within the lesser of ninety (90) days of receipt of the completed application or the period required by federal law for such approval or disapproval.
- (3) Any period specified above for the city council to approve or disapprove an application may be extended by mutual agreement between the applicant and the city.
- b. A completed conditional use permit application shall be deemed approved if the city council fails to approve or disapprove the application within the periods specified above or any agreed extension thereof.

- c. Any disapproval of the conditional use permit application shall be in writing and accompanied by an explanation for the disapproval, and the locality shall identify any modifications that could be made to the application which would permit the city to approve the proposed project. City council's action on disapproval of an application submitted under this section shall:
 - (1) Not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; and
 - (2) Be supported by substantial record evidence contained in a written record publicly released within thirty (30) days following the disapproval.
 - d. The fee for processing standard process projects shall be five hundred dollars (\$500.00), which shall not exceed the actual direct costs to process the application, including permits and inspection, in accordance with Virginia Code Section 15.2-2316.4:1, as amended.
 - e. Nothing in this section shall prohibit the denial of an application because:
 - (1) The proposed height of any wireless support structure, wireless facility, or wireless support structure with attached wireless facilities exceeds fifty (50) feet above ground level; provided that such denial does not unreasonably discriminate against the applicant; or
 - (2) The proposed location of the new structure or co-location of a wireless facility is in an area where all cable and public utility facilities are required or encouraged to be placed underground in accordance with Virginia Code Section 15.2-2316.4:2, as amended;
 - (3) The applicant did not provide written notice to adjacent landowners at least 15 days before it applies to locate a new structure, or
 - (4) Existing wireless support structures are available within a reasonable distance that could be used for co-location. The applicant shall be responsible for submitting evidence proving that an existing wireless support structure is incapable of supporting co-location because of unreasonable terms, technical limitations, or other valid criteria as determined by the zoning administrator or designee.
2. Exceptions to conditional use permit requirement.
- a. Administrative review-eligible projects. New communication towers meeting the definition of an administrative-review eligible project, or the co-location of a wireless facility that is not a small cell facility on an existing structure, shall be considered an administrative review-eligible project. All such projects shall be reviewed pursuant to the criteria put forth in Virginia Code Section 15.2-2316.4:2, as amended, and shall be subject to the following requirements:
 - (1) The wireless service provider or wireless infrastructure provider either (a) obtains the approval of the City of Lexington by virtue of a franchise agreement and right-of-way permit or lease, as required by law, if a new wireless support structure is proposed to be located in the right-of-way or on city property; or (b) the wireless service provider or wireless infrastructure provider: (i) either has permission from the owner of the

land on which the administrative review-eligible project is proposed or has the permission from the owner of an existing pole, building or structure to co-locate equipment on that pole, building or structure and (ii) notifies and provides evidence of such permission to the locality in which the permitting process occurs; and (cannot find state code for this section: found at § 56-484-29.A)

- (2) The applicant shall submit an application which shall include: (a) photographs or accurate renderings, including correct colors and exact dimensions, of each type of proposed project; (b) a statement signed by a professional engineer licensed in the Commonwealth of Virginia stating that the proposed facilities comply with all applicable Federal Communications Commission regulations, including, without limitation, regulations pertaining to the emission of radio frequency radiation; and (c) such additional information as the planning director may reasonably require in order to determine whether the requirements of this section are met.
- (3) Within ten (10) days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. All such applications shall be approved or denied within the following specified time periods:
 - (a) For a new structure within the lesser of one hundred fifty (150) days of receipt of the completed application or the period required by federal law for such approval or disapproval; or
 - (b) For the co-location of any wireless facility that is not a small cell facility, within the lesser of ninety (90) days of receipt of a completed application, or the period required by federal law for such approval.
 - (c) Any period specified above for the city to approve or disapprove an application may be extended by mutual agreement between the applicant and the city.
- (4) A completed application shall be deemed approved if the director of planning fails to approve or disapprove the application within the periods specified above or any agreed extension thereof.
- (5) Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval, and the locality must describe any modifications that could be made to the application which would permit the city to approve the proposed project. The director of planning's action on disapproval of an application submitted under this section shall:
 - (a) Not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; and
 - (b) Be supported by substantial record evidence contained in a written record publicly released within thirty (30) days following the disapproval.

- (6) The fee for processing administrative review-eligible projects shall be five hundred dollars (\$500.00) in accordance with Virginia Code Section 15.2-2316.4:1, as amended.
- (7) Nothing in this section shall be interpreted to prohibit the denial of an application if the proposed height of any wireless support structure, wireless facility, or wireless support structure with attached wireless facilities exceeds fifty (50) feet above ground level.
- (8) Nothing in this ordinance shall be interpreted to prohibit the city from limiting the number of new structures or the number of wireless facilities that can be installed within a five hundred foot (500') radius of an existing wireless support structure that could support co-location at that specific location. The applicant shall be responsible for submitting evidence proving that an existing wireless support structure is incapable of supporting co-location because of unreasonable terms, technical limitations, or other valid criteria as determined by the zoning administrator or designee. 15.2-2316.4:3. B." Nothing in this article shall prohibit a locality from limiting the number of new structures or the number of wireless facilities that can be installed in a specific location."
- b. Temporary portable towers. Temporary portable towers also known as cells on wheels (COWS), are permitted under the following circumstances:
- (1) For use when a duly authorized communication tower is undergoing maintenance that requires antennas to be disconnected or turned off. A permit shall be obtained from the zoning administrator authorizing the COW for a maximum of sixty (60) days, which period may be extended at the discretion of the zoning administrator.
- (2) For use in an emergency situation during the activation of the city's emergency operations center.
- (3) For special events not to exceed seven (7) days under a special event permit approved in accordance with section ~~13-1504~~ of this ~~ordinance~~ by the City of Lexington.
- c. Small cell facility. (1) Small cell facilities installed by a wireless service provider or wireless infrastructure provider on existing structures; provided that the following requirements are met: The wireless service provider or wireless infrastructure provider either
- (a) obtains the approval of the City of Lexington by virtue of a franchise agreement and right-of-way permit or lease, as required by law, if a new small cell facility is proposed to be located in the right-of-way or on city property; or
- (b) the wireless service provider or wireless infrastructure provider: (i) has permission from the owner of an existing pole, building or structure to co-locate equipment on that pole, building or structure and (ii) notifies and provides evidence of such permission to the locality in which the permitting process occurs; and
- (2) The applicant shall submit an application to the department of planning for administrative review and approval by the director of planning and the application

shall include: (a) photographs or accurate renderings, including correct colors and exact dimensions, of each type of proposed small wireless facility; (b) a statement signed by a professional engineer licensed in the Commonwealth of Virginia stating that the proposed facilities comply with all applicable Federal Communications Commission regulations, including, without limitation, regulations pertaining to the emission of radio frequency radiation; and (c) such additional information as the planning director may reasonably require in order to determine whether the requirements of this section are met. An applicant may submit up to thirty-five (35) permit requests on a single application. All such completed applications, as determined by the director of planning, shall be approved or disapproved within sixty (60) days of receipt of the complete application. Within ten (10) days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. The 60-day period may be extended by the locality in writing for a period not to exceed an additional thirty (30) days. The application shall be deemed approved if the locality fails to act within the initial sixty (60) days or an extended 30-day period. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval. The fee for processing small cell facility applications shall be one hundred dollars (\$100.00) for each application proposing up to five (5) small cell facilities and fifty dollars (\$50.00) for each additional small cell facility proposed on a permit application. The application for the small cell facility shall be approved only if the following minimum standards are met:

- (a) The small cell facility shall not have the potential to pose a material interference with other pre-existing communication facilities or with future communication facilities that have already been designed and planned for a specific location or that have been reserved for future public safety communication facilities, as determined by the city.
- (b) The small cell facility does not create a public safety concern or inhibit critical public service needs.
- (c) If the communication small cell facility shall be installed on or in publicly owned or publicly controlled property, excluding privately owned structures, the communication small cell facility shall be substantially concealed from view by means of painting or tinting to match the surface of the building or other structure to which they are affixed or by other suitable method, such as by flush-mounting or integration into the design elements of the building or structure.
- (d) Further, electrical power and battery backup cabinets shall be roof-mounted or otherwise located so as not to be visible from a public street or, where not practicable as determined by the director of planning, such equipment shall be appropriately screened by landscaping or other means minimizing visibility from a public street.
- (e) Small cell facilities shall only be permitted in the Lexington Downtown Historic Preservation District or the Residential Neighborhood Conservation District if they meet the standards included in the Lexington Historic District Design Guidelines as amended.

- (f) This section shall not be construed to prohibit or limit an applicant from voluntarily submitting conditions to address visual or aesthetic effects resulting from the placement of small cell facilities on private property.
- (3) At such time that the small cell ceases to be used for communications purposes for three (3) consecutive months, the applicant shall remove the small cell from the property. If the applicant fails to remove the small cell within thirty (30) days of written notice from the zoning administrator, the director of planning, through his or her own agents or employees, shall be authorized to remove the small cell facility and assess all charges incurred in such removal on the applicant or owner.
- d. Micro-wireless facilities. The installation, placement, maintenance or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles shall not require any permit from the city nor shall they be subject to any fee from the city if the applicant provides the director of planning or designee with proof of compliance with all national safety codes.
- e. Nothing herein shall be construed to exempt the applicant from the requirement for a grant of franchise from the city council pursuant to Section 15.2-2100 of the Code of Virginia, 1950, as amended.
3. Preapplication meeting required. Prior to submitting an application for a conditional use permit for a communication tower, the applicant shall meet with the director of planning to discuss the proposed location of the communication tower, the location of all existing and planned communication towers which the applicant owns or operates within the city, the feasibility of locating the communication facilities on existing towers, buildings or structures, or on municipal property and such other issues as deemed relevant by the planning director or designee. Failure to schedule or attend a preapplication meeting shall preclude the acceptance and processing of an application for a conditional use permit for a communication tower.
4. Additional information required for use permits. In addition to the information otherwise required for a conditional use permit application, any application for a conditional use permit for a communication tower shall include the following:
- a. A site plan drawn to scale specifying the location of tower(s), guy anchors (if any), transmission building and other accessory uses, parking, access, landscaped areas, fences ownership and use of adjoining properties.
- b. Certification by the manufacturer or an engineering report by a state-registered structural engineer shall be submitted indicating the communication tower or antenna height, design, structure, installation and total anticipated capacity of the structure, including number and type of antennas which could be accommodated, and demonstrating to the satisfaction of the code compliance manager that all structural requirements and safety specifications set forth in the Virginia Uniform Statewide Building Code, as supplemented and amended, will be met. In addition to the structural and safety specifications in the Virginia Uniform Statewide Building Code, the certification shall indicate that the proposed communication tower will be constructed to withstand 110 mile per hour winds.

- c. A statement from a registered engineer that the NIER (nonionizing electromagnetic radiation) emitted from the communication tower, when measured in conjunction with the emissions from all communication facilities on the tower, does not result in an exposure at any point on or outside such facility which exceeds the lowest applicable exposure standards established by any regulatory agency of the U.S. government or the American National Standards Institute.
- d. In order to assist the city council in determining whether it is feasible to locate the proposed communication facilities on existing communication towers, proposed communication towers which have received all necessary approvals for construction, suitable buildings and suitable structures, including, but not limited to, electric transmission structures, the applicant shall indicate on a map the location of all existing towers, and all buildings and structures suitable for the proposed communication facilities within a two-mile radius of the proposed communication tower site, including specific information about the location, height, and design of each tower.
- e. Verifiable evidence from the applicant, in written form deemed acceptable to the director of planning, of the lack of space on all existing towers within a two-mile radius of the proposed site, and all suitable buildings, and other structures which could accommodate the proposed antenna, and the lack of space on existing tower sites to construct an additional communication tower for the proposed antenna within the service area.
- f. Written confirmation of plans for multiple use of the proposed communication tower.
- g. A visual study depicting all areas the proposed facility would be visible from and what the appearance would be, including photo-simulations. A balloon test at the proposed site may also be required at the discretion of the planning director or designee.

After acceptance of an application as complete, the director of planning may request additional information and documentation relative to land use and safety issues, provided that the director shall not delay processing the conditional use permit application while the provision of such information or documentation is pending. However, in the event that all requested information and documents are not submitted prior to a scheduled public hearing, the planning department will recommend to the planning commission that consideration of the application be continued until such information and documents have been submitted.

5. Multiple use of communication towers required whenever feasible.

- a. In the consideration of applications for the conditional use permits for the construction of communication towers, the multiple use of existing communication towers, proposed communication towers which have received necessary approvals for construction, and suitable buildings and structures, including, but not limited to, electric transmission structures shall be required whenever feasible in order to minimize the proliferation of communication towers throughout the city, to provide for adequate light and air, to facilitate the creation of a convenient, attractive and harmonious community, to preserve the character of zoning districts, and to eliminate the potential for adverse impact on established land uses within the city. However, in no event shall it be deemed a violation of this ordinance to operate a communication tower with a single user if a conditional use permit has been issued without an express stipulation requiring multiple use.

6. Evaluation criteria for conditional use permits. In determining whether a conditional use permit application for a communication tower should be approved, the planning commission and city council shall consider the following factors, in addition to the other evaluation criteria for conditional use permits set out in Article 1 of this ordinance:

- a. Whether the communication tower is consistent with the comprehensive plan as determined by the planning commission in accordance with section 15.2-2232 of the Code of Virginia.
- b. Whether approval of the communication tower will contravene good planning practices or obstruct the public aims of facilitating the creation of a convenient, attractive community, providing for adequate light and air, preserving the character of zoning districts and eliminating the potential for adverse impact on established land uses within the city.
- c. Whether the proposed communication tower is to be located in an area where it would be unobtrusive and would not substantially detract from aesthetics or neighborhood character, due either to location, to the nature of surrounding uses (such as industrial uses), or to lack or mitigation of visibility caused by natural growth, stealth design or other factors.
- d. Whether the applicant has established that collocation on existing and proposed communication towers and suitable buildings and structures is not feasible in accordance with subsection 420-11.5.4.B.5 above, and whether the applicant has agreed to provide collocation opportunities to other users and has specified the number and types of users that could be accommodated on the proposed communication tower.
- e. Whether the application represents a request for multiple use of a communication tower or site, or use on a site contiguous to an existing communication tower. Where the applicant proposes multiple use of the communication tower, the planning commission and the city council may consider whether the applicant has submitted written confirmation of collocation plans including, but not limited to, agreements, memoranda of agreement or completed forms for multiple use provided by the city.
- f. Whether the application contains evidence that other potential users of the proposed communication tower have been contacted, and they have no current plans, to the best of their ability to determine, that could be fulfilled by joint use of the proposed communication tower.
- g. Whether the application shows how the communication tower or site will be designed or laid out to accommodate future multiple users, and if not so designed, the reasons given for failure to do so.

C. Setback requirements

- 1. The following setback requirements shall apply to all towers and antennas for which a conditional use permit is required; provided, however, that the City may reduce the standard setback requirements if the goals of this section would be better served thereby:

- a. Towers must be set back a distance equal to 200% of the height of the tower from any off-site residential structure and in no case less than 400 feet.
- b. Towers, guys, and accessory facilities must satisfy the minimum zoning district setback requirements for primary structures.

The existing Lexington zoning definition for “Broadcasting or Communication Tower” is recommended to be replaced by the Communication Tower definition from the Chesapeake, VA code.

BROADCASTING OR COMMUNICATION TOWER

~~Any unstaffed facility for the transmission and/or reception of radio, television, radar, cellular telephone, personal paging device, specialized mobile radio (SMR), and similar services. A broadcasting or communication tower usually consists of an equipment shelter or cabinet, a support tower or other structure used to achieve the necessary elevation, and the transmission or reception devices or antenna. Excluded are amateur radio towers, which are described separately. Also excluded are wireless communication antennas which fit the definition of Utility services, minor.~~

COMMUNICATION TOWER

A tower or antenna which supports communication (broadcasting and/or receiving) equipment utilized by commercial, government or other corporate, public and quasi-public users. Towers include radio, television, cellular telephone, personal communication services (PCS), microwave and other similar communications facilities, satellite earth station and building-supported. Communication towers may be self-supporting or guy-supported.

The existing zoning definition for “Utility Service, Minor” needs to be amended by removing the second sentence that mentions wireless communications antennas. The utility service minor use is allowed by right in the R-1, R-2, R-LC, C-1 and C-2 zoning district. All of the communications related regulations should be consolidated to the previous (amended) section 420-11.5.4.

UTILITY SERVICE, MINOR

Service which is necessary to support development within the immediate vicinity and involve only minor structures. Included in this use type are small facilities such as transformers, relay and booster devices, and well, water and sewer pump stations. ~~Also included in this use type are wireless communication antennas which are attached to an existing building or structure, including but not limited to utility poles, signs, broadcasting or communication facilities, and water towers, and which are not greater than 20 feet in length.~~

Zoning District	FP, Floodplain Overlay	P-OS, Parks and Open Space District	R-1, Residential General	R-2, Suburban Residential	R-M, Residential Multifamily	R-LC, Residential- Light Commercial	C-1, Central Business District	C-2, General Commercial District
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*B = By-right uses, C = Conditional
uses*

Use Types

Miscellaneous								
Amateur radio tower			B	B		B	B	B
Building, Portable	B	B	B ⁵	B ⁵	B ⁵	C ⁶	C ⁶	C ⁶
Broadcasting or communication tower (Standard Process Project)		C	C	C				C
Communication tower (Admin. Review Eligible Project)	B ⁷	B ⁷	B ⁷	B ⁷	B ⁷	B ⁷	B ⁷	B ⁷
Cemetery, private						C		
Garage, private			B	B		B	C	C
Parking facility		B			C	C	C	C
Recreation facility, private	B	C	B	B	B	B		
Utility service, major			C	C				C
Utility service, minor			B	B		B	B	B

¹ Second floor and higher

² First floor

³ Bed & Breakfasts only allowed along Main, Washington, and Nelson Streets

⁴ Bed & Breakfasts only allowed along S. Main Street

⁵ accessory building is by right

⁶ temporary construction office and storage sheds are by-right

⁷ permitted if requirements of 420-11.5.4 are met

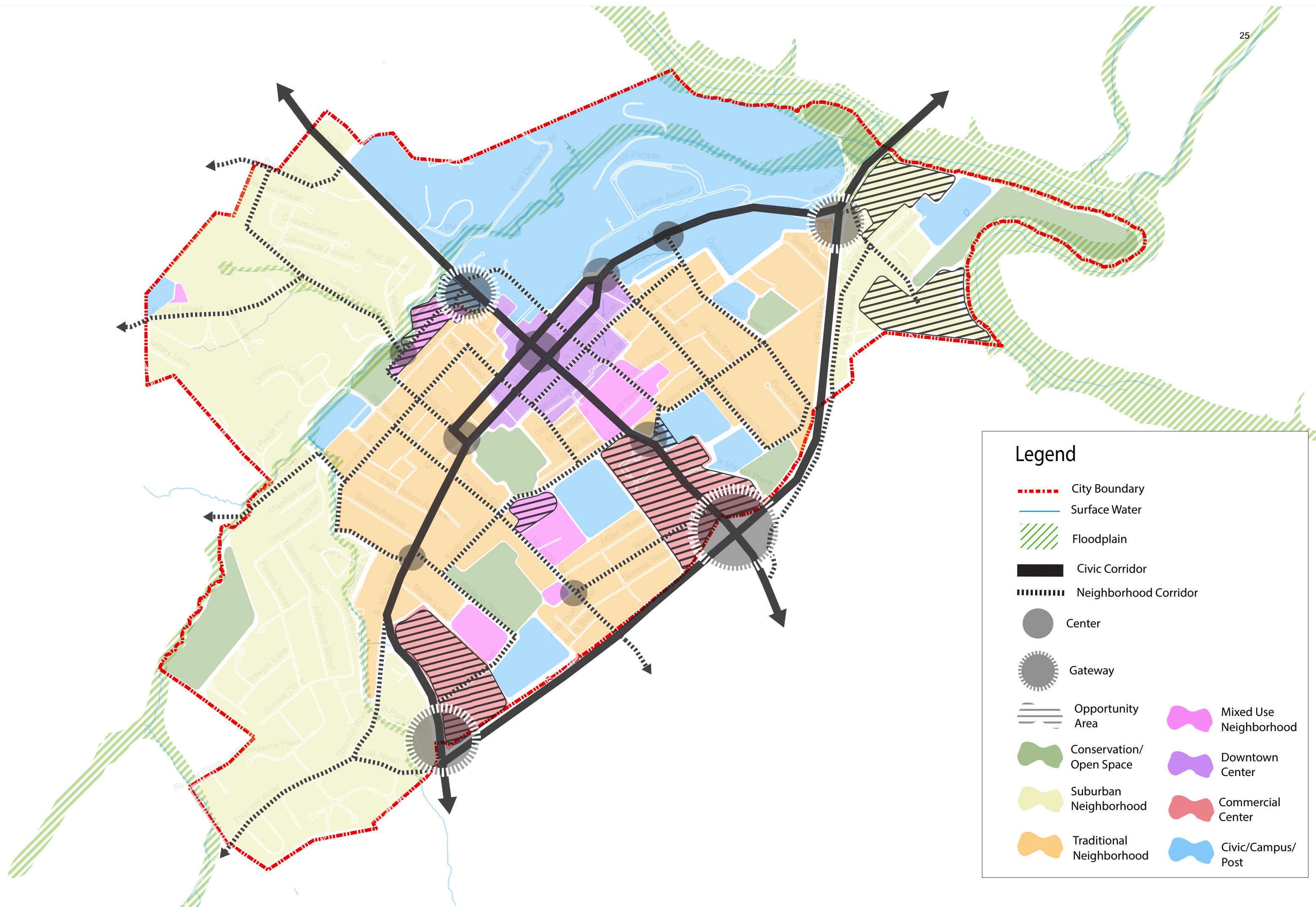
Planned Unit Development (“PUD”) Zoning Text Amendment

October 14, 2021 Discussion Topics (to assist staff’s future research)


- Should a PUD be an overlay district or a stand-alone zoning district? In past discussions Planning Commission has seemed to lean toward returning to an overlay.
- Where should PUDs be allowed?
 - C-2 and R-LC zoning districts only?
 - Opportunity Areas specifically?
 - What about the suburban neighborhood area of East Lexington designated as an opportunity area?
- What is the intent of a PUD?
 - Mixed-use development in a commercial district?
 - Mixed- use development in a residential-light commercial district?
 - Planned development for various residential building types in a residential district?


Attached Helpful Resources:


- 1) Future Land Use Map from the Comprehensive Plan
- 2) “PUD Amendment Discussion” memo provided by Commissioner Driscoll for the Commission’s March 10, 2021 meeting





Legend


 City Boundary


 Surface Water


 Floodplain


 Civic Corridor


 Neighborhood Corridor


 Center


 Gateway


 Opportunity Area


 Conservation/Open Space


 Suburban Neighborhood

 Traditional Neighborhood

 Mixed Use Neighborhood

 Downtown Center

 Commercial Center

 Civic/Campus/Post

To: Arne Glasser and Members of the Lexington Planning Commission

From: John Driscoll

Re: PUD Amendment Discussion

Date: March 10, 2021

Introduction

The Planning Commission is considering amendments to Lexington's Zoning code for Planned Unit Developments (PUDs). The review and amendment to the 2017 Zoning require careful consideration given the recent adoption of the Comprehensive Plan 2040 in November 2020.

The implication of the 2017 PUD and the proposed amendments is that a PUD, with its conditions cited in the master plan, can be designated for significant areas of Lexington with little reference to the underlying zoning or adjoining uses. In effect, this approach for PUDs could undermine the zoning established in the 2017 update.

I ask that the Planning Commission consider the following questions in their review.

1. How should a PUD be framed? As a separate district governed by its own and negotiated conditions, or should the underlying zoning inform the allowable requirements for the PUD?
2. What should be guiding the location of a PUD?
3. How should the Lexington Comprehensive Plan 2040, its future land uses, and the design principles outlined for each land use section inform the PUD zoning regarding uses and location?
4. What conditions guide the applicant's proposal, and how much discretion/flexibility should be in place? This question is also related to the review and approval process.

As a background for the PC discussion, the following briefing note is organized around these questions. It is a complicated topic; I learned a lot in doing the research, there is more to understand, and I look forward to our discussion.

1. The intent of a PUD and the Framing Approach

The Code of Virginia, § 15.2-2201, defines PUDs as: "a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis."

Also, PUDs encourage innovative site development that supports the values of a jurisdiction's Comprehensive Plan. For example, in Lexington's PUD, there are characteristics such as pedestrian orientation, a mixture of housing types and affordability, buildings and spaces of appropriate scale, and environmentally sensitive design.

In consideration of PUDs, we are fortunate to take advantage of a review of the state of the practice undertaken for Loudoun County in [a memorandum](#) dated January 29, 2021 by the Kindig Keast Collaborative. The following are key points from the memo:

1. "A Planned Unit Development (PUD) is typically a **development** and a **regulatory** process. Definitions vary, but the purpose of a PUD is generally to allow development flexibility beyond

the standard zoning code requirements. The intent of PUDs is to encourage unified plans that provide a more holistic and innovative package over conventional development.

2. "Many communities across the nation are updating their zoning ordinances to either eliminate or reduce the use of PUDs. A key intent is to reduce or eliminate the reliance on conventional PUDs by replacing them with robustly defined development standards.
3. "Many communities have shifted to a form-based approach in their downtown commercial districts and maintained their stringent use-based approach within their residential districts.
4. "The development type option avoids relying upon a discretionary review process for PUDs by including calibrated densities, percentages of open space, and other design criteria as standard options within the existing zoning district structure to achieve the intended character of a place.
5. "This alternative means of achieving development reduces uncertainty, improves development outcomes, and accommodates the needs of both the development community and a jurisdiction's citizenry.
6. "Ordinances that integrate development type options within individual zoning districts have review and approval procedures that are more streamlined because of the by-right approach. The creation of development type options, such as planned and cluster, within a local jurisdiction's existing zoning ordinance structure on a "by right" basis has increasingly developed into a practical alternative to individual PUDs.
7. "Reducing the number of PUD districts in the Zoning Ordinance and applying them as standard base zoning districts is a critical step for reducing the County's reliance on the negotiated, discretionary PUD process. Alternative approaches that can be imbedded in the updated base zoning districts to implement the Place Types as needed. These alternative approaches should include practices that are predictable for developers, as well as respond to planned community character. The memo includes alternative approaches for the County to consider as methods to decrease the dependance on PUD districts during a legislative rezoning."

In *A Legal Guide to Urban and Sustainable Development*,ⁱ the authors note that Planned Unit Development introduced a different process that needed to be incorporated into existing zoning ordinances.

"It was more difficult to adapt PUDs into local zoning ordinances, given the adherence of those zoning ordinances to the concepts and procedures tied to the Euclidean¹ form of zoning. Based on this difficulty and differences in state enabling laws for planned unit developments, local communities followed a variety of approaches.

1. "Include a PUD district as a 'floating zone'. The PUD standards and procedures would be included in the district in the zoning ordinance text. Individual PUDs would not be mapped until the PUD is approved.

¹ A system of zoning whereby a town or community is divided into areas in which specific uses of land are permitted from *Village of Euclid, Ohio et al. v. Ambler Realty Co.*, 272 U.S. 365 (1926), case in which the Supreme Court upheld the right of a locality to enforce such a system. From <https://www.merriam-webster.com/legal/Euclidean%20zoning>

2. "Treat PUDs as a special exception or conditional use in certain districts identified in the ordinance. Appropriate conditions could then be added to the PUD.
3. "Map the PUD and treat it as an 'overlay district', providing some flexibility over the underline traditional Euclidean zoning districts.

2. What guides the PUD process? A fundamental issue is does underlying zoning guide development standards regarding uses, density, dimensions etc. or does the PUD become in effect its own district?

The current Lexington PUD, introduced in 2017 as part of the major updating of the Zoning Code, seems to adopt the second approach noted above, the PUD is an exception in designated districts with its own conditions as identified in the ordinance. The existing code set conditions such as location (s), Minimum Area (3 acres), Open Space (not less than 30%), Density (max of 20 dwelling units/acre with additional density allowed based on open space bonus), and Heights ranging from 45 to 60 feet. Proposed parking is based on the applicant establishing parking regulations for consideration by City Council.

Before the 2017 update, the PUD code in Lexington incorporated aspects of the first and third options' floating zone' and 'overlay district', in effect using the underlying zoning for residential districts to guide uses and conditions yet allowing flexibility to promote:

more creative, innovative, imaginative and, where possible, environmentally sensitive development'. The PUD was intended for residential development 'to provide both for development flexibility of undersized parcels and to allow the use of diversified development techniques for larger parcels. The PUD overlay was intended to expand housing opportunities for persons of all income levels.'

Any use permitted in the particular district in which the PUD is overlaid is allowed. Housing types authorized in any of the City's residential districts may be considered but the project's density shall be no greater than that specified in the underlying district. Nonresidential uses of public or semipublic, cultural or recreational character shall be permitted uses, provided such nonresidential uses shall be compatible with and secondary to the primary residential use.

In other jurisdictions such as Staunton and Blacksburg, the PUD zoning is also based on the overlay district approach for residential PUDs. For example, in Staunton, the code reads as follows:

The uses permitted in a planned residential development shall only be those uses permitted in the particular zoning district wherein the planned residential development is located, and the intensity of use for the planned residential development must not exceed the intensity of use for the particular zoning district involved.

Blacksburg's PUD zoning is based on the overlay district approach and divides the PUD districts into residential, commercial, and industrial.

The regulations established herein are designed to supplement or "overlay" the requirements and provisions established for the zoning district in which located. All requirements of the underlying zoning district shall remain applicable unless specifically modified by the provision established herein.

In summary, PUDs in Staunton, Blacksburg and the pre-2017 code for Lexington are guided by the underlying zoning of the zoning district in which the PUD can be located. In the case of Staunton and

Blacksburg, residential, commercial, and industrial areas have differentiated PUDs where the permitted uses reflect the land use categories (see appendix). In the older Lexington code, the intent was only to use PUDs in residential areas.

Permitted Uses

It is important to note that all uses permitted by right in Residential, Commercial, and Industrial districts can be permitted in the current Lexington PUD. Furthermore, uses may be permitted within the Master Plan at the discretion of City Council. Also, one or more uses permitted by conditional use permit in any zoning district may be allowed in the PUD if documented within the Master Plan. The implication is that is for significant areas of Lexington where 3 acres of land can be assembled, a PUD could include:

- All types of residential development—note that of the 11 residential use categories, 9 are by right and 2 are conditional (fraternity/sorority houses and Multi-family Dwelling)
- All types of commercial development note that some 69 potential uses could be proposed.
- All types of industrial development can occur, there are 6 uses in the matrix.

In addition, if adopting the current approach of a separate master plan, the current proposed amendments will eliminate two significant conditions: open space requirements (30% encouraged but not required) and density (to be established by City Council). Parking is also negotiable.

3. Where can PUDs be proposed?

Before the 2017 amendments, PUDs in Lexington were allowed in residential areas. After the 2017 amendments, PUDs areas were expanded into areas designated as mixed use, commercial use, and special planning areas on the future land use map. Interestingly, there is no clear reference to use in residential areas within Article V-PUD of the 2017 Zoning. Table 1 below helps to understand the evolution of areas where PUDs could be develop in Lexington.

Table 1	Areas/Uses	Notes
PUD <2017	Residential	<ul style="list-style-type: none"> • Authorized in all residential districts
2017 PUD	Mixed Use, Commercial Use, Special Planning Area	<ul style="list-style-type: none"> • Mixed-Use & parts of McLaughlin Street (Now RLC), • Commercial Use C1 & C2 (confirm C1), • Special Planning Areas were coterminous with boundaries of C-2 Commercial Use--60 East and South Lex.
2020 Comp Plan	Suburban Neighborhood, Traditional Neighborhood, Mixed Use Neighborhood, Commercial Center	<ul style="list-style-type: none"> • Residential for suburban and traditional neighborhoods, • Mixed use that includes RLC in four areas and Commercial Center includes 60 East and South Lexington but not downtown (confirm)
2021 Text Amendments	Mixed Use, Downtown Center C-1), Commercial Center C-2, Opportunity Areas.	<ul style="list-style-type: none"> • Four mixed use areas, • Downtown center is added, • Commercial included 60 East and South Lex. • Five opportunity areas <ul style="list-style-type: none"> ○ McLaughlin mixed use, ○ Spotswood (partial of mixed use area) ○ East Lexington residential. ○ 60 East and South Lex.

Given that the future land use map and zoning designations have changed over time, it isn't easy to picture where PUDs can occur in Lexington. Table 2 below illustrates where the PUDs could happen and the differences among the different Zoning text and the Comp Plan.

Table 2				
Uses	"Old PUD"	2017 Zoning Update	2020 Comp Plan	2021 proposed Text Amendment
Residential				
Suburban Neighborhood				
Traditional Neighborhood				
Mixed Use				
Downtown		Confirm Yes or No	Confirm Yes or No	
Commercial Center				
'Opportunity Zones'				

As noted earlier, the "Old PUD" was designated for residential areas. In 2017, this was expanded to include Mixed use neighborhoods and Commercial Centers and for some reason did not mention residential areas.

The 2040 Comprehensive Plan includes PUDs in the Future Land Use Map (see future land use page 99) for: Suburban Neighborhoods, Traditional Neighborhood, Mixed-Use Neighborhood and Commercial Center. There is no mention of Opportunity Zones.

The proposed amendments in 2021 further expand the areas to include the downtown 'center' and opportunity zones and does not reference residential development.

As noted earlier, the implication of the proposed amendments given the approach of treating the PUD as a special area is that any mix of residential, commercial, or industrial development could be presented for the mixed-use neighborhoods, the downtown, the two commercial areas, and all opportunity zones.

4. The Review and Approval Process

In the current (2017) code as well as the proposed amendments, the sequencing of the review and approval process includes the City Council, the Zoning Administrator, and the Planning Commission.

1. The applicant files a rezoning request with the Zoning Administrator, including a narrative, existing conditions map, and a master plan.
2. The Planning Commission reviews the preliminary master plan, considers it at a public hearing and forwards its recommendations to City Council.
3. City Council reviews the master plan, considers it at a public hearing, and once approved, all accepted conditions and proffers are enforceable by the Zoning Administrator.
4. The Zoning Administrator approves the site plan within 60 days.

It is important to note that the rezoning application is considered a waiver under the existing zoning ordinance if the PUD conflicts with the Zoning and Sub-Division ordinance. The City Council can request specific waivers or modifications after a public hearing.

While the four-step process may seem straight forward, there are complications. For example, if the City Council establishes the density as part of the PUD zoning, at what point does this occur? Before the process starts or after the PUD proposal has started? At what point are the waivers approved? What will be the basis for the Planning Commission to make a recommendation? Note other discretionary items include open space and parking.

The density example noted above leaves the process open to negotiation with unknown outcomes. More recent planning practice is moving away from this approach. Would it not be more straightforward if the applicant knew the development parameters ahead of time and what flexibility was available?

Appendix. Staunton and Blacksburg PUDs

Staunton

"Residential areas thus established would be characterized by a unified building and site development program, open space for recreation, and the provision for commercial (in R-3 and R-4 districts only), religious, educational, and cultural facilities which are integrated with the total project by unified architectural and open space treatment. In order to accomplish these objectives, the customary district regulations may be modified; provided, *that overall population densities do not exceed the densities of specific residential districts*. A planned residential development shall be permitted in any R-1, R-2, R-3, R-4, and P-1 districts."

Blacksburg

"This district is established to encourage innovative and creative design, promote efficient use of land, protect surrounding property and natural features of the land and allow flexible application of development controls for uses of all kinds. These goals shall be accomplished through various measures, such as permitting a wider range of densities and uses to be developed in accordance with a master plan, establishing performance criteria which allow clustering of uses or densities in various areas of a site in exchange for increased open space or other amenities. The PUD district includes the planned unit residential development (PUD-R), planned unit commercial development (PUD-C) and planned unit industrial park (PUD-IP)."

ⁱ **A Legal Guide to Urban and Sustainable Development for Planners, Developers and Architects**, [Daniel K. Slone](#), [Doris S. Goldstein](#), [W. Andrew Gowder \(With\)](#), August 2008