

## LEXINGTON PLANNING COMMISSION

April 28, 2022 - 5:00 P.M  
 Community Meeting Room – City Hall  
 300 E. Washington Street, Lexington, VA 24450

### AGENDA

1. **CALL TO ORDER**
2. **APPROVAL OF THE AGENDA**
3. **APPROVAL OF MINUTES**  
 Minutes from April 14, 2022\*
4. **CITIZENS' COMMENTS ON MATTERS NOT ON THE AGENDA**
5. **NEW BUSINESS**
  - A. CUP 2022-03: An application by Washington & Lee for a Conditional Use Permit to allow 101 N. Jefferson Street to be used as office space
    - 1) Staff Report\*
    - 2) Applicant Statement
    - 3) Public Comment
    - 4) Commission Discussion & Decision
  - B. ZOA 2022-02: An application by the City of Lexington to amend the Zoning Ordinance to replace “accessory dwelling” with “accessory apartment” in the Use Matrix
    - 1) Staff Report\*
    - 2) Applicant Statement
    - 3) Public Comment
    - 4) Commission Discussion & Decision
  - C. ZOA 2021-04: Annual Zoning Ordinance Amendments. Planned Unit Development (PUD).
    - 1) Continued discussion of PUD text amendment\*
    - 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
    - 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
- 7) Green Infrastructure Group

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

**7. CITY COUNCIL REPORT**

**8. ADJOURN**

\*indicates attachment



## MINUTES

**The Lexington Planning Commission  
Thursday, April 14, 2022 – 5:00 p.m.  
Lylburn Downing Middle School Cafeteria  
302 Diamond Street, Lexington, VA 24450**

### **Planning Commission:**

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

### **City Staff:**

Arne Glaeser, Planning Director  
Kate Beard, Administrative Assistant

### **Washington & Lee Representatives:**

Tom Kalasky  
Hugh Latimer  
Steve McAllister

## **CALL TO ORDER**

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

## **AGENDA**

The agenda was unanimously approved as presented. (N. Betts / B. Shester)

## **MINUTES**

Minutes from the March 24, 2022 meeting were unanimously approved as presented. (J. Driscoll / L. Straughan)

## **CITIZENS' COMMENTS ON MATTERS NOT ON THE AGENDA**

None

## **NEW BUSINESS**

Commissioner Straughan made the following statement and requested it be made a part of the record:

### **DISCLOSURE STATEMENT**

*I, Leslie Straughan, a member of the Planning Commission of the City of Lexington, Virginia, make the following disclosure:*

*1. I am executing this written disclosure regarding the Lexington Planning Commission's discussion and vote on agenda items 5. NEW BUSINESS A. CPA 2022-01, B. RZ 2022-02 and C. MPA 2022-02 regarding the Washington & Lee Master Plan update.*

*2. My husband, Robert Straughan, is the Dean of the Williams School at Washington & Lee University. He is participating on the design committees of the Williams School expansion and the Admissions and Financial Center building. While I do not have a conflict of interest pursuant to the State and Local Government Conflict of Interests Act,*

*Va. Code Section 2.2-3115 and do not intend to recuse myself on all agenda items related to Washington & Lee University, I do believe there may be a perceived conflict with the City's Code of Ethics in this instance. It states "In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest or where they have an organizational responsibility or personal relationship that may give the appearance of a conflict of interest or where they have a conflict of interest under Section 2.2-3101 of the 1950 Code of Virginia, as amended."*

*3. For this reason, I abstain from this discussion and vote and will sit with the public for this portion of the meeting. Please record this declaration in the official records of the Lexington Planning Commission.*

L. Straughan left the dais and joined the public. **B. Shester moved to open the public hearings for all three applications in order to streamline the applicant statement and public comments. N. Betts seconded and the motion passed unanimously. (5-0)**

**A. CPA 2022-01: An application by Washington & Lee to change the future land use designation for 12 Lee Avenue from "Downtown Center" to Civic/Campus/Post"**

**B. RZ 2022-02: An application by Washington & Lee to rezone multiple properties owned by the University to the I-1 Institutional Overlay District.**

**C. MPA 2022-02: Washington & Lee Campus Master Plan Update**

**1) Staff Report –**

Development on the W&L campus is governed by a Campus Master Plan and any property to be considered in the Campus Master Plan must first be rezoned to the Institutional Overlay district. The rezoning of a parcel is also required to be in conformance with the Lexington Comprehensive Plan. W&L is therefore requesting 1) a Comprehensive Plan amendment for 12 Lee Avenue to change its future land use designation, 2) to rezone 6 parcels to the Institutional Overlay zoning district, and 3) to amend the Campus Master Plan for the entire campus. This is a new public hearing for these applications. All comments received by April 8<sup>th</sup> were included in the meeting packet, and comments received since that date and were forwarded on to Commissioners electronically in advance of the meeting.

The Institutional District was designed to allow larger scale institutional uses such as universities and medical campuses to develop in accord with master plans approved by the City Council. By approval of a master plan, Council pre-authorizes various land uses that are described and located within the area incorporated within the master plan. Land uses not shown and described by the master plan can only be approved through the issuance of a conditional use permit by City Council, after review and recommendation by the Planning Commission. The I-1 zoning district is intended to function as an *overlay district*, meaning that the application of the overlay district on property does not result in a change of the underlying zoning district or the regulations that may be derived from the underlying or base zoning district. For example, a property can be zoned R-1 as the underlying zoning district, and have an institutional overlay that is implemented with an approved master plan. Uses allowed on the hypothetical subject parcel are the uses permitted in the R-1 zoning district that are then further limited by the amended Campus Master Plan. Director Glaeser addressed misinformation about what is approved in an institutional overlay rezoning by stressing that a rezoning to the institutional overlay does not permit W&L to

do anything they want with the rezoned parcel. That parcel is limited to the permitted uses in the institutional overlay and is more specifically limited to the use and building footprint approved in the Campus Master Plan. A subsequent owner does not have free reign over the development of a parcel included in a master plan.

W&L has amended their previous applications - the Triangle properties were removed from the rezoning request, the request to close McLaughlin Street for aerial dance performances was withdrawn, and a proffer statement was included with the new application. W&L has proposed development standards for four of the capital projects outlined in the proffer statement.. Staff also notes there are a number of inaccuracies contained in the proffer statement that can be reviewed if necessary. Development standards such as building height, lot area, lot width, setback, and parking requirements may be proposed as part of a submitted master plan request. If development standards are not proposed as a part of a master plan, the development standards applicable to the underlying zoning districts shall apply.

In response to a question from J. Driscoll, A. Glaeser clarified that, if approved with the master plan, building standards that exceed the standards for the underlying zoning district would not require a CUP so long as they conform to those proposed in the master plan.

## **2) Applicant Statement –**

Tom Kalasky, Executive Director of Facilities Management and Planning at W&L, responding to a question from Commissioner Tuchler, said more specific details for individual projects, including site plans, building elevations, and traffic study results, would be submitted for the Commission's review during the site plan approval process. Commissioner Tuchler questioned whether the traffic study should wait until site plan review rather than having that information when considering approval of the master plan. Mr. Kalasky explained that the capital projects proposed in the master plan are expected to be undertaken over the next decade or more, and their sequence has not yet been determined. He maintained that the traffic studies should be current at the time the project is begun. M. Tuchler reminded the applicant that the Commission's concern is how the plan and its implementation will affect the community as a whole. He acknowledged that while it may be inconvenient to have a traffic study completed now and at the time a site plan is submitted, it would likely give the community more confidence that W&L is prioritizing the needs of the community. After additional discussion concerning the timing, scope and utility of traffic analyses, Mr. Kalasky committed to sharing the scope of the traffic study with the Planning Commission and City staff.

## **3) Public Comment –**

Elizabeth Boetsch, 410 Honeysuckle Hill – read from a prepared statement which is attached as Appendix A.

David Cox, 107 Lee Avenue – stated that, according to the Commissioner of Revenue, 65% of the land in Lexington is exempt from property tax and noted that when he was on City Council 12 years ago, that figure was 52%. He argued that the steady encroachment of the City's institutions, in this case W&L, into the City's tax base cannot be sustained and will undermine the City's ability to pay for the effective security and infrastructure and excellent schools that Lexington's residents, as well as the institutions and their employees, rely upon. He said zoning is one of the few controls the City has and he urged the Commission to keep that in mind.

Susan Minor, 203 Ross Road – read from a prepared statement which is attached as Appendix B.

Molly McCluer, 109 Rebel Ridge – expressed concern with both the process by which the rezoning requests were presented to the City as well as the cumulative impact that W&L’s increasing occupancy is having on the downtown. She asserted that W&L’s requests have been made in an *ad hoc*, piecemeal way and are effectively attempts to circumvent zoning law. She argued that increased flexibility is not an opportunity to disregard safeguards such as the City’s Comprehensive Plan or W&L’s 2003 oral proffer to limit requests to the existing campus. She requested the Commission refer to the impact map she prepared for the meeting (attached as Appendix C) to grasp the extent to which W&L already dominates Lexington’s small downtown – making it harder for smaller, more creative businesses to establish themselves and erasing Lexington’s distinctive character. She suggested other sites on W&L’s existing campus for some of the proposed projects and urged the Commission to vote against the subject requests.

Lisa Tracey, 501 Jackson Avenue – read from a prepared statement which is attached as Appendix D.

Barbara Crawford, 210 W. Nelson Street – reminded the Commission that Lexington has a long history of active and well documented historic preservation with various contexts through which to view the architectural heritage that shapes the community. She said the practice for decades has been restoring rather than destroying historic structures and that Lexington is a role model for other communities in that regard. She added that while historic preservation is the content of the discussion and a critically fundamental element, the context in which we should have this discussion has to do with the quality of life – social, economic and cultural – of the entire community. She urged the Commission to consider the wider ramifications of the individual proposals and to question whether the requests being made are in the best interest of the whole community or just one element of it.

Rachel Rowland, works at 7 E. Washington Street – requested the Commission consider that less than 3% of the area of Lexington is a Historic Preservation District - a unique amenity that attracts economic development. She said the companies for which she has worked have secured significant amounts of money by locating sites near walkable communities. She said the downtown district is an asset which would be eroded if rezoned and preserving it would benefit the City by drawing economic development. She argued that being a good steward of an historic built environment means promoting adaptive reuse of existing structures rather than demolition, and paying for predevelopment costs like conceptual site plans and architectural elevations prior to rezoning requests. She suggested the Commission carefully weigh the risk of sacrificing the built in, year-round draw of Lexington’s historical built environment for a seasonal, institutional related use. She said that W&L is a pillar of the community, but downtown Lexington is its soul, and the Planning Commission has been entrusted as its stewards.

John Lane, resident of Hardy, Virginia – expressed concerns about the amount of traffic that would be drawn into the downtown area, specifically by the potential relocation of materials currently housed in the University Chapel museum to the proposed Institutional History Museum on Lee Avenue. He indicated that such a relocation could potentially divert 35,000 – 40,000 visitors from University Chapel to the Lee Avenue site. Mr. Lane provided the Commissioners with prepared comments which are attached as Appendix E.

Lee Merrill, 2 S. Randolph Street – said his comments were his own but were also the consensus of the Land Conservation Committee at RACC. He reported that he understood the Woods Creek relationship was being addressed well so would not comment on that. His concern was the continued pressure of eroding into the core block across Lee Avenue. He argued it would not benefit the entire community and should be resisted. He objected to the 54’ proposed height for the Institutional Museum saying its scale is fairly outrageous in terms of its ability to relate to the adjacent structures and the edge of the downtown. He said the parking garage is a great idea, but that restrictions on that land suggest there is no reason to extend the I-1 across Lee Avenue. He suggested that, if the University wishes to persist with the proffered museum height, they should model the height with a balloon 54 feet off the sidewalk so the public could get a sense of its impact. He expressed extreme opposition to the notion of Washington Street becoming one-way and argued the Planning Commission should have the benefit of at least a schematic level traffic impact to evaluate the subject requests.

Cameron Spivey, 204 W. Washington Street – said he is a history major at W&L, representing the Students for Historical Preservation which is opposed to the proposal to build a new museum of institutional history. Mr. Spivey argued there is no need for the proposed museum on Lee Avenue because the University Chapel already hosts a very large collection of institutional history. He suggested the museum remain in the chapel. He also noted he had not heard of students suggesting that Washington Street be made more pedestrian friendly and is strongly opposed to the master plan proposals.

John Sebrell, 5 Sheridan Row – said his favorite question when he was on the Planning Commission was to ask the City Planner, “Why are you recommending this? What’s in it for us?” He asserted a traffic study is not necessary for Washington Street as it is a city street – just because W&L wants to build on both sides of it doesn’t make it theirs. He is absolutely opposed to any increase in the Institutional Overlay, suggesting that any projects outside of the existing I-1 district be made to adhere to all of the standards in the underlying zoning that anyone else would have to abide by.

#### **4) Commission Discussion and Decision**

Responding to a series of questions from Commissioner Betts, Mr. Kalasky said the parking garage would be open to the public at certain times and some type of arrangement would need to be agreed upon, perhaps through an MOU; the University has never restricted access to the Woods Creek Trail and that they recently initiated a meeting with the City and VMI to collaboratively document standards to maintain access to and improve the trail; the University has not surveyed students about the traffic proposals; and there are currently no plans to demolish Mattingly House for the construction of the Institutional History Museum. Commissioner Shester asked if the proposed footprint for the museum and parking garage was entirely within the boundaries of parcels currently owned by W&L, or if additional parcels would have to be acquired. Mr. Kalasky offered some clarification of the layout of the proposed garage and A. Glaeser said it appeared to him that the depth of the garage would extend toward the middle of the block towards Jefferson Street onto parcels not owned by W&L. He said it would be helpful to have that clarified. N. Betts asked if the Commission could fashion a recommendation that would make approval of the garage contingent on public use. A. Glaeser responded the proffer should come from the applicant and suggested how the Commission might frame a recommendation.

Commissioner Driscoll asked for the sequence of the projects and Mr. Kalasky responded that the Williams School expansion was the only project with a timeline. The timing of the other projects would depend on the University's programmatic needs and fundraising.

Commissioner Goodin asked how wedded W&L is to the request that W. Washington Street be made one-way. Mr. Kalasky responded they think the one-way reprioritization is worthy of consideration for a number of reasons, including the green space that would be created by burying the utilities and the extension of the City's bike path network to campus with a dedicated bike lane. N. Betts said he would like to have input from students and faculty about pedestrian safety. Mr. Kalasky noted the traffic study would include foot traffic. J. Driscoll said he was not inclined to recommend approval of the one-way traffic request. He said the Commission had to weigh what is best for the University against what is best for the City and could not commit to the Washington Street proposal without understanding its implications on traffic. Mr. Latimer clarified that the plans for the buildings proposed for the Washington Street/Lee Avenue area are not dependent on the one-way traffic proposal. He indicated the one-way proposal originated with a proposal from the University's trustees to close traffic on that portion of Washington Street. He indicated the one-way proposal seemed less restrictive and would allow for a dedicated bike lane. M. Tuchler made the observation that Mr. Latimer's response seemed to indicate an absence of acknowledgement or consideration for how the proposal might impact or benefit the community.

There was additional discussion about the footprint of the proposed museum/garage and whether all necessary parcels are owned by W&L and subject to the rezoning request. A. Glaeser and B. Shester requested clarification and confirmation from the applicant on this matter.

There was lengthy discussion about how and when to proceed with the Commission's deliberation of the applications. There was general agreement to consider recommendations for those projects on the interior of the campus and to continue discussion of the remaining projects at the Commission's regularly scheduled May 12, 2022 meeting. **N. Betts moved to recommend approval of the partial conversion of the Leyburn Library to a teaching and learning center. J. Goodin seconded and the motion passed unanimously (5-0). B. Shester moved to recommend approval of the expansion of the Science Center and IQ Center. N. Betts seconded and the motion passed unanimously (4-0, Commissioner Tuchler abstained).** At the request of J. Driscoll, A. Glaeser recommended approval of the Elrod Commons project as it is located within the academic core and negative community impacts are not expected. **N. Betts moved to recommend approval of the renovation of Elrod Commons and additions to the dining facilities. J. Driscoll seconded and the motion passed unanimously (5-0).** At the request of J. Goodin, A. Glaeser recommended approval of a back campus site for upper division housing as negative community impacts are not expected from either proposed location. **B. Shester moved to recommend approval of either of the proposed locations for additional upper division housing on back campus. M. Tuchler seconded and the motion passed unanimously (5-0).** A. Glaeser noted the site of the proposed softball field is in Rockbridge County. **The Commission chose to make no recommendation on the softball field.** There was discussion about whether to make a recommendation for the pedestrian bridge over Woods Creek. B. Shester noted that they had heard during the public comments that RACC was satisfied with the ongoing discussions concerning public access to the trail and handling of their environmental concerns. A. Glaeser provided an explanation for asking for a separate recommendation and the additional oversight the

project would receive before construction could begin. **J. Driscoll moved to recommend approval the new pedestrian bridge over Woods Creek. B. Shester seconded and the motion passed unanimously (4-0, N. Betts abstained). J. Goodin moved to continue the Commission's discussion and decision of the matters not addressed via motion to its meeting on May 12, 2022, with the understanding that staff and the applicant will have time to provide additional feedback. J. Driscoll seconded and the motion passed unanimously (5-0).**

## **OTHER BUSINESS**

- A. Zoning and Planning Report – Director Glaeser reported the following:
  - He attended the quarterly meeting for the Bike/Ped plan. The consultants are likely to present the final plan to City Council on May 5<sup>th</sup>.
  - Two public hearings have been advertised for the next Planning Commission meeting. One is for a zoning text amendment and the other is for a CUP at 101 N. Jefferson Street.
  - He assisted the City Manager in reviewing the Spotswood proposals.
  - He responded to complaint that a neighbor was living in a parked R.V. A site visit revealed that the individual was repairing the R.V.s and not living in them.
  - He received another inquiry about first floor residential use in the C-1 zoning district.
- B. Catalyst Project Updates –
  - 1) Green Infrastructure Group – Commissioner Driscoll reported the Green Infrastructure Group is still working on its draft report.

## **CITY COUNCIL REPORT**

A. Glaeser read the following for Commissioner Straughan who left the meeting early to attend a City Council work session:

City Council met on Thursday, April 7<sup>th</sup>

- We had a budget work session with the Lexington City School Board. Staff compensation will be a major focus of both the school board and city budgets for FY23.
- Chief Angela Greene and Rebecca Logan of Main Street Lexington presented the outdoor beverage license. This allows customers of participating downtown restaurants to purchase an alcoholic beverage and carry it downtown within a designated area during a special event. We will be allowed up to 17 special events per year. The July 3 Freedom Food Festival is the proposed inaugural event to use the permit. City Council will vote on whether to apply for the license at the April 21 meeting.
- Council approved an amendment to the sidewalk snow removal ordinance. It allows (but does not require) the City Manager to assess a \$250 fine, the cost of snow removal by a contractor, and a \$200 administrative fee.
- A public hearing was held on the selection of a developer/partner to develop the Spotswood site. Due to the amount of public comment and the delay in the City Manager's recommendation, the public hearing will be continued at the April 21 meeting. It is expected that Council will make a decision at that time.
- City Council voted to move our meetings back to the County Administration Building which has very good streaming capabilities. Our April 21 meeting will be held there. Planning Commission will also begin meeting there in May.

**ADJOURN**

The meeting was adjourned at 7:29 pm with unanimous approval. (N. Betts / J. Driscoll)

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J. Goodin, Chair, Planning Commission



Elizabeth Boetsch

410 Honeysuckle Hill

I am sure that there will be many observations tonight regarding the proposed Washington and Lee Master plan but speaking as a resident of Lexington I would like to comment on the following:

- 1). The size and scale of the proposed buildings
- 2) The Washington Street dilemma, and;
- 3) The “cost” to the city

No one doubts the ability of Washington and Lee to build beautiful quality buildings; the evidence is all around us. However, by coming into conflict with current zoning restrictions, the wishlist that they have presented raises serious questions.

Our city’s zoning restrictions were adopted with care and purpose. They are there to protect the overall fabric of Lexington as a charming yet vital small town. The design presented is only one of many possibilities and the footprint of the proposed construction would seem to indicate that there is ample room for properly scaled buildings. Yet there is no indication that

W&L has even tried to produce a plan that can both meet current restrictions and accommodate their needs.

The proposal to make Washington St one way and to somehow accommodate vastly increased student traffic to the Williams School addition is particularly troublesome. We need to acknowledge that this is a public street, not a private road for the university. With basically 2 main East-West arteries in the city, changing Washington St. to one-way puts an enormous burden on Nelson Street which already experiences lengthy delays throughout the day. Would it not make more sense to find a campus area for the academic addition to the Williams School and limit Washington St. construction to administrative offices?

Finally, in my view, the proposal to build a museum that will loom over Lee Avenue and a three-story parking garage that may or may not be open to the public while reducing street parking shows little consideration for surrounding businesses or sensitivity to the intended scale of neighborhood properties.

We understand that the implementation of this plan is still years away. Why would the city want to alter its zoning restrictions without a much clearer justification of what is being proposed? I urge you in the

interest of all our citizens to maintain the set back and height restrictions as they are and ask the university to return to the drawing board.

Good evening. My name is Susan Minor and my address is 203 Ross Road. I am a member of the Historic Lexington Foundation Board of Directors and I'm here representing the HLF.

Historic Lexington Foundation once again appreciates the opportunity to comment on the Washington & Lee Campus Master Plan.

Since the last Planning Commission meeting on the subject, we were pleased to learn that the university has dropped plans for the redevelopment of the "McLaughlin Triangle." We appreciate the fact that university decision-makers heard community concerns and responded accordingly. As good citizens of our city, we now hope that, in good faith, they will respond in a similar manner to our other concerns.

My first comment is that repeatedly, W&L officials have noted that many of the elements of the Master Plan are conceptual only. Also, that much of what is included in the Master Plan in the way of demolition and new construction is many years in the future. As such, we urge the Planning Commission and City officials not to rush into approving the Master Plan, but wait until university funding has been raised and site plans firmly established.

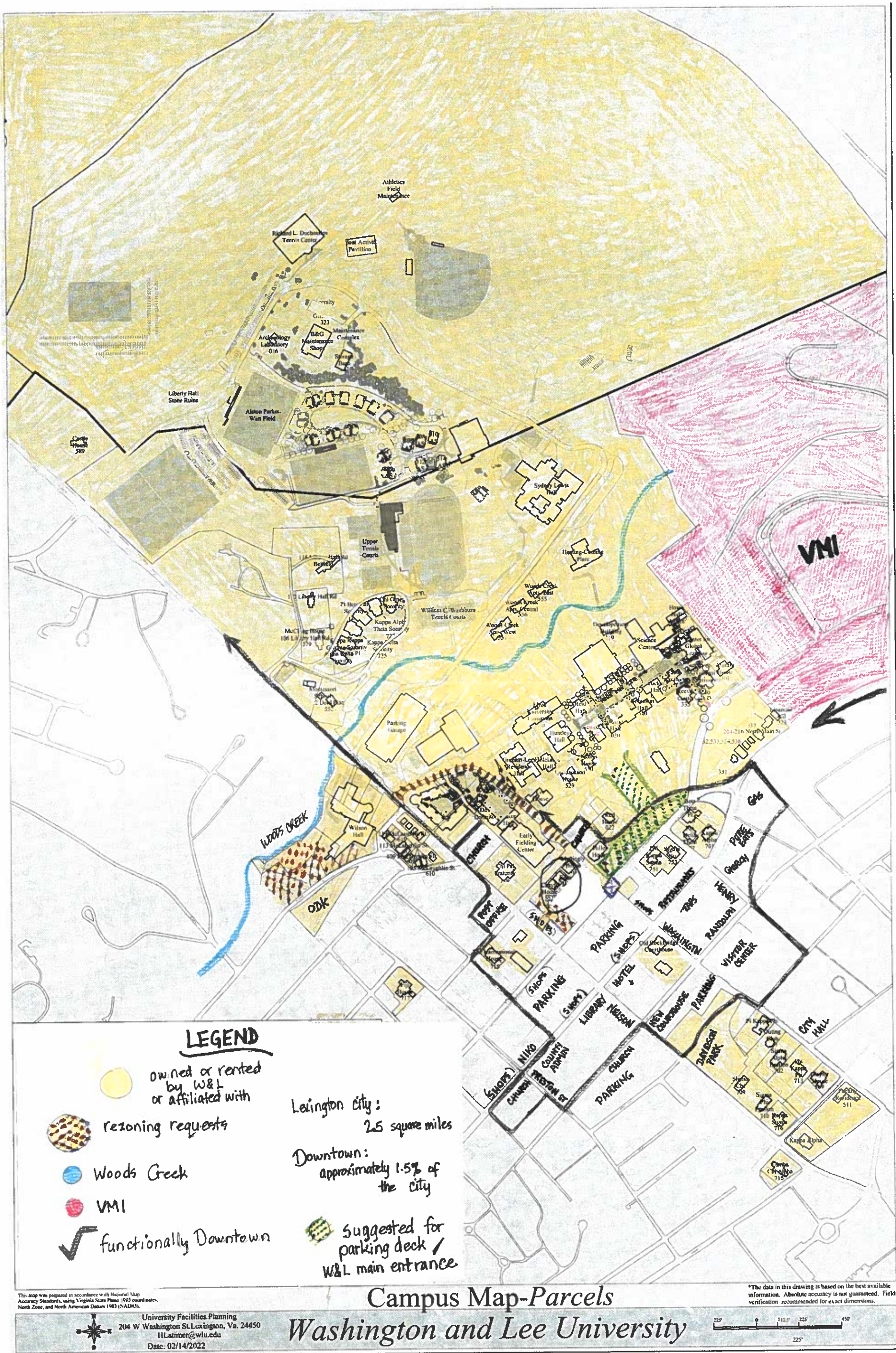
As we understand, a new Commerce School is a university priority and that it is targeted for initial fundraising. After that, and many years later, are plans to demolish the Early-Fielding building for a new admission and financial aid office. Similarly, Casa Hispanica and Chavis House are to be demolished to make way for an overly massive building to house an institutional history museum and conference rooms, plus a multi-level parking garage.

It is critical that the City not remove setback and height restrictions for new buildings planned for Lee Avenue and West Washington Street. To do otherwise would overwhelm the aesthetic integrity of the surroundings and diminish the architectural appeal of our City, not to mention the loss of on-street parking along Lee Avenue.

Lastly, Washington & Lee University has proposed making West Washington Street one way from Lee Avenue to the underground delivery garage at the point where the street descends to Nelson Street, which would only lead to additional traffic congestion on West Nelson Street. The City needs to hire its own traffic consultant to research this before even contemplating this proposal.

Thank you for your consideration.







Lisa Tracy  
 501 Jackson  
 Lexington  
 4-14-22

Good evening. Thank you for having us speak to and before you.

Tonight we are talking about the CURRENT revised W&L master plan - and the proposed zoning changes and amendment to the City's Comprehensive Plan, which W&L has said are essential to it proposed master plan changes.. The current plan states,  
 "Approval of the Master Plan is NOT approval of all of these projects, it is approval of the *conceptual strategy* (my italics) for the built environment."

I find this disingenuous. Whereas we all have 3 minutes to raise our concerns, and a number of members collectively of the Planning Commission, City Council and the ARB could recuse themselves because of links to W&L, W&L itself has significant if not limitless resources – time and money – to nibble the city to death in slow, individual bites.

These bites can each be made to seem necessary, logical, and really no big deal. The process is not limited to the W&L architectural staff's upfront professional activities and those of their consultants and prospective contractors. This process includes stealth acquisition of properties, both residential and commercial, by wealthy alumni who then gift W&L with those properties.

We've already seen how devastatingly overwhelming VMI's presence is in its neighborhood. About that we could do nothing; it's a state agency. About this, we can.

So:

- Taller and much larger buildings on Lee Avenue; for the Williams building on Washington, a height of 75 feet.
- A bite out of Washington Street, one of our only two east-west, west to east through streets. Why not just traffic calming speed bumps? This is a CITY street.
- At Wilson Hall a 6-foot setback instead of 25 in, yes, the Industrial-Arts zoning district, but one that abuts three residential neighborhoods.
- The effect of blasting, runoff, and physical encroachment in concrete and steel on our historic commercial area;
- The destruction of historic buildings on Lee Avenue which, though perhaps humble, have a grace and charm that a brick monolith will never equal;
- AND Nelson Street – let the houses just deteriorate enough and it won't be an issue.

That's just a thumbnail sketch of what the city is dealing with.

Let me just mention in passing that the W&L Master Plan identifies the EAST side of Lee Avenue as the SOUTH side, and speaks of W&L itself as being located EAST of downtown whereas it's actually WEST. This shows ME, at least, how much attention they are paying to our city and their place in it. It could be a metaphor.

I'll submit the rest of my gleanings from the Master Plan separately. Not least is the hazard of attaching a requested AMENDMENT to the city's Comprehensive Plan and approving rezoning to accommodate a master plan that in W&L's own words, is merely a "conceptual strategy."

Thank you.

John E. Lane, III

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To: Planning Commission, City of Lexington

Date: April 14, 2022

COMMENTS ON PROPOSED REZONING:  
W&L INSTITUTIONAL HISTORY BUILDING  
C-1 Lee Avenue Corridor

Chief Concerns:

>Congestion, traffic, foot traffic increased substantially along the Lee Avenue corridor approaching Preston Ave.

> Incursion into Commercial 1 area.

Opportunities:

>Modern large gathering venue for University functions.

>Retention of current Chapel as Lee Chapel Museum, retention of tourist attractions based on National Historic Landmark general nationwide advertising.

>Continuation of dispersed traffic and tourist impacts to on campus area away from C-1 zoned area.

A. ZONING LAW:

1. Lexington C-1 zoning goals and limitations quoted: [*emphasis, J. Lane*]

“E. Central Business District (C-1).

The purposes of this district are to enhance the utility, safety and attractiveness of the historic downtown business area for residents and visitors alike; to encourage the *continuation of a compact, efficient and attractive retail facade* and arrangement of buildings in the downtown area; and to *minimize traffic congestion* and its effects in the downtown area, all of which purposes are served by encouraging a compact and convenient arrangement of retail stores, offices, compatible service uses and the use of community parking areas and *by discouraging those uses which are incompatible with permitted uses or which would tend to be disruptive of traffic and pedestrian flow* and historic building patterns. Furthermore, the historic area regulations of Article VIII of this chapter apply to the Central Business District as a means of protecting this important element of the City's historic and architectural heritage.

§ 420-1.6 ZONING § 420-1.6 420:5

637692134524570000 (lexingtonva.gov) Click on

parcels. [https://lexingtongis.timmons.com/#/mwl?zoom=18&location=-79.443016\\_37.785499](https://lexingtongis.timmons.com/#/mwl?zoom=18&location=-79.443016_37.785499)

B. DISCUSSION:



1. Washington and Lee University Master Plan provides for a building dedicated to Institutional History, located midway in the eastern side of the block on Lee Ave. approaching Preston Ave.

Comparing of the WLU/MP with Lexington City GIS tax map graphics, this apparently involves two lots, TM # 16 1 42 and #16 1 43, although there may be other proximate lots this writer has not identified. *See WLU/MP links below, see WLU MP Master Plan, PDF p. 43, plan page 84. See Tax map page capture, annotated on Exh. 1*

2. From best information and belief, I understand WLU plans to relocate to their Institutional History proposed site on Lee Ave, all those contents previously housed in the on campus structure general known as Lee Chapel, [recently 2021 renamed University Chapel].

3. Those Lee Chapel and Museum actual plaques and other artifacts previously housed in the chapel itself attract approximately 35,000 to 40,000 visitors annually, per W&L Spectator and university archives. Traffic and congestion issues are therefore dispersed but generally centered toward this on campus location, away from the commercial downtown district zoned C-1.

4. From information and belief, I understand WLU encounters difficulties using Lee Chapel:

- a. as a spiritual center for students practicing different faiths and creeds;
- b. as a mandatory gathering place for a large number of students expressing emotional discomfort a Civil War era museum setting;
- c. concerning heating and air conditioning maintenance issues, for large *mandatory* student gatherings sitting for lengthy periods, though the problem is not significant for short duration tourist visitor small groups.
- d. limited utility for purposes other than as a historic landmark museum and student sponsored voluntary student and public gathering event venue.

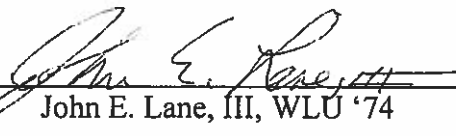
### RECOMMENDATIONS:

1. Lexington City Planning and WLU together should reconsider and revise the WLU Master Plan to avoid redirecting significant traffic and congestion along the Lee Avenue corridor, which is two way street. A potential shift of 35,000 to 40,000 tourists into the commercial district for visits not generating direct retail sales, and causing further parking problems, as well as foot traffic and vehicular traffic *in motion* conflicts/collisions *should be avoided*.

2. This can be achieved by using the current proposed Lee Avenue corridor Institutional History location not as a museum, but as a university centered [a.] small impact meeting location and [b.] intermittent large gathering venue.

3. Coordinate with Recommendation #2 above, WLU should consider restoring the Chapel as the

Lee Chapel Museum with all contents returned in order to continue tourism popularity and *continue directing tourism related congestion away from the C-1 Lee Avenue corridor*, while still allowing intermittent university voluntary gathering events.

Sincerely,   
John E. Lane, III, WLU '74

Additional References:

- MPA 2022-01 Washington & Lee Master Plan Report 2021 - submitted 12-10-2021
- Washington & Lee applications CPA 2022-01, RZ 2022-02 & MPA 2022-02 - submitted 3-16-2022
- MPA 2022-02 Washington & Lee Master Plan Report 2021 - submitted 3-18-2022

4-14-22 / Lane Comments / Rezoning Hearing / Planning Comm / 42.43, 44 rezoned by JEL



April 13, 2022

Museum examines George Washington, Robert E. Lee and institutional history.

It aims to be visited more by the community Lee Chapel is an iconic landmark on the Washington and Lee campus. Photo by Andrew Harris, '22.

<https://ringtumphi.net/4100/arts-life/lee-chapel-museum-serves-as-an-educational-resource-during-campus-change/>

Jack Eason

November 6, 2018

Due to recommendations from the Commission on Institutional History and Community, portraits of George Washington and Robert E. Lee have been replaced at Lee Chapel, thrusting the chapel to the forefront of campus discussion. The commission recommended a number of changes involving Lee Chapel, including the replacement of the portrait of Lee in battle uniform with one of him in civilian clothing, as well as the closure of the doors separating the chapel and the statue chamber during university events. The administration chose to also replace the portrait of Washington.

Most students at Washington and Lee develop a degree of removed familiarity with Lee Chapel. Honor orientation takes place there, as well as the president's opening address. After orientation week, however, students' visits become less frequent. Most students are only vaguely aware of the chapel's function as a museum, and few take the time to view the exhibitions. However, according to Lucy Wilkins, Director of University Collections and Lee Chapel and Museum, over 35,000 visitors stream through the chapel and museum each year, a number more than five times the population of Lexington itself.

The museum tells the story of the contributions of Lee and Washington to the early university, not of their might on the battlefield. Wilkins does acknowledge that it wasn't always that way. "It truly was the shrine of the South in the thirties and forties," said Wilkins, "but that was not Lee's intention for the building. Misconceptions come because the history has not been told very well."

If students want to see the museum for themselves, tours are unscheduled and self-guided, so visitors just have to walk inside. A guide can also meet visitors on the stage and speak briefly about the statue chamber.

The gates to the statue chamber have been locked since the violence involving alt-right, white supremacists in Charlottesville, Virginia, last year. But, Lee Chapel Museum leadership is working on a plan to make the chamber accessible to the general public.

The museum itself houses many valuable artifacts, such as paintings, the statue and personal belongings of Lee.

"Our department is responsible for the art collection of the university, so we were anxious to provide more protection for the artifacts," said Wilkins. Visitors are then guided downstairs to the Lee family crypt, where Lee, his wife and various family members are buried. To the right of the crypt are Lee's office and the museum space, which take up most of the bottom floor. Lee's office is preserved exactly as it would have been the day of his death and the museum features other items from the early days of Washington and Lee.

Wilkins, who has been with the Museum since 2013, wants more members of the Washington and Lee community to utilize and learn from the space.

With updated exhibits, new technology and a central location, Wilkins sees the museum becoming the true heart of campus, as it was in the past. "What I'd really like to see is the students use the building more," said Wilkins, "We'd like to see different groups of students come and really make it their chapel."



www.lexingtonva.gov

**Planning & Development Department**  
 300 East Washington Street  
 Lexington, Virginia 24450  
 Phone: (540) 462-3704 Fax: (540) 463-5310

## APPLICATION FOR CONDITIONAL USE PERMIT

### Applicant<sup>1</sup>

Name: Hugh Latimer Phone: 540-458-8959  
 Company: Washington and Lee University Fax: \_\_\_\_\_  
 Address: 204 W. Washington St. Email: hlatimer@wlu.edu  
 Applicant's Signature: [Signature] Date: 3/30/22

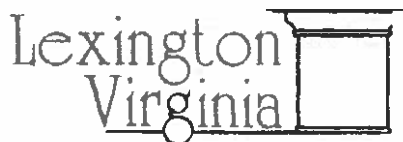
### Property Owner

Name: Hugh Latimer for Washington & Lee University Phone: 540-458-8959  
 Address: 204 W. Washington St. Email: hlatimer@wlu.edu  
 Owner's Signature: [Signature] Date: 3/30/22

### Proposal Information<sup>2</sup> (attach list of properties if request includes multiple properties)

Address (or location description): 101 N. Jefferson St.  
 Tax Map: 16164 Deed Book and Page #: 114  
 Acreage: 0.21 Zoning (attach any existing zoning conditions or proffers): Base R-1; I-1 Overlay  
 Description of Proposal<sup>3</sup>: see attached sheet

1. Prior to submitting an application, the applicant is required to meet with staff for a pre-application meeting.
2. Any application deemed incomplete by staff will not be accepted.
3. Please refer to page 3 of this application for the conditions of issuance for all conditional use permit applications. Submitting a sketch plan or other visual detail of your request is highly encouraged.



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**Planning & Development Department**  
 300 East Washington Street  
 Lexington, Virginia 24450  
 Phone: (540) 462-3704 Fax: (540) 463-5310

## Notice to Adjacent Property Owners

The City will give notice of public hearings to be held on the application to those persons who own property, any portion of which abuts the subject property, and all property which is directly across the street from any portion of the subject property, as determined by the City's real property tax records. This notice will give the date, time and place of the hearing, identify the property which is the subject of the application and give a brief description of the proposed action. Notices will be mailed a minimum of ten (10) days prior to the date of the scheduled public hearings.

## Posting of the Property

The City will place a sign on the subject property which indicates that an action is pending. The sign will be located to be clearly visible from the street.

## THIS SECTION TO BE COMPLETED BY STAFF ONLY

**Application Fee: \$400** Amount Paid: 4/1/2022 \$400 Case Number: CUP- 2022 - 03

Date Received: 4/1/2022 Received By: Kate Braxton

### Staff Review

Planning: \_\_\_\_\_ Public Works: \_\_\_\_\_

Police: \_\_\_\_\_ Fire/Rescue: \_\_\_\_\_

### Public Hearings

#### Planning Commission

#### City Council

Legal Ad Dates: \_\_\_\_\_ Legal Ad Dates: \_\_\_\_\_

Adj. Property Notifications: \_\_\_\_\_ Adj. Property Notifications: \_\_\_\_\_

Public Hearing Date: \_\_\_\_\_ Public Hearing Date: \_\_\_\_\_

Action: \_\_\_\_\_ Action: \_\_\_\_\_



[www.lexingtonva.gov](http://www.lexingtonva.gov)

**Planning & Development Department**  
 300 East Washington Street  
 Lexington, Virginia 24450  
 Phone: (540) 462-3704 Fax: (540) 463-5310

## Conditions of Issuance

§ 420-11.C of the City of Lexington Zoning Ordinance outlines the conditions under which a conditional use permit may be issued. These conditions are as follows:

- 1) Conditional use permits may be issued for any of the uses for which a conditional use permit is required by the provisions of the zoning ordinance, provided that the governing body, upon a recommendation by the Planning Commission, shall find that:
  - a. The proposed use will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use.
  - b. The proposed use will not be detrimental to the public welfare or unduly injurious to property values or improvements in the neighborhood.
  - c. The proposed use will not be in conflict with the policies and principles of the City's adopted Comprehensive Plan.
  - d. Adequate public services, including streets and other trafficways, utilities, police and fire protection, are or reasonably will be available to support the proposed use.
- 2) Where the provisions of this chapter require conditional use permits for certain parking lots and drive-in facilities in the Commercial District (Central Business) C-1, due consideration shall be given in general to the purposes of the C-1 District and specifically to the effect of such parking lot or drive-in facility on the historic pattern of buildings and, in particular, on the maintenance of a compact, efficient and attractive retail facade and arrangement of buildings; on the use of off-street circulation ways, including use of alleys; on the location of access points and relationship to traffic and pedestrian flow; and on the adequacy of off-street waiting area at drive-in facilities.
- 3) In granting any conditional use permit, the governing body shall give due consideration to factors relevant to the findings required by Subsection C(1) and (2), as well as to any other reasonable land use and zoning considerations as may be required by the nature of the proposed use or as may be otherwise appropriate to effectuate the intent of this chapter, and the governing body shall designate such conditions as it deems necessary to carry out the intent of this chapter. The application for such conditional use permit shall be accompanied by such written and graphic material as may be necessary to enable the Planning Commission and the governing body to make the recommendation and findings set forth above.

**Background**

101 N. Jefferson is a three story plus basement building constructed in 1923 as a fraternity in-residence house, and had been used as a fraternity house until 2008, when it became a theme house for students. It has continued to this time as a residence for students, although the theme house student life function has been dropped, serving as a residence for the general student population.

**Purpose**

The purpose of this Conditional Use Permit application is to change the university's occupancy of this building, from a student residence to an administrative office use- housing a portion of the university's Advancement staff. This change in occupancy is planned to be permanent.

Improvements to be undertaken as part of the change in occupancy includes the provision of new HVAC systems. This will include the placement of approximately two outdoor condensing units to be located at the rear-side off the building near the back corner of the single-story wing. Bathrooms will be upgraded and the institutional kitchen will be gutted to provide two additional private offices. Office modular workstations will be installed in the First Floor Dining Room and in the Basement Level below the Dining Room.

The University Advancement staff will have parking available in the Faculty/Staff Corral Lot (northeast of the corner of Jefferson St. and Lee Ave), the gravel Faculty/Staff lot at the intersection of Lecter and Jefferson Streets, and visitor parking at the Visitor Lot across Jefferson St from the building.



<b>Project Name</b>	Change of use at 101 N. Jefferson Street
<b>Property Location</b>	101 N. Jefferson Street / Tax Map #: 16-1-64
<b>Zoning</b>	R-1 (General Residential District) / I-1 (Institutional Overlay)
<b>Owner/Applicant</b>	Washington & Lee University / Hugh Latimer
<b>Applicant's Intent</b>	change of use from fraternity/residential to administrative office

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PLANNING COMMISSION RECOMMENDATION: Pending  
STAFF RECOMMENDATION: Approval with conditions

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### OVERVIEW OF REQUEST AND BACKGROUND

The applicant requests a Conditional Use Permit to allow a change of use at 101 N. Jefferson Street from student theme residence to administrative office use.

#### *Location Map*



*Photograph of 101 N. Jefferson Street*



On April 19, 1990, the Lexington City Council voted to amend the Washington & Lee Master Plan and extend the Institutional I-1 overly to a number of University owned properties, including the subject parcel, which has had the “University administered fraternity and sorority house” use since that time. The University is now requesting to convert the building to administrative office use and this amendment to the W&L Master Plan can be achieved by either requesting an amendment to the Master Plan or requesting a conditional use permit.

### **APPLICABLE ZONING ORDINANCE SECTIONS**

#### **Article VII. Institutional District I-1**

##### **§420-7.3. Permitted uses.**

A building and/or land shall be used for the following purposes:

- A. Insofar as uses are generally consistent with the base district, public and private schools, colleges, universities, medical campuses and other educational or research institutions which have been approved as part of a master plan as set forth herein below, and including hospitals and other medically related facilities, dormitory or other student housing, university-administered fraternity and sorority houses, other fraternity and sorority houses with conditional use permits, staff and faculty housing, classroom, library, religious, administrative, recreational, athletic, alumni, parking and service facilities, signs and other accessory uses owned by or operated under the control of such institution.
- B. Facilities such as those set forth in Subsection A of this section, but which have not been approved as a part of a master plan as set forth below, shall require a conditional use permit.

### CONDITIONS OF ISSUANCE OF A CONDITIONAL USE PERMIT

Section 420-1.11., *Conditional use permits*, in part

C. Conditions of Issuance

- (1) Conditional use permits may be issued for any of the uses for which a conditional use permit is required by the provisions of this chapter, provided that the governing body, upon a recommendation by the Planning Commission, shall find that:
  - (a) The proposed use will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use. *The change in use is not expected to adversely affect the health or safety of persons residing in the adjacent fraternity and theme houses.*
  - (b) The proposed use will not be detrimental to the public welfare or unduly injurious to property values or improvements in the neighborhood. *The change in use is not expected to impact the public welfare or affect property values.*
  - (c) The proposed use will not be in conflict with the policies and principles of the City's adopted Comprehensive Plan. *The proposed change of use is not an expansion of the University boundary and is not in conflict with the Comprehensive Plan.*
  - (d) Adequate public services, including streets and other trafficways, utilities, police and fire protection, are or reasonably will be available to support the proposed use. *Adequate public services are available to support the proposed use. An adjacent parking lot as well as two others across N. Jefferson Street provide ample parking.*
- (3) In granting any conditional use permit, the governing body shall give due consideration to factors relevant to the findings required by Subsection C (1) and (2), as well as to any other reasonable land use and zoning considerations as may be required by the nature of the proposed use or as may be otherwise appropriate to effectuate the intent of this chapter, and the governing body shall designate such conditions as it deems necessary to carry out the intent of this chapter. The application for such conditional use permit shall be accompanied by such written and graphic material as may be necessary to enable the Planning Commission and the governing body to make the recommendation and findings set forth above.

### STAFF RECOMMENDATION

Based on the aforementioned findings and opinions, the Staff recommends the proposed Conditional Use Permit be **APPROVED**:

### PLANNING COMMISSION RECOMMENDATION

*Pending*

**SUGGESTED MOTION:**

I move to approve/deny Conditional Use Permit number CUP 2022-03 to amend the W&L Campus Master Plan to allow administrative office use 101 N. Jefferson Street.



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Planning & Development Department

~~P.O. Box 922~~

300 East Washington Street  
Lexington, Virginia 24450

Phone: (540) 462-3704 Fax: (540) 463-5310

## APPLICATION FOR ZONING ORDINANCE/~~COMP PLAN AMENDMENT~~

### Applicant<sup>1</sup>

Name: City of Lexington Phone: \_\_\_\_\_

Company: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: 300 E. Washington Street Email: \_\_\_\_\_

Applicant's Signature: James M. / Talary Date: 3/29/22

### Proposal Information<sup>2</sup>

Code/Plan Section(s) to be Amended<sup>3</sup>: Article III. Use Matrix

Proposed Text/Amendment (attach additional sheets if necessary): \_\_\_\_\_

Replace "accessory dwelling" with "accessory apartment" in the listed residential uses.

1. Prior to submitting an application, the applicant is required to meet with staff for a pre-application meeting.
2. Any application deemed incomplete by staff will not be accepted.
3. If the amendment proposes to replace existing text, please provide a full copy of the existing text for the affected section.

### THIS SECTION TO BE COMPLETED BY STAFF ONLY

Application Fee: \$350 Amount Paid: \_\_\_\_\_ Case Number: ZOA ~~ZTA/CPA~~ 2022 - 02

Date Received: \_\_\_\_\_ Received By: \_\_\_\_\_

### Public Hearings

#### Planning Commission

#### City Council

Legal Ad Dates: \_\_\_\_\_ Legal Ad Dates: \_\_\_\_\_

Public Hearing Date: \_\_\_\_\_ Public Hearing Date: \_\_\_\_\_

Action: \_\_\_\_\_ Action: \_\_\_\_\_

NON  
REFUNDABLE

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**Staff Report & Recommendation**  
**Zoning Ordinance Amendment Application**  
**ZOA 2022-02 – Replace “accessory dwelling” in the Use Matrix**

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**Project Name**                      Zoning Ordinance amendment to replace “accessory dwelling” with “accessory apartment” in the Use Matrix

**Zoning Ord. Section**    420-3 Use Matrix

**Applicant**                              City of Lexington

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*PLANNING COMMISSION RECOMMENDATION: pending*  
*STAFF RECOMMENDATION: approval*

**OVERVIEW OF REQUEST**

On March 21, 2022, the Board of Zoning Appeals heard an appeal of a determination by the Zoning Administrator that an accessory dwelling unit must be located within the main dwelling unit and cannot be located in an accessory building that is detached from the main building. At issue was the fact that the Use Matrix lists “accessory dwelling” as a by right use in the R-1 zoning district, however the definitions section of the zoning ordinance does not provide a definition for this use. The Zoning Administrator maintained that the definition provided for “accessory apartment” was intended to describe the “accessory dwelling” use when it was added to the Use Matrix. The BZA very narrowly voted to uphold the Zoning Administrator’s determination and strongly recommended that the inconsistent terminology be addressed by the Planning Commission and City Council at their earliest convenience.

At its meeting on March 24, 2022, Planning Commission directed staff to begin the zoning ordinance amendment process, as recommended by the Board of Zoning Appeals, to correct the inconsistency in terminology existing in the zoning ordinance.

**ISSUE:**

There is an inconsistency in the nomenclature used in the 2017 Zoning Ordinance update whereby the use is called an “accessory dwelling” in the Use Matrix (Article III) while the definition included in the Definition section (Article XX) is for an “accessory apartment.”

**RECOMMENDATION:**

Replace “accessory dwelling” with “accessory apartment” in the residential uses listed in the Use Matrix as follows:



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**Staff Report & Recommendation**  
**Zoning Ordinance Amendment Application**  
**ZOA 2022-02 – Replace “accessory dwelling” in the Use Matrix**

*Article III. Use Matrix*

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
<b>Use Types</b>								
<b>Residential</b>								
Accessory dwelling apartment			B	B	B	B	B	

“Accessory apartment” is defined in the zoning ordinance as follows:

*§420-20.1 Definitions.*

*ACCESSORY APARTMENT: A residential use having the external appearance of a single-family residence in which there is located a second dwelling unit that comprises no more than 25% of the gross floor area of the building nor more than a total of 750 square feet.*

**PLANNING COMMISSION RECOMMENDATION**

*pending*

**STAFF RECOMMENDATION**

Approve the staff proposed zoning text amendment.

**SUGGESTED MOTION**

The public necessity, convenience, general welfare, or good zoning practice warrant the consideration of the following Zoning Ordinance amendment and I move to recommend approval of ZOA 2022-02 to replace “accessory dwelling” with “accessory apartment” in the Use Matrix as presented by staff.

## Article V. Community Mixed-Use District (CMU) *(to replace PUD or in addition to an amended PUD?)*

### §420-5.1. Purpose.

The purpose of the CMU Community Mixed-Use District is to increase available housing options while creating an enhanced pedestrian environment in which residential, commercial, cultural, ~~institutional~~, or entertainment uses are physically and functionally integrated. ~~Uses may be mixed horizontally (on adjacent lots), vertically (within the same building), or both. A mix of uses vertically within the same building is preferred.~~ *(Is the purpose statement sufficient?)*

~~The CMU base zoning district is distinguished from the UMU Planned Development District, in that the base zoning district does not require the master plan, terms and conditions, and other documentation required for rezoning to a planned development district. (We likely won't need this statement distinguishing the two districts unless we create a new Community Mixed Use district while retaining an amended PUD district. For comparison, the Henrico Urban Mixed Use Planned Development District purpose statement is, in part, "the purpose of the UMU-PD is to encourage moderate to high density neighborhood development integrated with commercial and civic uses. Unlike the base zoning districts, which prescribe specific design standards, the UMU-PD District allows the applicant to propose development standards for review and approval. The UMU-PD district combines a variety of lot sizes and housing types with public parks in a compact, walkable neighborhood setting. However, the UMU-PC district allows for more intense development with higher density, and commercial and civic uses are required.")~~

Allowed uses include:

- By-right uses listed on the Use Matrix (see section 420.3) for the C-2 zoning district
- Uses listed as conditional on the Use Matrix require the approval of a conditional use permit
- Statement that a mixing of uses either vertically within a building or horizontally is required for the CMU district
- Townhouses and multifamily dwellings (other dwelling types by provisional use permit) *(The Henrico zoning ordinance lists provisional uses that are approved by their Board of Supervisors and there is also a list of conditional uses that are approved by their Board of Zoning Appeals. The purpose of both of these types of uses are similar in that they are uses that may be appropriate in a zoning district, but because of their nature, extent, and external effects, require special consideration which is similar to conditional uses in the Lex zoning ordinance);*
- Commercial and office uses; and
- Cultural or educational facilities.



*(Is the list of allowed uses sufficient?)*

#### §420-5.2. Use standards.

Allowed uses and use-specific standards for principal, accessory, and temporary uses are established in Article 4: Use Regulations. *(Use standards are similar to Lex use and design standards found in Article 11 of Lex Z.O. and the Lex zoning ordinance does not include a list of temporary uses.)*

#### §420-5.3. CMU District Dimensional and Intensity Standards.

*(Refer to Lex Lot Requirements table Sec. 420-4.6 attached in background documents.)*

Standard	Townhouse	Other Uses
Lot area, minimum (sf) <sup>[1]</sup>	1,000	1,500
Lot width, minimum (feet) <sup>[1]</sup>	16	20
Structure height, maximum (feet)	60 <sup>[2]</sup>	60 <sup>[2]</sup>
Density, minimum/maximum (du/ac) <sup>[3]</sup>	10/40	10/40
Lot coverage, minimum/maximum (% of net lot area)	50/100	65/100
Front build-to zone boundaries, minimum/maximum (feet) <sup>[4]</sup>	12/30	12/30
Building width in front build-to zone, minimum (% of lot width) <sup>[5]</sup>	70	70
Front yard, minimum (feet)	0	0
Interior side yard, minimum (feet)	0	0
Rear yard, minimum (feet)	0	0

#### Notes:

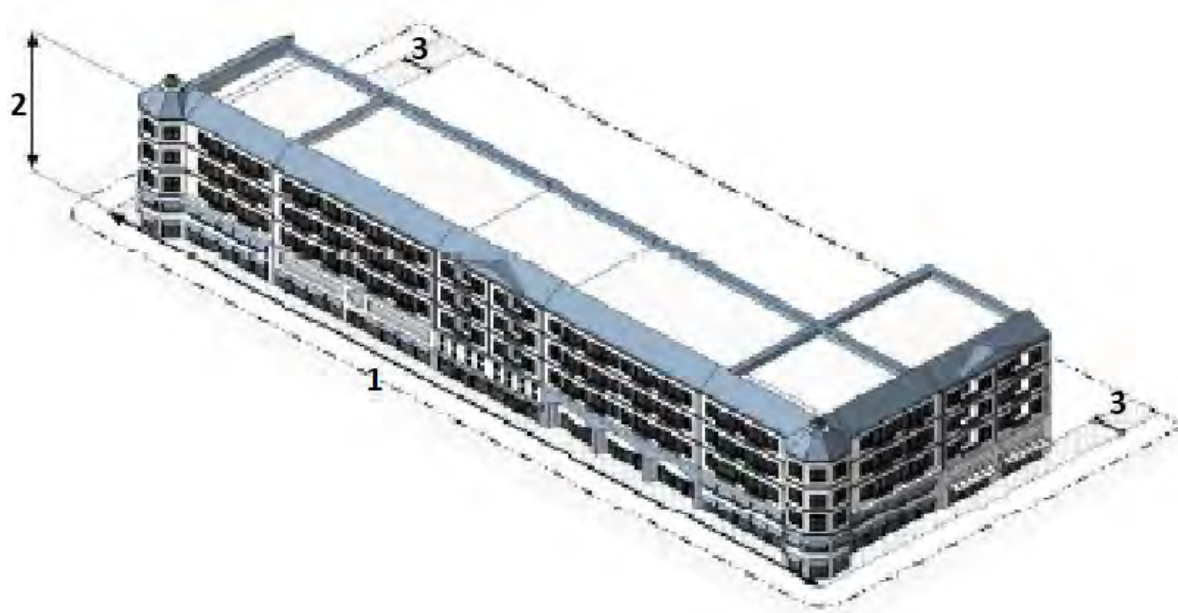
[1] The Board of Supervisors may approve lot area and width requirements for single-family and duplex dwellings in accordance with Sec. 24-2306, Provisional Use Permit. *(The single family attached dwelling and the duplex dwelling are listed as provisional uses in the Henrico CMU zoning district.)*

[2] The Board of Supervisors may approve a building or structure height up to 200 feet in accordance with Sec. 24-2306, Provisional Use Permit. *(In order to incentivize use of the CMU zoning district, the maximum allowed building height should be greater than the maximum building height of 45 feet that is allowed in the C-2 zoning district. If there is discomfort with buildings greater than 45 feet in height, we can reduce the maximum height in C-2 while still allowing a greater building height to incentivize use of the CMU zoning district.)*

[3] Applicable to residential development and the residential component of mixed-use development. *(The appropriate density maximum will be difficult to determine and we should consider a density minimum as well.)*

[4] The area between the minimum and maximum build-to zone boundaries that extends the width of the lot constitutes the build-to zone. The maximum front build-to zone boundary may be increased to 45 feet where civic spaces or outdoor dining areas are located, provided such an increase is allowed along a maximum of 25 percent of the front lot line. *(Front build-to zones are not currently included in the Lex zoning ordinance and we should consider whether to include this concept or not.)*

[5] Buildings must be located such that the facades occupy the minimum percentage of the front build-to zone. The remaining build-to zone width may be occupied by outdoor gathering spaces, walkways, landscaped areas, stormwater management facilities, or driveways or surface parking (subject to Article 5, Division 1). *(Article 5, Division 1 of the Henrico zoning ordinance provides regulations for access, circulation, off-street parking, and loading. Similar to the comment above, Lex zoning ordinance does not have a minimum building width requirement that must be in the front build-to zone and we should consider whether to include this concept or not.)*



#### §420-5.4. Other District Standards

##### 1. Minimum Area for Rezoning

The minimum contiguous area for lands to be classified to the CMU District is 12 acres. An area less than 12 acres may be reclassified to the CMU District in accordance with Sec. 24-2303, Map Amendment (Rezoning) or Sec. 24-2304, Conditional Zoning, if it abuts lands already classified in the CMU District. *(The appropriate minimum acreage needs to be established.)*

##### 2. Minimum Amount of Mixed-Use Development

- a. Except as exempted in accordance with subsection b. below, no development will be approved in the CMU District unless a minimum of 20 percent of development consists of residential uses and a minimum of 20 percent consists of nonresidential uses. For the purpose of this provision, percentages will be measured including development on the site and, at the option of the applicant, development within  $\frac{1}{4}$  mile of the site, based on the floor area of the use.

- b. The body reviewing the development application may exempt a proposed development from this requirement if the applicant demonstrates, through economic or market studies prepared by a qualified professional, that the market will not reasonably support the required mix of uses on or within ¼ mile of the site.

### **3. Building Orientation**

The front façade of all buildings, as defined by the primary entrance, must face a street or a courtyard, plaza, or similar open space.

### **4. Connectivity**

- a. The internal vehicular and pedestrian circulation systems of development must be designed in coordination with any existing or allowable future development on adjoining lots.
- b. Easements allowing vehicular or pedestrian cross-access between adjoining lots, along with agreements defining maintenance responsibilities of the property owners, must be recorded in the land records.

### **5. Pedestrian Access and Circulation**

- a. Sidewalks must be provided on both sides of every street. Each sidewalk must have a minimum width of seven feet along arterial and collector roads and a minimum width of five feet along other streets, exclusive of any outdoor dining, display, or vending area. In addition, street trees must be provided that are spaced between 35 and 45 feet on center, unless otherwise approved by the Planning Director to avoid utility conflicts or to ensure the visibility of major design features. Street trees must be located adjacent to any existing or proposed roadway in either a planting strip or tree well. Planting strips and tree wells must be at least five feet wide in the narrowest dimension.
- b. At least one walkway must be provided from an adjacent sidewalk to each building entrance designed for use by the general public that is located on the side of the building facing the sidewalk.

### **6. Off-Street Parking**

#### **a. Reduced Minimum Vehicle Parking Space Requirements**

The minimum required number of off-street vehicle parking spaces for mixed-use development must be 70 percent of the minimum requirements in Sec. 24-5110, Minimum Number of Off-Street Parking Spaces, subject to any alternative parking plan or parking reductions approved in accordance with Sec. 24-5115, Off-Street Parking Alternative Parking Plans, and Sec. 24-5120, Reduced Parking Standards for Parking Demand Reduction Strategies.

#### **b. Maximum Off-Street Vehicle Parking Spaces**

The number of off-street surface vehicle parking spaces must not exceed 125 percent of the minimum requirements in Sec. 24-5110, Minimum Number of Off-Street Parking Spaces, in structured parking facilities do not count toward the maximum allowed, subject to any alternative parking plan approved in

accordance with Sec. 24-5120, Reduced Parking Standard for Parking Demand Reduction Strategies.

**c. Location**

All proposed new or expanded surface vehicle parking must be located to the rear or side of the development's principal building(s), or in a parking structure built in accordance with Sec. 24-4320.B, Parking Structure. Parking may be provided along the street (on-street parking), subject to the approval of the County Engineer or VDOT, as appropriate.

**d. Break-Up of Large Parking Lots**

Each surface parking lot with more than 100 parking spaces must be organized into smaller modules that contain 50 or fewer spaces each and are separated by buildings, pedestrian walkways, or landscaped areas in accordance with the Article 5, Division 3, Landscaping and Tree Protection.

**e. Pedestrian Walkways Through Parking Areas**

Each vehicle parking lot or structure containing more than 50 parking spaces must provide clearly identified ADA accessible pedestrian routes between parking areas and the primary pedestrian entrance(s) to the building(s) served by the parking areas. Such pedestrian routes must be designed and located to minimize the exposure of pedestrians to vehicular traffic.

**f. Parking Structures**

Where the façade of a parking structure abuts or faces a street frontage, the façade must be articulated by windows, masonry columns, decorative insets and projections, awnings, changes in color or texture, or similar decorative features that break up the vertical plane.

**7. Utility Lines**

All new utility lines such as electric, telephone, CATV, or other similar lines must be installed underground, in conduit and in duct banks where practical. This requirement applies to lines serving individual sites as well as to other necessary utility lines within the district. All junction and access boxes must be screened with appropriate landscaping.

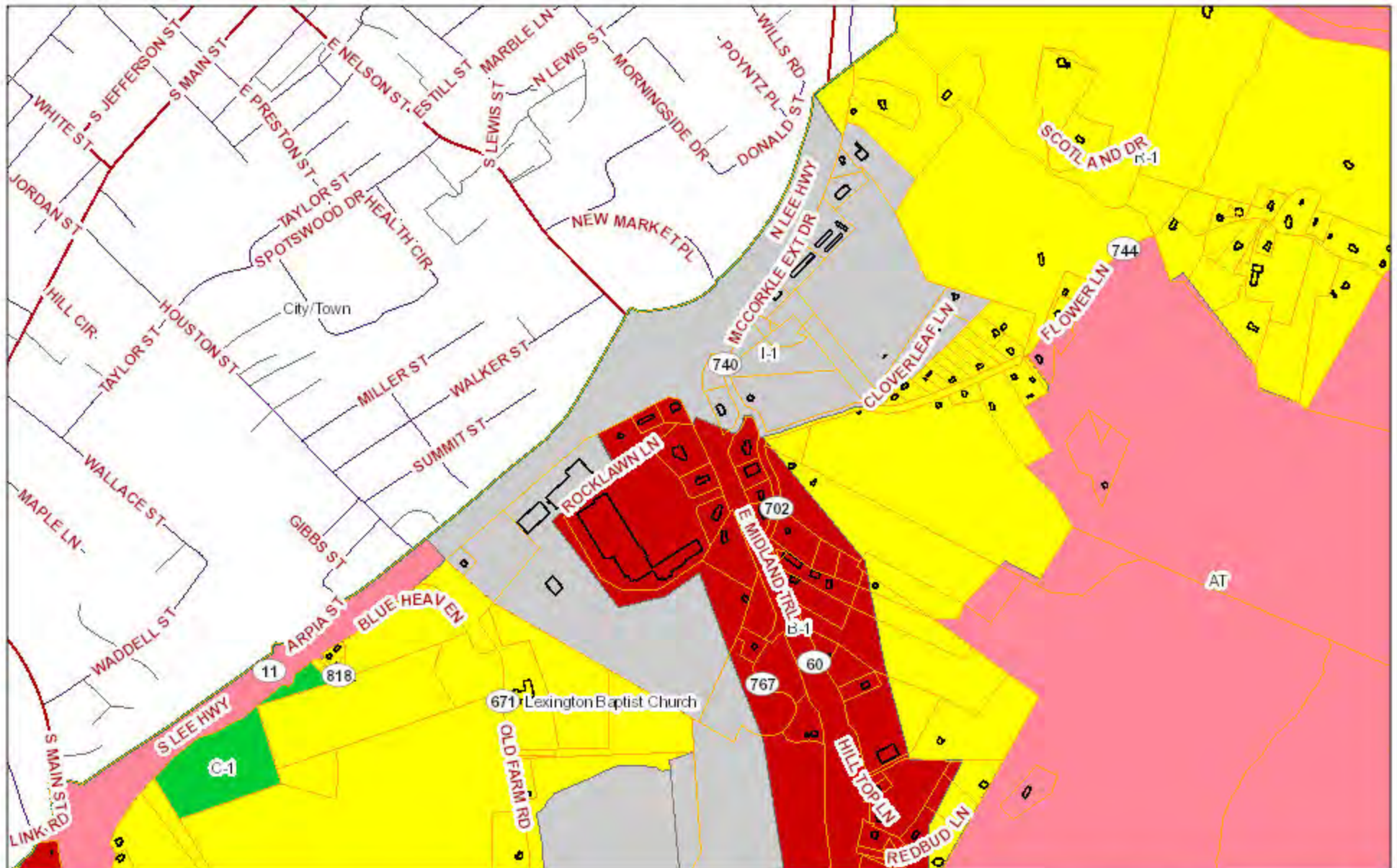
**§420-5.5. Reference to Other Standards**

Article 4	Use Regulations	Article 5, Division 6	Neighborhood Compatibility
Article 5, Division 1	Access, Circulation, Off-Street Parking, and Loading	Article 5, Division 7	Signs
Article 5, Division 2	Required Open Space	Article 5, Division 8	Chesapeake Bay Preservation
Article 5, Division 3	Landscaping and Tree Protection	Article 5, Division 9	Environmentally Friendly Design Incentives
Article 5, Division 4	Fences and Walls	Article 6	Nonconformities
Article 5, Division 5	Exterior Lighting and Crime Prevention	Article 8	Definitions

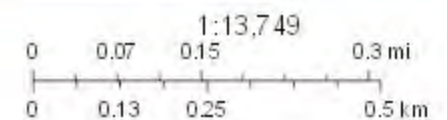
*Additional notes:*

- 1. Community Mixed Use can be renamed to something else if needed.*
- 2. The Henrico code contains design elements that we do not have experience with and may be difficult to implement.*
- 3. Not all of the Henrico code elements need to be included in our mixed use district.*





March 22, 2022



**TABLE 1. AREA AND SETBACK REQUIREMENTS**

<b>DISTRICT</b>	<b>AREA (ACRES)</b>	<b>SETBACK</b>	<b>FRONTAGE</b>	<b>SIDE</b>	<b>REAR</b>	<b>HEIGHT</b>	<b>ACCESSORY BUILDINGS</b>
C-1	N/A	N/A	N/A	25'	50'	N/A	N/A
A-1	See Notes 8 and 9	65'	175'	50'	50'	35'*	5*
A-2	See Notes 8 and 9	65'	175'	50'	50'	35'*	5*
A-T	2	65'	175'	50'	50'	35'*	5*
R-1	See Table 2	25'	100'	15'	25'	35'*	5*
R-2	See Table 2	25'	75'	10'	25'	35'*	5*
B-1	N/A	20'	N/A	20'*	20'	35'*	20'*
I-1	N/A	20'	N/A	20'*	20'	35'*	20'*

(Table 1 Amended by Ord. of 4-14-08; Table 1 Amended by Ord. of 5-27-08)

**TABLE 2. RESIDENTIAL DISTRICT- AREA REQUIREMENTS**

USE	PUBLIC WATER & SEWER	PUBLIC/PRIVATE WATER & PRIVATE DRAINFIELD
R-1	.5 ACRES	1 ACRE
R-2	.25 ACRES	N/A
MULTI FAMILY	.5 ACRES PLUS 2000 SF EACH ADDITIONAL UNIT	N/A

(Table 2 Amended by Ord. of 4-14-08)

**\* NOTES**

1. Height measured from average grade to highest point of structure. The height limit for dwellings may be increased to a maximum of 45' and up to 3 stories provided the side line setbacks are increased a minimum of one foot for each additional foot of building height over 35'.

2. The height limit for buildings (except hotels/motels) in the B-1 and I-1 Districts may be increased to 45' and up to 4 stories provided the side line setbacks are increased a minimum of one foot for each additional foot of building height over 35'. **The height limit for hotels/motels in the B-1 District may be increased to 55' and up to 5 stories provided the side line setbacks are increased a minimum of one foot for each additional foot of building height over 35'.** This limit may be increased by 75' by special exception for architectural purposes with additional setback in a 1:1 ratio.

(Note 2 Amended by Ord. of 11-22-10; Note 2 Amended by Ord. of 7-22-19)

3. A public or semi-public building such as a school, church, library, or hospital may be erected to a height of 60' from grade provided required front, side, and rear setbacks are increased one foot for each additional foot of building height over 35'.

4. Church spires, belfries, cupolas, monuments, water towers, silos, tanks, chimneys, flues, flag poles, television and radio antennae, and associated poles or towers are exempt from height requirement. Parapet walls may be erected up to 4' above building height.

(Note 4 Amended by Ord. of 4-14-08; Note 4 Amended by Ord. of 10-27-14)

5. Side yard setbacks for B-1 and I-1 Districts are applicable only when adjacent to residential or agricultural districts or corner lots, except when the building height exceeds 35'. When the building exceeds 35' in height, side line setbacks are increased a minimum of one foot for each additional foot of building height that exceeds 35'.

(Note 5 Amended by Ord. of 7-22-19)

6. Accessory buildings/structures limited to 15' at the highest point when within 20' of property lines. If over 20' from property line (15' in R-1, 10' in R-2) building/structure may be up to 35'. All accessory buildings/structures shall be less than the main building in height



except farm and industrial buildings/structures. Accessory buildings/structures shall meet the required front setback of the primary building and shall have a required minimum separation of 5' from the primary building.

(Note 6 Amended by Ord. of 4-14-08)

7. Decks, ramps, landings, garages and other structures attached to the primary structure shall meet the setbacks applicable to the primary structure except for the ordinary projection of steps, sills, cornices, buttresses, ornamental features, chimneys, flues, and eaves, provided such projections are 2' or less.

8. The minimum lots size in A-1, A-2 and A-T shall be 2 acres unless approved as a clustered development pursuant to Section 712.00, Cluster Developments.

(Note 8 Added by Ord. of 4-14-08; Note 8 Amended by Ord. of 5-27-08)

9. As stated in Note 8, the minimum lot size in the A-1 and A-2 Districts shall be 2 acres. In addition, density in the A-1 and A-2 Districts is regulated by Sections 701.05 through 701.05-4, Section 712.02-1 and Tables 4 and 5.

(Note 9 Added by Ord. of 5-27-08)

## §420-4.6. Lot Requirements.

Zoning District	Lot Area	Lot Width	Building Height	Front Yard	Side Yard	Rear Yard
<b>R-1</b>	8,000 sq. ft.; 12,000 sq. ft. for two-family dwellings	60 feet; 80 feet for two-family dwellings	35 feet; up to 45 feet w/30 foot side yard plus 1 foot for each additional foot over 35 feet	15 feet	10 feet	25 feet for main buildings, 5 feet for accessory buildings
<b>R-2</b>	15,000 sq. ft.	80 feet	35 feet; up to 45 feet w/30 foot side yard plus 1 foot for each additional foot over 35 feet	25 feet	15 feet	25 feet for main buildings, 5 feet for accessory buildings
<b>R-M</b>	8,000 sq. ft.; Two- family dwellings- 12,000 sq. ft.; Multi-family- 10,000 sq. ft. plus 1,500 sq. ft. for each unit in excess of 4; Townhouses - 2,400 sq. ft. per unit	60 feet; Two-family dwellings-80 feet; Townhouses-20 feet each unit; Multi-family-50 feet plus 10 feet for each unit above 4	45 feet	25 feet	10 feet; 20 feet for multi-family	25 feet; 30 feet for multi-family
<b>R-LC</b>	Residential use: 8,000 sq. ft.; Two- family dwellings- 12,000 sq. ft.; Multi-family- 10,000 sq. ft. plus 1,500 sq. ft. for each unit in excess of 4; Townhouses - 2,400 sq. ft. per unit; Non- residential: 8,000 s.f.	Residential uses: 60 feet; Two-family dwellings-80 feet; Townhouses-20 feet each unit; Multi-family-50 feet plus 10 feet for each unit above 4; Non-residential: 60 feet	35 feet, except dwellings may be increased up to 45 feet, provided that each side yard is 20 feet, plus at least one foot for each additional foot of building height over 35 feet.	25 feet	Residential uses: 10 feet, or 20 feet for multi-family  Non- residential: 10 feet	Residential uses: 25 feet, or 30 feet for multi-family  Non-residential: 25 feet

Zoning District	Lot Area	Lot Width	Building Height	Front Yard	Side Yard	Rear Yard
<b>C-1</b>	None	None	45 feet; public and governmental buildings up to 60 feet w/CUP	None	10 feet when abutting a residential district	10 feet when abutting a residential district
<b>C-2</b>	None	None	45 feet	30 feet	30 feet when abutting a residential district	30 feet when abutting a residential district
<b>PUD</b>	3 acres		see §420-5.10			
<b>POS</b>	0 sq. ft.	0 feet	15 feet; 35 feet if ≥ 10 feet from a property line	5 feet <sup>1</sup>	5 feet <sup>1</sup>	5 feet <sup>1</sup>

<sup>1</sup>Structures located in designated cemeteries and designed to contain human remains, such as but not limited to, mausoleums, columbaria, crypts, and niche walls, are not subject to P-OS yard setback regulations.

## ▷ Future Land Use





### Future Land Use and Zoning

While the Comprehensive Plan provides guidance for future land use in Lexington, the City's primary tool for shaping and regulating land use is the City's Zoning Ordinance. The Zoning Ordinance is a legal requirement that divides the City into eight zones and specifies allowed uses and dimensional requirements for each zone.

Future land use differs from zoning, although the two are related. Future land use can be thought of as a picture of what the City should strive to achieve within the next 20 or more years. This map does not change what is allowed on a piece of property right now, although it should be used to guide decisions on rezonings and conditional use permits. To determine the appropriate use and development form for a specific parcel, property owners should refer to the future planning framework map and the corresponding planning objectives and design principles. Ultimately, the specific use and zoning of an individual parcel will be reviewed by the City using the Comprehensive Plan as a guide.

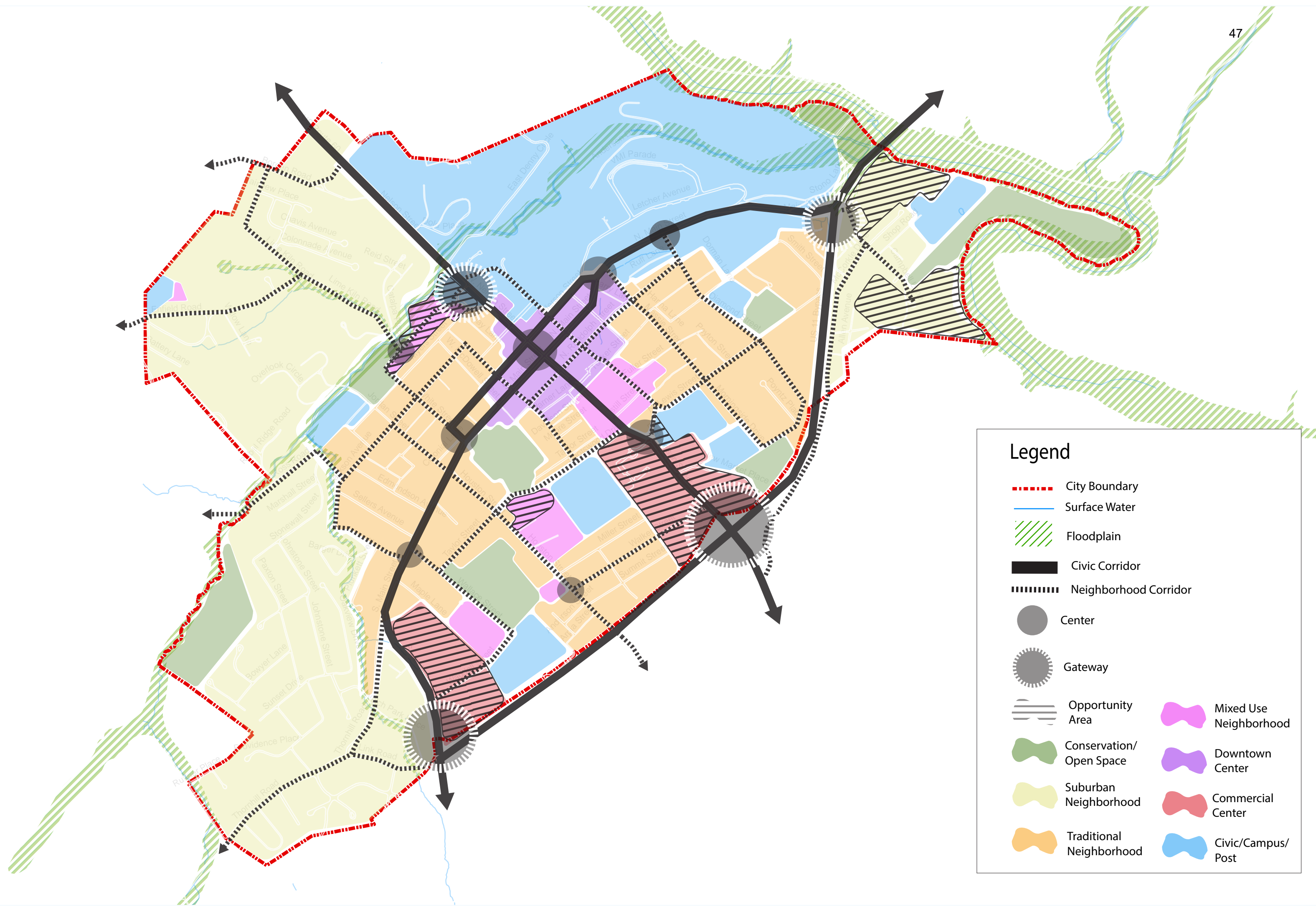
**Table 8.2** illustrates the relationship between the Future Planning Framework Map and Lexington's existing zoning categories.

**Table 8.2 Future Land Use and Zoning**


Future Land Use Pattern Area	Zoning Districts								
	General Residential District (R-1)	Suburban Residential District (R-2)	Multifamily Residential District (R-M)	Residential Light Commercial (R-LC)	Central Business District (C-1)	General Commercial District (C-2)	Parks and Open Space District (P-OS)	Planned Unit Development (?)	Institutional Overlay District (I-1)
 Suburban Neighborhood		X					X	X	
 Traditional Neighborhood	X						X	X	
 Mixed Use Neighborhood			X	X	X			X	
 Downtown Center					X				
 Commercial Center				X		X		X	
 Civic/Campus/Post							X		X
 Conservation							X		


COMMUNITY MIXED USE DISTRICT (CMU)


X





### 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

PAS-Report-545 PUDs notes

“Planned Unit Developments” by Daniel R. Mandelker, American Planning Association, Planning Advisory Service Report Number 545 (2007)

## **Chapter 1, Planned Unit Development as a Zoning Concept**

### Some History

PUD as a land-use concept began in the 1950s and 1960s. Simply put, a PUD is a development project a municipality considers comprehensively at one time, usually in the zoning process employed to approve a development plan. A PUD proposal will contain a map and the regulations under which the project will be built. PUDs were at first primarily residential. They were a change in style from the standard residential developments common after the Second World War.

This change occurred because the standard subdivision ordinance and the accompanying zoning regulations have serious design flaws when applied to residential land-use projects. Most conventional zoning ordinances do not allow single-family, multifamily, and nonresidential uses in the same zoning district. They also contain site development standards for setbacks, site coverage, and the like that produce dull projects because they apply uniformly throughout each district. Subdivision control deals principally with infrastructure and lot and block layout in new subdivisions. Neither allows the review of a project on a comprehensive basis as an integrated entity, where a jurisdiction can consider its development and design details.

The PUD concept was a response to these failings in residential development. It was implemented by a new set of regulations in the zoning ordinance that applied primarily to residential development and required a discretionary project review followed by the approval of a development plan that displaced zoning regulations in residential zones. In its early stages, PUD was intended to provide a comprehensive development review that could overcome the shortcomings of zoning and subdivision regulation, improve project design, and provide for of common open space in return for “clustering” development elsewhere in the project at increased densities. Open space was either privately held and available only to the residents of the PUD or dedicated to the local government. Total project density was not increased. This form of PUD is usually called “cluster” development.

PUD regulation did mark a change from the way in which land-use regulations had been applied. Instead of zoning regulations that decided what development was allowed as a matter of right, and subdivision regulations limited to measurable requirements such as street widths, PUD regulations allowed municipalities the discretion to decide what kind of development they would approve.

Changes in development style can be threatening to neighbors, and discretionary review can be unfair to developers, but several factors make limited PUD more acceptable to many

communities. One was homogeneity in the residential development and demographics at the time. This was a time when a majority of the country lived as nuclear families with an average of 3.37 children. The father worked, and the mother stayed at home. Single-family housing dominated, and styles were similar. PUD ordinances allowed communities to use their discretion in deciding what developments they would accept, but that discretion was limited because any developments they approved would serve the typical family and would likely be built in the familiar development pattern. In addition, PUD regulations that followed the cluster development model were limited to single-family development and did not allow an increase in density.

### Early Reports and Model Regulations

There also was a need for model regulations, so the American Society of Planning Officials, later to become the American Planning Association, asked me to prepare a report on PUD that contained recommendations for a model ordinance (Mandelker 1966). Several years later APA published another report on PUD based on a questionnaire, national interviews, and a review of PUD regulations that updated my earlier report (So, 197). The Urban Land Institute then published a report some years later that discussed how PUD was carried out in practice and included a discussion of regulatory problems and issues (Moore and Siskin 1984).

These reports and recommendations generally assumed the typical PUD would be a cluster development limited to single-family development with no increase in project density. Multifamily uses might be permitted margin-ally, and commercial development could be allowed if accessory and related to the residential uses. The PUDs studied in the ULI report were also small in size. Only a few were larger than 100 acres. Development at this scale does not raise problems at the regional level, such as the impact on highway facilities and the jobs/housing balance. Cluster development could also be approved under the subdivision ordinance, though the reports recommended including PUDs regulations in the zoning ordinance as a rezoning or conditional use if a change in use or density was required.

These reports were limited in the changes they suggested. As proposed in these reports, PUD was only a marginal change to existing land-use regulation and did not substantially modify the regulatory framework. It filled a gap in existing regulations by allowing a comprehensive review of new development that promised new design opportunities while preserving open space. This expectation was clear in ordinance purpose clauses providing that local governments could not approve a PUD unless they found it would provide a better built environment than what could be accomplished under existing regulations. This type of purpose clause is still common.

Though the type of development contemplated under PUD regulation did not differ much from what had been done before, this kind of regulation did change the basis for development because it required PUDs to obtain approval in a discretionary review process. This was a major change. Zoning ordinances allow uses as-of-right, and subdivision ordinances have set



standards. This kind of nondiscretionary regulation can be arbitrary, but it is fair if the review standards in the ordinance are fair and fairly applied.

By comparison, a discretionary approval process can provide opportunities for unfair and arbitrary decision making. The PUD review process can become an invitation to essentially standardless negotiation if the ordinance is not written properly. It can also provide opportunities to developers to overreach and obtain excessive concessions or even default on their promises by failing to provide improvements and infrastructure that were promised (Turque 2006). One feature of my early report was a concern that approval standards provide sufficient guidance and that ordinances contain sufficient protections, so that developers could not take unfair advantage. Strict provisions about development phasing, for example, are necessary so that developers do not build a profitable part of a development first and then not provide promised amenities, such as common open space. Controlling the exercise of discretion in planned development regulation is still a major problem.

### What PUD is Today

The origins of PUD regulation explain what PUD is today. It has a dual character. As the Urban Land Institute report stated several years ago, PUD is both a physical plan and a legal concept (Moore and Siskin 1984, 5). This definition highlights the difficulty in defining PUD, as it is both a development type and a legal process for approving a development type. This dual character is reflected in a definition of PUD contained in a Eugene, Oregon, General Information sheet:

*A planned unit development (PUD) is a comprehensive development plan intended to provide flexibility in design and building placement, promote attractive and efficient environments that incorporate a variety of uses, densities and dwelling types, provide for economy of shared services and facilities, and preserve natural resources. (Eugene, Oregon, Planning and Development Department, n.d.)*

This definition includes both the process and physical design elements of PUD. It notes the opportunity for flexibility in design and building placement, which can occur through the approval process, but also emphasizes elements in physical design that must be included, such as mixed uses, densities, and the preservation of natural resources. The definition does not expressly state that the design of PUDs must be better than what might be obtained through traditional zoning, but it is implied.

PUDs can range in size from infill housing development on a few acres in a downtown area to a large master-planned community of 50 square miles in outer suburbia. This variety suggests that different kinds of regulation are required for different types of development and that no single approach to PUD regulation can fit all alternatives. Downtown sites, for example, may not have natural resources to preserve. A definition may not be able to catch all of these alternatives.

A PUD that has a variety of mixed uses is usually called a master-planned community when it is built on a large scale. The development of increasing numbers of these communities is one of the most important changes in the PUD concept in recent years, and this increase has significantly changed the way in which communities draft and apply PUD regulations. We have had master-planned communities for some time, of course—large-scale developments often with thousands of homes and divided into neighborhoods with mixed uses, including retail and employment centers. Now, especially in the west, the south, and other growing areas of the country, the master-planned community is becoming the standard method of development. Their larger scale and mix of uses may require different kinds of regulatory treatment in PUD ordinances.

So how should a PUDs be defined, or is a definition necessary? The Eu-gene definition can be generalized to better emphasize both the process in which PUDs are approved and the type of development contemplated by the regulations:

*A PUD is a development that has been approved in a process that requires the comprehensive review of project design and that can include a variety of project types, including infill developments, housing developments, and mixed-use developments, such as master-planned communities.*

Ordinances may need definitions more specific to the types of PUDs that are allowed.

#### The Changing Market and Policy Environment for PUDs and Master-Planned Communities

Changes in market demand, development practices, the scale of development, and community expectations have substantially altered the market and policy environment for PUD regulation. These changes need to be considered.

Housing demand, for instance, has called for major changes in the housing products that PUDs and master-planned communities offer. One observer commented several years ago that a mass market in housing no longer exists; rather, it is breaking into niche markets with different housing needs (Halter 1998, 1). This change has occurred because the homebuyer profile has changed, and the stereotypical nuclear family of the past no longer drives the housing market. The nuclear family is a minority, and the number of children on average in each family has decreased by one-third. Employment has shifted from production to service, and time is a growing amenity as many families need dual incomes, and work demands put pressures on family life. Working at home through telecommuting is increasing and requires a different kind of housing that contains a work environment. Developers may also design and build for different housing preferences, featuring “green,” “conservation,” and other types of development in their projects based on polling efforts before a spade of earth is turned (McCrummen 2006).

Another important influence on PUD and its regulation was the publication in 1998 by APA and the International City/County Management Association of a best-selling influential book, *Best*

Development Practices (Ewing and Holder 1998). The book recommended land-use, transportation, housing, and conservation practices now widely used by developers—practices that have found their way into PUD ordinances. Best Development Practices did not deal with design issues, but design issues have also become increasingly important. Some of this is just greater attention to good design, but some of it shows the influence of the development model preferred by the new urbanism movement (Arendt 2004).

### New Urbanist and Design Issues

The current popularity of new urbanist development is evident by the number of books and articles expounding its advantages over development produced by conventional zoning. One of its important concepts is a development model of self-contained, self-sufficient communities in which reliance on the automobile is substantially reduced. This objective is achieved by providing internal employment opportunities, improving pedestrian access, and requiring street connectivity to the adjacent grid, eliminating the isolated cul-de-sac that reduces mobility. New urbanism also has specific design standards for homes and buildings that feature front porches and street adjacency, while mandating details all the way down to facade specifics.

The new urbanist movement attacks traditional zoning as a barrier to the kind of development it would like to see, but it has not favored PUD as a method of implementing its design ideas. It prefers, instead, a detailed “form-based code” that prescribes the new urbanist criteria for development and that applies as-of-right with no need for approval in a review process. Whether a detailed code of this type is desirable is a matter of debate. Some experience with form-based codes shows they can produce unintended and undesirable results (Mitchell 2002). Another option, which some communities have adopted, is to include new urbanist design standards as requirements for the approval of PUD. It is also possible to adopt standards allowing hybrid developments that include both new urbanist and traditional designs (Ewing 2000).

PUD ordinances, like new urbanist codes, contain design requirements intended to avoid look-alike and “cookie-cutter” developments that jurisdictions want to avoid. Anti-monotony requirements that require variations in exterior treatment are one example (Kendig 2004). Comprehensive design standards can also be included that enact general design principles. Some communities have adopted highly sophisticated and detailed design standards in the PUD ordinance that must be applied in development plans (Melby 2005).

### Resource Preservation

Demands for natural resource conservation have also influenced the regulation of PUDs. These regulations from the beginning required usable and adequate open space for residents, but the open space required was usually intended for resident activity, with no extensive attention to the preservation of natural resource areas.

### Challenges and Changes in the Regulatory Environment

A threshold question is whether the discretionary approval process common to PUDs ordinances is still necessary; that is, if problems exist in the zoning ordinance, why not fix them? If PUD ordinances are intended to produce “better” development and if a community knows what kind of development it prefers, why not draft ordinances that require the “preferred” development and allow that development as-of-right without the need to go through a discretionary approval process? Such an alternative allows up-front agreement on the preferred type of development, and on standards for that development which can then serve as the basis for drafting ordinance standards. Conservation design subdivision ordinances are such an alternative, as are new urbanist codes.

Other critics fault the costs of discretionary review in PUD ordinances, including the cost of delay, the cost of showing compliance with PUD regulations, and the cost of uncertainty created by not knowing when, whether, or how a PUD application will be approved. They argue a zoning ordinance can be written to accommodate the desirable features of PUD without requiring an expensive and time-consuming review process.

Finally, the NIMBY issue often arises; namely, PUDs offering a different style of housing or higher densities sometimes attract community opposition and challenge in a voters’ referendum. Process attracts public participation, which is necessary and can be helpful, except that NIMBY opposition often is unjustified, and securing approval over public opposition is difficult. I have heard of difficulties with NIMBY opposition to PUDs everywhere. Allowing PUDs as-of-right avoids this problem.

Whether as-of-right ordinances can produce good projects without the opportunity for discretionary review is another matter, and other critics argue that discretionary review is still needed to obtain really good project design. It is also true that even ordinances with as-of-right standards require interpretation to decide what they mean and sometimes end in judicial review to determine that meaning. A compromise is to enact detailed standards in a PUD ordinance to provide a development format but still require discretionary review of individual projects. Some communities take this approach, but other critics believe it is too rigid and open-ended standards are preferable.

#### Fitting PUD into the Surrounding Community

PUDs, especially larger projects, have an impact on the surrounding community, and can create jobs, housing, and traffic problems. When a PUD is limited in scale, its external impacts are likely to be minimal, especially if it includes only single-family residential development with no increase in density, as in cluster zoning. These developments should not generate substantial additional traffic, should not make new demands on public facilities, such as schools, and should not notably affect the jobs/housing balance. There should be no question of consistency with the plan if a residential PUD is in a neighborhood previously designated by the plan for residential use.

All this changes once a PUD does not comply with existing zoning by changing the authorized housing type, increasing densities, or introducing nonresidential uses. Modest density increases and the introduction of limited nonresidential uses may not have a significant effect on traffic congestion, the adequacy of public facilities, or the character of the surrounding area, but major changes in use and density will. The problem is even more serious in undeveloped outlying areas where a developer proposes a large-scale master-planned community.

### The Role of the Comprehensive Plan

The role of the comprehensive plan in the review of PUDs is closely tied to whether they will have impacts on the community at large. They may then have a major effect on growth and development and the adequacy of public facilities, issues considered in the comprehensive plan. Consistency with the comprehensive plan should then be required.

### The Advantages of master-Planned Communities as a Development Alternative

Master-planned communities raise smart growth questions. Though smart growth proponents support PUDs as infill in urban centers, they oppose sprawl development at the urban edge, and some consider the master-planned community an unsuitable form of urban sprawl. This objection needs consideration because master-planned communities have many advantages as a development alternative that regulations can support to obtain a more desirable living environment.

### How This Report Was Done and What It Includes

The purpose of this report is to provide recommendations on how PUD ordinances can be drafted and to review the case law and state statutes that authorize the regulation of PUD as a development technique. There is no all-purpose model of PUD regulation. Communities will need to make choices about which review process to use and which substantive standards should apply. This report recommends a number of alternatives for PUD regulation that communities can consider.

Chapter 2 provides an overview of the issues a community must consider when it decides to adopt a PUD ordinance. Chapter 2 provides recommendations on process, and Chapter 4 provides recommendations on substantive standards. Chapter 5 discusses the case law. Chapter 6 reviews statutory authority. As always, consult with your local land-use attorney to make certain that the language complies with all applicable law in your state and local jurisdiction.

### Conclusion

As always, consult with your local land-use attorney to make certain that the language complies with all applicable law in your state and local jurisdiction.