

See Plat Book  
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See Deed Book  
124 Page 27

583

BOOK 122 053  
DEED OF DEDICATION

THIS DEED, MADE THIS 11TH DAY OF SEPTEMBER, 1963:  
WHEREAS, LAND DEVELOPMENT, INC., HAS HERETOFORE ACQUIRED  
BY THREE SEPARATE DEEDS THE PROPERTY FULLY SET FORTH AND DESCRIBED  
ON THE MAP AND PLAT MADE BY CARROLL-KIM & ASSOCIATES, MADE JULY  
26, 1963, THE FIRST OF WHICH SAID DEEDS, FROM NAN H. STEPHENS,  
ET AL, DATED JULY 30, 1962, IS DULY RECORDED IN THE CLERK'S  
OFFICE OF THE CIRCUIT COURT OF THE CITY OF FREDERICKSBURG,  
VIRGINIA, IN DEED BOOK 119, AT PAGE 640; THE SECOND OF WHICH SAID  
DEEDS, FROM ISABELLE H. GRAHAM, DATED AUGUST 23, 1962, IS DULY  
RECORDED IN THE AFORESAID CLERK'S OFFICE IN DEED BOOK 120, AT  
PAGE 225; AND THE THIRD OF WHICH SAID DEEDS, FROM ISABELLE H.  
GRAHAM, DATED APRIL 10, 1963, IS DULY RECORDED IN THE AFORESAID  
CLERK'S OFFICE IN DEED BOOK 121, AT PAGE 692; AND WHEREAS LAND  
DEVELOPMENT, INC., IS THE SOLE OWNER, PROPRIETOR AND DEVELOPER  
OF THE PROPERTY DESCRIBED ON THAT CERTAIN MAP AND PLAT HERETOFORE  
MENTIONED;

NOW, THEREFORE WITNESSETH:

THIS IS TO CERTIFY THAT R. C. GLAZEBROOK, JR., PRESIDENT,  
AND F. MAXFIELD BROWN, SECRETARY, OF LAND DEVELOPMENT, INC., A  
VIRGINIA CORPORATION, THE SOLE OWNER, PROPRIETOR AND DEVELOPER  
OF SAID PROPERTY, KNOWN AS SECTION ONE, BRAEHEAD WOODS, FREDERICKS-  
BURG, VIRGINIA, AS SHOWN ON THE MAP AND PLAT MADE BY CARROLL-KIM  
& ASSOCIATES, DATED JULY 26, 1963, A COPY OF WHICH PLAT IS  
ATTACHED TO THIS DEED AND IS TO BE ADMITTED TO RECORD ALONG  
HEREWITH AS A PART HEREOF, HAVING BEEN DULY AUTHORIZED BY LAND  
DEVELOPMENT, INC., DO HEREBY DEDICATE TO THE PUBLIC FOR PUBLIC  
USE, CONTROL, PURPOSES AND ENJOYMENT FOREVER, ALL OF THE STREETS,  
LANES, ALLEYS AND WAYS SHOWN ON SAID PLAT, TO BE MAINTAINED AND  
USED AS PUBLIC STREETS, LANES, ALLEYS, WAYS, ETC.

WHITTICAR & WHITTICAR  
RALPH M. WHITTICAR, JR.  
RALPH M. WHITTICAR, III  
ATTORNEYS AT LAW  
FREDERICKSBURG, VA

BOOK 122 654

THE SAID STREETS, LANES, ALLEYS AND WAYS ARE FURTHER DEDICATED TO THE PUBLIC FOR THE USE NOT ONLY OF TRAVEL BUT ALSO FOR THE LAYING OF UTILITY MAINS, SUCH AS WATER, SEWER AND GAS MAINS, UNDERGROUND ELECTRICAL CONDUITS AND TELEPHONE CABLES, ETC.

IT IS THE INTENTION AND PURPOSE OF LAND DEVELOPMENT, INC., TO, AND THAT CORPORATION HEREBY DOES GRANT UNTO THE PUBLIC AT LARGE AND UNTO THE CITY OF FREDERICKSBURG, VIRGINIA, A MUNICIPAL CORPORATION, ALL OF THE SAID STREETS, LANES, ALLEYS AND WAYS AS AFORESAID TO BE USED BY THE PUBLIC AND BY THE CITY OF FREDERICKSBURG, VIRGINIA, FOR THE USE OF THE PUBLIC FOREVER AS PUBLIC STREETS, LANES, ALLEYS AND WAYS AND FOR THE LAYING OF VARIOUS UTILITY MAINS AS AFORESAID.

KNOW ALL MEN FURTHER BY THESE PRESENTS THAT THE LOTS AND BUILDING PLOTS SHOWN ON THE AFORESAID PLAT ARE NOT INTENDED FOR PUBLIC USE OR DEDICATED FOR PUBLIC PURPOSES, BUT ARE INTENDED FOR PRIVATE USE AND ENJOYMENT AND ARE AND SHALL REMAIN THE SOLE AND EXCLUSIVE PROPERTY OF SAID OWNER AND PROPRIETOR, ITS SUCCESSORS, GRANTEEES AND ASSIGNS.

THE OWNER AND PROPRIETOR, LAND DEVELOPMENT, INC., DOES HEREBY IMPOSE UPON EACH AND ALL OF SAID LOTS SHOWN ON THE AFORESAID MAP AND PLAT, CONSTITUTING SECTION ONE OF BRAEHEAD WOODS SUBDIVISION, THE FOLLOWING COVENANTS AND RESTRICTIONS GOVERNING THE USE OF SAID LOTS, WHICH COVENANTS ARE DECLARED TO BE AND SHALL BE CONSTRUED AS COVENANTS RUNNING WITH THE LAND AND ENFORCEABLE AGAINST THE PRESENT OWNER AND GRANTEEES OF SAID LOTS BOTH AT LAW AND IN EQUITY; AND IT SHALL NOT BE NECESSARY TO SET FORTH THESE RESTRICTIONS VERBATIM IN DEEDS CONVEYING SAID LOTS, AS REFERENCE TO THE SAID PLAT AND TO THIS WRITING IN ANY DEED SHALL BE SUFFICIENT NOTICE OF THE SAID COVENANTS AND RESTRICTIONS TO ANY AND ALL PERSONS WHO MAY BECOME GRANTEEES OR OWNERS OF SAID LOTS.

WHITTICAR & WHITTICAR  
RALPH M. WHITTICAR, JR.  
RALPH M. WHITTICAR, III  
ATTORNEYS AT LAW  
FREDERICKSBURG, VA

RESTRICTIONS

BOOK 122 655

1. No structure shall be erected, altered or permitted to remain on any residential building lot other than one detached single-family dwelling not to exceed two and one-half (2½) stories in height and a private garage for not more than three automobiles. No dwelling house shall be erected with a ground floor area of less than twelve hundred (1200) square feet plus carport or garage, or thirteen hundred (1300) square feet without garage or carport; if the dwelling is to be two stories or more, the immediate ground floor area shall be not less than eight hundred and sixty (860) square feet. These dimensions are exclusive of porches.
2. All buildings must be situated on their respective lot or lots in accordance with the R-1 zoning ordinances in effect at the time of construction for residential districts zoned R-1. This restriction applies with regard to use regulations, height regulations, area regulations, set-back regulations, frontage regulations and yard regulations.
3. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any lot at any time as a residence, either temporarily or permanently.
4. The lots in this subdivision as platted and recorded shall not be subdivided or rearranged in any manner subsequent to sale nor shall more than one dwelling be erected on any one lot, except that a dwelling may be erected on one or more lots, or a lot and a part of another lot. The purpose of this exception is to allow one or more lots to be subdivided, provided the dwelling site for any one house is enlarged and not reduced in size; nothing herein contained shall be construed to prohibit the use of more than one building site for the construction of a single dwelling.

BOOK 122 656

5. NO STRUCTURE OR BUILDING OF ANY KIND SHALL BE ERECTED ON, OR MOVED ONTO, ANY LOT IN THIS SUBDIVISION, UNLESS IT BE IN GENERAL CONFORMITY AND HARMONY WITH THE CLASS OF EXISTING STRUCTURES IN THE BLOCK.

6. NO BUILDING SHALL BE ERECTED, ALTERED, PLACED OR PERMITTED ON ANY OF THE LOTS OF THIS SUBDIVISION UNTIL THE LOCATION, DESIGN, PLANS AND SPECIFICATIONS THEREOF SHALL HAVE BEEN APPROVED BY THE PROPRIETOR; PROVIDED, HOWEVER, IF SUCH PROPRIETOR FAILS TO PROVE OR DISAPPROVE SUCH DESIGN, LOCATION OR ALTERATION WITHIN THIRTY (30) DAYS AFTER SUCH PLANS HAVE BEEN SUBMITTED TO HIM, OR IF NO SUIT TO ENJOIN THE ERECTION OF SUCH BUILDING OR THE MAKING OF SUCH ALTERATION HAS BEEN COMMENCED PRIOR TO THE COMPLETION THEREOF, SUCH APPROVAL WILL NOT BE REQUIRED.

7. NO CHANGE SHALL BE MADE IN THE TERRAIN OR GENERAL CONTOUR OF ANY BUILDING LOT, OR DRAINAGE COURSES THROUGH ANY BUILDING LOT WITHIN THE CONFINES OF THIS SUBDIVISION, NOR SHALL ANY BRIDGE OR CULVERT BE CONSTRUCTED ACROSS OR IN ANY DRAINAGE COURSE WITHIN THE CONFINES OF THIS SUBDIVISION WITHOUT THE PRIOR CONSENT OF THE PROPRIETOR, LAND DEVELOPMENT, INC. NO CHANGE SHALL BE MADE IN ANY DRAINAGE COURSE, WHETHER A FLOWING STREAM OR A WET-WEATHER DRAINAGE COURSE, THROUGH ANY BUILDING LOT WITHIN THE CONFINES OF THIS SUBDIVISION WITHOUT THE PRIOR CONSENT IN WRITING OF THE CITY ENGINEER OF THE CITY OF FREDERICKSBURG.

8. EXCEPT WHEN BEING USED FOR DELIVERY PURPOSES, COMMERCIAL VEHICLES AND TRUCKS SHALL NOT BE PARKED ON OR IN FRONT OF THE PREMISES UNLESS GARAGED. THIS SHALL NOT BE CONSTRUED TO RESTRICT PARKING ON THE PREMISES OF PASSENGER CARS USED FOR COMMERCIAL PURPOSES.

9. NO DWELLING OR OUTBUILDING SHALL BE CONSTRUCTED WITH CINDER BLOCK OR ASBESTOS SHINGLE EXTERIOR, AND ALL OUTBUILDINGS SHALL CONFORM TO THE ARCHITECTURE OF THE MAIN DWELLING. THIS

BOOK 122 857

RESTRICTION SHALL NOT PROHIBIT THE CONSTRUCTION OF A FLAT-ROOFED CARPORT OR SIMILAR STRUCTURE CONSTRUCTED AS A PART OF THE MAIN DWELLING. NO DWELLING SHALL CONTAIN CINDER BLOCK AS AN EXPOSED EXTERIOR WALL OR EXPOSED EXTERIOR FOUNDATION, HOWEVER IT MAY BE USED AS A STRUCTURAL MATERIAL. THE EXTERIOR WALLS, INCLUDING FOUNDATIONS, OF ALL BUILDINGS SHALL BE CONSTRUCTED OF BRICK, STONE OR WOOD, UNLESS THE PROPRIETOR SHALL APPROVE A DIFFERENT MATERIAL. OTHER ACCEPTABLE MATERIALS MAY BE USED IN CONSTRUCTION OF EXTERIOR WALLS AND FOUNDATIONS WITH THE PRIOR APPROVAL AND CONSENT OF THE PROPRIETOR.

10. OWNERS OF LOTS IN THIS SUBDIVISION, WHETHER SAID LOTS BE BUILT ON OR NOT, SHALL KEEP THEIR LOTS FREE OF WEEDS, UNDERGROWTH, GARBAGE, TRASH AND UNSIGHTLY DEBRIS AND LITTER AND SHALL AT ALL TIMES COMPLY WITH THE CITY ORDINANCES PERTAINING THERETO. THE PROPRIETOR IS VESTED WITH POWER TO ENFORCE THIS COVENANT, WHICH POWER, HOWEVER, SHALL NOT BE EXCLUSIVE.

11. NO NOXIOUS OR OFFENSIVE ACTIVITIES SHALL BE CARRIED ON UPON ANY LOT, NOR SHALL ANYTHING BE DONE THEREON WHICH MAY BE OR MAY BECOME AN ANNOYANCE OR NUISANCE TO THE NEIGHBORHOOD.

12. NO SWINE, COWS, HORSES OR GOATS SHALL BE KEPT UPON THE PREMISES, AND NO COMMERCIAL LIVESTOCK OR POULTRY PROJECT SHALL BE MAINTAINED WITHIN SAID SUBDIVISION; NOR SHALL ANY DOG PENS, KENNELS OR OTHER SUCH PROJECTS INVOLVING THE REARING, HANDLING OR CARE AND MAINTENANCE OF ANIMALS IN NUMBERS BE CONDUCTED OR MAINTAINED WITHIN THIS SUBDIVISION; NOR SHALL ANY OFFENSIVE TRADE OR BUSINESS THAT WILL DEPRECIATE THE VALUE OF PROPERTY, OR BE AN ANNOYANCE TO OCCUPANTS THEREOF BE CONDUCTED OR MAINTAINED WITHIN THIS SUBDIVISION.

13. NO FENCE OR HEDGE SHALL BE PERMITTED OF A HEIGHT MORE THAN THREE (3) FEET ON ANY OF THE LOTS BETWEEN ANY BUILDING ON THE LOT AND THE STREET.

BOOK 122 658

14. THESE COVENANTS AND RESTRICTIONS SHALL RUN WITH THE LAND AND SHALL BE BINDING ON ALL PARTIES AND PERSONS CLAIMING TITLE TO ANY LOT IN SAID SUBDIVISION UNTIL THE 31ST DAY OF DECEMBER, 1999, AT WHICH TIME THESE COVENANTS AND RESTRICTIONS SHALL TERMINATE.

15. THESE COVENANTS AND RESTRICTIONS SHALL BE ENFORCEABLE BOTH BY ACTION AT LAW FOR DAMAGES AND BY BILL IN CHANCERY FOR INJUNCTION OR OTHER RELIEF, BY ANY PERSON OR PERSONS INJURED OR AGGRIEVED BY THE BREACH OR THE VIOLATION OF ANY OF THEM, AND NEITHER REMEDY SHALL BE HELD EXCLUSIVE OF THE OTHER.

16. INVALIDATION OF ANY ONE OR MORE OF THESE COVENANTS AND RESTRICTIONS BY JUDGMENT OR DECREE OF COURT SHALL IN NO WAY EFFECT ANY OF THE OTHER PROVISIONS HEREIN CONTAINED BUT THEY SHALL REMAIN IN FULL FORCE AND EFFECT.

BY DEED OF TRUST DATED THE 2ND DAY OF AUGUST, 1962, AND RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF FREDERICKSBURG, VIRGINIA, IN DEED BOOK 119, AT PAGE 644, LAND DEVELOPMENT, INC., A VIRGINIA CORPORATION, CONVEYED A PORTION OF THE PROPERTY DESCRIBED ON THE ABOVE PLAT, KNOWN AS SECTION ONE, BRAEHEAD WOODS, FREDERICKSBURG, VIRGINIA, TO HARRY B. F. FRANKLIN AND GEORGE C. RAWLINGS, JR., TRUSTEES, TO SECURE THE PAYMENT OF A DEBT FULLY DESCRIBED IN SAID DEED OF TRUST, PAYABLE TO THE ORDER OF NAN H. STEPHENS, MARGARET H. SMITH AND MARY GRAHAM HOWISON, NOTEHOLDERS; AND FOR MUTUAL CONSIDERATIONS THE SAID HARRY B. F. FRANKLIN AND GEORGE C. RAWLINGS, JR., TRUSTEES, AND NAN H. STEPHENS, MARGARET H. SMITH AND MARY GRAHAM HOWISON, NOTEHOLDERS, HEREBY JOIN IN THIS DEED OF DEDICATION FOR THE PURPOSE AND DO HEREBY RELEASE FROM THE LIEN OF SAID DEED OF TRUST ALL STREETS, LANES, ALLEYS AND WAYS DESCRIBED AS SUCH AND SHOWN ON THE MAP AND PLAT OF CARROLL-KIM & ASSOCIATES, DATED JULY 26, 1963, A COPY OF WHICH IS RECORDED ALONG WITH THIS DEED,

WHITTICAR & WHITTICAR  
RALPH M. WHITTICAR, JR.  
RALPH M. WHITTICAR, III  
ATTORNEYS AT LAW  
FREDERICKSBURG, VA

BOOK 122 059

AND ALL EASEMENTS RESERVED IN THIS DEED; BUT IT IS DISTINCTLY UNDERSTOOD THAT THE LIEN ON ALL OF THE REMAINING PROPERTY OTHER THAN STREETS, LANES, ALLEYS, WAYS AND EASEMENTS SHALL IN NO WAY BE AFFECTED.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

LAND DEVELOPMENT, INC.

By R. C. Glazebrook, Jr.  
PRESIDENT

ATTEST:

F. Maxfield Brown  
SECRETARY



James W. Smith (SEAL)  
TRUSTEE.

George B. Smith (SEAL)  
TRUSTEE.

Nam H. Stephens (SEAL)  
NOTEHOLDER.

Margaret H. Smith (SEAL)  
NOTEHOLDER.

Mary Graham Harrison (SEAL)  
NOTEHOLDER.

STATE OF VIRGINIA

CITY OF FREDERICKSBURG, TO-WIT:

I, Marie Handlich, A NOTARY PUBLIC FOR THE

CITY OF FREDERICKSBURG, IN THE STATE OF VIRGINIA, DO CERTIFY THAT R. C. GLAZEBROOK, JR., AND F. MAXFIELD BROWN, PRESIDENT AND SECRETARY RESPECTIVELY OF LAND DEVELOPMENT, INC., WHOSE NAMES ARE SIGNED TO THE FOREGOING WRITING BEARING DATE ON THE 11TH DAY OF SEPTEMBER, 1963, PERSONALLY APPEARED BEFORE ME THIS DAY IN MY CITY AND STATE AND IN THE NAME AND ON BEHALF OF THE SAID CORPORATION ACKNOWLEDGED THE SAID WRITING AS THE ACT AND DEED OF SAID CORPORATION AND MADE OATH THAT THE SEAL AFFIXED TO SAID WRITING

WHITTICAR & WHITTICAR  
RALPH M. WHITTICAR, JR.  
RALPH M. WHITTICAR, III  
ATTORNEYS AT LAW  
FREDERICKSBURG, VA.



BOOK 122 661

*City of Baltimore*  
*State of Maryland*  
STATE OF VIRGINIA

City of Baltimore, TO-WIT:

I, Abraham M. Leary, A NOTARY PUBLIC FOR THE

State of Maryland, IN THE STATE OF VIRGINIA, DO

CERTIFY THAT MARGARET H. SMITH, NOTEHOLDER, WHOSE NAME IS SIGNED  
TO THE FOREGOING DEED BEARING DATE ON THE 11TH DAY OF SEPTEMBER,

1963, HAS ACKNOWLEDGED THE SAME BEFORE ME IN MY City

AFORSAID.

MY COMMISSION EXPIRES May 3 1965

GIVEN UNDER MY HAND THIS 17th DAY OF SEPTEMBER, 1963.

Abraham M. Leary  
NOTARY PUBLIC.



STATE OF VIRGINIA

City of Fredericksburg, TO-WIT:

I, Lucy Samuel, A NOTARY PUBLIC FOR THE at Large

STATE OF VIRGINIA, DO

CERTIFY THAT MARY GRAHAM HOWISON, NOTEHOLDER, WHOSE NAME IS

SIGNED TO THE FOREGOING DEED BEARING DATE ON THE 11TH DAY OF

SEPTEMBER, 1963, HAS ACKNOWLEDGED THE SAME BEFORE ME IN MY City

AFORSAID.

MY COMMISSION EXPIRES July 12, 1967.

GIVEN UNDER MY HAND THIS 14th DAY OF SEPTEMBER, 1963.

Lucy Samuel  
NOTARY PUBLIC.

VIRGINIA: In the Clerk's Office of the Circuit Court of the City of Fredericksburg on the  
9 day of October, 1963 at 11:00 o'clock A.m., this Deed was presented and with  
Certificate annexed admitted to record and indexed. Testor CHAS. H. BERRY, CLERK

Chas. H. Berry  
Deputy Clerk

*Handwritten to  
District Clerk's Office  
10-16-63*

WHITTICAR & WHITTICAR  
RALPH M. WHITTICAR JR.  
RALPH M. WHITTICAR III  
ATTORNEYS AT LAW  
FREDERICKSBURG, VA

618

BOOK 122 736

FORM 2267V  
REV. 7-56

Received of The Chesapeake and Potomac Telephone Company of Virginia One Dollar (\$1.00) in consideration of which the undersigned hereby grant and convey unto said Company, its successors, assigns, lessees and agents, a right of way and easement to construct, operate, maintain, replace and remove a communication system consisting of such poles, fixtures, guys, anchors, wires, cables, and other appurtenances, as the grantees may from time to time require, upon, across and over the land which the undersigned own or in which the undersigned have any interest; said land being located and described as follows: A plan of Eracehead Woods - more specifically described on the attached plan marked Exhibit "A".

City of Fredericksburg County of \_\_\_\_\_, and State of Virginia and upon, along and over the roads, streets and highways adjoining the said land, together with the following rights: Of ingress and egress over and across the lands of the undersigned to and from said systems for the purpose of exercising the rights herein granted; to cut down and keep cut down all trees and undergrowth within 10 feet of said systems and any trees that may reach said systems in falling; to permit the attachment of and to carry in said systems the wires, cables, circuits and appurtenances of any other Company; including all electric wires; said systems being located on said land as ~~shown~~ shown on the attached plan marked Exhibit "A" hereto attached and made a part of this agreement. The center line of right of way being shown in heavy dashed lines on said plat.

Post Office Address: \_\_\_\_\_

Witness \_\_\_\_\_ hand and seal this 14th day of October, 1963.



ATTEST: J. Bradford Brown  
Secretary

Land Development Incorporated XXXXX

Witness: C. C. 2

R. Blagoderok (Seal)  
President

(Seal)

State of Virginia, City of Fredericksburg, To Wit:  
I, Marie Acranovich, a Notary of the State of Virginia/in and for  
the City aforesaid, do hereby certify that R. C. Blagoderok, Jr.  
J. Bradford Brown  
whose name do signed to the within writing bearing date on the 14th day of October  
1963, have acknowledged the same before me in my City  
and State aforesaid.

Given under my hand this 14th day of October, 1963.

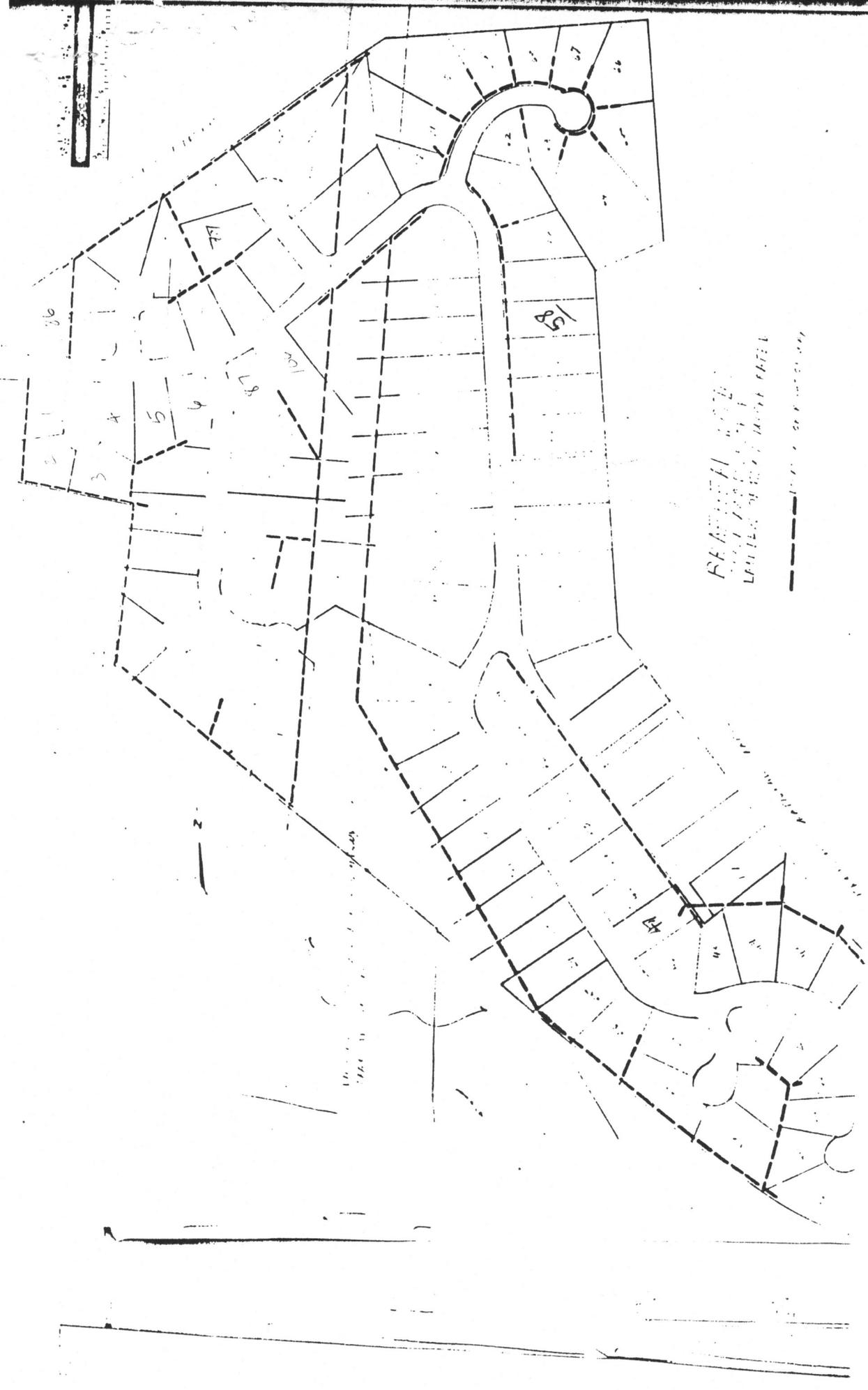
Marie Acranovich  
Notary Public

My commission expires 2nd day of January, 1967

VIRGINIA: In the Clerk's Office of the Circuit Court of the City of Fredericksburg on the  
28 day of October, 1963 at 9-20 o'clock P.m., this Deed was presented and with  
Certificate annexed admitted to record and indexed. Teste: CHAS. H. BERRY, CLERK

By Ellen G. Miller Deputy Clerk

Recorded, etc.  
11-22-63



REAL ESTATE CO.  
UNIT OF ...  
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Veeco Form No. 102-B  
10-1-54

BOOK 123 17

THIS AGREEMENT, made this 9<sup>th</sup> day of October, 1963, between  
Land Development, Inc.,  
a Virginia corporation, hereinafter called "Owner," and Virginia Electric and Power Company, a Virginia  
corporation, hereinafter called "Company."

**WITNESSETH:**

That for the sum of One Dollar (\$1.00), and other valuable considerations, the receipt whereof is hereby  
acknowledged, Owner grants unto Company, its successors and assigns, the right, privilege and easement of  
right of way to construct, operate and maintain a pole line for transmitting and distributing electric power,  
including all wires, poles, attachments, ground connections, equipment, accessories and appurtenances desir-  
able in connection therewith (hereinafter referred to as "facilities"), and including all telephone wires and  
attachments of any other company, over, upon and across the lands of Owner, situated in

City of Fredericksburg, Virginia, as shown on Plat No. M-7630, hereto attached  
and made a part of this agreement; the location of said right of way being shown in broken lines on said plat.

The facilities erected hereunder shall remain the property of Company. Company shall have the right to  
inspect, rebuild, remove, repair, improve, relocate on the right of way above described, and make such changes,  
alterations, substitutions, additions to or extensions of its facilities as Company may from time to time deem  
advisable, including the right to increase or decrease the number of wires.

Company shall at all times have the right to trim, cut and keep clear all trees, limbs, undergrowth and  
other obstructions along said pole line or adjacent thereto that may endanger the safe and proper operation  
of its facilities. All trees and limbs cut by Company at any time shall remain the property of Owner.  
Trees cut by Company with merchantable trunks six inches or more in diameter will be cut into lengths of not  
less than four feet when requested by Owner and will be placed in piles separate from other trees, limbs and  
undergrowth cut by Company.

For the purpose of constructing, inspecting, maintaining or operating its facilities, Company shall have  
the right of ingress to and egress from the right of way over the lands of Owner adjacent to the right of way  
and lying between public or private roads and the right of way in such manner as shall occasion the least prac-  
ticable damage and inconvenience to Owner.

Company shall repair damage to roads, fences or other improvements and shall pay Owner for other  
damage done in the process of the construction, inspection, or maintenance of Company's facilities, or in the  
exercise of its right of ingress and egress; provided Owner gives written notice thereof to Company within  
thirty days after such damage occurs.

The Owner covenants that it is seized of and has the right to convey the said easement of right of way,  
rights and privileges; that Company shall have quiet and peaceable possession, use and enjoyment of the  
aforesaid easement of right of way, rights and privileges, and that Owner shall execute such further assur-  
ances thereof as may be required.

IN WITNESS WHEREOF, the Owner has caused its corporate name to be signed hereto by its President \_\_\_\_\_, and its corporate seal to be hereunto affixed and attested by its Secretary \_\_\_\_\_, the day and year first above written.

Land Development, Inc.  
By R. C. Stogden, Jr.  
President

Attest:  
L. M. Jefferson  
Secretary  
1963  
FREDERICKSBURG, VIRGINIA

M. H. Harrison  
Notary Public

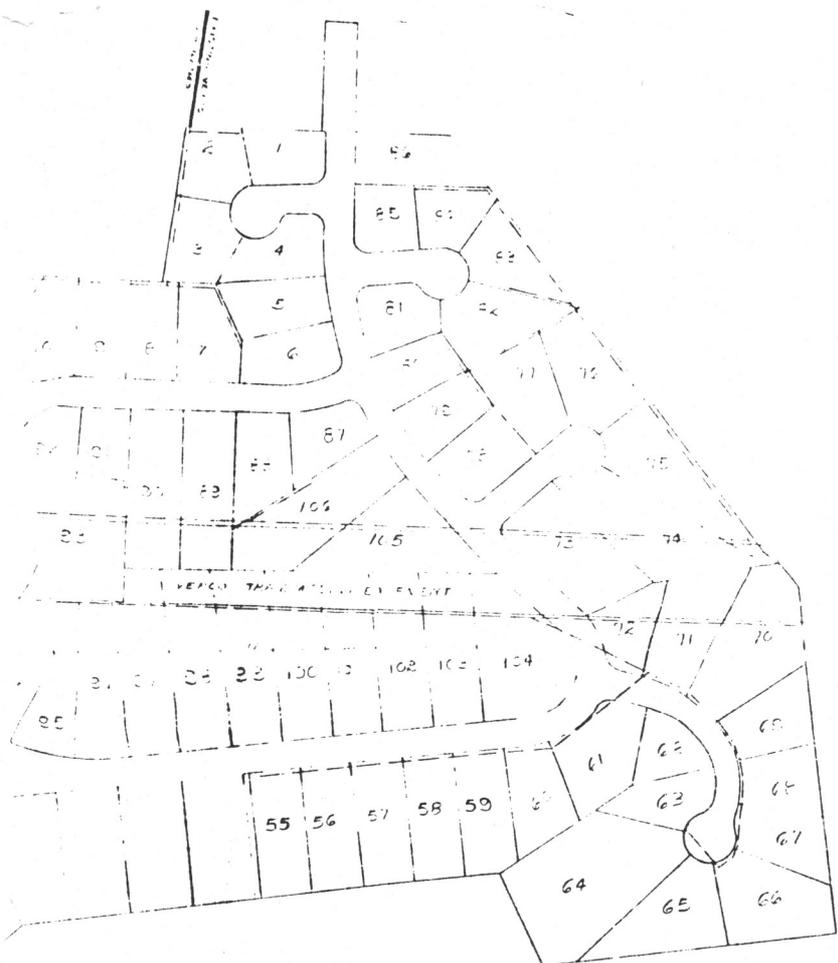
STATE OF VIRGINIA  
City of Fredericksburg To-wit:

I, Marie Harrison, a Notary Public in and for the City aforesaid, County aforesaid, State of Virginia at Large,

whose commission expires on the 2nd day of January, 1967, do hereby certify that R. C. Stogden, Jr. and J. Maffill Brown, whose names are signed to the foregoing writing dated the 9th day of October, 1963, as President and Secretary, respectively, of Land Development, Inc., acknowledged the same before me

in the City aforesaid this 14th day of October, 1963.  
Marie Harrison  
Notary Public.

VIRGINIA: In the Clerk's Office of the Circuit Court of the City of Fredericksburg on the 31 day of October, 1963, at 9:00 o'clock A.M., this Deed was presented and with Certificate annexed admitted to record and indexed. Teste: CHAS. H. BERRY, CLERK  
Chas. H. Berry  
By \_\_\_\_\_ Deputy Clerk



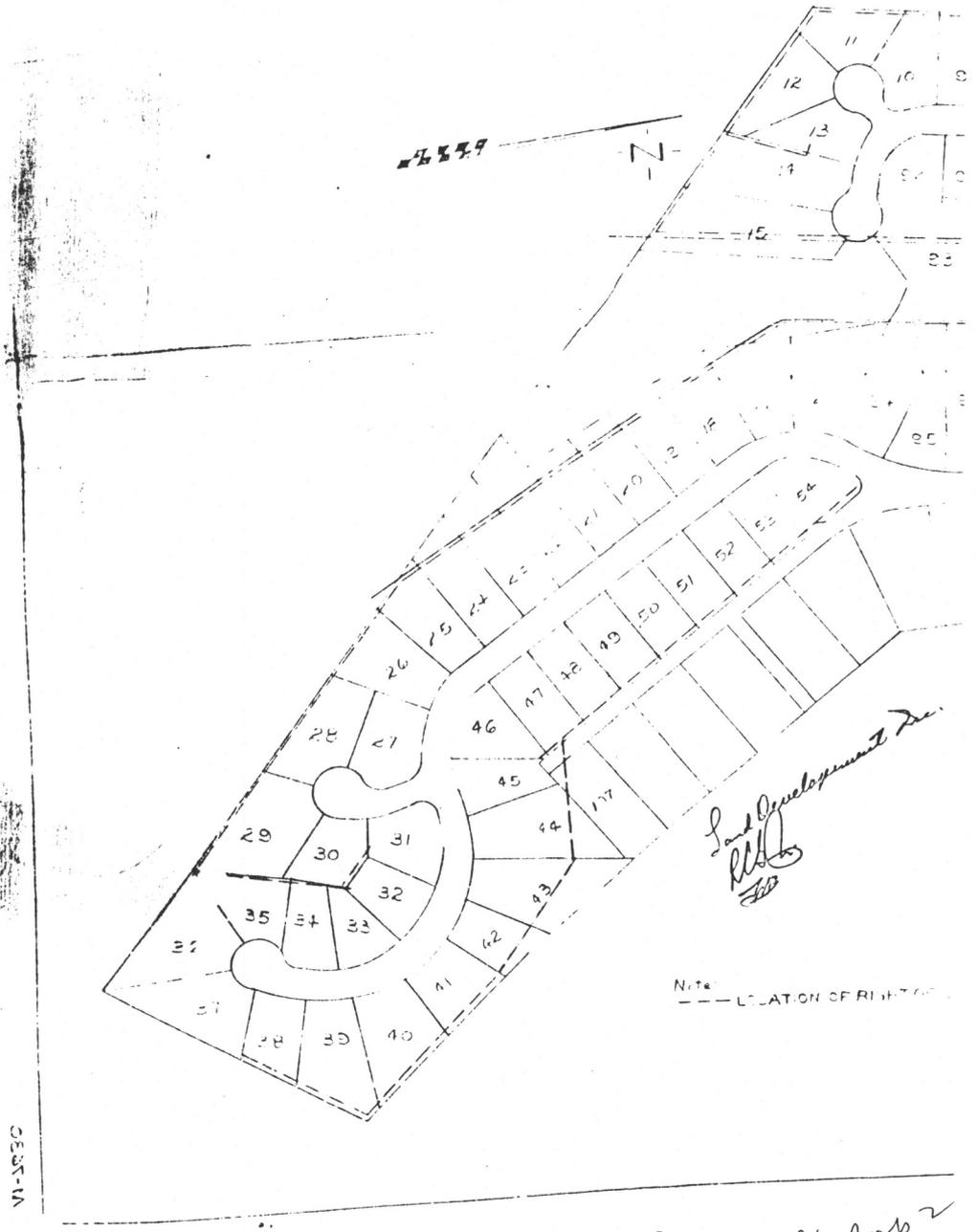
**BRAEHEAD WOODS**  
OWNER AND DEVELOPER  
LAND DEVELOPMENT, INC

Approved  
Record Oct 11 1983  
9:04 A  
Chas. B. King  
Clerk

1	PLAT
2	BOOK
3	CITY OF
4	PLAT
5	PREPARED BY
6	DATE
7	SCALE

0230-M

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*Land Development Inc.*  
*RLL*  
*3/10*

Note: --- LOCATION OF RIGHT OF WAY

*Plot Books 2*  
*Page 62*

VI-3530

138/355

KNOW ALL MEN BY THESE PRESENTS that Mary Howison, single; Margaret H. Smith and J. Brookes Smith, her husband; Mary Gramhan Howison, single; Nannie H. Stephens and Wallace T. Stephens, her husband; all heirs of Robert Reid Howison, deceased

Howison, Mary et als )  
Right )  
To: of )  
Way )

Grantor-, in consideration of One Dollar (\$1.00), receipt whereof is acknowledged, grant to Virginia Electric and Power Company, a Virginia corporation, its successors and assigns, hereinafter called Company, the right to construct, operate and maintain a pole line, at a location to be designated by Company, with all desirable appurtenances for the transmission and distribution of electricity and sound, including the wires and attachments of any other company, over, upon, and across the property of Grantor - situated in said county and state, described as follows:

Va. Electric & Power Co.  
# 586

A tract of land containing 140 acres, more or less, located on the north side of State Highway Route No. Battlefield Park Road about 1 mile south of Fredericksburg in Courtland Magisterial District of Spotsylvania County, Virginia, and adjoining the lands now or formerly owned by E. C. Snead, Jr. and Fredericksburg Park Road

Made 2/6  
J.E. & P. Co.  
Richardson, Va.  
7-11-47

Form Approved: Norman C. Flippen Assistant Counsel  
Approved: D. O. Scott Superintendent  
Approved: S. G. B. System R/W Eng.

It is agreed that said pole line and appurtenances erected hereunder shall be and remain the property of Company and that Company shall at all times have full and free ingress to and egress from and over the said property in order to construct and efficiently maintain and operate said line and appurtenances, with the right to make such changes, additions and alterations therein as Company may from time to time deem advisable; with the further right to trim, cut and keep clear all trees, limbs and undergrowth and other obstructions along said line or adjacent thereto that may in any way endanger or interfere with the proper and efficient operation of the same.

WITNESS the following signature S and seal S this 3rd day of May, 1947.

Nannie H. Stephens (SEAL) Mary Howison (SEAL)  
Wallace T. Stephens (SEAL) Margaret H. Smith (SEAL)  
(SEAL) J. Brookes Smith (SEAL)  
(SEAL) Mary Graham Howison (SEAL)

Tenn. }  
STATE OF VIRGINIA } To-wit:  
Greene Co.

I, D. K. Lawson a Notary Public in and for the City aforesaid County aforesaid State of Virginia at Large Tenn do hereby certify that Nannie H. Stephens and Wallace T. Stephens

D.K. Lawson  
Greene County  
Tennessee  
Notary Public  
(SEAL)

whose name S signed to the foregoing writing bearing date on the 3rd day of May 1947, has acknowledged the same before me in the state & county aforesaid. Given under my hand this 15th. day of May, 1947. My commission expires Sept. 17, 1947.

STATE OF VIRGINIA } To-wit:  
Spotsylvania County } D. K. Lawson Notary Public.

I, Donald G. Schleigh a Notary Public in and for the State of Virginia at Large do hereby certify that Mary Howison, Margaret H. Smith, J. Brookes Smith and Mary Graham Howison

whose name S are signed to the foregoing writing bearing date on the 3rd day of May 1947, have acknowledged the same before me in the county & state aforesaid. Given under my hand this 3rd day of May, 1947. My commission expires May 25, 1949.

STATE OF VIRGINIA } To-wit:  
QUALIFICATION CIRCUIT COURT FREDERICKSBURG, VA. } Donald G. Schleigh Notary Public.

I, do hereby certify that, a Notary Public in and for the City aforesaid County aforesaid State of Virginia at Large

whose name signed to the foregoing writing bearing date on the day of 19, has acknowledged the same before me in the aforesaid. Given under my hand this day of, 19. My commission expires, 19. Notary Public.

Virginia:  
In the Office of the Clerk of the Circuit Court of Spotsylvania County, 9 July 1947, this deed of right of way was received, and with certificate annexed, admitted to record at 11:30 o'clock, A. M., and indexed.

Teste: *[Signature]*, Clerk.

548

THIS AGREEMENT, made this 3rd day of July, 1964, between

William Hollister, Jr. and Jacqueline W. Hollister, husband and wife

of Stafford County, Virginia, hereinafter called "Owner" ("Owner" wherever used herein being intended to include the grantors whether one or more or masculine or feminine), and Virginia Electric and Power Company, a Virginia corporation, hereinafter called "Company."

WITNESSETH:

That for the sum of One Dollar (\$1.00), and other valuable considerations, the receipt whereof is hereby acknowledged, Owner grants unto Company, its successors and assigns, the right, privilege and easement of right of way to construct, operate and maintain a pole line for transmitting and distributing electric power, including all wires, poles, attachments, ground connections, equipment, accessories and appurtenances desirable in connection therewith (hereinafter referred to as "facilities"), and including all telephone wires and

attachments of any other company, over, upon and across the lands of Owner, situated in City of Fredericksburg, Virginia, as shown on Plat No. M-7957, hereto attached and made a part of this agreement; the location of said right of way being shown in broken lines on said plat.

The facilities erected hereunder shall remain the property of Company. Company shall have the right to inspect, rebuild, remove, repair, improve, relocate on the right of way above described, and make such changes, alterations, substitutions, additions to or extensions of its facilities as Company may from time to time deem advisable, including the right to increase or decrease the number of wires.

Company shall at all times have the right to trim, cut and keep clear all trees, limbs, undergrowth and other obstructions along said pole line or adjacent thereto that may endanger the safe and proper operation of its facilities. All trees and limbs cut by Company at any time shall remain the property of Owner. Trees cut by Company with merchantable trunks six inches or more in diameter will be cut into lengths of not less than four feet when requested by Owner and will be placed in piles separate from other trees, limbs and undergrowth cut by Company.

For the purpose of constructing, inspecting, maintaining or operating its facilities, Company shall have the right of ingress to and egress from the right of way over the lands of Owner adjacent to the right of way and lying between public or private roads and the right of way in such manner as shall occasion the least practicable damage and inconvenience to Owner.

Company shall repair damage to roads, fences or other improvements and shall pay Owner for other damage done in the process of the construction, inspection, or maintenance of Company's facilities, or in the exercise of its right of ingress and egress; provided Owner gives written notice thereof to Company within thirty days after such damage occurs.

The Owner covenants that he is seized of and has the right to convey the said easement of right of way, rights and privileges; that Company shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement of right of way, rights and privileges, and that Owner shall execute such further assurances thereof as may be required.

BOOK 125-331

WITNESS the following signatures..... and seal.....:

*William Hollister Jr MD* (SEAL)  
*Jacqueline W. Hollister* (SEAL)

REMOVED  
C. M. Miller  
REAL ESTATE  
ADMITTED TO RECORD  
1964 AUG -7 AM 9:11  
BOOK NO. PAGE NO.  
CHARLES H. BERRY, CLERK  
CIRCUIT COURT  
CITY OF FREDERICKSBURG, VA.

STATE OF VIRGINIA

City of FREDERICKSBURG

To-wit:

City aforesaid  
County aforesaid  
State of Virginia at Large.

I, HOLLAND A. TURNER, a Notary Public in and for the  
whose commission expires on the 10th day of JANUARY, 1967, do hereby certify that  
WILLIAM HOLLISTER, JR. And JACQUELINE W. HOLLISTER

whose names ARE signed to the foregoing writing dated the 3rd day of JULY  
1964, acknowledged the same before me in the CITY of STATE aforesaid this 3rd day of  
JULY, 1964.

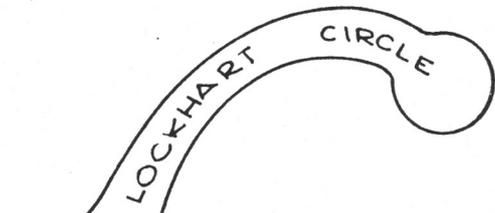
*Holland A. Turner*  
Notary Public.

QUALIFICATION CIRCUIT COURT  
FREDERICKSBURG, VA.

VIRGINIA: In the Clerk's Office of the Circuit Court of the City of Fredericksburg on the  
7 day of August, 1964 at 9:11 o'clock A M. The Deed was presented and with  
Certificate annexed admitted to record and indexed. Teste: CHAS. H. BERRY, CLERK

*Charles H. Berry* Deputy Clerk

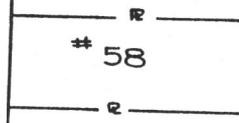
Returned to: Virginia State Dept. of Revenue  
Real Estate Dept.  
Richmond, Va. 8-24



BRAEHEAD WOODS  
SUBDIVISION



BRAEHEAD  
DRIVE



WILLIAM HOLLISTER, JR. & JACQUELINE W. HOLLISTER



WILLIAM HOLLISTER, JR. & JACQUELINE W. HOLLISTER

BARTOW V. DANIELS



*W.A. JAH*

NOTE  
-----  
LOCATION OF RIGHT OF WAY  
ON PROPERTY OF OWNER

# 556.3B	
VIRGINIA ELECTRIC AND POWER COMPANY	
PLAT TO ACCOMPANY RIGHT-OF-WAY AGREEMENT	
RAPPAHANNOCK	DISTRICT
<del>FREDERICKSBURG</del> - TOWNSHIP	COUNTY
FREDERICKSBURG	STATE
FREDERICKSBURG OFFICE	No. M-7957
NO SCALE	BY: C.J.F.



Deed  
# 122  
Page 633

# PLAT OF SUBDIVISION SECTION ONE BRAEHEAD WOODS

CITY OF FREDERICKSBURG, VIRGINIA  
Scale: 1" = 100'

CARROLL - KIM AND ASSOCIATES  
PROFESSIONAL ENGINEERS AND LAND SURVEYORS  
1001 Charles Street, Fredericksburg, Virginia

## ENGINEER'S CERTIFICATE

I, Edward L. Carroll, a duly certified Civil Engineer and Land Surveyor in the State of Virginia do hereby certify that the land shown hereon and described as SECTION ONE BRAEHEAD WOODS is now in the name of LAND DEVELOPMENT, INC. and was acquired by said corporation as follows: Parcel A-B-C-D was acquired from Isabelle H. Graham by two conveyances; the first deed dated August 23, 1962 and recorded September 20, 1962 in Deed Book 120 at Page 229 among the land records of the city of Fredericksburg, Va. the second deed dated April 10, 1963 and recorded June 7, 1963 in Deed Book 121 at Page 692 among the land records of the City of Fredericksburg, Va.; the Remainder of Section One Braehead Woods was acquired from Nan H. Stephens and Wallace T. Stephens, Margaret H. Smith and Mary G. Howison by deed dated July 30, 1962 and recorded September 3, 1962 in Deed Book 119 at Page 640 among the land records of the City of Fredericksburg, Virginia.

I further certify that all bearings shown hereon refer to Grid North of the Virginia North Zone, and that Iron Pipes shown thus: o will be set where indicated.

Given under my hand this 26 day of July 1963.



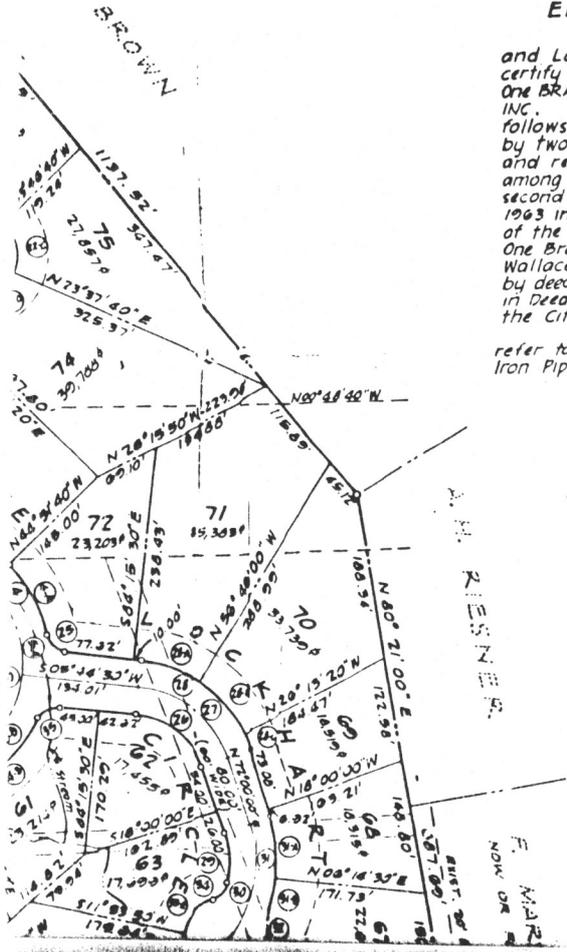
*Edward L. Carroll*  
Edward L. Carroll  
Certified Civil Engineer & Land Surveyor  
Fredericksburg, Virginia

## OWNER'S CERTIFICATE

It is hereby certified that LAND DEVELOPMENT, INC. is the owner of the land shown and described hereon as SECTION ONE BRAEHEAD WOODS and that the subdivision shown hereon is with its free consent and is in accordance with its wishes

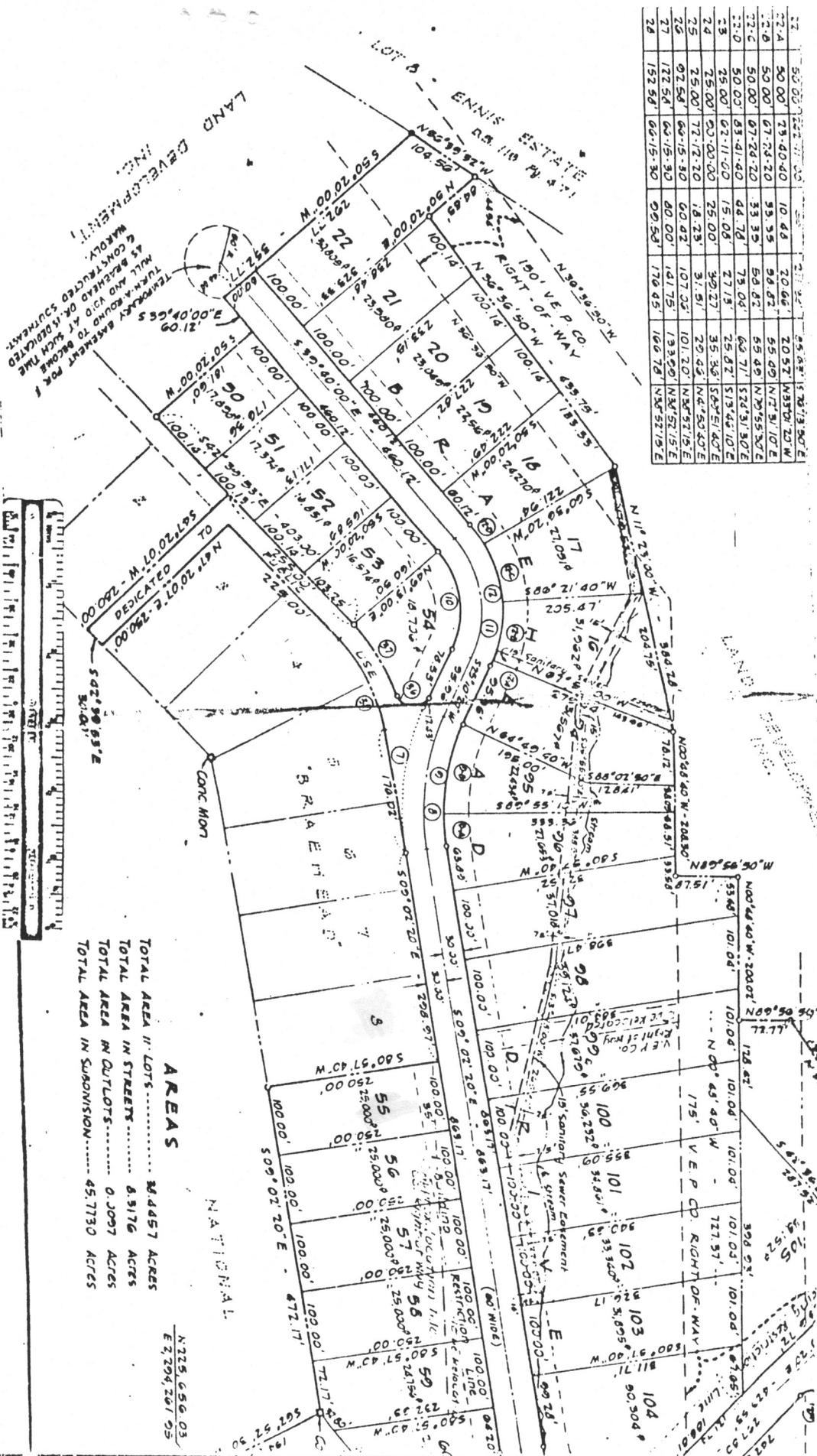
*Elizabethbrook*  
President  
*Margaret Brown*  
Secretary

Admitted to  
Record July 9, 1963





22	50.00'	78.40'-00"	10.48'	94.47'	5.83'	5.76'-3.90'E
23	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
24	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
25	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
26	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
27	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
28	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
29	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
30	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
31	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
32	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
33	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
34	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
35	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
36	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
37	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
38	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
39	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
40	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
41	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
42	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
43	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
44	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
45	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
46	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
47	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
48	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
49	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
50	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
51	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
52	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
53	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
54	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
55	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
56	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
57	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
58	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
59	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
60	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
61	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
62	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
63	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
64	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
65	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
66	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
67	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
68	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
69	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
70	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
71	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
72	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
73	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
74	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
75	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
76	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
77	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
78	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
79	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
80	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
81	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
82	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
83	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
84	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
85	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
86	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
87	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
88	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
89	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
90	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
91	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
92	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
93	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
94	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
95	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
96	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
97	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
98	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
99	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E
100	50.00'	67.24'-20"	33.35'	64.87'	5.00'	N 72° 51.10' E



PB 2 P. 63

BOOK 128 175

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

I, Beatrice Lee Brooks, a Notary Public for the City of Fredericksburg, in the State of Virginia, do certify that R. C. Glazebrook, Jr., and F. Maxfield Brown, President and Secretary respectively of Land Development, Inc., whose names are signed to the foregoing writing bearing date on the 7th day of May, 1965, personally appeared before me this day in my City and State and in the name and on behalf of the said Corporation acknowledged the said writing as the act and deed of said Corporation and made oath that the seal affixed to said writing is the true corporate seal of said Corporation and that it has been affixed thereto by due authority.

My commission expires 1/26/1969.

Given under my hand this 10th day of May, 1965.

Beatrice Lee Brooks  
Notary Public

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

I, Beatrice Lee Brooks, a Notary Public for the City of Fredericksburg, in the State of Virginia, do certify that Mary Graham Howison, Noteholder, and Mary Graham Howison, attorney-in-fact for Nan H. Stephens and Margaret H. Smith, Noteholders, whose names are signed to the foregoing deed bearing date on the 7th day of May, 1965, have acknowledged the same before me in my City aforesaid.

My commission expires 1/26/1969.

Given under my hand this 10th day of May, 1965.

Beatrice Lee Brooks  
Notary Public

BOOK 128 176

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

I, Beatrice Lee, a Notary Public for the City of Fredericksburg, in the State of Virginia, do certify that Harry B. F. Franklin and George C. Rawlings, Jr., Trustees, whose names are signed to the foregoing deed bearing date on the 7th day of May, 1965, have acknowledged the same before me in my City aforesaid.

My commission expires 1/26/1969.

Given under my hand this 10th day of May, 1965.

Beatrice Lee Brooks  
Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of the City of Fredericksburg on the 10 day of May, 1965 at 2:30 o'clock P.m., this Deed was presented and with Certificate annexed admitted to record and indexed. Test: CHAS. H. BERRY, CLERK  
Chas. H. Berry  
Deputy Clerk

BOOK 128 . 168

DEED OF DEDICATION

THIS DEED, Made this 7th day of May, 1965:

WHEREAS, Land Development, Inc., has heretofore acquired from Nan H. Stephens and Wallace T. Stephens, Margaret H. Smith and Mary G. Howison, by deed dated July 30, 1962, recorded September 3, 1962, in Deed Book 119, page 640, among the records in the Clerk's Office of the Circuit Court of the City of Fredericksburg, Virginia, certain real estate including all that land to be dedicated by this Deed of Dedication; and whereas Land Development, Inc., is the sole owner, proprietor and developer of said property;

NOW, THEREFORE WITNESSETH:

This is to certify that R. C. Glazebrook, Jr., President, and F. Maxfield Brown, Secretary, of Land Development, Inc., a Virginia corporation, the sole owner, proprietor and developer of said property, known as Section Two, Braehead Woods, Fredericksburg, Virginia, as shown on the map and plat made by Carroll-Kim & Associates, dated May 6, 1965, a copy of which plat is attached to this deed and is to be admitted to record along herewith as a part hereof, having been duly authorized by Land Development, Inc., do hereby dedicate to the public for public use, control, purposes and enjoyment forever, all of the streets, lanes, alleys and ways shown on said plat, to be maintained and used as public streets, lanes, alleys, ways, etc.

The said streets, lanes, alleys and ways are further dedicated to the public for the use not only of travel but also for the laying of utility mains, such as water, sewer and gas mains, underground electrical conduits and telephone cables, etc.

It is the intention and purpose of Land Development, Inc., to, and that corporation hereby does grant unto the public at

~~BOOK~~ 128 169

large and unto the City of Fredericksburg, Virginia, a Municipal corporation, all of the said streets, lanes, alleys and ways as aforesaid to be used by the public and by the City of Fredericksburg, Virginia, for the use of the public forever as public streets, lanes, alleys and ways and for the laying of various utility mains as aforesaid.

KNOW ALL MEN FURTHER BY THESE PRESENTS that the lots and building plots shown on the aforesaid plat, numbered 7 through 15 and 88 through 93, inclusive, are not intended for public use or dedicated for public purposes, but are intended for private use and enjoyment and are and shall remain the sole and exclusive property of said owner and proprietor, its successors, grantees and assigns.

The owner and proprietor, Land Development, Inc., does hereby impose upon each and all of said lots shown on the aforesaid map and plat, constituting Section Two of BRAEHEAD WOODS subdivision, the following covenants and restrictions governing the use of said lots, which covenants are declared to be and shall be construed as covenants running with the land and enforceable against the present owner and grantees of said lots both at law and in equity; and it shall not be necessary to set forth these restrictions verbatim in deeds conveying said lots, as reference to the said plat and to this writing in any deed shall be sufficient notice of the said covenants and restrictions to any and all persons who may become grantees or owners of said lots.

#### RESTRICTIONS

1. No structure shall be erected, altered or permitted to remain on any residential building lot other than one detached single-family dwelling not to exceed two and one-half (2 1/2)

BOOK 128 170

stories in height and a private garage for not more than three automobiles. No dwelling house shall be erected with a ground floor area of less than twelve hundred (1200) square feet plus carport or garage, or thirteen hundred (1300) square feet without garage or carport; if the dwelling is to be two stories or more, the immediate ground floor area shall be not less than eight hundred and sixty (860) square feet. These dimensions are exclusive of porches.

2. All buildings must be situated on their respective lot or lots in accordance with the R-1 zoning ordinances in effect at the time of construction for residential districts zoned R-1. This restriction applies with regard to use regulations, height regulations, area regulations, set-back regulations, frontage regulations and yard regulations.

3. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any lot at any time as a residence, either temporarily or permanently.

4. The lots in this subdivision as platted and recorded shall not be subdivided or rearranged in any manner subsequent to sale nor shall more than one dwelling be erected on any one lot, except that a dwelling may be erected on one or more lots, or a lot and a part of another lot. The purpose of this exception is to allow one or more lots to be subdivided, provided the dwelling site for any one house is enlarged and not reduced in size; nothing herein contained shall be construed to prohibit the use of more than one building site for the construction of a single dwelling.

5. No structure or building of any kind shall be erected on, or moved onto, any lot in this subdivision, unless it be in general conformity and harmony with the class of existing structures in the block.

BOOK 128 171

6. No building shall be erected, altered, placed or permitted on any of the lots of this subdivision until the location, design, plans and specifications thereof shall have been approved by the proprietor; provided, however, if such proprietor fails to <sup>AP</sup> <sup>W.G.</sup> prove or disapprove such design, location or alteration within thirty (30) days after such plans have been submitted to him, or if no suit to enjoin the erection of such building or the making of such alteration has been commenced prior to the completion thereof, such approval will not be required.

7. No change shall be made in the terrain or general contour of any building lot, or drainage courses through any building lot within the confines of this subdivision, nor shall any bridge or culvert be constructed across or in any drainage course within the confines of this subdivision without the prior consent of the proprietor, Land Development, Inc. No change shall be made in any drainage course, whether a flowing stream or a wet-weather drainage course, through any building lot within the confines of this subdivision without the prior consent in writing of the City Engineer of the City of Fredericksburg.

8. Except when being used for delivery purposes, commercial vehicles and trucks shall not be parked on or in front of the premises unless garaged. This shall not be construed to restrict parking on the premises of passenger cars used for commercial purposes.

9. No dwelling or outbuilding shall be constructed with cinder block or asbestos shingle exterior, and all outbuildings shall conform to the architecture of the main dwelling. This restriction shall not prohibit the construction of a flat-roofed carport or similar structure constructed as a part of the main dwelling. No dwelling shall contain cinder block as an exposed

BOOK 128 172

exterior wall or exposed exterior foundation, however it may be used as a structural material. The exterior walls, including foundations, of all buildings shall be constructed of brick, stone or wood, unless the proprietor shall approve a different material. Other acceptable materials may be used in construction of exterior walls and foundations with the prior approval and consent of the proprietor.

10. Owners of lots in this subdivision, whether said lots be built on or not, shall keep their lots free of weeds, undergrowth, garbage, trash and unsightly debris and litter and shall at all times comply with the City ordinances pertaining thereto. The proprietor is vested with power to enforce this covenant, which power, however, shall not be exclusive.

11. No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

12. No swine, cows, horses or goats shall be kept upon the premises, and no commercial livestock or poultry project shall be maintained within said subdivision; nor shall any dog pens, kennels or other such projects involving the rearing, handling or care and maintenance of animals in numbers be conducted or maintained within this subdivision; nor shall any offensive trade or business that will depreciate the value of property, or be an annoyance to occupants thereof be conducted or maintained within this subdivision.

13. No fence or hedge shall be permitted of a height more than three (3) feet on any of the lots between any building on the lot and the street.

14. These covenants and restrictions shall run with the land and shall be binding on all parties and persons claiming title to any lot in said subdivision until the 31st day of

BOOK 128 173

December, 1999, at which time these covenants and restrictions shall terminate.

15. These covenants and restrictions shall be enforceable both by action at law for damages and by bill in chancery for injunction or other relief, by any person or persons injured or aggrieved by the breach or the violation of any of them, and neither remedy shall be held exclusive of the other.

16. Invalidation of any one or more of these covenants and restrictions by judgment or decree of court shall in no way effect any of the other provisions herein contained but they shall remain in full force and effect.

By deed of trust dated the 2nd day of August, 1962, and recorded in the Clerk's Office of the Circuit Court of the City of Fredericksburg, Virginia, in Deed Book 119, at page 644, Land Development, Inc., a Virginia Corporation, conveyed the property described on the above plat, known as Section Two, Braehead Woods, Fredericksburg, Virginia, to Harry B. F. Franklin and George C. Rawlings, Jr., Trustees, to secure the payment of a debt fully described in said deed of trust, payable to the order of Nan H. Stephens, Margaret H. Smith and Mary Graham Howison, noteholders; and for mutual considerations the said Harry B. F. Franklin and George C. Rawlings, Jr., Trustees, and Nan H. Stephens, Margaret H. Smith and Mary Graham Howison, noteholders, hereby join in this deed of dedication for the purpose and do hereby release from the lien of said deed of trust all streets, lanes, alleys and ways described as such and shown on the map and plat of Carroll-Kim & Associates, dated May 6, 1965, a copy of which is recorded along with this deed, and all easements reserved in this deed; but it is distinctly understood that the lien on all of the remaining property other than streets, lanes, alleys, ways and

BOOK 128 174

easements shall in no way be affected.

WITNESS the following signatures and seals:

LAND DEVELOPMENT, INC.

By *R. B. Brooks, Jr.*  
President

ATTEST:

*J. Maffei Benson*  
Secretary

*Nan H. Stephens* (SEAL)  
Noteholder

By: *Mary Graham Howison* (SEAL)  
Her Attorney-in-fact

*Margaret H. Smith* (SEAL)  
Noteholder

By: *Mary Graham Howison* (SEAL)  
Her Attorney-in-fact

*Mary Graham Howison* (SEAL)  
Noteholder in her own right

*James H. Mullin* (SEAL)  
Trustee

*George Parker* (SEAL)  
Trustee

The authority of Mary Graham Howison to act as attorney-in-fact for Nan H. Stephens and Margaret H. Smith, Noteholders, is evidenced by those two certain Powers of Attorney, dated June 19, 1962, and October 8, 1963, recorded in Deed Book 119, page 545, and Deed Book 122, page 652, respectively, and in that certain Deed of Trust dated August 2, 1962, recorded in Deed Book 119, page 644, in the records in the Clerk's Office of the Circuit Court of the City of Fredericksburg, Virginia.

adequate facilities for the loading and unloading of goods in compliance with all of the district regulations established by this ordinance for the district in which the building, structure, or land is located.

ARTICLE IV - RESIDENTIAL DISTRICT R-1

Sec. 18-15. Use regulations.

In Residential District R-1 any building to be erected on land to be used shall be for one or more of the following uses:

- (1.) Single family dwellings.
- (2.) Parks and playgrounds where no admission fee is charged.
- (3.) Historic and educational shrines and museums and existing buildings of historical interest. The collection of admission fees and the incidental sale of literature, handicraft articles, confections, and refreshments shall be permitted.
- (4.) Accessory buildings. Except as provided for corner lots, accessory buildings shall be located behind the rear building line of the main building and at least five (5) feet from any property line. Accessory buildings may be constructed only after the construction of the main building has commenced and may be used only after the main building is completed and in use.
- (5.) A temporary sign or signs aggregating eight (8) square feet in area or less appertaining to the lease, hire, or sale of the building or premises on which the sign is displayed.
- (6.) Public utilities. Poles, wires, distribution transformers and other facilities necessary for the provision and maintenance of public utilities including water and sewage facilities.
- (7.) Truck gardening, other than the raising of live stock or poultry and other farming activities that would be objectionable to surrounding residents. The sale of produce on the premises is specifically prohibited.

Sec. 18-16. Height regulations.

Structures may be erected up to forty (40) feet in height from grade except that:

- (1.) Fire towers are exempt from the provisions of

this ordinance. Belfries, monuments, chimneys radio aerials, cooling towers and similar structures not normally of be increased in height up to twenty-five feet above the height zone limits. Parapet walls (4) feet above the height of the building walls rest. No sign, name plate, or any kind may be installed upon or attached to above structures.

(2.) Any accessory building which is more than ten (10) feet of any party lot line shall be one (1) story in height. All accessory buildings shall be the same height as the main building in height.

Sec. 18-17. Area regulations.

(1.) For residential lots containing a single family dwelling the minimum area shall be as follows:

	Type of Lot
(a)	Lots served by public water and sewage disposal systems.....
(b)	Lots served by individual water or sewage disposal systems.....
(c)	Lots served by individual water and sewage disposal systems.....

(2.) Where individual septic tanks are used, greater lot areas may be required if the health officer determines that there are health problems due to soil condition, or other conditions to health problems.

(3.) Any lot of record at the time this ordinance which is less in area than that required by this ordinance may be used for residential purposes when the other requirements are met.

Sec. 18-18. Setback regulations.

In this zone the minimum setback from front lot line to the building line shall be:

(1.) Where a setback depth has been established in any block, buildings shall be erected at least ten (10) feet or more from the front lot line.

for the loading and unloading of goods of the district regulations established for the district in which the building is located.

V - RESIDENTIAL DISTRICT R-1

Regulations.

In District R-1 any building to be erected shall be for one or more of the following:

Family dwellings.  
Playgrounds where no admission fee is charged.

Religious and educational shrines and museums of historical interest. The collection and the incidental sale of literature, confections, and refreshments shall be permitted.

Accessory buildings. Except as provided for in this ordinance, accessory buildings shall be located behind the main building and at least five feet from the property line. Accessory buildings may be used only after the main building is used.

Signs. No sign or signs aggregating eight (8) or less appertaining to the lease, business or premises on which the sign is located.

Utilities. Poles, wires, distribution facilities necessary for the provision of public utilities including water and gas.

Farming. Other than the raising of livestock, other farming activities that would be a nuisance to surrounding residents. The sale of products of such activities is specifically prohibited.

Regulations.

Buildings erected up to forty (40) feet in height are exempt from the provisions of this ordinance.

This ordinance. Belfries, monuments, television antennae, chimneys radio aerials, cooling towers, elevator penthouses and similar structures not normally occupied by workmen may be increased in height up to twenty-five per cent (25%) of the height zone limits. Parapet walls may be up to four (4) feet above the height of the buildings on which the walls rest. No sign, name plate, or advertising device of any kind may be installed upon or attached to any of the above structures.

(2.) Any accessory building which is within ten (10) feet of any party lot line shall be one (1) story or less in height. All accessory buildings shall be less than the main building in height.

Sec. 18-17. Area regulations.

(1.) For residential lots containing or intended to contain a single family dwelling the minimum lot area shall be as follows:

Type of Lot	Minimum Lot Area
(a) Lots served by public water and sewage disposal systems....	10,000 sq. ft.
(b) Lots served by individual water or sewage disposal systems.....	15,000 sq. ft.
(c) Lots served by individual water and sewage disposal systems.....	20,000 sq. ft.

(2.) Where individual septic tanks and/or individual wells are used, greater lot areas may be required if the health officer determines that there are factors of drainage, soil condition, or other conditions to cause potential health problems.

(3.) Any lot of record at the time of the adoption of this ordinance which is less in area than the minimum required by this ordinance may be used for a single family residence when the other requirements of this ordinance are met.

Sec. 18-18. Setback regulations.

In this zone the minimum setback distances from the front lot line to the building line shall be as follows:

(1.) Where a setback depth has not been established in any block, buildings shall be erected thirty-five (35) feet or more from the front lot line.

ARTICLE V - RESIDENTIAL

(2.) Where setback depths have been established, buildings shall be erected a distance from the front lot line which is at least equal to the average setback of all the houses on that side of the street and in the block in which the building is located. The setback in all such cases shall be at least twenty-five (25) feet but need not exceed thirty-five (35) feet.

**Sec. 18-19. Frontage regulations.**

Lots intended for single family dwellings and served by public water and sewer shall have a minimum lot width at the setback line of seventy-five (75) feet. Lots intended for single family dwellings and served by septic tanks and/or private wells shall have a minimum lot width at the setback line of one hundred (100) feet. Any lot of record at the time of the adoption of this ordinance which is less in frontage than the minimum required by this ordinance may be used for any permitted use provided that the other requirements of this ordinance can be met.

**Sec. 18-20. Yard regulations.**

(1.) Side. The minimum side yard shall be ten (10) feet or more and the total width of the two required side yards shall be twenty-five (25) feet or more.  
 (2.) Rear. Each main building shall have a rear yard of twenty-five (25) feet or more. Every part of the rear yard must be open to the sky and unobstructed except for accessory buildings which may cover up to forty per cent (40%) of the required rear yard area. Whenever a rear lot line abuts the side lot line of another property, accessory buildings shall be erected ten (10) feet or more from the rear lot line.

**Sec. 18-21. Special provisions.**

(1.) For all existing corner lots the side yard on the side facing the side street shall be twenty (20) feet or more for both main and accessory buildings.  
 (2.) For subdivisions platted after the enactment of this ordinance each corner lot shall have extra width sufficient for maintenance of required building setback lines on both streets.

**Sec. 18-22. Use regulations.**

In Residential District R-2 any land to be used shall be for one of the following uses:

- (1.) Any use permitted in Residential District R-2.
- (2.) Two family dwellings and accessory buildings.
- (3.) Apartment houses.
- (4.) Public and semi-public uses including churches, colleges, playgrounds, public buildings, and curricula the same as ordinarily given in public schools and colleges, parks, and golf courses.
- (5.) Home occupations conducted in a dwelling.
- (6.) Professional offices such as law, legal, engineering, and architectural offices.
- (7.) Professional shingles of less than one hundred (100) square feet in area or less.
- (8.) Church bulletin boards and signs. The area of signs and bulletin boards for each church shall be thirty (30) square feet or more. No sign or bulletin board shall be five (5) feet or less in area or less.
- (9.) Accessory buildings. Except on corner lots accessory buildings shall be set back five (5) feet from the rear building line of the main building. Accessory buildings may be constructed only after the main building has commenced and may be used only after the building is completed and in use.
- (10.) Non-transient rooming accommodations for five (5) guests.

**Sec. 18-23. Height regulations.**

Structures may be erected up to a height from grade except that:  
 (1.) A public or semi-public building such as a school, church, or library may be erected up to a height of sixty-five (65) feet from grade provided that the front and rear yards shall be increased in proportion to the height.

ARTICLE V - RESIDENTIAL DISTRICT R-2

ck depths have been established,
cted a distance from the front lot
equal to the average setback of all
e of the street and in the block in
located. The setback in all such cases
ty-five (25) feet but need not exceed

Sec. 18-22. Use regulations.

In Residential District R-2 any building to be erected
on land to be used shall be for one or more of the following
uses:

regulations.

single family dwellings and served
er shall have a minimum lot width
seventy-five (75) feet. Lots
ily dwellings and served by septic
ells shall have a minimum lot width
e hundred (100) feet. Any lot of
the adoption of this ordinance which
an the minimum required by this
for any permitted use provided that
of this ordinance can be met.

- (1.) Any use permitted in Residential District R-1.
- (2.) Two family dwellings and duplexes.
- (3.) Apartment houses.
- (4.) Public and semi-public uses such as schools, churches, colleges, playgrounds, private schools having curricula the same as ordinarily given in public schools and colleges, parks, and golf courses.
- (5.) Home occupations conducted by the occupant.
- (6.) Professional offices such as medical, dental, legal, engineering, and architectural offices conducted within a dwelling by the occupant where only one (1) person is employed other than members of the family residing on the premises.
- (7.) Professional shingles of two (2) square feet in area or less.
- (8.) Church bulletin boards and signs for the display of names of educational institutions. The aggregate area of signs and bulletin boards for each such establishment shall be thirty (30) square feet or less, and an individual sign or bulletin board shall be fifteen (15) square feet in area or less.
- (9.) Accessory buildings. Except as provided for corner lots accessory buildings shall be located behind the rear building line of the main building and at least five (5) feet from any property line. Accessory buildings may be constructed only after the construction of the main building has commenced and may be used only after the main building is completed and in use.
- (10.) Non-transient rooming and boarding houses where accommodations for five (5) guests or less are provided.

lations.

minimum side yard shall be ten (10)
total width of the two required side
five (25) feet or more.
main building shall have a rear
5) feet or more. Every part of the
to the sky and unobstructed except
s which may cover up to forty per
ired rear yard area. Whenever a rear
e lot line of another property,
all be erected ten (10) feet or more

rovisions.

sting corner lots the side yard on the
treet shall be twenty (20) feet or
ccessory buildings.
sions platted after the enactment of
rner lot shall have extra width
ance of required building setback

Sec. 18-23. Height regulations.

Structures may be erected up to forty (40) feet in
height from grade except that:

- (1.) A public or semi-public building such as a school, church, or library may be erected to a height of sixty-five (65) feet from grade provided that required front and rear yards shall be increased in depth and side yards



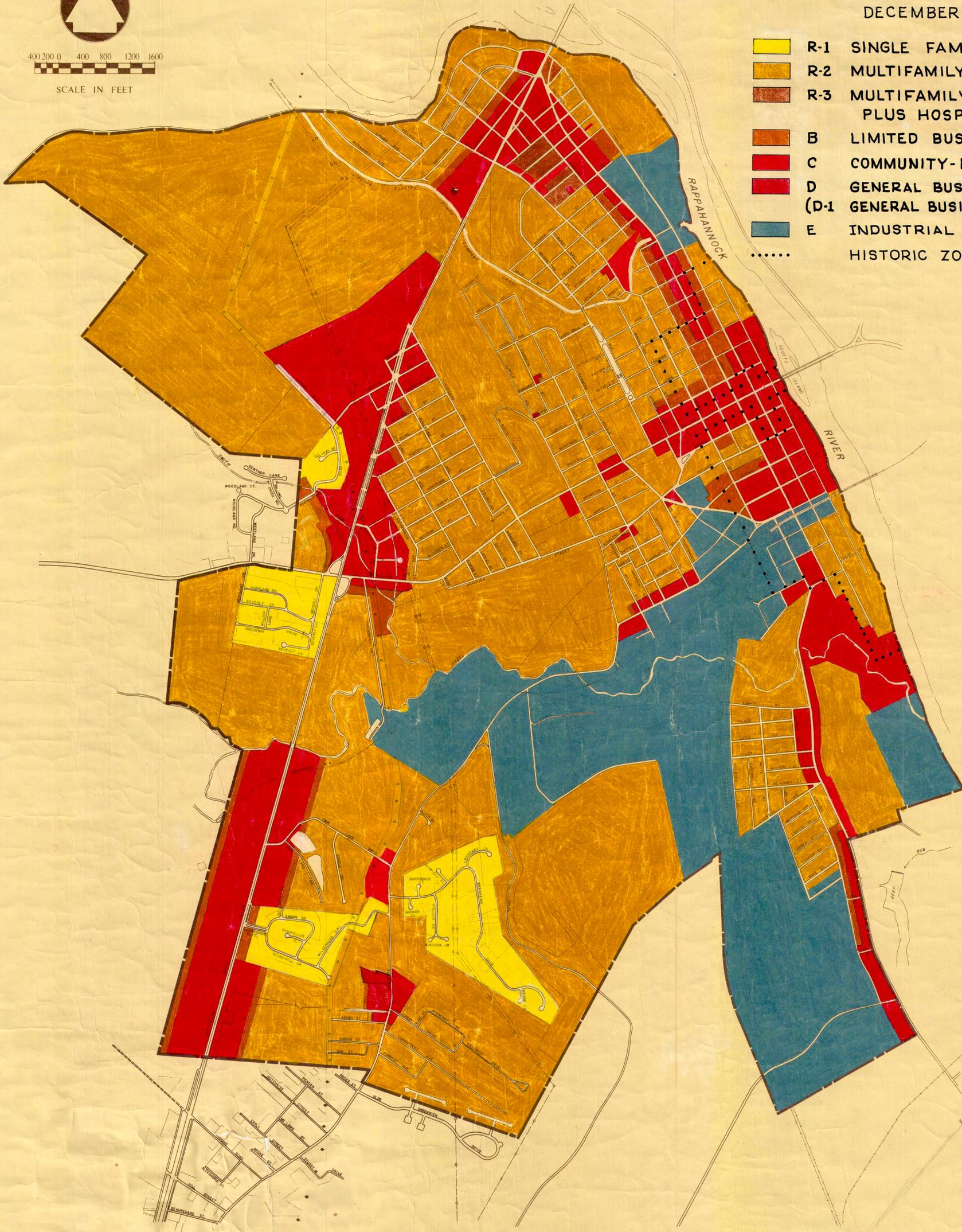
400 200 0 400 800 1200 1600

SCALE IN FEET

# EXISTING ZONING

DECEMBER 1969

- R-1 SINGLE FAMILY RESIDENTIAL
- R-2 MULTIFAMILY RESIDENTIAL
- R-3 MULTIFAMILY RESIDENTIAL PLUS HOSPITAL
- B LIMITED BUSINESS
- C COMMUNITY-HIGHWAY BUSINESS
- D GENERAL BUSINESS (D-1 GENERAL BUSINESS W/MOBILE HOMES)
- E INDUSTRIAL
- HISTORIC ZONE



URBAN PLANNING GRANT PROJECT NO. P-41

PREPARED UNDER THE CONTRACT FOR THE COMMONWEALTH OF VIRGINIA, GOVERNOR'S OFFICE, DIVISION OF PLANNING

BY: ROSSER H. PAYNE, JR., A.L.P. WARRENTON, VIRGINIA

The preparation of this plan was financed in part through an Urban Planning Grant from the Department of Housing and Urban Development under provisions of section 701 of the Housing Act of 1954 as amended.

## CITY OF FREDERICKSBURG

1969

DEED

228

THIS DEED made and entered into this 1st day of May, 1970, by and between LAND DEVELOPMENT, INC. a Virginia corporation, party of the first part, and CITY OF FREDERICKSBURG, a municipal corporation, party of the second part.

WITNESSETH: That for and in consideration of the sum of ONE (\$1.00) DOLLAR, and other valuable consideration, cash in hand paid by the party of the second part to the party of the first part, receipt of which is hereby acknowledged, the party of the first part grants unto the party of the second part, the City of Fredericksburg, the following rights in real property situate in the City of Fredericksburg, Virginia, that is to say: the privilege and easement in perpetuity of right of way to construct, lay, maintain, repair, inspect, improve, replace and alter, and at will remove, within the easements strips hereinafter described and referred to, works and systems for the transmission and distribution of sewage, water and related utility services, over, upon, across and under real property of the party of the first part known and described as

Those certain lots lying in the City of Fredericksburg known as Lot 15 in Section Two of Braehead Woods Subdivision as shown on the map and plat thereof made by Carroll-Kim & Associates, dated July 26, 1963, and outlet C which adjoins the said Lot 15 and is also shown on map and plat of Section Two of Braehead Woods, which plat is recorded in the Office of the Clerk of the Circuit court of the City of Fredericksburg, Virginia, in Plat Book 2 at page 102, said easement strips being further described on a plat of Martin, Clifford & Associates dated April, 1970, attached hereto and to be recorded along with this deed as a part hereof; said easement hereby conveyed being specifically designated on said plat as a 15 foot sanitary sewer easement.

The further terms and conditions of this grant are as follows:

(a.) That the party of the second part may (but is not required to) trim, cut, remove and keep clear all trees, limbs, undergrowth and any and all other obstructions within the said right of way or easement strip that may in any manner in the judgment of the party of the second part

endanger or interfere with the proper and efficient operation of the works and systems therein or thereon, and the party of the second part shall have all such other rights and privileges as are reasonably necessary or convenient for the full enjoyment and use of the easement herein granted for the aforesaid purposes.

(b.) That the party of the second part will exercise reasonable care to protect the property of the party of the first part from damage or injury occasioned in the enjoyment of the easement and rights herein granted, and to promptly repair the said property or reimburse the party of the second part for any property damage beyond repair.

(c.) That if the party of the second part does cut or fell any brush, undergrowth or trees or should excavations be carried on pursuant to this easement and any large sized rocks or boulders are unearthed and are not buried in said excavation, such brush, undergrowth, trees, large sized rocks and boulders shall, at the expense of the party of the second part be removed from the property of the party of the first part.

(d.) That the party of the first part shall have no right, title, interest, estate or claim whatsoever in or to any of the sewer lines, pipes or other equipment and accessories installed by virtue hereof.

The party of the first part further covenants that it has the right to convey said easement; that the party of the second part shall have quiet and peaceful enjoyment and possession of said easement, and that the party of the first part will execute such further assurances of the said grants and easement herein contained as may be requisite.

WITNESS the following signatures and seals:

FRANKLIN AND RAWLINGS  
ATTORNEYS AND COUNSELLORS  
AT LAW  
FREDERICKSBURG, VIRGINIA



LAND DEVELOPMENT, INC.

By *R. B. [Signature]*  
Vice President

*Lucy [Signature]*  
Assistant Secretary

STATE OF VIRGINIA

CITY OF FREDERIC KSBURG, to-wit:

I, Kozie E. Miller, a Notary Public for the City and State aforesaid, do certify that R. C. Glazebrook, Jr. and ~~XXXXXX~~ Lucy Samuel Vice Assistant ~~XXXXXX~~ /President and/Secretary respectively of Land Development, Inc. whose names are signed to the foregoing writing bearing date on the 1st day of May, 1970, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 4th day of May, 1970.

My commission expires: January 26, 1971.

Kozie E. Miller  
Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of the City of Fredericksburg on the 6 day of May, 1970 at 10:30 o'clock A.m., this Deed was presented and with Certificate annexed admitted to record and indexed. Teste: CHAS. H. BERRY, CLERK  
Charles H. Berry  
By \_\_\_\_\_ Deputy Clerk

FRANKLIN AND RAWLINGS  
ATTORNEYS AND COUNSELLORS  
AT LAW  
FREDERICKSBURG, VIRGINIA

Retained to: Franklin, Rawlings & Co.  
5-14-70

BRAHEAD Woods  
SUBDIVISION

KINLOCH  
DRIVE

Existing 15'  
Sanitary Sewer Esm't

Existing 15'  
Sanitary Sewer Esm't

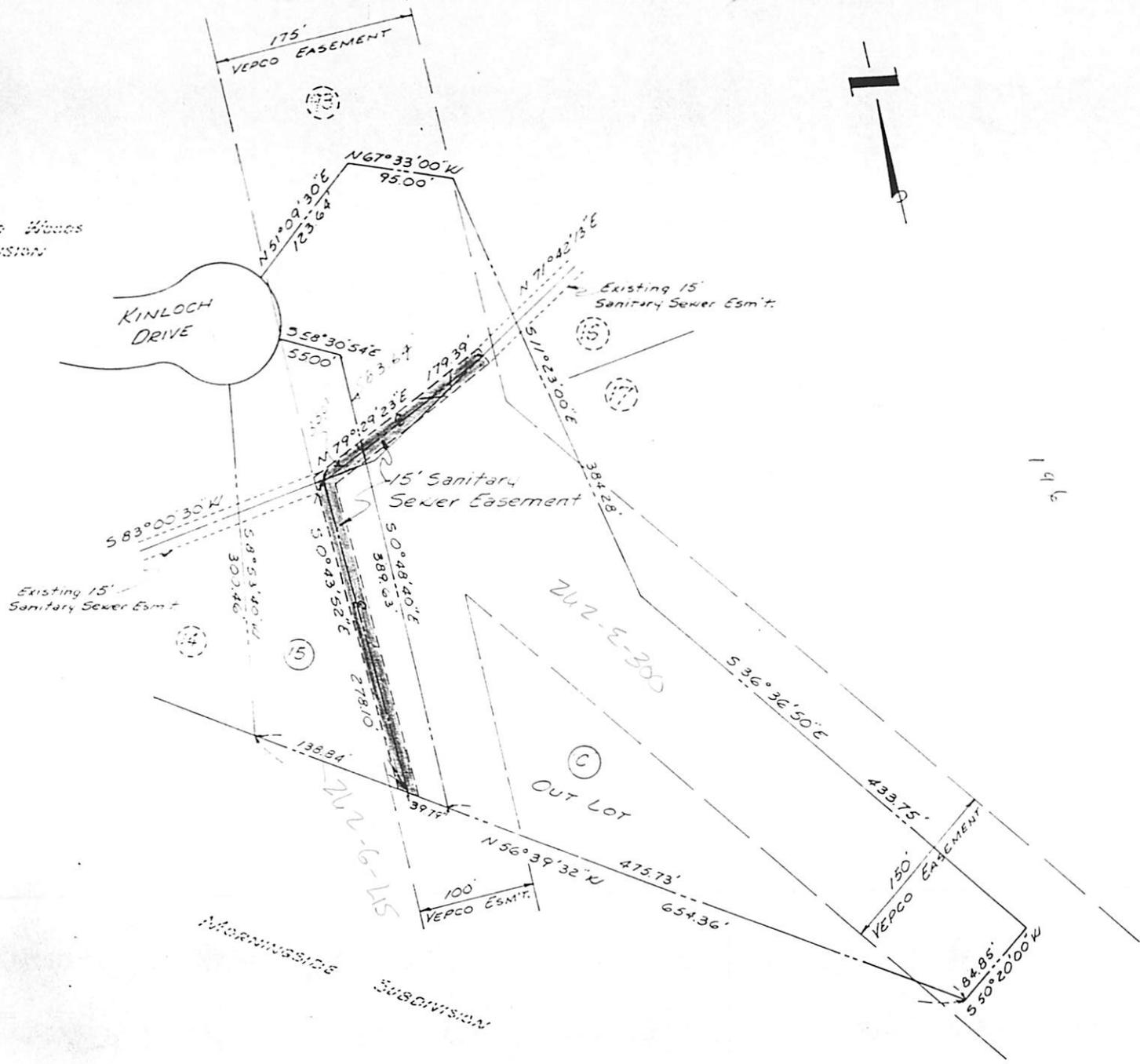
15' Sanitary  
Sewer Easement

OUT LOT  
C

MORNINGSIDE  
SUBDIVISION

SANITARY SEWER EASEMENT  
LOT No.15 & OUT LOT "C"  
LAND DEVELOPMENT, INC.  
DEED BOOK 119, PAGE 640  
CITY OF FREDERICKSBURG  
TO BE CONVEYED TO  
CITY OF FREDERICKSBURG

PREPARED BY  
MARTIN, CLIFFORD & ASSOCIATES  
ENGINEERS & CONSULTANTS  
STAFFORD, VIRGINIA  
SCALE: 1"=100' APRIL 1970



BOOK 145 PAGE 321

EASEMENT

147

THIS DEED, Made and entered into this 14th day of February, 1972, by and between JOSEPH R. PLUMMER and JOYCE B. PLUMMER, his wife, parties of the first part, and the CITY of FREDERICKSBURG, a municipal corporation, party of the second part.

WITNESSETH: That for and in consideration of the sum of ONE DOLLAR (\$1.00), cash in hand paid, and other good and valuable consideration, receipt whereof is hereby acknowledged, the said JOSEPH R. PLUMMER and JOYCE B. PLUMMER, his wife, doth hereby grant to the CITY of FREDERICKSBURG, party of the second part, in perpetuity the following easements across portions of Lot 12 Section Two of Braehead Woods Subdivision, Fredericksburg, Virginia, as follows:

(1) A sanitary sewer easement 12 feet in width from Morningside Subdivision across the western corner of said Lot 12, as shown on the plat of a survey dated February 9, 1972 prepared by Sullivan-Donahoe and Associates, a copy of which is attached hereto to be recorded as a part of this deed; and

(2) A drainage easement from Morningside Subdivision to the western boundary line of Lot 13 and thence to Kinloch Circle, said drainage easement being 12 feet in width across the southeastern corner of said Lot 12 and thence 6 feet in width along the eastern boundary line of Lot 12, to be used together with a 6-foot easement along the western boundary line of Lot 13, as shown on the said plat attached hereto to be recorded as a part hereof;

which said easements shall be for the purpose of laying, operating and maintaining drainage and sewer lines and mains, but nothing herein contained shall be construed to impose on the parties of the first part the duty to lay, operate and maintain such mains and lines.

WITNESS the following signatures and seals.

 (SEAL)  
Joseph R. Plummer

 (SEAL)  
Joyce B. Plummer

STATE OF VIRGINIA

CITY OF FREDERICKSBURG, to-wit:

I, *F. M. King*, a Notary Public for the city

aforsaid, in the State of Virginia, do certify that Joseph R. Plummer and Joyce B. Plummer, his wife, whose names are signed to the foregoing writing bearing date on the 14th day of February, 1972, have acknowledged the same before me in my City and State aforsaid.

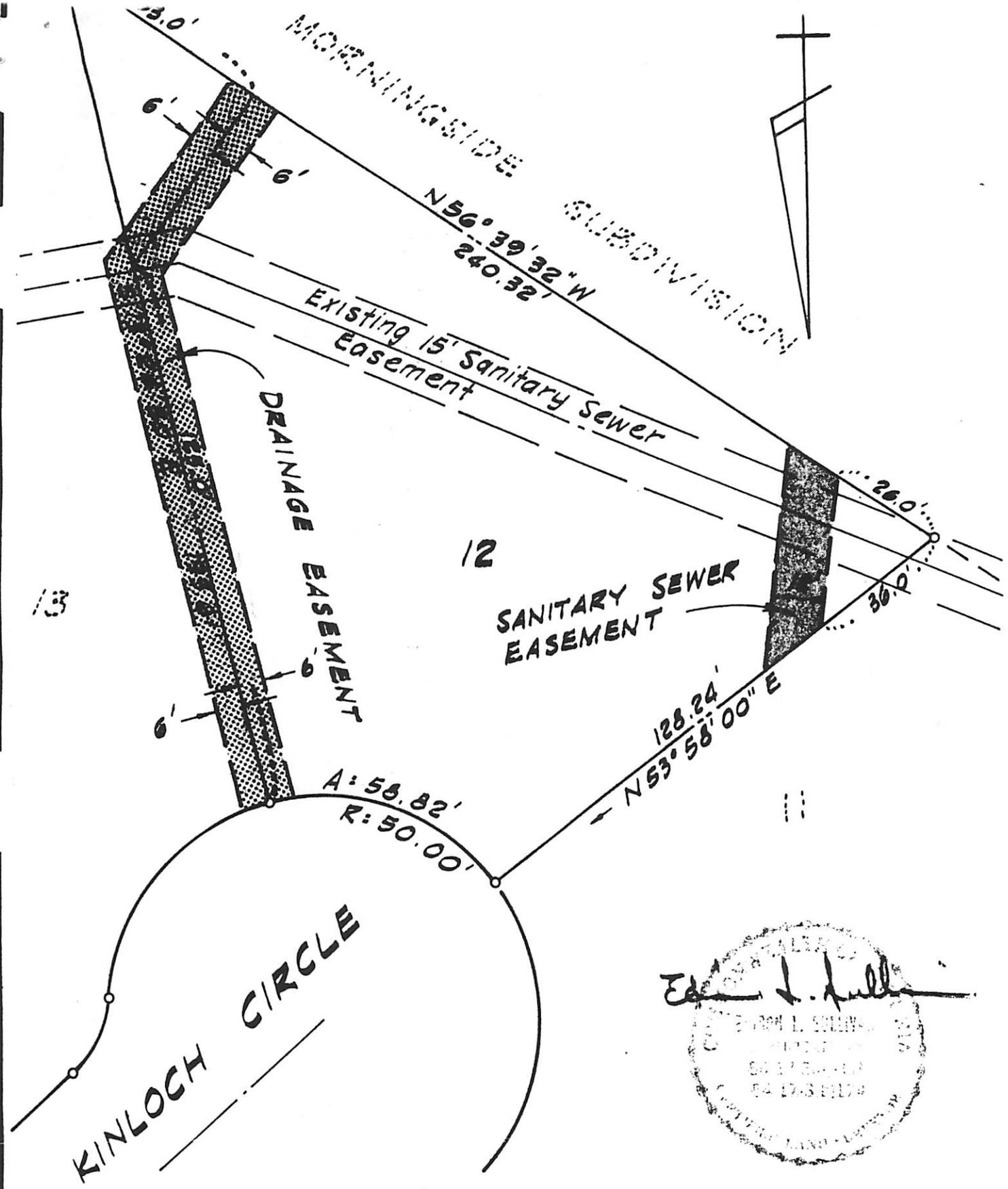
Given under my hand this 28 day of February.

My commission expires: *Sept. 10, 1972*

*F. M. King*  
\_\_\_\_\_  
Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of the City of Fredericksburg on the 1st day of March, 1972 at 9-00 o'clock A.m., this Deed was presented and with Certificate annexed admitted to record and indexed. Testo: CHAS. H. BERRY, CLERK

*Chas H Berry*  
By \_\_\_\_\_ Deputy Clerk



# PLAT

SHOWING A SANITARY SEWER EASEMENT ON LOT 12, AND A DRAINAGE EASEMENT ON LOTS 12 & 13, SECTION TWO, BRAEHEAD WOODS, LOCATED IN THE CITY OF FREDERICKSBURG VIRGINIA.

Date: February 9, 1972

Scale: 1" = 30'

SULLIVAN-DONAHOE AND ASSOCIATES



813

BOOK 151 PAGE 118

THIS AGREEMENT, Made and entered into this 21st day of November, 1973, by and between JOSEPH R. PLUMMER and JOYCE B. PLUMMER, his wife; NORMAN W. ROWE and PHYLLIS T. ROWE, husband and wife; RICHARD A. KAYE and JACQUELINE M. KAYE, husband and wife; RODOLFO L. QUION and ANNIE S. QUION, husband and wife, and LAND DEVELOPMENT, INC., a Virginia Corporation, parties of the first part, herein designated as "OWNER", although more than one; the CITY OF FREDERICKSBURG, VIRGINIA, a Municipal Corporation, party of the second part, herein designated as "CITY"; FREDERICKSBURG SAVINGS & LOAN ASSOCIATION, Fredericksburg, Virginia, NOTEHOLDER, and A. WILSON EMBREY, JR. and DUVAL Q. HICKS, JR., TRUSTEES, parties of the third part; and CONFEDERATE BUILDERS, INC., NOTEHOLDER and GEORGE C. RAWLINGS, JR., TRUSTEE, parties of the fourth part;

WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00), cash in hand paid, the receipt of which is hereby acknowledged, Owner does hereby grant and convey unto the City, its lessees, permittees, successors and assigns the right, privilege and easement, in perpetuity, of right-of-way to construct, lay, maintain, repair, inspect, improve, replace with larger or smaller materials, relocate, make extensions or additions to, make alterations and substitutions in, and at will remove, within the easement strip hereafter described, works and systems for the transmission and distribution of sewage and storm water under Owner's property situate in the City of Fredericksburg, Virginia, the said easement strip being eighteen (18) feet in width and more fully described and designated as "Proposed 18' Sanitary Sewer and Drainage Easement" as set

forth on a plat made by Sullivan-Donahoe and Associates, dated September 8, 1972, attached hereto and by reference made a part hereof, together with the right to use abutting land adjoining the easement where necessary, provided, however, that this right to use abutting land shall be exercised only during periods of actual construction or maintenance and then only to the minimum extent necessary for such construction or maintenance.

The owners of the property affected by the aforesaid easement are as follows: (1) Joseph R. Plummer is the owner of Lot 12, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia acquired by deed of December 8, 1971 from Land Development, Inc., et als, which deed is duly recorded in Deed Book 145, at Page 317 of the land records in the Clerk's Office of the Circuit Court of the City of Fredericksburg, Virginia; (2) Norman W. Rowe and Phyllis T. Rowe, husband and wife, as tenants by the entirety with the right of survivorship as at common law, are the owners of Lot 13, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia, acquired by deed of May 17, 1973 from Land Development, Inc., duly recorded in Deed Book 149 at Page 672 of said land records; (3) Richard A. Kaye and Jacqueline M. Kaye, husband and wife, as tenants by the entirety with the right of survivorship as at common law, are the owners of Lot 14, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia, acquired by deed of December 5, 1972 from Land Development, Inc., duly recorded in Deed Book 148 at Page 435 of said land records; (4) Rodolfo L. Quion and Annie S. Quion, husband and wife, as tenants by the entirety with the right of survivorship as at common law, are the owners of

Lot 15, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia, acquired by deed of March 26, 1973 from Land Development, Inc., duly recorded in Deed Book 149 at Page 148 of said land records; and (5) Land Development, Inc. is the owner of Out Lot C of Braehead Woods Subdivision, Fredericksburg, Virginia, it being a part of the same real estate acquired from Nan H. Stephens, et vir et al by deed of July 30, 1962 duly recorded in Deed Book 119 at Page 640 of the aforesaid land records.

The parties mutually covenant and agree as follows:

(1) That for any of the purposes aforesaid, the City shall have full rights of ingress and egress over, upon and across Owner's property and to bring on said property such persons, vehicles, machinery, equipment and tools as in City's sole judgment is reasonably necessary, advisable or expedient.

(2) That the City may, but it is not required to trim, cut and keep clear all trees, limbs, and undergrowth within or near the said right-of-way or easement strip that may in any manner, in City's judgment, endanger or interfere with the proper and efficient operation of the works, system or systems therein, and the City shall have all such other rights and privileges as are reasonably necessary or convenient for the full enjoyment or use, for any of the aforesaid purposes of the easement hereby granted.

(3) That Owner shall make no charge to City, or to City's lessees, permittees, successors or assigns for the use and enjoyment of the easement, and rights herein granted or for the privilege of constructing, maintaining, operating or

removing the aforesaid facilities, works or systems; nor shall delivery of this easement to the City, either expressly or impliedly, be construed to constitute any payment, or the waiver of any obligation for the payment, by the Owner or the Owner's successors or assigns, of any cut-in fee or charge, tax, assessment, other charge or obligation whatsoever now due or heretofore due or hereafter to become due and payable to the City or to any person, firm or other corporation whatsoever.

(4) That the City will exercise reasonable care to protect the Owner's livestock, if any, fences, if any, buildings, tracks and roadbed, trestle or other property from damage or injury occasioned in the enjoyment of the easement and rights herein granted, and to promptly repair the said property or reimburse the Owner for any property damaged beyond repair.

(5) That if the City does cut or fell any brush, undergrowth, or trees, or should excavations be carried on pursuant to this easement and any large sized rocks or boulders are unearthed and are not buried in said excavation, such brush, undergrowth, trees, large sized rocks and boulders shall, at the expense of the City, be removed from Owner's property.

(6) That Owner shall have no right, title, interest, estate or claim whatsoever in and to any of the pipes, piping, attachments, equipment, accessories or other property erected by virtue hereof.

(7) That this instrument does not impose any obligation whatever upon the City to construct, maintain and operate any of the works, systems or facilities aforesaid, or any obligation

upon the City to cause the construction, operation and maintenance thereof by any lessee, permittee, successor or assign of the City, nor shall the City be liable for damages or for any sum whatsoever if none of the works, systems, or facilities aforesaid are constructed, operated or maintained and that in the event the City should determine that the easement and rights herein granted cannot be used or will not be used, the City may at any time terminate the same by instrument of release duly executed and delivered to Owner in form suitable for recordation.

(8) The Owner reserves the right to construct and maintain roadways over said easement and to make any use of the easement herein granted which may not be inconsistent with the rights herein conveyed or interfere with the use of said easement by the City for the purposes named, provided, however, that Owner shall not erect any building or other structure, excepting a fence, on the easement without obtaining the prior written approval of the City.

(9) Owner further covenants that owner has the right to convey the said easement to the City; that it has done no act to encumber such easement; that the City shall have quiet and peaceful possession, and useful enjoyment of said easement, free from all encumbrances, and that the Owner will execute such further assurances of the said easement as may be requisite.

(10) That all of the duties, obligations, covenants, rights, and benefits hereinbefore specified are binding upon the parties hereto, and upon Owner's successors and assigns, and upon City's lessees, permittees, successors and assigns. Nothing herein contained shall be construed to impose on the Owner the duty to lay, operate or maintain any sewer or drainage lines over, under and upon the said easement.

(11) The said parties of the third part, Fredericksburg Savings and Loan Association, Fredericksburg, Virginia, Noteholder, and A. Wilson Embrey, Jr. and DuVal Q. Hicks, Jr., Trustees, for valuable consideration, the receipt whereof is hereby acknowledged, do hereby join in this agreement for the express purpose of releasing and do hereby release unto the said party of the second part, all of their right, title, interest and estate in and to the easement herein conveyed from the liens of the following deeds of trust:

(a) That certain deed of trust dated August 21, 1972 from Joseph R. Plummer and Joyce B. Plummer, his wife, to A. Wilson Embrey, Jr. and DuVal Q. Hicks, Jr., Trustees conveying Lot 12, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia in trust to secure one note in the amount of \$45,000.00 payable to Fredericksburg Savings and Loan Association, Fredericksburg, Virginia, duly recorded in Deed Book 147 at Page 110 of said land records;

(b) That certain deed of trust dated June 5, 1973 from Norman W. Rowe and Phyllis T. Rowe, husband and wife, to A. Wilson Embrey, Jr. and DuVal Q. Hicks, Jr., Trustees, conveying Lot 13, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia in trust to secure one note in the amount of \$44,900.00 payable to Fredericksburg Savings and Loan Association, Fredericksburg, Virginia, duly recorded in Deed Book 149 at Page 674 of the aforesaid land records;

(c) That certain deed of trust dated January 30, 1973, from Richard A. Kaye and Jacqueline M. Kaye, aforesaid deeds of trust upon the other land hereby conveyed and not released here.

(12) The said parties of the fourth part, Confederate Builders, Inc., Noteholder, and George T. Rawlings, Jr., Trustee, for valuable consideration, the receipt whereof is hereby acknowledged, do hereby join in this agreement for the express purpose of releasing and do hereby release unto the said party of the second part, all of their right, title and interest and estate in and to the easement herein conveyed from the liens of the following deeds of trust:



husband and wife, to A. Wilson Embrey, Jr. and DuVal Q. Hicks, Jr., Trustees, conveying Lot 14, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia, in trust to secure one note in the amount of \$43,000.00 payable to Fredericksburg Savings and Loan Association, Fredericksburg, Virginia, duly recorded in Deed Book 148 at Page 437 of said land records;

(d) That certain deed of trust dated April 5, 1973 from Rodolfo L. Quion and Annie S. Quion, husband and wife, to A. Wilson Embrey, Jr. and DuVal Q. Hicks, Jr., Trustees, conveying Lot 15, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia, in trust to secure one note in the amount of \$42,000.00, payable to Fredericksburg Savings and Loan Association, Fredericksburg, Virginia, duly recorded in Deed Book 149 at Page 150 of said land records;

It is expressly understood that the release of the easement herein conveyed from the lien of the aforesaid deeds of trust shall not affect in anywise the lien of the aforesaid deeds of trust upon the other land thereby conveyed and not released hereby.

(12) The said parties of the fourth part, Confederate Builders, Inc., Noteholder, and George C. Rawlings, Jr., Trustee, for valuable consideration, the receipt whereof is hereby acknowledged, do hereby join in this agreement for the express purpose of releasing and do hereby release unto the said party of the second part, all of their right, title and interest and estate in and to the easement herein conveyed from the lien of that certain deed of trust dated June 1, 1973 wherein Norman W. Rowe and Phyllis T. Rowe, husband and wife, conveyed Lot 13, Section 2, Braehead Woods Subdivision, Fredericksburg,

unto George C. Rawlings, Jr., Trustee in trust to secure one note in the amount of \$20,050.00 payable to Confederate Builders, Inc., duly recorded in Deed Book 149 at Page 676 of said land records, but it is expressly understood that the release of the easement herein conveyed from the lien of said deed of trust shall not affect in anywise the lien of the said deed of trust upon the other land thereby conveyed and not released hereby.

WITNESS the following signatures and seals:

Joseph R. Plummer (SEAL)  
Joseph R. Plummer

Joyce B. Plummer (SEAL)  
Joyce B. Plummer

Norman W. Rowe (SEAL)  
Norman W. Rowe

Phyllis T. Rowe (SEAL)  
Phyllis T. Rowe

Richard A. Kaye (SEAL)  
Richard A. Kaye

Jacqueline M. Kaye (SEAL)  
Jacqueline M. Kaye

Rodolfo L. Quion (SEAL)  
Rodolfo L. Quion

Annie S. Quion (SEAL)  
Annie S. Quion

LAND DEVELOPMENT, INC.

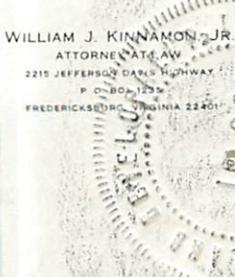
By F. Maxfield Brown (SEAL)  
F. Maxfield Brown, President

ATTEST:

Secretary

SEAL:

Secretary





CITY OF FREDERICKSBURG, VIRGINIA,

By *Freeman Junk* (SEAL)  
City Manager

ATTEST:

*Phyllis C. Ellis*  
Deputy Clerk

SEAL:

FREDERICKSBURG SAVINGS AND LOAN  
ASSOCIATION, Fredericksburg, Virginia,  
Noteholder

By *Lauren M. Runtz* (SEAL)  
President

ATTEST:

*M King*  
Secretary

SEAL:

*A Wilson Embrey Jr* (SEAL)  
A. Wilson Embrey, Jr., Trustee

*DuVal Q. Hicks Jr* (SEAL)  
DuVal Q. Hicks, Jr., Trustee

CONFEDERATE BUILDERS INC., Noteholder

By *J. Maxwell Brown* (SEAL)

ATTEST:

*R. Blaylock*  
Secretary

SEAL:

*George C. Rawlings Jr* (SEAL)  
George C. Rawlings, Jr., Trustee

STATE OF VIRGINIA

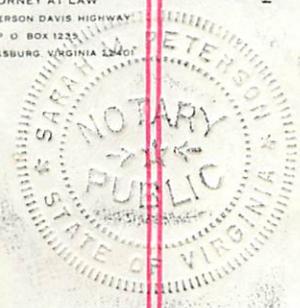
City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged  
before me this 21<sup>st</sup> day of November, 1973, by  
Joseph R. Plummer and Joyce B. Plummer, his wife.

*Susan M. Peterson*  
Notary Public

My commission expires 2/24/75

WILLIAM J. KINNAMON, JR.  
ATTORNEY AT LAW  
2215 JEFFERSON DAVIS HIGHWAY  
P. O. BOX 1225  
FREDERICKSBURG, VIRGINIA 22401



CITY OF FREDERICKSBURG, VIRGINIA

(NAME) \_\_\_\_\_  
CITY OF FREDERICKSBURG, VIRGINIA

MEMBERSHIP ASSOCIATION, FREDERICKSBURG, VIRGINIA  
Notary Public

(NAME) \_\_\_\_\_  
Notary Public

(NAME) \_\_\_\_\_  
A. Wilson, Jr., Notary Public

(NAME) \_\_\_\_\_  
Notary Public

(NAME) \_\_\_\_\_  
Notary Public

(NAME) \_\_\_\_\_  
George C. Hawkins, Jr., Notary Public

STATE OF VIRGINIA

City of Fredericksburg to-wit:

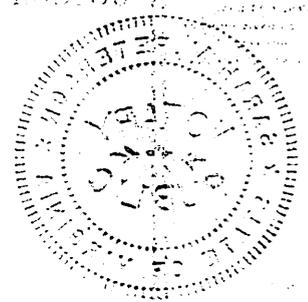
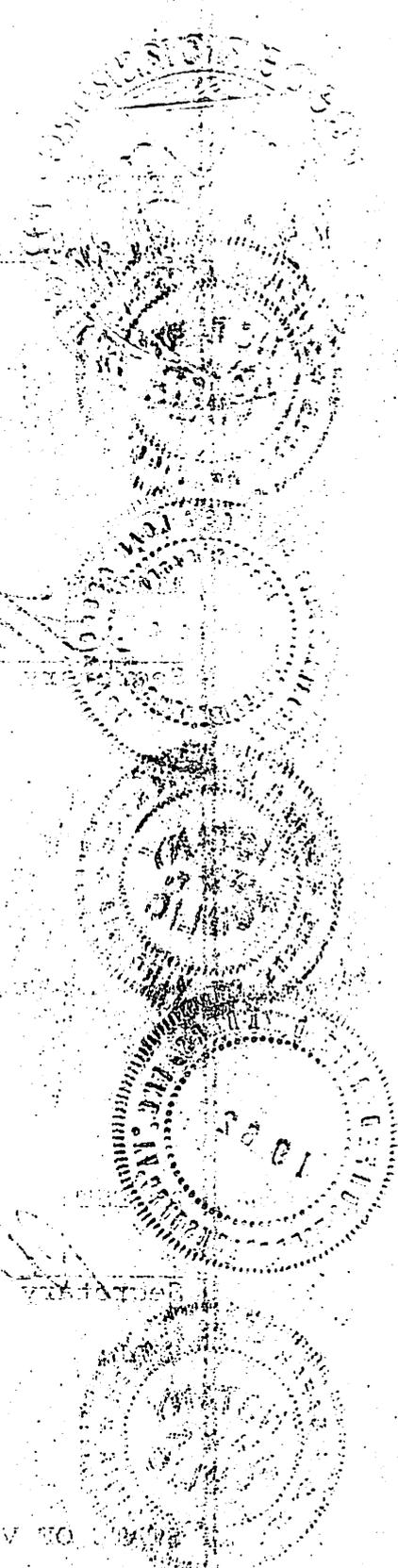
The foregoing instrument was acknowledged

before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

George E. Plummer and Joyce E. Plummer, his wife.

Notary Public

My commission expires \_\_\_\_\_



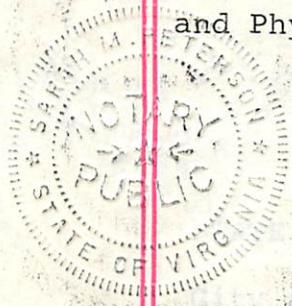
STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of November, 1973, by Norman W. Rowe and Phyllis T. Rowe, husband and wife.

Sarah M. Peterson  
Notary Public

My commission expires: 2/24/75



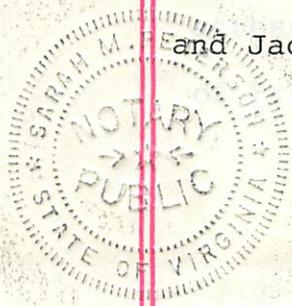
STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of November, 1973, by Richard A. Kaye and Jacqueline M. Kaye, husband and wife.

Sarah M. Peterson  
Notary Public

My commission expires: 2/24/75



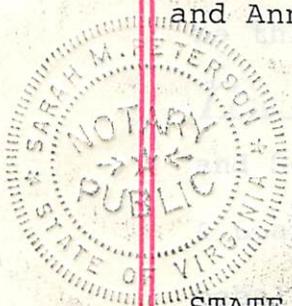
STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 23 day of November, 1973, by Rodolfo L. Quion and Annie S. Quion, husband and wife.

Sarah M. Peterson  
Notary Public

My commission expires: 2/24/75



STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of November, 1973, by F. Maxfield Brown

1914

and R. C. Glazebrook, President and Secretary, respectively,  
of Land Development, Inc., a Virginia corporation, on  
behalf of the corporation.



Oliver S. Lewis  
Notary Public  
My commission expires: 10-16-20

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before  
me by T. Freeman Funk, City Manager of the City of  
Fredericksburg, Virginia, a Municipal Corporation, and duly  
attested by William C. Ellis, Clerk, on behalf of the City  
of Fredericksburg, Virginia, a Municipal Corporation.

William C. Ellis  
Notary Public  
My commission expires: July 25, 1915

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

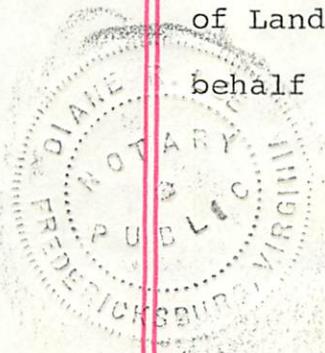
The foregoing instrument was acknowledged before  
me this 23rd day of November, 1913, by James  
McMurry and A. M. King, President  
and Secretary, respectively, of Fredericksburg Savings  
and Loan Association, a Virginia corporation, Noteholder, on  
behalf of the corporation.



William C. Ellis  
Notary Public  
My commission expires: July 25, 1915

WILLIAM C. ELLIS  
NOTARY PUBLIC  
STATE OF VIRGINIA  
COMMISSION EXPIRES JULY 25, 1915

and R. C. Glazebrook, President and Secretary, respectively, of Land Development, Inc., a Virginia corporation, on behalf of the corporation.



Diane R. Free  
Notary Public

My commission expires: 10-16-76

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me by F. Freeman Funk, City Manager of the City of Fredericksburg, Virginia, a Municipal Corporation, and duly attested by <sup>Phyllis C Ellis Deputy</sup> ~~Martha M. Beck~~, Clerk, on behalf of the City of Fredericksburg, Virginia, a Municipal Corporation.

Cleanor W. Bettick  
Notary Public

My commission expires: Aug 26, 1975

STATE OF VIRGINIA

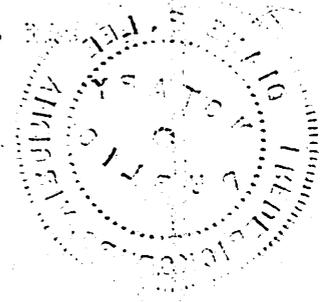
City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of November, 1973, by Laurence Mc Murtry and J. M. King, President and Secretary, respectively, of Fredericksburg Savings & Loan Association, a Virginia corporation, Noteholder, on behalf of the corporation.

Linda Chewing  
Notary Public

My commission expires: January 8 1974

and J. B. ... respectively.  
... a Virginia corporation, on  
behalf of the corporation.



Notary Public

My commission expires

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before

me by J. B. ... City Manager of the City of

Fredericksburg, Virginia, a Municipal Corporation, and City

attested by ... Clerk on behalf of the City

of Fredericksburg, Virginia, a Municipal Corporation.

*[Signature]*  
Notary Public

My commission expires

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before

me by ... by

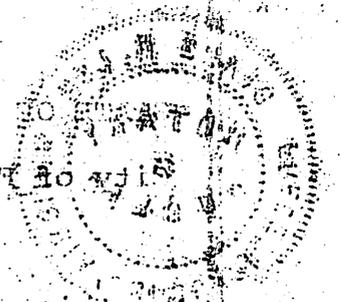
and ... respectively, of Fredericksburg Savings

Loan Association, a Virginia corporation, Notaries, on

behalf of the corporation.

*[Signature]*  
Notary Public

My commission expires



STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 23rd day of Nov., 1973, by A. Wilson Embrey, Jr. and DuVal Q. Hicks, Jr., Trustees.

Walter M. Edwards  
Notary Public

My commission expires: June 29th, 1977

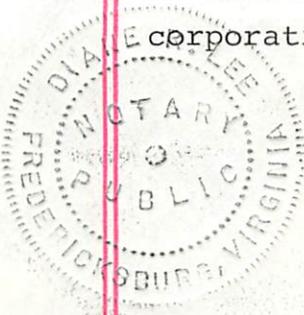
STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 23rd day of November, 1973, by F. Maxwell Brown and R.C. Slagbroack, Jr. President and Secretary, respectively, of Confederate Builders, Inc., a Virginia Corporation, on behalf of the corporation.

Quinn R. Fee  
Notary Public

My commission expires: 10-16-76



STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 21st day of November, 1973, by George C. Rawlings, Jr., Trustee.

Lucy Samuel  
Notary Public

My commission expires: July 12, 1975

VIRGINIA: In the Clerk's Office of the Circuit Court of the City of Fredericksburg on the 26 day of November, 1973 at 2:23 o'clock P.m., this Deed was presented and with Certificate annexed admitted to record and indexed. Teste: CHAS. H. BERRY, CLERK

Chas H Berry  
By..... Deputy Clerk

1973

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before

me this day of July, 1973, by A. Wilson

Tr. and Daniel O. Hicks, Jr., Trustees.

[Signature]  
Notary Public

My commission expires: Jan 31, 1974

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before

me this day of August, 1973, by

[Signature] and [Signature]

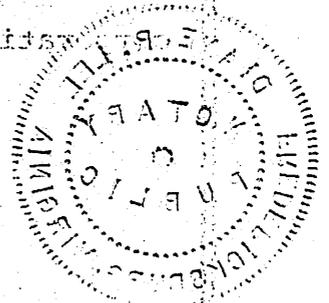
President and Secretary, respectively, of Confederate

Builders, Inc., a Virginia Corporation, on behalf of the

Notary Public

[Signature]  
Notary Public

My commission expires: 10-16-74



STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before

me this day of August, 1973, by George

Rawlinson, Jr., Trustee.

[Signature]  
Notary Public

My commission expires: Jan 31, 1974

NOTARY PUBLIC: is the name of the official who is authorized to perform notary public duties in the State of Virginia. The notary public is a public officer who is appointed by the State of Virginia to perform notary public duties. The notary public is a public officer who is appointed by the State of Virginia to perform notary public duties. The notary public is a public officer who is appointed by the State of Virginia to perform notary public duties.

MEMORANDUM

TO: Marvin S. Bolinger  
FROM: James M. Pates *JMP*  
DATE: December 6, 1993  
RE: Kinloch Circle Drainage Problem

I have reviewed the legal documents regarding the Kinloch Circle drainage problem and met with the Public Works staff involved. Based upon this information, I would offer the following comments:

(1) The City currently enjoys an 18-foot drainage easement across Lots 12, 13, 14, and 15 in the Braehead Woods Subdivision. The fence erected by Diane Hindrichs is located on Lot 14. The easement gives the City the right to use the easement area to convey stormwater from Morningside Drive and adjacent properties and to erect drainage structures within the easement. It further provides that the owners of the various lots have the right

....to construct and maintain roadways over said easement and to make any use of the easement herein granted which may not be inconsistent with the rights herein conveyed [to the City] or interfere with the use of said easement by the City for the purposes named, provided, however, that owner[s] shall not erect any building or other structure, excepting a fence, on the easement without obtaining the prior written approval of the City.

Ms. Hindrichs did apparently get permission from Jervis Hairston to construct the fence that is now obstructing the flow of water across the easement. But Jervis' letter of January 23, 1992 clearly states that the fence must not "impede the drainage flow in any manner pursuant to the drainage easement." Regardless of this letter, Ms. Hindrichs does not have the right to block public drainage within the easement. The City may therefore require Ms. Hindrichs to remove the fence or may remove the fence itself after reasonable notice.

(2) The City does not have an obligation to remove the fence or to compel Ms. Hindrichs to remove it. The City neither erected the fence nor did anything else to cause the current problem. The City must maintain its drainage "facilities" in good order, but I do not think this extends to unimproved drainage ditches.

(3) The City could go out and spend public funds to improve the storm drainage for all the lots affected by this problem. We can always construct drainage facilities within our easements.

In short, it is my legal opinion that the City has considerable flexibility in dealing with this matter. Please let me know if you need any further assistance.

JMP:jsl

cc: Thomas M. Slaydon  
Jervis Hairston

M E M O R A N D U M

TO: James M. Pates, City Attorney  
FROM: Andrew McGilvray, Civil Engineer, Public Works   
SUBJECT: Kinloch Drive Drainage  
DATE: July 15, 1993

The Department of Public Works has been investigating a drainage problem in the rear of the properties at 112, 114 and 116 Kinloch Drive and 3 Kinloch Circle. The drainage problem is being caused by the wood fence around the rear yard of 114 Kinloch Drive.

As shown on the attached plat, there is an existing 18 foot drainage easement through these properties which conveys run-off from the adjacent properties, as well as run-off from the upper section of Morningside Drive. The run-off from Morningside comes from a 24-inch pipe, into three 8-inch pipes, which discharge into a natural ditch at the southeast corner of Lot 12. The natural ditch through Lot 13 is located outside the 18-foot easement, however, it turns into the easement boundaries at the west property line of Lot 14 and runs the rest of the way in the easement to the stream, located 90 feet east of Lot 15. There is also a chain link fence along the southern property line of Lots 12 and 13.

According to the residents, several years ago there was no problem with drainage at this location. The first problem was caused by the chain link fence erected along the southern property line of Lots 12 and 13, which clogged with leaves and debris during rainfalls. The City then installed the three 8-inch pipes from the existing 24-inch pipe, under the fence and into lot 12. This relieved the clogging at the chain link fence and discharged run-off into the ditch across Lot 13 and beyond.

In the Spring of 1992, the property owner of Lot 14, Ms. Diane G. Hindrichs, constructed a wood board fence flush with the ground around her back yard and across the drainage easement. She requested permission from the City to construct this fence, and received it from Jervis Hairston (letter attached). This fence varies in height from 3 feet to 5 feet. The fence immediately created a problem by backing up leaves and debris behind the fence, and stopping the flow of run-off down the drainage ditch. When the water backed up at the fence, it then would run down the outside of the fence and collect in the yard of Lot 14 to depths up to 18 inches. Some of this water, however, is run-off from Kinloch Circle, which travels down a ditch between Lots 12 and 13 and then across Lot 13 to the fence. Prior to the installation of the fence none of this run-off water was impeded on its path to the stream.

Kinloch Drive Drainage  
July 15, 1993

Upon receiving the initial complaints about the fence backing up run-off, the City asked Ms. Hindrichs to either remove a section of the fence, or cut part of the boards off the bottom of the fence at the drainage ditch, which was done. However, she then attached chicken wire to the inside of the fence in order to keep her dogs in the yard. This then clogged with leaves and Lot 13 flooded during the next rain.

I then discovered that the Deed of Easement (Deed Book 151, Page 118) for the 18 foot drainage easement does not restrict the construction of fences across the easement. The Deed of Dedication for Braehead Woods (Deed Book 128, Page 168), on the other hand, has no rear yard restrictions on fences.

The Department of Public Works has looked at various solutions to this problem, such as improving the existing ditch, installing drainage pipe the entire length of the easement, or rerouting the Morningside drainage down Morningside Drive. All of these solutions, however, either avoid the issue of the fence or will still be affected by the fence. We are hereby requesting your assistance in looking into the legality of requiring the removal of the fence across the east and west property lines of Lot 14, owned by Ms. Hindrichs. If this can be done it will allow free flow of the run-off water once again, like it was prior to installation of the fence.

Enclosed are copies of the Plat for all of the affected properties, as well as the Deeds of Easement for the various easements across these properties, correspondence from the City to Ms. Hindrichs, and a letter from Mr. Leming (Lot 13) to Tuffy Hicks requesting his assistance. If you need any further information, please call me or Harvey.

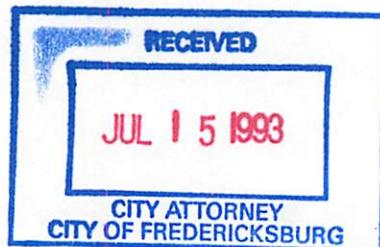


Upon receiving the initial complaints about the fence backing up run-off, the City asked Mr. Hinchick to either remove a section of the fence, or cut part of the boards off the bottom of the fence at the drainage ditch, which was done. However, the fence attached chicken wire to the inside of the fence in order to keep her dogs in the yard. This then clogged with leaves and lot is flooded during the next rain.

I then discovered that the Deed of Easement (Deed Book 181, Page 118) for the 18 foot drainage easement does not restrict the construction of fences across the easement. The Deed of Dedication for Brashers Woods (Deed Book 128, Page 100), on the other hand, has no rear yard restrictions on fences.

The Department of Public Works has looked at various solutions to this problem, such as improving the existing ditch, installing drainage pipe the entire length of the easement, or rerouting the Morningstar drainage down Morningstar Drive. All of these solutions, however, either avoid the issue of the fence or will still be affected by the fence. We are hereby requesting your assistance in looking into the legality of requiring the removal of the fence across the east and west property lines of Lot 14, owned by Mr. Hinchick. If this can be done it will allow free flow of the run-off water once again, like it was prior to installation of the fence.

Enclosed are copies of the Plat for all of the affected properties, as well as the Deeds of Easement for the various easements across these properties, correspondence from the City to Mr. Hinchick, and a letter from Mr. Lewing (Lot 13) to Tilly Hicks requesting his assistance. If you need any further information, please call me or Harvey.



BOOK 145 PAGE 321

EASEMENT

147

THIS DEED, Made and entered into this 14th day of February, 1972, by and between JOSEPH R. PLUMMER and JOYCE B. PLUMMER, his wife, parties of the first part, and the CITY of FREDERICKSBURG, a municipal corporation, party of the second part.

WITNESSETH: That for and in consideration of the sum of ONE DOLLAR (\$1.00), cash in hand paid, and other good and valuable consideration, receipt whereof is hereby acknowledged, the said JOSEPH R. PLUMMER and JOYCE B. PLUMMER, his wife, doth hereby grant to the CITY of FREDERICKSBURG, party of the second part, in perpetuity the following easements across portions of Lot 12 Section Two of Braehead Woods Subdivision, Fredericksburg, Virginia, as follows:

(1) A sanitary sewer easement 12 feet in width from Morningside Subdivision across the western corner of said Lot 12, as shown on the plat of a survey dated February 9, 1972 prepared by Sullivan-Donahoe and Associates, a copy of which is attached hereto to be recorded as a part of this deed; and

(2) A drainage easement from Morningside Subdivision to the western boundary line of Lot 13 and thence to Kinloch Circle, said drainage easement being 12 feet in width across the southeastern corner of said Lot 12 and thence 6 feet in width along the eastern boundary line of Lot 12, to be used together with a 6-foot easement along the western boundary line of Lot 13, as shown on the said plat attached hereto to be recorded as a part hereof;

which said easements shall be for the purpose of laying, operating and maintaining drainage and sewer lines and mains, but nothing herein contained shall be construed to impose on the parties of the first part the duty to lay, operate and maintain such mains and lines.

WITNESS the following signatures and seals.

 (SEAL)  
Joseph R. Plummer

 (SEAL)  
Joyce B. Plummer

STATE OF VIRGINIA

CITY OF FREDERICKSBURG, to-wit:

I, *F. M. King*, a Notary Public for the city

aforsaid, in the State of Virginia, do certify that Joseph R. Plummer and Joyce B. Plummer, his wife, whose names are signed to the foregoing writing bearing date on the 14th day of February, 1972, have acknowledged the same before me in my City and State aforsaid.

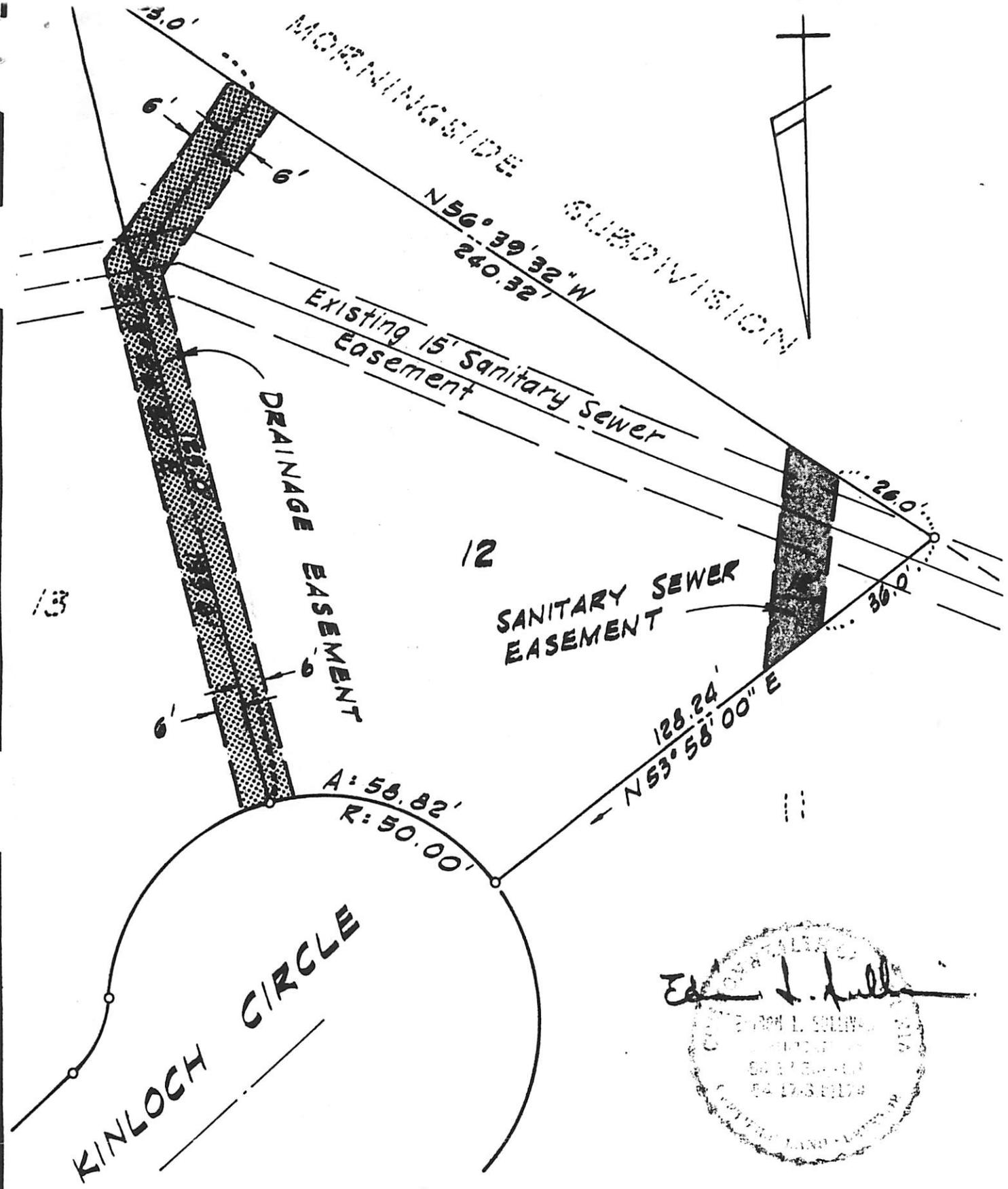
Given under my hand this 28 day of February.

My commission expires: *Sept. 10, 1972*

*F. M. King*  
\_\_\_\_\_  
Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of the City of Fredericksburg on the 1st day of March, 1972 at 9<sup>00</sup> o'clock A. m., this Deed was presented and with Certificate annexed admitted to record and indexed. Testo: CHAS. H. BERRY, CLERK

*Chas H Berry*  
By \_\_\_\_\_ Deputy Clerk



# PLAT

SHOWING A SANITARY SEWER EASEMENT ON LOT 12, AND A DRAINAGE EASEMENT ON LOTS 12 & 13, SECTION TWO, BRAEHEAD WOODS, LOCATED IN THE CITY OF FREDERICKSBURG VIRGINIA.

Date: February 9, 1972

Scale: 1" = 30'

SULLIVAN-DONAHOE AND ASSOCIATES



(e) Roof signs are permitted provided they do not exceed fifteen (15) feet in height.

(f) Projecting signs are permitted provided they do not project more than twenty-four (24) inches from the wall, including supports.

(g) Awning signs are permitted provided that the letters are limited to the drop leaf and do not exceed eight (8) inches in height.

(h) Marquee signs are herewith designated a special use under the provisions of Article XVI of this Chapter.

(i) Window signs are permitted.

(j) The aggregate sign area for any lot in District I shall not exceed one hundred and fifty (150) square feet except that in an industrial park one (1) ground sign of no more than one hundred and fifty (150) square feet shall be permitted in addition to an aggregate sign area for any individual industry within the said industrial park of one hundred (100) square feet and except that any sign permitted under Sec. 18.1-37 of this Article shall not be included in the computation of any of the aforesaid aggregate areas. (4/25/72, Ord. 72-9Z)

#### ARTICLE VII.

##### Residential District R-1

#### Sec. 18.1-41. Use regulations.

In District R-1 the following uses are permitted.

(a) By right:

(1) Single family detached units, garage, carport, dog house and tool shed.

(2) Public utilities.

(3) Truck gardening, not to include livestock.

(b) By special use permit:

(1) Schools.

(2) Non commercial parks and playgrounds.

(3) Churches.

(4) Community Buildings.

(5) Museums and shrines.

(6) Parking garages.

(7) Golf courses and country clubs.

(8) Accessory buildings for single family dwellings except those enumerated in Sec. 18.1-41. (a) (1) above.

(9) Plant nurseries with no sale of nursery products permitted on premises.

(10) Planned unit developments with a five (5) acre site minimum limited to single family dwellings, townhouses or patio houses and garden apartments.

(11) Cluster alternate subdivisions with a five (5) acre site minimum limited to single family detached dwellings.

(12) Cemeteries.

Sec. 18.1-42. Regulations, single family detached, public utilities.

The following regulations shall govern single family detached dwellings, either as a single unit or within a conventional subdivision, and public utilities in District R-1:

(a) Minimum lot size. Ten thousand (10,000) square feet.

(b) Building height. Fifty (50) feet maximum above finished grade.

(c) Setback.

(1) At least twenty-five (25) feet from right of way or fifty (50) feet from the center line of a local street which ever is greater, or

(2) At least forty-five (45) feet from right of way or ninety (90) feet from the center line of a primary or secondary collector street whichever is greater or,

(3) If fronting on a service drive at least twenty-five (25) feet from such right of way, except that,

(4) Where setback depths have been previously established, buildings shall be erected at a distance from the right of way which is at least equal to the average setback of all the houses on the side of the block in which the building is located.

(d) Minimum yard dimensions.

(1) Front yard width at setback line, seventy

(70) feet.

(2) Side yard width ten (10) feet.

(3) Rear yard depth twenty (20) feet.

Sec. 18.1-43. Regulations for planned unit developments.

The following regulations shall govern planned unit developments:

(a) Minimum lot size:

(1) Single family detached, five thousand (5,000) square feet.

(2) Town and Patio houses, two thousand six hundred (2,600) square feet.

(3) Garden apartments, eight thousand four hundred (8,400) square feet but not less than the total lot area computed on the basis of the number of dwelling units on the lot and of the number of rooms per dwelling unit as follows:

Number of Rooms per Dwelling Unit	Square Feet of Lot Area Per Dwelling Unit
1	900
2	1,400
3	2,000
4	2,400

- (b) Maximum units per gross acre, ten (10).
- (c) Maximum lot coverage. Fifty (50) percent including dwellings, accessory buildings and off street parking.
- (d) Building height. Fifty (50) feet maximum above finished grade.
- (e) Setback, single family detached.
- (1) At least twenty (20) feet from the right of way or forty (40) feet from the center line of a local street whichever is greater, or
  - (2) At least forty (40) feet from the right of way or eighty (80) feet from the center line of a primary or secondary collector street whichever is greater, or
  - (3) If fronting on a service drive, at least twenty-five (25) feet from such right of way.
- (f) Setback, Town and Patio Houses.
- (1) Twenty (20) feet from the right of way of a local street, a service drive or a parking bay, or
  - (2) Forty-five (45) feet from the right of way or ninety (90) feet from the center line of a primary or secondary collector street, whichever is greater.
- (g) Setback, Garden Apartments.
- (1) Thirty (30) feet from the right of way of a local street or sixty (60) feet from the center line, whichever is greater, or
  - (2) Forty-five (45) feet from the right of way or ninety (90) feet from the center line of a primary or secondary collector street, or
  - (3) If fronting on a service drive or parking bay, a minimum of fifteen (15) feet from the bay or right of way.
- (h) Minimum Yard Dimensions, single family detached.
- (1) Front yard width, at setback line, forty (40) feet.
  - (2) Side yard width, ten (10) feet.
- (i) Minimum Yard Dimensions, Town and Patio Houses.
- (1) Front yard width at setback line, twenty (20) feet.
  - (2) Side yard width twenty (20) feet, for end lots and between building groups.
  - (3) Rear yard depth forty (40) feet for each dwelling unit.
- (j) Minimum yard dimensions, Garden apartments.
- (1) Front yard width not regulated.
  - (2) Side yard width fifty (50) feet.
  - (3) Rear yard depth fifty (50) feet.
  - (4) In addition, no accessory building shall be located at a distance of less than twenty-five (25) feet from any main building or from any side or rear property line.
- (k) Minimum distance between buildings, Garden Apartments.
- (1) Front to front, front to rear or rear to rear, sixty (60) feet but if the off set in the building line is more than twenty (20) feet, spacing may be twenty (20) feet.
  - (2) Side to side, not less than the distance equal to the average height of the buildings.

Sec. 18.1-44. Regulations for cluster alternate subdivisions.

The following regulations shall govern cluster alternate subdivisions:

- (a) Minimum lot size, five thousand (5,000) square feet.
- (b) Maximum units per gross acre, four (4).
- (c) Maximum lot coverage, sixty (60) percent including lots and streets.
- (d) Building height, fifty (50) feet maximum above finished grade.
- (e) Setback.
  - (1) At least twenty (20) feet from the right of way or forty (40) feet from the center line of a local street whichever is greater, or
  - (2) At least forty (40) feet from the right of way or eighty (80) feet from the center line of a primary or secondary collector street whichever is greater, or
  - (3) If fronting on a service drive, at least twenty-five (25) feet from such right of way.
- (f) Minimum yard dimensions.
  - (1) Front yard width at setback line, forty (40) feet.
  - (2) Side yard width ten (10) feet. (4/25/72, Ord. 72-9Z)

Sec. 18.1-45. Additional regulations, District R-1.

In addition to the foregoing regulations in this article, the following regulations shall govern in District R-1:

- (a) Accessory Buildings.
  - (1) No accessory building shall be located within five (5) feet of any rear or side yard property line, except that on corner lots accessory buildings shall be located a minimum of fifteen (15) feet from the side yard adjacent to the street.
  - (2) No accessory building shall be located in a front yard.
  - (3) Any accessory building which is within ten (10) feet of any party lot line shall be one (1) story or less in height. All accessory buildings shall be less than the main building in height.
  - (4) The aggregate area of all accessory buildings on a given lot shall not exceed 40% of the total area in the rear and side yards.
  - (5) Accessory buildings may be constructed only after the construction of the main building has commenced and may be used only after the main building is completed and in use.
  - (6) Carports shall not project closer than five (5) feet to any property line.
- (b) Sign Regulations - See Article VI.
- (c) Parking and Loading Regulations - See Article V.

ARTICLE VIII

Residential District R-2

Sec. 18.1-47. Use regulations.

In District R-2 the following uses are permitted:

- (a) By right
  - (1) Single family detached units with garage, carport, doghouse and tool shed.
  - (2) Garden apartments.
  - (3) Townhouses or patio houses with garage, carport, dog house and tool shed.
  - (4) Non transient rooming and boarding houses limited to five (5) guests.
  - (5) Public utilities.
- (b) By special use permit
  - (1) Non commercial parks and playgrounds.
  - (2) Parking garages.
  - (3) Golf courses and country clubs.
  - (4) Private clubs.
  - (5) Accessory buildings for single family dwellings except those listed in Sec. 18.1-47 (a) (1) and (a) (3). (5/22/73, Ord. 73-14Z)
  - (6) Hospitals.
  - (7) Nursing homes.
  - (8) Schools.
  - (9) Churches.
  - (10) Community buildings.
  - (11) Libraries.
  - (12) Museums and shrines. (4/25/72, Ord. 72-9Z)

Sec. 18.1-48. Regulations District R-2.

The following regulations govern in District R-2:

- (a) Minimum Lot Size.
  - (1) Single family detached, eight thousand (8,000) square feet.
  - (2) Townhouses, patio houses, two thousand two hundred (2,200) square feet.
  - (3) Garden apartments, eight thousand four hundred (8,400) square feet, but not less than the total lot area computed on the number of dwelling units on the lot and of the number of rooms per dwelling unit as follows:

Number of Rooms Per Dwelling Unit	Square Feet of Lot Area Per Dwelling Unit
1	850
2	1,200
3	1,600
4	2,000

- (4) Non-transient rooming and boarding houses, public utilities, ten thousand (10,000) square feet.
- (b) Maximum units per gross acre, twenty (20).
- (c) Maximum Lot coverage, fifty (50) percent including buildings, accessory buildings and off street parking.
- (d) Building Height, fifty (50) feet maximum above finished grade.
- (e) Setback, single family detached, boarding houses, public utilities.
- (1) At least twenty-five (25) feet from the right of way or fifty (50) feet from center line of a local street whichever is greater, or
- (2) At least forty-five (45) feet from the right of way or ninety (90) feet from the center line of a primary or secondary collector street whichever is greater, or
- (3) At least twenty-five (25) feet from the right of way of a service drive, except that,
- (4) Where setback depths have already been established buildings shall be erected at a distance from the right of way which is at least equal to the average setback of all the houses on the side of the block in which the building is located.
- (f) Setback, Town and Patio Houses.
- (1) Twenty (20) feet from the right of way of a local street, a service drive or a parking bay, or
- (2) Forty-five (45) feet from the right of way or ninety (90) feet from the center line of a primary or secondary collector street, whichever is greater.
- (g) Setback, Garden Apartments.
- (1) Thirty (30) feet from the right of way of a local street or sixty (60) feet from the center line whichever is greater, or
- (2) Forty-five (45) feet from the right of way or ninety (90) feet from the center line of a primary or secondary collector street, or
- (3) If fronting on a service drive or parking bay, a minimum of fifteen (15) feet from the bay or right of way.
- (h) Minimum Yard Dimensions, Single Family Detached, Boarding Houses, Public Utilities.
- (1) Front yard width at setback line, sixty (60) feet.
- (2) Side yard width, ten (10) feet.
- (3) Rear yard depth, twenty (20) feet.
- (i) Minimum Yard Dimensions, Town and Patio Houses.
- (1) Front yard width at setback line, twenty (20) feet.
- (2) Side yard width, twenty (20) feet for end lots and between building groups.
- (3) Rear yard depth, forty (40) feet for each dwelling unit.

## (j) Minimum Yard Dimensions, Garden Apartments.

- (1) Front yard width, at setback line, not required.
- (2) Side yard width, fifty (50) feet.
- (3) Rear yard depth, fifty (50) feet.
- (4) In addition no accessory building shall be located at a distance of less than twenty-five (25) feet from any main building or from any side or rear property line.

## (k) Minimum Distance between buildings, Garden Apartments.

(1) Front to front, front to rear or rear to rear sixty (60) feet but if the offset in the building line is more than twenty (20) feet, spacing may be twenty (20) feet.

(2) Side to side, not less than the distance equal to the average height of the buildings.

(1) Visible roof structures such as air conditioners, fans, vents and the like shall be enclosed by parapet walls not to exceed five (5) feet in height.

(m) Sign regulations - See Article VI.

(n) Parking and loading regulations - See Article V.

(o) Accessory buildings, all permitted uses.

(1) No accessory building shall be located within five (5) feet of any rear or side yard property line, except that on corner lots accessory buildings shall be located a minimum of fifteen (15) feet from the side yard adjacent to the street.

(2) No accessory building shall be located in a front yard.

(3) Any accessory building which is within ten (10) feet of any party lot line shall be one (1) story or less in height. All accessory buildings shall be less than the main building in height.

(4) The aggregate area of all accessory buildings on a given lot shall not exceed 40% of the total area in the rear and side yards.

(5) Accessory buildings may be constructed only after the construction of the main building has commenced and may be used only after the main building is completed and in use.

(6) Carports shall not project closer than five (5) feet to any property line. (4/25/72, Ord. 72-9Z)

## ARTICLE IX

## Residential District R-3

## Sec. 18.1-50. Use regulations.

In District R-3 the following uses are permitted:

(a) By right

(1) Townhouses or patio houses with garage, carport, dog house and tool shed.

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BOOK 151 PAGE 118

THIS AGREEMENT, Made and entered into this 21st day of November, 1973, by and between JOSEPH R. PLUMMER and JOYCE B. PLUMMER, his wife; NORMAN W. ROWE and PHYLLIS T. ROWE, husband and wife; RICHARD A. KAYE and JACQUELINE M. KAYE, husband and wife; RODOLFO L. QUION and ANNIE S. QUION, husband and wife, and LAND DEVELOPMENT, INC., a Virginia Corporation, parties of the first part, herein designated as "OWNER", although more than one; the CITY OF FREDERICKSBURG, VIRGINIA, a Municipal Corporation, party of the second part, herein designated as "CITY"; FREDERICKSBURG SAVINGS & LOAN ASSOCIATION, Fredericksburg, Virginia, NOTEHOLDER, and A. WILSON EMBREY, JR. and DUVAL Q. HICKS, JR., TRUSTEES, parties of the third part; and CONFEDERATE BUILDERS, INC., NOTEHOLDER and GEORGE C. RAWLINGS, JR., TRUSTEE, parties of the fourth part;

WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00), cash in hand paid, the receipt of which is hereby acknowledged, Owner does hereby grant and convey unto the City, its lessees, permittees, successors and assigns the right, privilege and easement, in perpetuity, of right-of-way to construct, lay, maintain, repair, inspect, improve, replace with larger or smaller materials, relocate, make extensions or additions to, make alterations and substitutions in, and at will remove, within the easement strip hereafter described, works and systems for the transmission and distribution of sewage and storm water under Owner's property situate in the City of Fredericksburg, Virginia, the said easement strip being eighteen (18) feet in width and more fully described and designated as "Proposed 18' Sanitary Sewer and Drainage Easement" as set

forth on a plat made by Sullivan-Donahoe and Associates, dated September 8, 1972, attached hereto and by reference made a part hereof, together with the right to use abutting land adjoining the easement where necessary, provided, however, that this right to use abutting land shall be exercised only during periods of actual construction or maintenance and then only to the minimum extent necessary for such construction or maintenance.

The owners of the property affected by the aforesaid easement are as follows: (1) Joseph R. Plummer is the owner of Lot 12, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia acquired by deed of December 8, 1971 from Land Development, Inc., et als, which deed is duly recorded in Deed Book 145, at Page 317 of the land records in the Clerk's Office of the Circuit Court of the City of Fredericksburg, Virginia; (2) Norman W. Rowe and Phyllis T. Rowe, husband and wife, as tenants by the entirety with the right of survivorship as at common law, are the owners of Lot 13, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia, acquired by deed of May 17, 1973 from Land Development, Inc., duly recorded in Deed Book 149 at Page 672 of said land records; (3) Richard A. Kaye and Jacqueline M. Kaye, husband and wife, as tenants by the entirety with the right of survivorship as at common law, are the owners of Lot 14, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia, acquired by deed of December 5, 1972 from Land Development, Inc., duly recorded in Deed Book 148 at Page 435 of said land records; (4) Rodolfo L. Quion and Annie S. Quion, husband and wife, as tenants by the entirety with the right of survivorship as at common law, are the owners of

Lot 15, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia, acquired by deed of March 26, 1973 from Land Development, Inc., duly recorded in Deed Book 149 at Page 148 of said land records; and (5) Land Development, Inc. is the owner of Out Lot C of Braehead Woods Subdivision, Fredericksburg, Virginia, it being a part of the same real estate acquired from Nan H. Stephens, et vir et al by deed of July 30, 1962 duly recorded in Deed Book 119 at Page 640 of the aforesaid land records.

The parties mutually covenant and agree as follows:

(1) That for any of the purposes aforesaid, the City shall have full rights of ingress and egress over, upon and across Owner's property and to bring on said property such persons, vehicles, machinery, equipment and tools as in City's sole judgment is reasonably necessary, advisable or expedient.

(2) That the City may, but it is not required to trim, cut and keep clear all trees, limbs, and undergrowth within or near the said right-of-way or easement strip that may in any manner, in City's judgment, endanger or interfere with the proper and efficient operation of the works, system or systems therein, and the City shall have all such other rights and privileges as are reasonably necessary or convenient for the full enjoyment or use, for any of the aforesaid purposes of the easement hereby granted.

(3) That Owner shall make no charge to City, or to City's lessees, permittees, successors or assigns for the use and enjoyment of the easement, and rights herein granted or for the privilege of constructing, maintaining, operating or

removing the aforesaid facilities, works or systems; nor shall delivery of this easement to the City, either expressly or impliedly, be construed to constitute any payment, or the waiver of any obligation for the payment, by the Owner or the Owner's successors or assigns, of any cut-in fee or charge, tax, assessment, other charge or obligation whatsoever now due or heretofore due or hereafter to become due and payable to the City or to any person, firm or other corporation whatsoever.

(4) That the City will exercise reasonable care to protect the Owner's livestock, if any, fences, if any, buildings, tracks and roadbed, trestle or other property from damage or injury occasioned in the enjoyment of the easement and rights herein granted, and to promptly repair the said property or reimburse the Owner for any property damaged beyond repair.

(5) That if the City does cut or fell any brush, undergrowth, or trees, or should excavations be carried on pursuant to this easement and any large sized rocks or boulders are unearthed and are not buried in said excavation, such brush, undergrowth, trees, large sized rocks and boulders shall, at the expense of the City, be removed from Owner's property.

(6) That Owner shall have no right, title, interest, estate or claim whatsoever in and to any of the pipes, piping, attachments, equipment, accessories or other property erected by virtue hereof.

(7) That this instrument does not impose any obligation whatever upon the City to construct, maintain and operate any of the works, systems or facilities aforesaid, or any obligation

upon the City to cause the construction, operation and maintenance thereof by any lessee, permittee, successor or assign of the City, nor shall the City be liable for damages or for any sum whatsoever if none of the works, systems, or facilities aforesaid are constructed, operated or maintained and that in the event the City should determine that the easement and rights herein granted cannot be used or will not be used, the City may at any time terminate the same by instrument of release duly executed and delivered to Owner in form suitable for recordation.

(8) The Owner reserves the right to construct and maintain roadways over said easement and to make any use of the easement herein granted which may not be inconsistent with the rights herein conveyed or interfere with the use of said easement by the City for the purposes named, provided, however, that Owner shall not erect any building or other structure, excepting a fence, on the easement without obtaining the prior written approval of the City.

(9) Owner further covenants that owner has the right to convey the said easement to the City; that it has done no act to encumber such easement; that the City shall have quiet and peaceful possession, and useful enjoyment of said easement, free from all encumbrances, and that the Owner will execute such further assurances of the said easement as may be requisite.

(10) That all of the duties, obligations, covenants, rights, and benefits hereinbefore specified are binding upon the parties hereto, and upon Owner's successors and assigns, and upon City's lessees, permittees, successors and assigns. Nothing herein contained shall be construed to impose on the Owner the duty to lay, operate or maintain any sewer or drainage lines over, under and upon the said easement.

(11) The said parties of the third part, Fredericksburg Savings and Loan Association, Fredericksburg, Virginia, Noteholder, and A. Wilson Embrey, Jr. and DuVal Q. Hicks, Jr., Trustees, for valuable consideration, the receipt whereof is hereby acknowledged, do hereby join in this agreement for the express purpose of releasing and do hereby release unto the said party of the second part, all of their right, title, interest and estate in and to the easement herein conveyed from the liens of the following deeds of trust:

(a) That certain deed of trust dated August 21, 1972 from Joseph R. Plummer and Joyce B. Plummer, his wife, to A. Wilson Embrey, Jr. and DuVal Q. Hicks, Jr., Trustees conveying Lot 12, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia in trust to secure one note in the amount of \$45,000.00 payable to Fredericksburg Savings and Loan Association, Fredericksburg, Virginia, duly recorded in Deed Book 147 at Page 110 of said land records;

(b) That certain deed of trust dated June 5, 1973 from Norman W. Rowe and Phyllis T. Rowe, husband and wife, to A. Wilson Embrey, Jr. and DuVal Q. Hicks, Jr., Trustees, conveying Lot 13, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia in trust to secure one note in the amount of \$44,900.00 payable to Fredericksburg Savings and Loan Association, Fredericksburg, Virginia, duly recorded in Deed Book 149 at Page 674 of the aforesaid land records;

(c) That certain deed of trust dated January 30, 1973, from Richard A. Kaye and Jacqueline M. Kaye, aforesaid deeds of trust upon the other land hereby conveyed and not released here.

(12) The said parties of the fourth part, Confederate Builders, Inc., Noteholder, and George T. Rawlings, Jr., Trustee, for valuable consideration, the receipt whereof is hereby acknowledged, do hereby join in this agreement for the express purpose of releasing and do hereby release unto the said party of the second part, all of their right, title and interest and estate in and to the easement herein conveyed from the liens of the following deeds of trust:

husband and wife, to A. Wilson Embrey, Jr. and DuVal Q. Hicks, Jr., Trustees, conveying Lot 14, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia, in trust to secure one note in the amount of \$43,000.00 payable to Fredericksburg Savings and Loan Association, Fredericksburg, Virginia, duly recorded in Deed Book 148 at Page 437 of said land records;

(d) That certain deed of trust dated April 5, 1973 from Rodolfo L. Quion and Annie S. Quion, husband and wife, to A. Wilson Embrey, Jr. and DuVal Q. Hicks, Jr., Trustees, conveying Lot 15, Section 2, Braehead Woods Subdivision, Fredericksburg, Virginia, in trust to secure one note in the amount of \$42,000.00, payable to Fredericksburg Savings and Loan Association, Fredericksburg, Virginia, duly recorded in Deed Book 149 at Page 150 of said land records;

It is expressly understood that the release of the easement herein conveyed from the lien of the aforesaid deeds of trust shall not affect in anywise the lien of the aforesaid deeds of trust upon the other land thereby conveyed and not released hereby.

(12) The said parties of the fourth part, Confederate Builders, Inc., Noteholder, and George C. Rawlings, Jr., Trustee, for valuable consideration, the receipt whereof is hereby acknowledged, do hereby join in this agreement for the express purpose of releasing and do hereby release unto the said party of the second part, all of their right, title and interest and estate in and to the easement herein conveyed from the lien of that certain deed of trust dated June 1, 1973 wherein Norman W. Rowe and Phyllis T. Rowe, husband and wife, conveyed Lot 13, Section 2, Braehead Woods Subdivision, Fredericksburg,

unto George C. Rawlings, Jr., Trustee in trust to secure one note in the amount of \$20,050.00 payable to Confederate Builders, Inc., duly recorded in Deed Book 149 at Page 676 of said land records, but it is expressly understood that the release of the easement herein conveyed from the lien of said deed of trust shall not affect in anywise the lien of the said deed of trust upon the other land thereby conveyed and not released hereby.

WITNESS the following signatures and seals:

Joseph R. Plummer (SEAL)  
Joseph R. Plummer

Joyce B. Plummer (SEAL)  
Joyce B. Plummer

Norman W. Rowe (SEAL)  
Norman W. Rowe

Phyllis T. Rowe (SEAL)  
Phyllis T. Rowe

Richard A. Kaye (SEAL)  
Richard A. Kaye

Jacqueline M. Kaye (SEAL)  
Jacqueline M. Kaye

Rodolfo L. Quion (SEAL)  
Rodolfo L. Quion

Annie S. Quion (SEAL)  
Annie S. Quion

LAND DEVELOPMENT, INC.

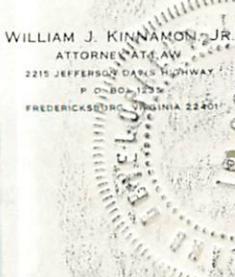
By F. Maxfield Brown (SEAL)  
F. Maxfield Brown, President

ATTEST:

Secretary

SEAL:

Secretary



CITY OF FREDERICKSBURG, VIRGINIA,

By *Freeman Junk* (SEAL)  
City Manager

ATTEST:

*Phyllis C. Ellis*  
Deputy Clerk

SEAL:

FREDERICKSBURG SAVINGS AND LOAN  
ASSOCIATION, Fredericksburg, Virginia,  
Noteholder

By *Lauren McQuitty* (SEAL)  
President

ATTEST:

*M King*  
Secretary

SEAL:

*A Wilson Embrey Jr* (SEAL)  
A. Wilson Embrey, Jr., Trustee

*DuVal Q. Hicks Jr* (SEAL)  
DuVal Q. Hicks, Jr., Trustee

CONFEDERATE BUILDERS INC., Noteholder

By *J. Maxwell Brown* (SEAL)

ATTEST:

*R. Blaylock*  
Secretary

SEAL:

*George C. Rawlings Jr* (SEAL)  
George C. Rawlings, Jr., Trustee

STATE OF VIRGINIA

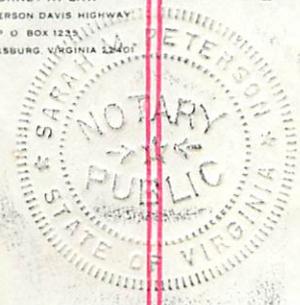
City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged  
before me this 21<sup>st</sup> day of November, 1973, by  
Joseph R. Plummer and Joyce B. Plummer, his wife.

*Sarah M Peterson*  
Notary Public

My commission expires 2/24/75

WILLIAM J. KINNAMON, JR.  
ATTORNEY AT LAW  
2215 JEFFERSON DAVIS HIGHWAY  
P. O. BOX 1225  
FREDERICKSBURG, VIRGINIA 22401



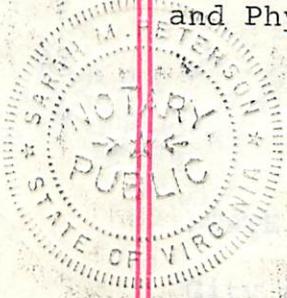
STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of November, 1973, by Norman W. Rowe and Phyllis T. Rowe, husband and wife.

Sarah M. Peterson  
Notary Public

My commission expires: 2/24/75



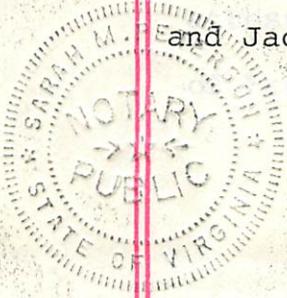
STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of November, 1973, by Richard A. Kaye and Jacqueline M. Kaye, husband and wife.

Sarah M. Peterson  
Notary Public

My commission expires: 2/24/75



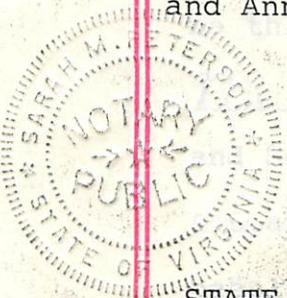
STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 23 day of November, 1973, by Rodolfo L. Quion and Annie S. Quion, husband and wife.

Sarah M. Peterson  
Notary Public

My commission expires: 2/24/75



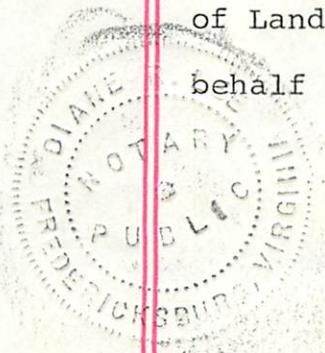
STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of November, 1973, by F. Maxfield Brown

WILLIAM J. KINNAMON, JR.  
ATTORNEY AT LAW  
2215 JEFFERSON DAVIS HIGHWAY  
P O BOX 1235  
FREDERICKSBURG, VIRGINIA 22401

and R. C. Glazebrook, President and Secretary, respectively, of Land Development, Inc., a Virginia corporation, on behalf of the corporation.



Diane R. Free  
Notary Public

My commission expires: 10-16-76

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me by F. Freeman Funk, City Manager of the City of Fredericksburg, Virginia, a Municipal Corporation, and duly attested by <sup>Phyllis C Ellis Deputy</sup> ~~Martha M. Beck~~, Clerk, on behalf of the City of Fredericksburg, Virginia, a Municipal Corporation.

Cleanor W. Bettick  
Notary Public

My commission expires: Aug 26, 1975

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of November, 1973, by Laurence McMuntry and J. M. King, President and Secretary, respectively, of Fredericksburg Savings & Loan Association, a Virginia corporation, Noteholder, on behalf of the corporation.

Linda Chewing  
Notary Public

My commission expires: January 8 1974

STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 23rd day of Nov., 1973, by A. Wilson Embrey, Jr. and DuVal Q. Hicks, Jr., Trustees.

Walter M. Edwards  
Notary Public

My commission expires: June 29th, 1977

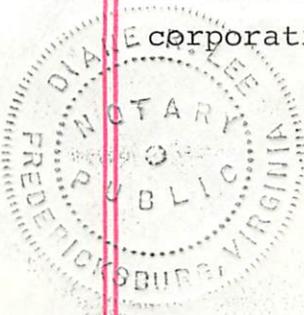
STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 23rd day of November, 1973, by F. Maxwell Brown and R.C. Slagbroack, Jr. President and Secretary, respectively, of Confederate Builders, Inc., a Virginia Corporation, on behalf of the corporation.

Quinn R. Fee  
Notary Public

My commission expires: 10-16-76



STATE OF VIRGINIA

City of Fredericksburg, to-wit:

The foregoing instrument was acknowledged before me this 21st day of November, 1973, by George C. Rawlings, Jr., Trustee.

Lucy Samuel  
Notary Public

My commission expires: July 12, 1975

VIRGINIA: In the Clerk's Office of the Circuit Court of the City of Fredericksburg on the 26 day of November, 1973 at 2:23 o'clock P.m., this Deed was presented and with Certificate annexed admitted to record and indexed. Teste: CHAS. H. BERRY, CLERK

Chas H Berry  
By..... Deputy Clerk



# ZONING MAP

## CITY OF FREDERICKSBURG

### VIRGINIA

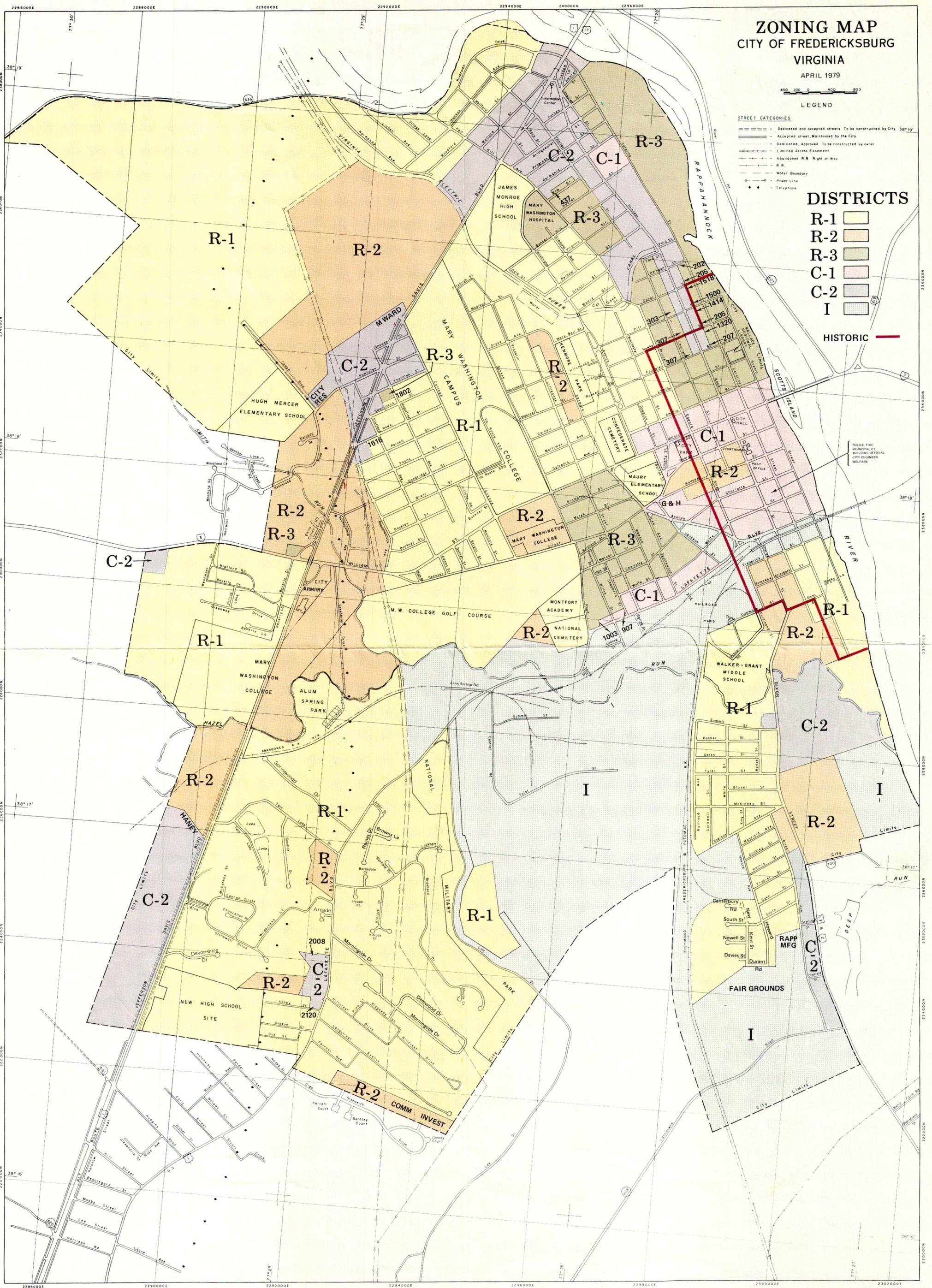
APRIL 1979



- LEGEND**
- STREET CATEGORIES**
- Dedicated and accepted streets. To be constructed by City. 36" lg'
  - Accepted street, Maintained by the City
  - Dedicated, Approved. To be constructed by owner
  - Limited Access Easement
  - Abandoned R.R. Right of Way
  - R.R.
  - Water Boundary
  - Power Line
  - Telephone

- DISTRICTS**
- R-1
  - R-2
  - R-3
  - C-1
  - C-2
  - I

**HISTORIC**



# ZONING MAP CITY OF FREDERICKSBURG VIRGINIA JULY 1972



## LEGEND

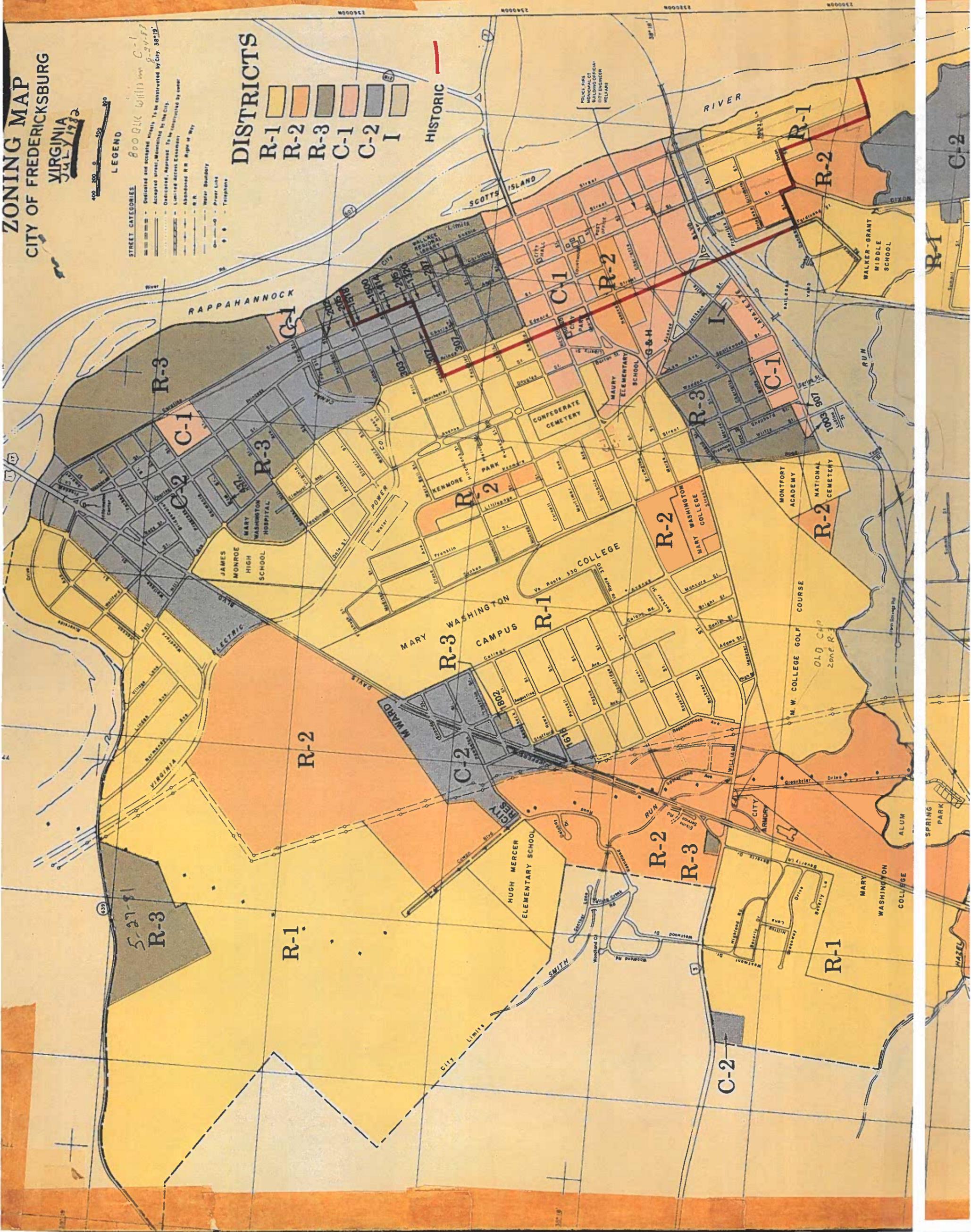
- STREET CATEGORIES**
- Dedicated and accepted rights. To be constructed by City. 36" 19"
  - Accepted streets. Manicured by the City.
  - Dedicated, Approved. To be constructed by owner.
  - Limited Access Easement.
  - Abandoned R.R. Right of Way.
  - R.R.
  - Water Boundary.
  - Power Line.
  - Telephone.

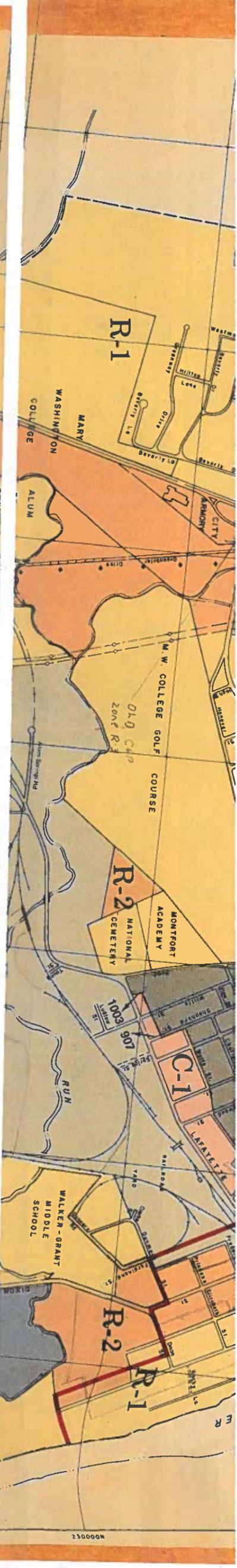
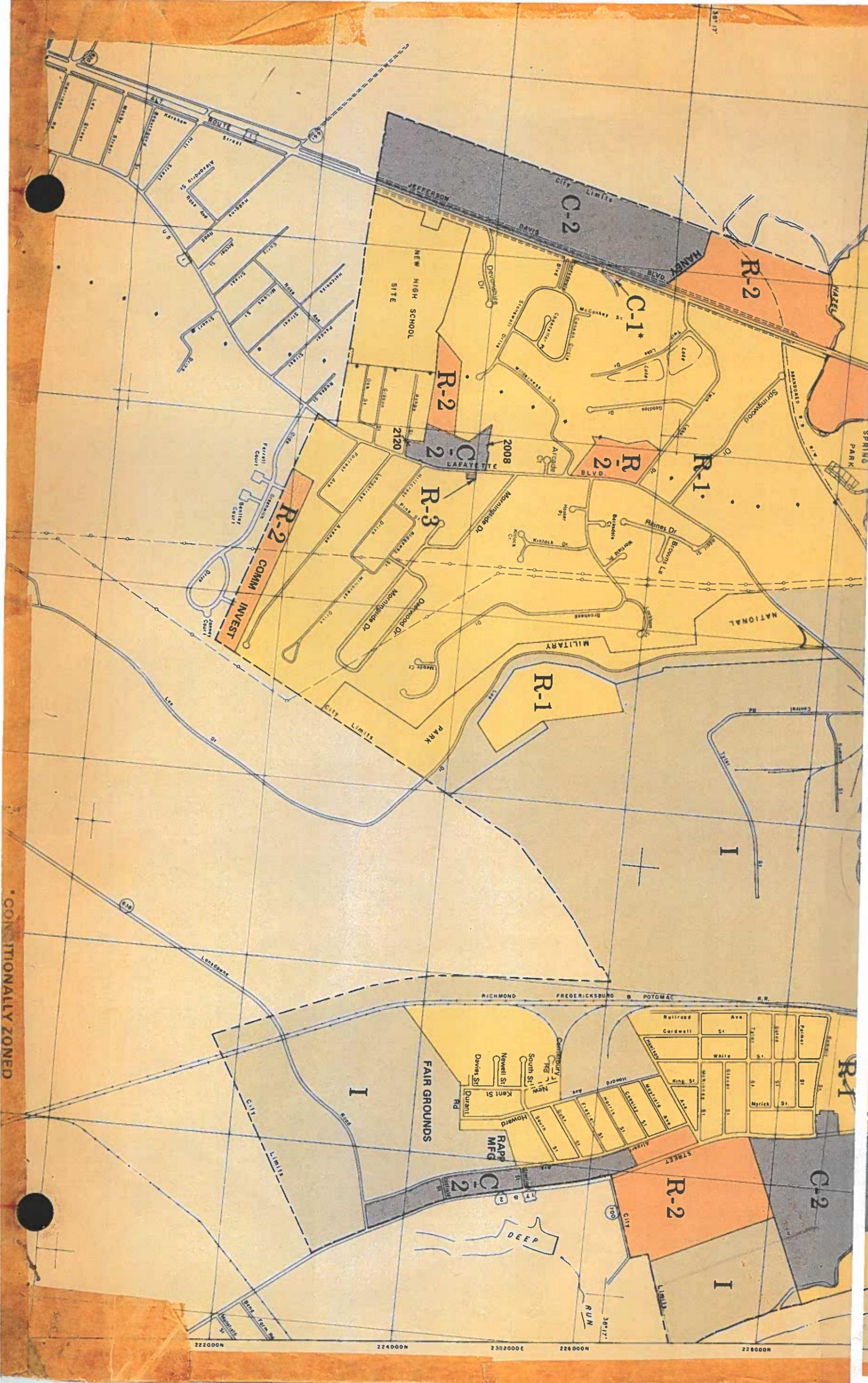
800 QIK with zone C-1  
8-24-87

## DISTRICTS

- R-1
- R-2
- R-3
- C-1
- C-2
- I

HISTORIC





\* CONDITIONALLY ZONED

000022 22400022 30002022 0000222 000022 000022 000022 000022

7  
84-26  
Page 1 of 8 Page(s)  
Meeting Date: 1/11/84

MEMORANDUM

TO: City Council  
FROM: Planning Commission  
RE: Joint Public Hearing with City Council to consider proposed City Zoning Ordinance  
DATE: January 6, 1984

The Planning Commission is about to complete its study and recommendations for a Revised City Zoning Ordinance. The Commission has held two formal public hearings, a number of work sessions, and incorporated both written and verbal public input into the formulation of this document.

The Commission feels the next step should be a joint City Council/Planning Commission public hearing to consider this document further. The Commission has suggested that this joint hearing be held February 16, 1984 at 7:00 P.M.

This date will allow the Planning Commission to meet with other interested groups and organizations and make additional adjustments and revisions as necessary in the interim period. Complete copies of the proposed ordinance as revised to date will be provided to Council after the regular Planning Commission meeting this month (January 17, 1984). In the meantime, I have enclosed for your review a summary of the proposed zoning district classifications as well as information relating to the development of land use and zoning recommendations for the annexed area.

DEVELOPMENT OF  
LAND USE PLAN AND ZONING RECOMMENDATIONS  
FOR THE ANNEXED AREA

Pursuant to Fredericksburg, Virginia City Code Section 18.1-17, adopted April 25, 1972 by Ordinance Number 72-9Z;

"Any territory hereafter annexed to the City of Fredericksburg shall be in District R-1."

The existing R-1 (Residential) District in the City of Fredericksburg is the most restrictive zone in terms of allowable uses and density. The R-1 district can be characterized as a low density residential zone with single-family dwellings as the predominant use. Cluster residential developments limited to single family detached dwellings are permitted in the existing R-1 zone by special use permit.

Proposed Zoning and Subdivision Ordinance Update:

The City Council and Planning Commission are in the process of updating and adopting a revised Zoning and Subdivision Ordinance, and Official Zoning Map. These documents are being revised significantly to reflect and implement the recommendations outlined in the City Comprehensive Plan which was adopted in 1981.

The impact of the 4.438 square miles comprising the annexation area has been considered in the formulation of the revised City Zoning and Subdivision Ordinances. The proposed ordinance revisions have been structured to accomodate both existing and potential development within the annexation area. The broadened zoning district classifications being proposed also reflect the changing growth and development patterns that have taken place since the prior zoning update in 1972 (See Attachment A).

Land Use and Zoning Recommendations - Annexation Area:

Although the effective date of annexation is January 1, 1984, the City has already begun its data collection and physical analysis of the annexed area. Initial efforts in this regard have included the development of updated aerial photography and 200-scale topographic mapping for the entire annexation area. This data will be especially useful in accurately mapping existing land use and completing the required physical analysis of the annexation area. These analyses will be followed by an evaluation of existing zoning, demographic, economic, housing, transportation, and public facilities and utilities data for the annexed area. The entire process, to include public hearings and a comprehensive assessment of annexation area citizens views and input, will culminate in a series of land use and zoning recommendations. These recommendations will be adopted as an Addendum to the City Comprehensive Plan and serve as a guideline for future growth and development within the area.

The adopted City Comprehensive Plan reflects a positive commitment to involve citizens in all phases of the planning and decision-making process. The Planning Commission and City Council will continue to hold public hearings and workshops to promote citizen participation in the development of the annexed area Land Use Plan and zoning recommendations.

Anticipated Timetable:

Traditionally, cities have been given at least one year to develop land use plans and zoning recommendations for territory which they annex. The City will endeavor to complete this task in a timely but prudent fashion (See Attachment B).

During the transitional period when the Annexed Area Land Use Plan and zoning recommendations are being formulated, some decisions on development proposals may be on a piecemeal basis. Such will not be encouraged, but when necessary, these decisions will take into account the following factors among other considerations:

- A. Existing zoning of property before annexation and adjacent zoning
- B. Impact on surrounding land uses
- C. Access provisions
- D. Availability of required utilities and facilities
- E. Impact on economic development objectives

Source of Information:

Questions regarding land use and zoning matters in the annexation area should be addressed to:

Director of Planning and Community Development  
P. O. Box 7447  
Fredericksburg, Va. 22404  
  
Telephone: 703-373-5011  
Room 209 (City Hall)

Copies of the proposed Zoning Ordinance and Subdivision Ordinance provisions are available for public examination in the Office of the City Manager, 715 Princess Anne Street (City Hall - Room 209), Fredericksburg, Virginia, as well as in the downtown Central Rappahannock Regional Library, and the Mary Washington College Library.

PROPOSED ZONING DISTRICT CLASSIFICATIONSR-2 RESIDENTIAL DISTRICT.

0 84 - 26  
 Page 4 of 8 Page(s)  
 Meeting Date: 1/11/84

Purpose and Intent

The R-2 District is created to provide for single family detached dwellings in suburban scaled and situated subdivisions. The maximum density of two (2.0) dwelling units per acre establishes this district as one with a low density residential character. The application of this district shall be compatible with the residential development of currently vacant land areas, including those in the annexation area, into subdivisions of ten (10) acres or greater.

R-4 RESIDENTIAL DISTRICTPurpose and Intent

The R-4 District is established to provide for single family detached dwellings in both developed and undeveloped areas of the City. The maximum density of four (4.0) dwelling units per acre recognizes prevailing single family densities in established residential areas where infill lot development and redevelopment may occur. The District is applicable to undeveloped areas including the annexation area, of adequate size and physiographic characteristic for suburban scale residential subdivisions of either a conventional or cluster design.

R-8 RESIDENTIAL DISTRICTPurpose and Intent

The R-8 District is established to provide for a planned mixture of single family detached and attached dwelling types at a density not to exceed eight (8.0) dwelling units per acre. Compatible development in this district would be sensitive to land physiography, public infrastructure and facilities, transportation access requirements, and vulnerable environmental features in achieving optimal siting of dwellings, open space, recreational and community facilities, and transportation systems.

R-16 RESIDENTIAL DISTRICTPurpose and Intent

The R-16 District is established to provide for a planned mixture of single family attached and multiple family dwelling types at a density not to exceed sixteen (16.0) dwelling units per acre. Compatible development in this district would be sensitive to land physiography, public infrastructure and facilities, transportation access requirements, and vulnerable environmental features in achieving optimal siting of dwellings, open space, recreational and community facilities, and transportation systems.

## R-30 RESIDENTIAL DISTRICT

0-84-26  
Page 5 of 8 Page(s)  
Meeting Date: 1/11/83

### Purpose and Intent

The R-30 District is established to provide for multiple-family dwellings of a mid-rise character at a density not to exceed thirty (30.0) dwelling units per acre and to allow other selected uses which are compatible with the unique character of such a residential district.

## RMH - Residential Mobile Home District

### Purpose and Intent

The RMH District is established to provide for the location of mobile homes in mobile home parks and to allow other selected uses which are compatible with the unique residential character of the district. Those areas of the City where mobile homes are presently located should be recognized as RMH districts with subsequent redevelopment subject to the provisions of this district.

## C-T, TRANSITIONAL COMMERCIAL/OFFICE DISTRICT

### Purpose and Intent

The C-T District is established to provide for the location of predominantly non-retail, commercial uses in a low intensity manner such that they can be employed as transitional land uses between residential neighborhoods and higher intensity uses. The application of this District is intended for newly developing areas of the City including the annexation area, where offices and financial institutions are the principal uses.

## C-D DOWNTOWN BUSINESS DISTRICT

### Purpose and Intent

The C-D District is established to promote harmonious development, redevelopment and rehabilitation of uses in the commercial areas of the Old and Historic Fredericksburg District. The regulations of this district are intended to promulgate the goals of the Comprehensive Plan for historic development while encouraging mixed uses in the downtown area. The emphasis in site planning is to be placed upon enhancing pedestrian circulation, minimizing vehicular/pedestrian access conflicts among uses, respecting the geometry of the downtown streetscape, and maintaining a continuity with the architectural precedents of the historic area.

## C-SC, COMMERCIAL SHOPPING CENTER DISTRICT

### Purpose and Intent

The C-SC District is established to provide locations for community and neighborhood retail commercial and services uses in planned shopping centers. The application of this District is intended for areas which will provide for orderly facility development, minimize traffic congestion, permit "one-stop" and comparison shopping, and provide for safe pedestrian movement. Typical uses found in the C-SC District include supermarket, drug store, variety department store, specialty stores, movie theaters.

## C-H, HIGHWAY RETAIL COMMERCIAL

o 84-26  
Page 6 of 8 Page(s)

Meeting Date: 1/11/84

### Purpose and Intent

The C-H District is established to provide locations on heavily traveled collector and arterial highways for those commercial and services uses which are oriented to the automobile requiring good access but not dependent on adjoining uses or pedestrian trade. The application of this district should be to those areas of the City where individual uses can be grouped in pre-planned concentrations and limiting the "strip" development effect on newly developing areas, such as those in the annexation area. Adequate transportation and site planning of uses should have the goal of minimizing through-traffic movements.

## I-1, LIGHT INTENSITY INDUSTRIAL DISTRICT

The I-1 District is established to provide areas for a broad range of clean industries operating under high performance standards. The district is designed to encourage light intensity uses in low density, well landscaped industrial park settings which would be compatible with all types of adjoining uses and afford maximum protection to surrounding properties.

## I-2, General Industrial District

The I-2 District is established to provide for medium to heavy industrial land uses in areas of the City appropriate to adequately serve the physical, transportation access, and environmental impacts of such industrial development.

## HFD - OLD AND HISTORIC FREDERICKSBURG DISTRICT

### Purpose and Intent

The Old and Historic Fredericksburg District (HFD) is established for the purpose of promoting the general welfare, education, and recreational benefit of the public through the recognition of this area of the City as having historic, architectural, and cultural significance. Regulations of the HFD are intended to protect and preserve the architectural integrity of existing structures, to create an atmosphere for compatible growth for future generations, to prevent the intrusion of environmental influences adverse to such purposes, and to assure that new structures and uses will be in keeping with the character to be preserved and enhanced.

## FPO - FLOODPLAIN OVERLAY DISTRICT

### Purpose and Intent

The FPO District is established to protect those areas of the City which are subject to periodic inundation from flood waters. The district provides development regulations with the objectives of (1) maintaining community safety from floods and related dangers, (2) protecting against loss of life, health, and property from floods and related dangers, (3) to preserve and protect floodplains, and (4) to require appropriate con-



DEVELOPMENT OF  
LAND USE PLAN AND ZONING RECOMMENDATIONS  
FOR THE ANNEXED AREA

pursuant to Fredericksburg, Virginia City Code Section 18.1-17, adopted April 25, 1972 by Ordinance Number 72-9Z;

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The existing R-1 (Residential) District in the City of Fredericksburg is the most restrictive zone in terms of allowable uses and density. The R-1 district can be characterized as a low density residential zone with single-family dwellings as the predominant use. Cluster residential developments limited to single family detached dwellings are permitted in the existing R-1 zone by special use permit.

Proposed Zoning and Subdivision Ordinance Update:

The City Council and Planning Commission are in the process of updating and adopting a revised Zoning and Subdivision Ordinance, and Official Zoning Map. These documents are being revised significantly to reflect and implement the recommendations outlined in the City Comprehensive Plan which was adopted in 1981.

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RESIDENTIAL DISTRICT

Anticipated Timetable:

Traditionally, cities have been given at least one year to develop land use plans and zoning recommendations for territory which they annex. The City will endeavor to complete this task in a timely but prudent fashion (See Attachment B).

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Fredericksburg, Va. 22404

Telephone: 703-373-5011  
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and attached dwelling types at a density not to exceed sixteen (16.0) dwelling units per acre. Compatible development in this district would be sensitive to land physiography, public infrastructure and facilities, transportation access requirements, and vulnerable environmental features in achieving optimal siting of dwellings, open space, recreational and community facilities, and transportation systems.

RESIDENTIAL DISTRICT

Purpose and Intent

The district is established to provide for a planned mixture of single family attached and multiple family dwelling types at a density not to exceed sixteen (16.0) dwelling units per acre. Compatible development in this district would be sensitive to land physiography, public infrastructure and facilities, transportation access requirements, and vulnerable environmental features in achieving optimal siting of dwellings, open space, recreational and community facilities, and transportation systems.

PROPOSED ZONING DISTRICT CLASSIFICATIONSR-2 RESIDENTIAL DISTRICT.0 84-26  
Page 4 of 8 Page(s)  
Meeting Date: 1/11/84Purpose and Intent

The R-2 District is created to provide for single family detached dwellings in suburban scaled and situated subdivisions. The maximum density of two (2.0) dwelling units per acre establishes this district as one with a low density residential character. The application of this district shall be compatible with the residential development of currently vacant land areas, including those in the annexation area, into subdivisions of ten (10) acres or greater.

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o 84-26  
Page 5 of 8 Page(s)  
Meeting Date: 1/11/83

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## C-H, HIGHWAY RETAIL COMMERCIAL

84-26  
Page 6 of 8 Page(s)  
Meeting Date: 1/11/84

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PROPOSED ZONING DISTRICTS/PERMITTED

LAND USES

LAND USE CATEGORIES	ZONING DISTRICTS											
	R-2 (2 DU/AC)	R-4 (4 DU/AC)	R-8 (8 DU/AC)	R-16 (16 DU/AC)	R-30 (30 DU/AC)	RMH (Mobile Homes)	C-T (Office/Transitional)	C-D (Downtown Commercial)	C-SC (Shopping Center)	C-H (Highway Commercial)	I-1 (Industrial-Light)	I-2 (Industrial - Heavy)
Single Family Detached	*	*					*	*				
Single Family Detached (Cluster)		*	*									
Family Dwellings			*	*			*	*				
Household Dwellings			*	*			*	*				
High-Rise Apartments				*			*	*				
Mid-Rise Apartments					*		*	*				
Low-Rise Apartments					*			*	*			
Mobile Homes						*						
Office Commercial							*	*	*	*	*	*
Downtown Commercial								*				
Shopping Centers								*				
Highway - Oriented Commercial Uses									*			
Light Industrial Uses											*	*
Heavy Industrial Uses												*

Meeting Date 1/11/84

**NOTICE OF  
PUBLIC HEARING  
PROPOSED ADOPTION  
OF REVISED ZONING  
& SUBDIVISION  
ORDINANCES**

Pursuant to Section 15.1-431 of the Code of Virginia, 1950 (as amended) notice is hereby given that the City Council of Fredericksburg, Virginia will hold a joint public hearing with the City Planning Commission to receive public input regarding the proposed update of the Zoning and Subdivision Ordinances and the Official City Zoning Map.

This joint public hearing will be held on Thursday, February 16, 1984 beginning at 7:00 p.m. in City Hall Council Chambers, 715 Princess Anne Street, Fredericksburg, Virginia. The public is urged to attend and present suggestions or comments on any aspect of the proposed ordinances including the substantially revised and broadened Zoning District Classifications, the expanded requirements proposed for governing the downtown "Historic Fredericksburg District", proposed revisions to the Zoning Map, and other recommended procedural and regulatory provisions.

A copy of the proposed revised Zoning and Subdivision Ordinances and Official Zoning Map is available for public examination in the Office of the City Manager, City Hall—Room 209 during regular business hours. The proposed Ordinances are also available for review in the Central Rappahannock Regional Library and the Mary Washington College Library.

Please address all questions regarding this issue to:

City Planning Commission  
P.O. Box 7447  
Fredericksburg, Va. 22404

or call the City Planner at 373-5011.

**NOTICE OF PROPOSED  
HEARING FOR  
PROPOSED ADOPTION  
OF REVISED  
CITY ZONING AND  
SUBDIVISION  
ORDINANCES** 263

Pursuant to Section 15.1-431 of the Code of Virginia, 1950 (as amended) notice is hereby given that the City Council of Fredericksburg, Virginia will hold a public hearing beginning at 6:30 p.m. on Tuesday, April 24, 1984 in City Hall Council Chambers, 715 Princess Anne Street, Fredericksburg, Virginia.

The purpose of the hearing is to receive additional public input regarding the proposed revised Zoning and Subdivision Ordinances and Official Zoning Map prior to adoption of said documents. The public is encouraged to attend and present their views.

A copy of the proposed revised Zoning and Subdivision Ordinances and Official Zoning Map is available for public examination in Room 209 of City Hall at the above referenced address. All questions regarding this matter should be addressed to the City Planning Office, 703/373-5011.

**Lawrence A. Davies  
Mayor**

April 24, 1984  
public hearing ad

April 24, 1984

THE COUNCIL of the City of Fredericksburg, Virginia, held a public hearing on Tuesday, April 24, 1984, 6:30 p.m., Council Chambers, City Hall.

PRESENT: Mayor Lawrence A. Davies, presiding. Councilors James D. Govenides, Barbara C. Terry, George M. Van Sant, Weldon L. Bailey, W. Sidney Armstrong, T. Stacy Lloyd, Jr., Gordon W. Shelton, Ralph A. Hicks, Jr., and Raymond R. Decatur.

ABSENT: Councilor Enos Richardson, Jr.

ALSO PRESENT: City Manager, Peter R. Kolakowski; Assistant City Manager, John M. Koelsch; Assistant City Attorney, Thomas Bricken; Clerk of Council, Christie S. Pugh; Director, Planning and Community Development, Jervis C. Hairston; and Community Development Coordinator, Sarah Mulligan.

ABSENT: City Attorney, Walter J. Sheffield.

PURPOSE OF HEARING. The Clerk of Council read the purpose of the public hearing which was to receive citizens' input on the proposed/revised Zoning and Subdivision Ordinances. (D84-203)

Mayor Davies requested those wishing to speak to raise their hands. The following persons spoke.

BRIAN DAMON, Economic Development Commission member, read a statement from the Commission requesting Council allow the Planning Commission to continue meeting with various groups and affected property owners to reach a mutually acceptable solution and the process be completed in no less than six months. (D84-204). Mr. Damon also spoke as President of the Central Fredericksburg Association and urged Council not to adopt Section/Division 18 of the Zoning Ordinance that evening. He questioned the sign requirements, stated there should be guidelines for regulation of Sec. 5, and questioned the membership of the Architectural Review Board. He suggested there be better representation of business persons on the Architectural Review Board.

DR. ROBERT WHEELER, Planning Commission member and Chairman of the Zoning Ordinance Committee, stated that they had worked very hard on the matter and realize it can be improved upon. He also stated that the annexed area will be worked on soon and the Zoning Ordinance and Comprehensive Plan will have to be revised by the end of the year. He suggested Council pass as much of the ordinance that evening as they could.

MRS. HEWETSON stated that she was one of the founders of the Historic District. She requested that area be controlled.

MR. JOE RILEY questioned the rights of the property owners in the Historic District. He stated that the rules and regulations are not clear.

MR. MORTON NUMAR stated that he lives in Arlington and owns a house on Caroline Street and plans to retire there. He questioned the reasons for the changes in the Historic District and the necessity of it. He further stated that he now questions the value of his house. He requested Council not pass Division 18 in its present form.

MR. DAVE LOWE stated that the ordinance affects the livelihood of the merchants downtown and pointed out there are very few businesses that can survive off tourists. He also pointed out that there are historical homes on Washington Avenue near Kenmore which are not included in this. He stated that the businessmen need clarification of the rules and guidelines. Mr. Lowe further questioned the membership of the Architectural Review Board and suggested it contain business persons. He also stated that no provision is made for emergency repairs. Mr. Lowe urged Council not to adopt Section 18 as written. He presented a petition regarding Division 18. (D84-205)

COUNCIL MEETING OPENED AND PUBLIC HEARING RECESSED At this time, 7:30 p.m., Mayor Davies stated that according to the law the Council meeting had to be called to order. The public hearing was recessed and would continue after the Council meeting was opened.

*Lawrence A. Davies*  
\_\_\_\_\_  
Mayor

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Clerk of Council

Ag

THE COUNCIL of  
in regular session at  
Chambers, City Hall.

PRESENT: Mayor

James D. Covenides,  
L. Bailey, W. Sidney  
Shelton, Ralph A. Hi

ABSENT: Council

ALSO PRESENT:

City Manager, John M  
Bricken; Clerk of Co  
and Community Develo  
Development Coordina

ABSENT: City A

PRAYER: The me

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MR. FRANK BROOKS

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April 24, 1984

THE COUNCIL of the City of Fredericksburg, Virginia, met in regular session on Tuesday, April 24, 1984, 7:30 p.m., Council Chambers, City Hall.

PRESENT: Mayor Lawrence A. Davies, presiding Councilors James D. Govenides, Barbara C. Terry, George M. Van Sant, Weldon L. Bailey, W. Sidney Armstrong, T. Stacy Lloyd, Jr., Gordon W. Shelton, Ralph A. Hicks, Jr., and Raymond R. Decatur.

ABSENT: Councilor Enos Richardson, Jr.

ALSO PRESENT: City Manager, Peter R. Kolakowski; Assistant City Manager, John M. Koelch; Assistant City Attorney, Thomas Bricken; Clerk of Council, Christie S. Pugh; Director of Planning and Community Development, Jervis C. Hairston; and Community Development Coordinator, Sarah Mulligan.

ABSENT: City Attorney, Walter J. Sheffield.

PRAYER: The meeting was opened with a prayer from Councilor Hicks. The public hearing continued.

MS. MARGUERITE MILLS stated she is owner of Crismond Shoe Store and does not feel the business concerns of those in the Historic District have been considered. She stated that Division 18 only recognizes special interest groups and she is against the tones of the ordinance. Ms. Mills further stated that 1870 should be the permanent cut off date of historic buildings. She suggested a maintenance ordinance be adopted.

MR. AL GALLANT, Chairman of the Planning Commission, stated the Commission tried to do the best it could and tried to be in touch with Central Fredericksburg Association and other organizations. He stated that he hoped they could have better communication in the future and he thanked all persons for their input.

MR. WILLIAM BLODGETT, Architectural Review Board member, stated that Section 18 is needed and the Architectural Review Board is basically a suggestive body.

MR. FRANK BROOKS stated that R-1 property should not be reassigned R-4. He urged Council to not act in haste and pass

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the ordinance chapter by chapter as done with the City Code.

HEARING CLOSED. There being no others desiring to speak, the hearing was closed at 7:55 p.m.

PUBLIC HEARING ON REZONING REQUEST FOR 317 PRINCESS ANNE STREET. A second public hearing was held that evening for the purpose of receiving citizens' input on the request to rezone from R-1 to R-2 the property addressed 317 Princess Anne Street. (D84-206) The following persons spoke.

MRS. MAUREEN BLODGETT stated she is a property owner at 400 Princess Anne Street and a real estate agent representing the property owner of 317 Princess Anne Street. She stated that property across the street is zoned R-2 and pointed out that it would be hard to use 317 for a single family dwelling.

MRS. WILMA RICHARDSON stated that she lives next door to the property and has been ask for use of her property while renovation is taking place. She stated that she has no problem with the property being rezoned but does not want them to use her property during renovation.

Mayor Davies stated that since this could be considered spot zoning that Council should allow the City Attorney and City Planner to discuss the matter further. Mr. Hairston agreed.

CLOSED. There being no others wishing to speak, the hearing was closed at 8:10 p.m.

ADDITIONS TO AGENDA. The following items were added to the agenda.

- 1A. Letter from McCoy family-Dr. Lloyd
- 1B. Milestone-Mr. Van Sant

APPROVAL OF MINUTES. Mayor Davies asked Council's pleasure regarding the minutes of the March 21, 1984 special meeting and April 10, 1984 regular meeting. Mrs. Terry moved that they be approved. Mr. Bailey seconded the motion and it passed unanimously by voice vote.

✓ ZONING AND SUBDIVISION ORDINANCE 84-8 ADOPTED WITH EXCEPTION OF SECTION 18. Mr. Van Sant made a motion that the Zoning and Subdivision Ordinances be placed on second reading with the

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the property as a family dwelling.

located next door to

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wanting them to use

the property to be considered spot

zoning. The City Attorney and City Planner

agreed.

After she finished speaking, the hearing

was closed. Comments were added to the

minutes at the Council's pleasure

at the special meeting and

it was decided that they be

and that it passed unanimously.

RESOLVED WITH EXCEPTION

that the Zoning and

ordinance dealing with the

exception of the section regarding Historic District and Council set a 90 day deadline for the Planning Commission to work out a compromise that will be suitable for all parties. Mr. Decatur seconded the motion and suggested it be amended to include adoption of the part of Section 18 regarding the Architectural Review Board membership for a one year trial. Mr. Van Sant accepted the amendment. Mr. Armstrong stated he would vote against the motion because the citizens are concerned over that portion of Sec. 18 regarding the Architectural Review Board. Mr. Van Sant stated he was not sure whether he accepted the amendment or not.

Mr. Shelton made a substitute motion that the Zoning Ordinance be placed on second reading with the exception of Section 18. Mr. Armstrong seconded the motion and it passed unanimously by the following recorded vote. Ayes (10): Councilors Govenides, Terry, Van Sant, Bailey, Armstrong, Lloyd, Shelton, Hicks, Decatur, and Mayor Davies. Nays (0): None.

Mr. Armstrong made a motion that Article 14 of the old Zoning Ordinance remain in effect until Section 18 of the new ordinance is passed. Mr. Van Sant seconded the motion and it passed by the following recorded vote. Ayes (10): Councilors Govenides, Terry, Van Sant, Bailey, Armstrong, Lloyd, Shelton, Hicks, Decatur, and Mayor Davies. Nays (0): None.

Mr. Shelton pointed out that better communication is needed.

Mr. Shelton made a motion that Section 18 be returned to the Planning Commission for additional study. Mr. Van Sant seconded the motion and it passed unanimously by voice vote.

REZONING REQUEST FOR 317 PRINCESS ANNE STREET REFERRED TO CITY ATTORNEY AND CITY PLANNER. Mrs. Terry made a motion that the rezoning of 317 Princess Anne Street be referred to the City Attorney and City Planner. Mr. Van Sant seconded the motion and it passed unanimously by voice vote.

CITY MANAGER TRANSMITTED VARIOUS DOCUMENTS FOR FILING IN THE DOCUMENT BOOK. Minutes of the Board of Zoning Appeals meeting

held January 12, 1984 (D84-207); Minutes of the Board of Zoning Appeals meeting held January 16, 1984 (D84-208); Minutes of the Architectural Review Board meeting held March 12, 1984 (D84-209); Minutes of the Architectural Review Board meeting held March 26, 1984 (D84-210); Minutes of the Finance Committee meeting held April 3, 1984 (D84-211); Minutes of the Public Interest Committee meeting held April 5, 1984 (D84-212); Minutes of the Citizens Cable TV Commission meeting held April 10, 1984 (D84-213); Minutes of the Planning Commission meeting held April 17, 1984 (D84-214).

Dr. Lloyd made a motion that the minutes be placed in the document book. Mr. Hicks seconded the motion and it passed unanimously by voice vote.

CONSENT AGENDA. The City Manager presented the consent agenda for approval. Mr. Hicks requested discussion of item 4C and Mr. Shelton requested discussion of item 4B. Mr. Hicks made a motion that the remaining items be approved. Mr. Govenides seconded the motion and it passed unanimously by voice vote.

The following items were approved.

4A. Virginia Employment Commission's dislocation workers program in conjunction with the Job Training Partnership Act. Approved and Mayor authorized to execute the document on behalf of the City. (D84-215)

4D. Recommendation that the Public Works Department vacancy on the Clean Community Commission be referred to the Public Interest Committee for replacement.

4E. Rezoning request. Matter referred to the Planning Commission for report and recommendation. (D84-216)

4F. Letter from Mr. Robert Shelton concerning leasing property at 410 Lafayette Blvd. Matter referred to Public Works Committee for report and recommendation. (D84-217)

4G. For Information: Michael Baker Engineering has notified the City that they will be unable to complete their report until the 1st week in May. They are waiting for a couple of documents from Federal agencies as part of their research.

4B. LETTER RE PLANT. Mr. Kolakow Schooler in regards Filtration Plant. the Public Works Co Mr. Shelton question 60 to 90 days for a the drainage problem

4C. LETTER RE Mr. Kolakowski trans 823 Marye Street in Mr. Hicks questioned Govenides stated the the Public Interest (D84-219)

Mr. Shelton made Mrs. Terry seconded vote.

RESOLUTION 84-2 Mr. Kolakowski trans May as "Older America that the resolution Mayor Davies suggest be changed to "we". by voice vote. (D84

APPLICATION FOR an application for M has until May 10 to Kolakowski further r at that time and will Shelton questioned w approves the event. prohibits that. (D84

CONTINGENCIES T of contingencies is

4B. LETTER REGARDING USE OF A SITE NEAR WATER FILTRATION PLANT. Mr. Kolakowski transmitted a letter from Mr. Malone Schooler in regards to the use of a site near the Water Filtration Plant. He recommended the matter be referred to the Public Works Committee for report and recommendation. Mr. Shelton questioned the time frame. Mr. Kolakowski stated 60 to 90 days for a response. Dr. Lloyd questioned whether the drainage problem would be complicated by the use. (D84-218)

4C. LETTER REGARDING NOISE COMPLAINT ON MARYE STREET. Mr. Kolakowski transmitted a letter from the property owner of 823 Marye Street in regards to neighborhood noise complaints. Mr. Hicks questioned the status of the noise ordinance. Mr. Govenides stated that the Commonwealth's Attorney had informed the Public Interest Committee that it was not enforceable. (D84-219)

Mr. Shelton made a motion that items 4B and C be approved. Mrs. Terry seconded the motion and it passed unanimously by voice vote.

RESOLUTION 84-25 REGARDING "OLDER AMERICANS MONTH" APPROVED. Mr. Kolakowski transmitted a resolution approving/proclaiming May as "Older Americans Month" in the City. Mrs. Terry moved that the resolution be approved. Mr. Bailey seconded the motion. Mayor Davies suggested that in the seventh paragraph "Mayor Davies" be changed to "we". This was accepted and it passed unanimously by voice vote. (D84-220)

APPLICATION FOR MEMORIAL ROCK 1984. Mr. Kolakowski transmitted an application for Memorial Rock '84. He stated that Council has until May 10 to accept or reject the application. Mr. Kolakowski further reported that he does not have a recommendation at that time and will be meeting with the City Attorney. Mr. Shelton questioned whether tickets could be sold before the City approves the event. Mr. Bricken stated there is nothing that prohibits that. (D84-221)

CONTINGENCIES TOTAL. Mr. Kolakowski reported that the total of contingencies is \$170,672.00.

INDUSTRIAL SPUR AGREEMENT. Mr. Kolakowski reported that he will receive an executed copy of the Industrial Spur Agreement tomorrow.

BOOK ON VIRGINIA. Mr. Kolakowski shared with Council pictures of Fredericksburg structures which appear in a book on Virginia.

ORDINANCE 84-11, 84-12, AND 84-13, REZONING REQUESTS, PLACED ON FIRST READING AND PUBLIC HEARING TO BE HELD MAY 22, 1984. Mr. Hairston presented three rezoning requests: Request to rezone from R-3 to C-2 property adjoining and including Rebel Bowl which extends along Jackson Street between Charlotte and Wolfe Streets; Request to rezone from R-1 to R-2 2410 and 2414 Lafayette Boulevard; Request to rezone from R-1 to C-2 a parcel located off the service road (Ramseur Street) on the north side of Route 3 just east of I95. Mr. Hairston reported that the Planning Commission recommends the first request be approved for C-1 zoning and the Ordinance 84-11 be placed on first reading. The Planning Commission recommends the second request of R-2 be approved and the Ordinance 84-12 be placed on first reading and recommends the third request be approved C-2 and the ordinance 84-13 be placed on first reading with a public hearing to be held on May 22, 1984 at 7:00 p.m. on all three requests.

Dr. Lloyd made a motion that Ordinances 84-11, 12, and 13 be placed on first reading and a public hearing be held on May 22, 1984 at 7:00 p.m. Mr. Hicks seconded the motion and it passed unanimously by voice vote. (D84-222)

HISTORIC DISTRICT MAP. Mr. Hairston presented a color map of the Historic District.

ORDINANCE 84-14, UTILITY TAX, PLACED ON FIRST READING. Mr. Bricken presented a revised Utility Tax Ordinance and recommended first reading. Dr. Lloyd so moved and Mr. Bailey seconded the motion and it passed unanimously by voice vote. (D83-223)

SPECIAL COUNCIL MEETING ON BUDGET. Mr. Van Sant reminded

Council of the Special  
Thursday at 8:00 p.m.  
Finance Committee meet

APPRECIATION EXPRESSION  
Chairman of the Education  
for his services on the

1A. LETTER FROM  
Dr. Lloyd transmitted  
a drainage problem on  
He suggested the Public  
Mr. Kolakowski reported  
McCoy and she wants to  
reported that the District  
Works Department to work  
he had looked at the  
Mr. Bailey stated that  
McCoy has the right to  
The matter was left with

1B. MILESTONE.  
the last Council meeting  
He expressed gratitude  
Mrs. Terry decided not to

Mayor Davies point  
100 percent attendance

Mr. Govenides stated  
the people of Fredericksburg  
finest people on Council

ADJOURNMENT: Up  
Mr. Van Sant and unanimous  
10:00 p.m.

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Clerk of

Council of the Special Council Meeting on the budget that Thursday at 8:00 p.m. He also reported that the regular Finance Committee meeting for May has been postponed.

APPRECIATION EXPRESSED TO MR. GOVENIDES. Mr. Hicks, Chairman of the Education Committee, expressed appreciation for his services on the Education Committee.

1A. LETTER FROM MCCOY FAMILY REGARDING DRAINAGE PROBLEM. Dr. Lloyd transmitted a letter from Mrs. James McCoy regarding a drainage problem on her property at 2120 Lafayette Boulevard. He suggested the Public Interest Committee look into the matter. Mr. Kolakowski reported that he has been in contact with Mrs. McCoy and she wants the City to install a pipe. He further reported that the ditches were cleaned and he asked the Public Works Department to work on the matter. Mr. Decatur stated that he had looked at the property and there are some real problems. Mr. Bailey stated that he had also seen the property and Mrs. McCoy has the right to feel that she has been stepped on. The matter was left with the City Manager. (D84-224)

1B. MILESTONE. Mr. Van Sant reported that tonight is the last Council meeting for Mr. Govenides and Mrs. Terry. He expressed gratitude to Mr. Govenides and stated he was sorry Mrs. Terry decided not to run again.

Mayor Davies pointed out that tonight's meeting marked 100 percent attendance for Mr. Shelton. (D84-225)

Mr. Govenides stated that it has been a pleasure to serve the people of Fredericksburg and to come to know some of the finest people on Council.

ADJOURNMENT: Upon the motion of Mrs. Terry, seconded by Mr. Van Sant and unanimously carried, the Council adjourned at 10:00 p.m.

  
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Mayor

\_\_\_\_\_  
Clerk of Council

April 24 1984  
City Council Minutes

the ordinance chapter by chapter as done with the City Code.

HEARING CLOSED. There being no others desiring to speak, the hearing was closed at 7:55 p.m.

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exception of the section regarding Historic District and Council set a 90 day deadline for the Planning Commission to work out a compromise that will be suitable for all parties. Mr. Decatur seconded the motion and suggested it be amended to include adoption of the part of Section 18 regarding the Architectural Review Board membership for a one year trial. Mr. Van Sant accepted the amendment. Mr. Armstrong stated he would vote against the motion because the citizens are concerned over that portion of Sec. 18 regarding the Architectural Review Board. Mr. Van Sant stated he was not sure whether he accepted the amendment or not.

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CITY MANAGER TRANSMITTED VARIOUS DOCUMENTS FOR FILING IN THE DOCUMENT BOOK. Minutes of the Board of Zoning Appeals meeting

*Rob Wheel*

CITY OF FREDERICKSBURG, VIRGINIA

**ZONING &  
SUBDIVISION  
ORDINANCES**

Adopted By City Council  
Effective: April 25, 1984

DIVISION 1:  
CONSTITUTION AND PURPOSE

2-1.1 Title and Application

The regulations embraced in this Article of the Code of Fredericksburg, Virginia shall be designated as the "Zoning Ordinance of Fredericksburg, Virginia." The provisions of the Zoning Ordinance shall apply to all land and structures in the incorporated territory of the City of Fredericksburg.

2-1.2 Purpose and Intent

The Zoning Ordinance of Fredericksburg, Virginia (hereinafter the Ordinance) is intended for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of Section 15.1-489 of the Code of Virginia, as amended.

2-1.3 Severability and Validity

Should any Section, division or provision of this Ordinance be decided by the Courts to be invalid or unconstitutional, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part held unconstitutional or invalid.

2-1.4 Conflicting Ordinances

All other City ordinances, or parts thereof, which are inconsistent with the provisions of this Ordinance are hereby repealed. If another State or Federal statute or City ordinance or regulation contains conflicting provisions with this Ordinance, the more restrictive of the provisions, ordinances, or regulations shall govern.

2-1.5 Minimum Requirements

In interpreting and applying the provisions of this Article, they shall be held to the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not intended by this Article to interfere with or abrogate or annul any easements, covenants, or other agreement between parties, provided, however, that where this Article imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or required larger open spaces than are imposed or required by other ordinances, rules, regulations, or by easements, covenants or agreements, the provisions of this Article shall govern.

2-1.6 Effective Date

This Ordinance was adopted on April 24, 84, by the City Council of Fredericksburg, Virginia and became effective on April 25, 1984,

, at which time all previous zoning provisions and ordinances were repealed. A certified copy of the Ordinance, as may be amended from time to time, shall be filed in the Office of the City Zoning Administrator and in the Office of the Director of Public Works.

DIVISION 2:  
GENERAL REGULATIONS

2-2.1 General Effect

No structure hereafter shall be erected and no existing structure shall be moved, altered, added to or enlarged, nor shall any land or structure be used or arranged for any purpose or manner other than those permitted in or which may be contrary to the specific districts and provisions of this Ordinance.

2-2.2 Prior Approvals

Nothing in this Ordinance shall be deemed to require any change to the plans or buildings previously approved prior to the effective date of this Ordinance.

2-2.3 Zoning Map and Districts

The incorporated territory of the City of Fredericksburg, Virginia shall be divided into classes of zoning districts as presented in Divisions 6-19. The location and boundaries of the zoning districts established by this Ordinance are as indicated on the map entitled "Official Zoning Map of Fredericksburg, Virginia", as approved by the City Council as part of this Article and filed in the Office of the Zoning Administrator and the Director of Public Works.

2-2.4 Zoning District Boundaries

In the event that uncertainties exist with respect to the intended boundaries of the various zoning districts as shown on the Official Zoning Map, the following rules shall apply:

1. Where indicated boundaries follow streets, alleys, railroads or waterways, such boundaries shall be construed as the centerlines of those streets, alleys, railroads or waterways.
2. Where indicated boundaries approximately follow lines of lots or parcels of record or scale to be not more than ten (10) feet therefrom, such lot or parcel lines shall be construed to be such boundary.
3. Where a zoning district divides a parcel of land, the location of such boundary shall be determined by the use of the Zoning Map scale to the nearest foot unless such line can be more accurately determined by geometric computations.
4. The Flood Boundary and Floodway Map, as amended, prepared by the Department of Housing and Urban Development, shall be incorporated into the Zoning Map to delineate the boundaries of the Floodplain Overlay District (FPO).
5. Where uncertainties continue to exist as to district boundary determination, such location shall be determined by the Board of Zoning Appeals.

**2-2.5 Annexation**

Any territory hereafter annexed to the City of Fredericksburg shall be initially classified under the R-2 District and thereafter such amendments to the annexed area shall be classified according to the districts which most closely serve to implement the Comprehensive Plan for this area.

**2-2.6 Interpretation of District Regulations**

**1. Permitted Uses/Special Permit Uses**

- A. Any use, not otherwise prohibited by law, shall be permitted to locate in a specified district or districts, either as a permitted use or a special permit use which is provided for therein. Any use not specifically permitted in a specified district or districts as by right use or special permit use shall be prohibited.
- B. Where a reference is made to specific prohibitions it is for the purpose of clarification or guidance and no further inference may be drawn therefrom.
- C. No structure shall hereafter be built or moved, and no structure or land shall hereafter be occupied, except for a use that is permitted as a by right use or a special permit use and as regulated by the provisions for such use and applicable district requirements.
- D. No use of a structure or land that is designated as a special permit use in any district shall be established or hereafter changed to another use designated as a special use permit, unless a special use permit has been secured from the City Council in accordance with the provisions of Article 2-20.
- E. No sign, accessory use or structure, or home occupation shall be hereafter established, altered, or enlarged unless in accordance with the provisions of this Ordinance.
- F. In the event there is not a particular use listed in the Ordinance that corresponds to a use in question, then it shall be interpreted that the use in the Ordinance having the most similar characteristics shall govern, as determined by the Zoning Administrator.
- G. Notwithstanding any other provisions of this Ordinance, the City Council reserves the right to issue any special permit.

**2. Bulk and Size**

- A. Where no minimum district size is specified, the minimum area, and width requirements shall define the minimum district size.
- B. No land encumbered by easement for distribution facilities, transformers, distribution lines, or transmission lines for

DIVISION 6:  
R-2 RESIDENTIAL DISTRICT

2-6.1 Purpose and Intent

The R-2 District is created to provide for single family detached dwellings in suburban scaled and situated subdivisions. The maximum density of two (2.0) dwelling units per acre establishes this district as one with a low density residential character. The application of this district shall be compatible with the residential development of currently vacant land areas, including those in the annexation area, into subdivisions of ten (10) acres or greater.

2-6.2 Permitted Uses

1. Single family detached dwellings
2. Accessory uses, to include detached carports and garages, tool sheds, children's playhouses, and doghouses

2-6.3 Special Permit Uses

1. Cemeteries
2. Churches
3. Cluster residential subdivisions
4. Colleges and universities
5. Libraries
6. Museums and shrines
7. Plant nurseries, with no sale of nursery products permitted on premises
8. Day Care Homes
9. Private schools and related uses
10. Public schools, parks, playgrounds, athletic fields and related uses
11. Public utility uses
12. Swimming pools, private
13. Bed and breakfast lodging

**2-6.4 Maximum Density**

**Two (2.0) dwelling units per acre**

**2-6.5 Lot Size Requirements**

1. Minimum district size for cluster subdivisions: Ten (10) acres
2. Minimum Lot Area
  - A. Conventional subdivision lot: 15,000 sq. ft.
  - B. Cluster subdivision lot: 13,000 sq. ft.
3. Minimum lot width
  - A. Conventional subdivision lot
    - (1) Interior lot: 100 feet
    - (2) Corner lot: 125 feet
  - B. Cluster subdivision lot
    - (1) Interior lot: 80 feet
    - (2) Corner lot: 100 feet

**2-6.6 Bulk Regulations**

1. Maximum building height
  - A. Single family dwellings: 35 feet
  - B. All other structures: 50 feet
2. Minimum yard requirements
  - A. Conventional subdivision lot
    - (1) Front yard: 35 feet
    - (2) Side yard: 12 feet, with a minimum total of 30 feet
    - (3) Rear yard: 30 feet
  - B. Cluster subdivision lot
    - (1) Front yard: 25 feet
    - (2) Side yard: 10 feet, with a minimum total of 24 feet
    - (3) Rear yard: 25 feet

- C. A maximum floor area ratio equal to 0.20 shall apply to uses other than residential.

2-6.7 Open Space

In subdivisions approved for cluster development, 15% of the gross area shall be open space dedicated for common usage and ownership.

2-6.8 Additional Regulations

1. Refer to Division 2, General Regulations, for provisions which may supplement those cited herein.
2. Refer to Division 4, for off-street parking and private street requirements.
3. Refer to Division 3, for sign requirements.

DIVISION 7:  
R-4 RESIDENTIAL DISTRICT

2-7.1 Purpose and Intent

The R-4 District is established to provide for single family detached dwellings in both developed and undeveloped areas of the City. The maximum density of four (4.0) dwelling units per acre recognizes prevailing single family densities in established residential areas where infill lot development and redevelopment may occur. The District is applicable to undeveloped areas including the annexation area, of adequate size and physiographic characteristic for suburban scale residential subdivisions of either a conventional or cluster design.

2-7.2 Permitted Uses

1. Single Family detached dwellings
2. Accessory uses, to include detached carports and garages, tool sheds, children's playhouses and doghouses.

2-7.3 Special Permit Uses

1. Cemeteries
2. Churches
3. Cluster residential subdivisions
4. Colleges and universities
5. Libraries
6. Museums and shrines
7. Plant nurseries (with no sale of nursery products permitted on premises)
8. Day care homes
9. Private schools and related uses
10. Public schools, parks, playgrounds, athletic fields and related uses
11. Public utility uses
12. Swimming pools, private
13. Bed and breakfast lodging
14. Community buildings

15. Branch governmental offices and substations
16. Nursery schools
17. Post offices
18. Homes for adults (4 people or fewer, as per State Code)
19. Home Occupations

2-7.4 Maximum Density

Four (4.0) dwelling units per acre

2-7.5 Lot Size Requirements

1. Minimum size district for cluster subdivisions: 10 acres
2. Minimum lot area
  - A. Conventional subdivision lot: 8,400 sq. ft.
  - B. Cluster subdivision lot: 6,000 sq. ft.
3. Minimum Lot Width
  - A. Conventional subdivision lot
    - (1) Interior lot: 70 feet
    - (2) Corner lot: 95 feet
  - B. Cluster subdivision lot
    - (1) Interior lot: Not regulated
    - (2) Corner lot: 75 feet

**2-7.6 Bulk Regulations**

1. Maximum building height

A. Single family dwellings: 35 feet

B. All other structures: 60 feet

2. Minimum yard requirements

A. Conventional subdivision lot

(1) Front yard: 30 feet

(2) Side yard: 10 feet

(3) Rear yard: 25 feet

B. Cluster subdivision lot

(1) Front yard: 24 feet

(2) Side yard: 8 feet

(3) Rear yard: 25 feet

C. Infill subdivision lot (lot of record on or before date of ordinance adoption) or lots in developed areas where yard geometry has already been established by existing residential dwellings.

(1) Front yard: The average of the front yard set backs of the two residential dwellings located on the contiguous side lots to the lot in question.

(2) Side yard: The average of the side yard setbacks of the two residential dwellings located on the contiguous side lots to the lot in question.

3. A maximum floor area ratio (FAR) equal to 0.30 shall apply to uses other than residential.

**2-7.7 Open Space**

For subdivisions approved for cluster development, 15% of the gross area shall be open space dedicated for common usage and ownership.

**2-7.8 Additional Regulations**

1. Refer to Division 2, General Regulations, for provisions which may supplement those cited herein.

2. Refer to Division 4, for off-street parking and private street requirements.

3. Refer to Division 3, for sign requirements.

MEMORANDUM

TO: Planning Commission  
 FROM: Jervis Hairston, Director Planning & Community Development *JH*  
 RE: Information on Rezoning Requests for 5/17/84 Public Hearing  
 DATE: May 10, 1984

This is to provide background data for two rezoning requests to be reviewed by the Commission, as follows:

I. Lanier Zoning Map Amendment Request:

Joseph H. and Linda Lanier has applied to rezone property they own addressed 109 Adair Street, containing approximately 10,170 square feet.

The request is to rezone from R-1 (comparable to R-4 under the newly adopted zoning district classifications) to R-2 (comparable to the newly adopted R-8 and R-16 zoning district classifications). The subject property currently has a residential structure situated on it which appears to be a two-family unit (duplex). The new "R-8" zoning district classification most suitably accomodates such structure.

It should also be noted that other existing uses surrounding the subject property, though currently zoned "single family residential," are being used for multifamily and, as such, the Planning Commission may, in its deliberations for the subject request, consider making the zoning for those surrounding parcels more reflective of their current use. Specifically, 100 thru 118 Adair Street, and 111 - 117 Adair Street are properties with 10 units and 4 units respectively.

Please also note the attached correspondence regarding this specific rezoning request, including a legal description of the property in question, a petition about the rezoning request and a letter from an adjacent property owner.

II. Hickory Corporation Zoning Map Amendment Request:

The Hickory Corporation, William Runnells, Jr. President, has applied to rezone two contiguous parcels (a 5.1± acre parcel which they own and a 6.0 ± parcel for which they are contract purchasers) located north of Route 3 and extending back from Ramseur Street (to the north) immediately west of the Race-Trac gas station. A map showing the parcels is attached.

The request is to rezone the 5.1-acre parcel from District R-1 (comparable to the R-4 zone under the newly adopted classifications) to C-2 (comparable to the C-H or highway commercial zone under the new zoning classifications), and the adjoining 6.0-acre parcel from R-1 to R-3. The requested R-3 zoning is comparable to the R-16 or R-30 residential district under the newly adopted zoning classifications.

The stated intended use, should rezoning be approved, is to develop a quality hotel and townhouses or multifamily units.

The Commission has recently recommended approval of C-2 rezoning of a 3.42-acre tract which is immediately adjacent (on the west) of the above referenced 5.1-acre parcel. The plan for that 3.42 acre parcel is to develop a self-service storage facility.

A number of major factors should be weighed heavily in considering this request. First, road access either from Ramseur Street or perhaps more suitably along Mahone Street is a key issue. With the proposed development Mahone and/or Ramseur Street should be widened and extended in order to adequately accomodate this development as well as future growth within this general area. Secondly, provisions for on-site stormwater drainage facilities should be provided in order to prevent any further adverse impacts upon this drainage shed area, as well as upon existing residential developments along this general drainage area. There are at least two ponds located on the subject parcels.

The 5.1-acre parcel up for rezoning was zoned C-2 (commercial) prior to annexation, but the 6.0-acre adjoining parcel was zoned R-1 (Residential) before annexation occured.

#2

MEMORANDUM

TO: Planning Commission  
FROM: Jervis Hairston, Director Planning & Community Development  
RE: Special Use Permit Requests & Other Cases for Planning Comm. Consideration  
DATE: August 23, 1984

This is to provide information regarding special use permit requests for the upcoming Planning Commission Meeting:

1. Claude Rackley - Freestanding Sign, 1602 William Street:

Mr. Rackley is requesting a special use permit to allow a freestanding (ground) sign in front of his office building at 1602 William Street. The attached drawings depict the type and proposed location for said sign on his lot. Free-standing signs are permitted only by special use permit in the C-T zoning district per Sec. 2-3.6(3)(H). Such sign may not exceed 40 square feet in area or 20 feet in height.

As shown on the attached drawing the proposed sign would show the address and names of tenants in the 1602 William Street office building. Claude Rackley (Attorney's Office) SOVRAN Mortgage, William A. Middleton and Cundiff Insurance are the current occupants of the office building. Indirect lighting is proposed for this sign. The subject property is zoned C-T (Commercial Transitional) with R-4 and R-16 zoning adjoining. Consideration should be given to directing the sign away from the residentially zoned areas, if approved.

2. Dr. Robert Keller - Three Apartment Units, 1311 Seacobeck Street:

Dr. Robert Keller seeks a special use permit to add three apartment units for single persons at 1311 Seacobeck Street. This property is zoned C-H (Commercial-Highway) and use to be a part of the old Geroge Washington Motel. Currently the complex contains retail shops and apartment units.

Dr. Keller's proposal is to close-in a small courtyard area across from five existing apartment units, and covert said area into three apartment spaces. This would leave a hallway (underroof) between the existing five units and the requested three additional units.

A copy of a preliminary plan for the additional units including proposed parking areas and landscaping is in the Planning Office. The subject property is bordered by C-H, R-4 and C-T zoning. The C-T zone is designated on an adjacent lot (westside) where Dr. Keller's office building is located (the southwest corner of the Augustine Avenue and Thornton Street intersection). The southside of the subject property and Seacobeck Street is comprised totally of single-family residential uses while the uses on the adjoining east and north sides are apartment units or retail sales operations.

3. Mr. Hunter Greenlaw - 4 Apartment Units, 401 Hanover Street:

Mr. Hunter Greenlaw of 401 Hanover Street Partnership seeks a special use permit to allow four residential apartments within the existing house located at 401 Hanover Street (Old Holloway House). The remaining portion of the house will be used as 3 office spaces. The subject property is zoned C-T where offices are allowed "by right" and residential dwellings are allowed "by special use permit." This property was rezoned "conditionally" and the proffered conditions should be implemented prior to building occupancy. These conditions are listed on the attached Ordinance number 83-28.

4. Mr. Hunter Greenlaw - One Apartment Unit, 804 Charles Street:

Mr. Hunter Greenlaw of 804 Charles Street Partnership seeks a special use permit to allow one apartment unit in the existing house located at 804 Charles Street (formerly the 408 George Street Chewing House). The remaining portion of this property is to be used as office space. The attached Ordinance number 83-28 list proffered conditions which must be carried out before occupancy of this building. These conditions, as in the case involving 401 Hanover Street, were part of a conditional rezoning which included the 401 Hanover Street and 804 Charles Street properties. Please refer to these conditions in considering this special use permit request.

A copy of the planned site improvements involving 401 Hanover Street & 804 Charles Street may be examined in the Planning Office.

5. Mrs. Amy Yuhr Perry - Bed and Breakfast Lodging Use, 1312 Sophia Street:

Mrs. Amy Yuhr Perry seeks a special use permit per Sec. 2-7(3)(13) of the Zoning Ordinance to allow a bed and breakfast use in their residence at 1312 Sophia Street. The Perrys propose to offer two bedrooms in their residence (within Historic District) to travelers and tourists on a bed and breakfast basis.

The attached survey plat and narrative provides additional information regarding this proposal. The Ordinance definition of "bed and breakfast use" is as follows:

Bed and Breakfast Lodging: A single family dwelling containing sleeping and breakfast accommodations as an accessory use to the principal use. Such lodging shall have no more than five room accommodations for transient persons and wherein a charge is normally paid for such accommodations.

6. Zoning Ordinance Text Amendment - Nonconforming Uses" Section 2-5.2(5):

It has been brought to my attention that the City Zoning Ordinance does not contain provisions which would adequately cover or allow for reconstructing "non-conforming uses" which through some emergency, disaster such as fire, floods, or related types of catastrophic acts or events may be destroyed.

To provide for such considerations, I would suggest that Sec. 2-5.2(5) of the "Non-Conforming Uses" provision within the Ordinance be modified to add the following language:

- 5. If any building or structure, with the exception of a single-family detached dwelling, in which a non-conforming use is conducted is damaged or destroyed by any casualty to an extent exceeding fifty (50) percent of its assessed value, it shall be reconstructed only for a conforming use.

In the event of such emergency, disaster or related catastrophic event or situation, City Council reserves the right to issue a special exception which would allow for the full reconstruction of the then non-conforming structure and use upon finding that such reconstruction and use will not, to any greater extent, adversely affect the district in which such structure or use is located.

Appropriate Ordinance wording to revise the Code per the above will be formulated by the City Attorney for City Council consideration should the Commission recommend approval of this text amendment.

Please also refer to the attached current Ordinance section concerning "Non-Conforming Uses."

7. Zoning Ordinance Text Amendment - To allow "Private Clubs" as a use allowed by Special Use Permit in the C-D (Commercial-Downtown) District:

This text amendment has been requested by the Mount Vernon Club, Inc. which seeks to continue to locate their organization in the City's Central Business District, as has been the case for the past 25 years. Please refer to the attached letter from the Mount Vernon Club, Inc. for additional information regarding this request.

Currently, "private clubs" are allowed in the R-8, R-16, R-30 residential districts "by special use permit." The only commercial zone which allows "private clubs" is C-SC, and only by special use permit. The previous zoning regulations allowed private clubs by special use permit in the C-1 (largely the downtown area) zone and by right in the old C-2 zone.

8. Mount Vernon Club, Inc. - Private Club, 402 William Street:

In conjunction with the above referenced proposed Zoning Ordinance Text Amendment to allow "private clubs" by special use permit in the C-D zone, the Mount Vernon Club, Inc. seeks a special use permit to allow such use in the property located at 402 William Street. This property is owned by Orrick F. Johnson and managed by Johnson Real Estate Services.

A complete data sheet regarding the use of the 402 William Street property by the Mount Vernon Club, Inc. is attached for your review.

The Zoning Ordinance recommends that one parking space be provided for every four members of clubs. There is an existing parking lot area (off-street) on the west side of the 402 William Street building which accomodates about 30-40 cars. Most of said lot is leased to Cablevision of Fredericksburg, Inc.- (408 William Street). However, as pointed out in the attached Mount Vernon Club data sheet, the main use of the club would be lunch period and after 5:00 P.M. on weekdays (generally after hours of peak use by adjacent businesses), and on Sundays at noon.

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9. Mr. Jules Elliott, Site Plan for Development of a 12-unit Townhouse Complex in the 300 Block of Lafayette Boulevard (north side):

Mr. Jules Elliott seeks site plan approval in order to develop 12 townhouse units on the tract within the 300 block (northside) of Lafayette Boulevard. Four groups with three townhouses each are proposed with two parking spaces per unit.

The subject property is now zoned C-D (Commercial-Downtown) and a special use permit was obtained by Mr. Elliott in May 1984 to allow the development of the townhouse complex. Mr. Elliott proposed owner-occupied units, and the Commission conditioned that a brick or other appropriate wall or fencing be provided around the perimeter of the project. Originally, 20 units were proposed for this tract. However, at the urging of the Commission the project density was reduced to twelve units.

Attached is a memorandum from the Engineering Department recommending action of this site plan subject to the conditions outlined. Particular attention should be given to landscaping and drainage provisions for this site.

The overall plan for this tract also calls for renovation of the large existing building at 307 Lafayette Boulevard and relocation of the one-story residential structure at 305 Lafayette Boulevard.

A copy of the site plan may be examined in the Planning Office.

10. Consideration for Zoning Map Amendment (R-4 to R-8) - Adair Street area:

This request was to rezone from R-1 (R-4) to R-8 the property at 109 Adair Street, upon which a dwelling which appears to be a duplex structure has been constructed. The R-1 (now R-4) zone permits only single family detached dwellings by right.

The Planning Commission tabled this request at its regular May, 1984 meeting in order to review the surrounding area and adjacent uses. This review revealed that within the immediate area there existed a number of townhouse-type and multifamily units (100-118 Adair Street, ~~119-122 Adair Street~~ containing 10 and 4 units respectively). These units were grandfathered. The new R-8 classification was viewed as a possible zoning district which would reflect said surrounding existing uses. The R-8 zone encourages a mixture of single family detached and single family attached units.

At its July meeting, the Planning Commission decided to re-advertise this request in order to notify area property owners that the entire Adair Street area would be considered for a change in zoning.

Major consideration should be given to the impact this rezoning would have on the surrounding area. Changing the zoning on parcels already developed should not cause any noticeable increase in traffic, noise, ect. However, it should be noted that Adair Street is immediately adjacent to a sound single-family residential area (Brown's Subdivision) which have a number of vacant lots yet to be developed. Additionally, consideration as to whether or not a rezoning of this sort would be a precedent of potentially negative consequences given the circumstances surrounding the 109 Adair Street structure.

11. Consideration of Zoning Map Amendment. - Area between Lafayette Boulevard and the Old Virginia Central Railroad, and between Charles Street and the overhead truss bridge (Map available in Planning Office):

This request involves rezoning from C-T to C-H and I-1 the property described above in accordance with the predominant existing uses within this particular area. Although the C-T zone was originally designated along the southside of Lafayette Boulevard between the river and Willis Street, adjustments should be made within at least a three block area along the south side of Lafayette Boulevard between Charles Street and the overhead truss bridge mentioned above.

Within this area, existing uses include (from east to west) Commonwealth Gas Company property, City-owned property including the Burke-Hudson building, several retail sales buildings and shops, a monument sales operation, two gas stations and a residence. The C-H zone would be more appropriate for the area between the overhead truss bridge and the Burke-Hudson building, while the I-1 zone could be designated on the remaining areas. This would also coincide with current zoning directly across the street on Lafayette Boulevard (north side).

A map reflecting proposed changes in zoning for this area can be examined in the Planning Office.

ZONING DISTRICT REQUIREMENTS

ZONES	MAXIMUM DENSITY	MINIMUM DISTRICT SIZE	MINIMUM LOT AREA	MAXIMUM BUILDING HEIGHT	MAXIMUM FLOOR AREA RATIO	OPEN SPACE
R-2	2 DU/Acre	10 Acres (Cluster Sub.)	(CON) (CLU) 15,000 13,000 Sq. Ft. Sq. Ft.	(SF) (OTHER) 35 Ft. 50 Ft.	.20 FAR (NR)	15% (Cluster Sub.)
R-4	4 DU/Acre	10 Acres (Cluster Sub.)	(CON) (CLU) 8,400 6,000 Sq. Ft. Sq. Ft.	(SF) (OTHER) 35 Ft. 60 Ft.	.30 FAR (NR)	15% (Cluster Sub.)
R-8	8 DU/Acre	5 Acres (W)	(SFD) (SFA) (NR) 5,000 3,600 1,500 Sq. Ft. Sq. Ft. Sq. Ft.	(SF) (OTHER) 40 Ft. 60 Ft.	.35 FAR (NR)	25%
R-16	16 DU/Acre	5 Acres (W)	(MF) (SFA) (NR) AD. 1,600 10,000 Sq. Ft. Sq. Ft.	(SFA) (MF&O) 40 Ft. 60 Ft.	.70 FAR (NR)	25%
R-30	30 DU/Acre	3 Acres (W)	(MF) (NR) AD. 10,000 Sq. Ft.	90 Ft.	1.00 FAR (NR)	40%
RMH	6 DU/Acre	10 Acres	(SFD) (MH) (NR) 8,000 4,000 10,000 Sq. Ft. Sq. Ft. Sq. Ft.	(R) (OTHER) 35 Ft. 50 Ft.	N/A	20%
CT	N/A	N/A	20,000 Sq. Ft.	40 Ft.	.50 FAR	30% (LOS)
CD	N/A	HFD	UR	50 Ft.	.30 FAR	UR
C-SC	N/A	5 Acres	40,000 Sq. Ft.	40 Ft.	.50 FAR	15% (LOS)
C-H	N/A	UR	20,000 Sq. Ft.	40 Ft. (SUP)	.70 FAR	15% (LOS)
I-1	N/A	5 Acres	30,000 Sq. Ft.	50 Ft.	.50 FAR	20% (LOS)
I-2	N/A	2 Acres	(LOT SIZE) 20,000 100 Ft. Sq. Ft. (Lot Depth)	75 Ft. (90 FT SUP)	1.00 FAR	10% (LOS)
<p>DU - Dwelling Unit  SUB. - Subdivision  W - Waiver  UR - Unregulated  CON - Conventional  CLU - Cluster  SFD - Single Family Detached</p> <p>SFA - Single Family Attached  NR - Non-residential  MF - Multi-Family  MH - Mobile Home  SF - Single Family  O - Other  R - Residential</p> <p>SUP - Special Use Permit  LOS - Landscaped Open Space</p>						
						ABBREVIATIONS

ORDINANCE 87-40

IT IS HEREBY ORDAINED by the City Council of the City of Fredericksburg, Virginia, that Chapter 17 of the City Code, relating to zoning, is hereby amended as follows: " "

I. That a new Division 5.3 be added to Article II (Zoning) of Chapter 17 as follows:

"DIVISION 5.3  
R -1 RESIDENTIAL DISTRICT

17.2-5.3 Purpose and Intent

The R-1 District is established to provide for single family detached dwellings at a density not to exceed two (2) dwelling units per acre, to allow other selected uses which are compatible with the low density residential character of the district, and to implement the stated purposes and intent of this Chapter. The application of this district shall be compatible with the residential development of currently vacant land area into subdivisions of ten (10) acres or more.

17.2-5.4 Permitted Uses

1. Single family detached dwellings
2. Accessory uses, including detached carports and garages, tool sheds, children's playhouses, and doghouses.

17.2-5.5 Special Permit Uses

1. Cemeteries
2. Churches, chapels, synagogues, temples, and other places of worship
3. Cluster residential subdivisions
4. Colleges and universities
5. Libraries
6. Museums and shrines

7. Plant nurseries, excluding the sale of nursery products on premises
8. Day care ~~homes~~ <sup>centers</sup>
9. Private schools and related uses
10. Public schools, parks, playgrounds, athletic fields and related uses
11. Public utility uses
12. Swimming pools, private

17.2-5.6 Density, Lot Size, Bulk, Open Space and Other Requirements

The maximum density, lot size, open space, bulk, and all other regulations and requirements for this district shall be the same as those set forth for the R-2 Residential District in Division 6, Article 2, of this Chapter."

That a new Division 8.9 be added to Article 2 (Zoning) of Chapter follows:

"DIVISION 8.9  
R-12 RESIDENTIAL DISTRICT

17.2-8.9 Purpose and Intent

The R-12 District is established to provide for a planned mixture of single family attached and multiple family dwelling types at a density not to exceed twelve (12) dwelling units per acre. Compatible development in this district shall be sensitive to existing land physiography, adequate public facilities and infrastructures, transportation access requirements and vulnerable environmental features in achieving optional sitings of dwellings, open space, recreational and community facilities, and transportation systems. This District and density shall not be encouraged within that part of the City covered by the Comprehensive Plan Amendment, adopted by City Council on June 30, 1987, where residential density shall generally not exceed eight (8) units per acre.

17.2-8.10 Permitted Uses

1. Single family attached dwellings
2. Multiple-family dwellings
3. A mixture of single family attached and multiple family

dwelling types

4. Accessory uses, including tool sheds, children's playhouses, doghouses and parking garages (when planned and constructed in concert with principal dwelling development program).

5. Governmental uses

17.2-8.11 Special Permit Uses

1. Cemeteries
2. Churches, chapels, synagogues, temples and other places of worship
3. Colleges and universities
4. Libraries
5. Museums and shrines
6. Day care ~~homes~~ *centers*
7. Private schools and related uses
8. Public schools, parks, playgrounds, athletic fields and related uses
9. Public utility uses
10. Swimming pools, private
11. Commercial swimming pools and tennis courts
12. Cultural art centers and related facilities
13. Conference centers and retreat houses operated by religious or non-profit organizations
14. Boarding houses
15. Rooming houses
16. Nursery schools
17. Post offices
18. Fire stations
19. Golf courses
- ~~20. Day care centers~~

21. Hospitals
22. Housing for the elderly
23. Institutional housing
24. Funeral chapels
25. Private clubs
26. Community association facilities
27. Dormitories
28. Fraternity/sorority houses
29. Parking lots
30. Parking garages
31. Nursing homes
32. Accessory uses to the uses set forth in this Section, when developed subsequent to principal dwelling development program

17.2-8.12 Maximum Density

Maximum density shall be twelve (12) dwelling units per acre.

17.2-8.13 Lot Size Requirements

1. Minimum district size - five (5) acres, but subject to the waiver provisions set forth in Section 17.2-8.16 of this Chapter.
2. Minimum lot area
  - A. Single family attached dwellings: 1600 sq. ft.
  - B. Multiple family dwellings: Adequate with respect to physiographic, air, solar, and environmental characteristics of lot and their relationship to adjoining properties.
  - C. Non-residential uses: 10,000 sq. ft.
3. Minimum Unit Width: 18 feet
4. Minimum Lot Width
  - A. Single family attached dwellings: 18 feet
  - B. Multiple family dwellings: Not regulated

C. Non-residential uses

- (1) Interior Lot: 75 feet
- (2) Corner Lot: 100 feet

5. Where a lot is to be subdivided into individual lots for the sale of single family attached dwelling units:

- A. Lot lines shall conform with party wall centerlines
- B. A privacy yard, having a minimum of 200 square feet, shall be provided on each lot.

17.2-8.14 Bulk Regulations

1. Maximum building height

- A. single family attached dwellings: 40 feet
- B. Multiple family dwellings and other structures: 60 feet

2. Minimum yard requirements

A. Single family attached dwellings

- (1) Front yard: 12 feet
- (2) Side yard: 15 feet
- (3) Rear yard: 25 feet (Decks on townhouses may encroach in required rear yard areas).

B. Multiple-family dwellings and all other structures

- (1) Front yard: 25 feet
- (2) Side yard: 25 feet
- (3) Rear yard: 35 feet

3. A maximum floor area ratio (FAR) equal to 0.70 shall apply to uses other than residential.

17.2-8.15 Open Space

Twenty-five percent (25%) of the gross area shall be landscaped open space.

17.2-8.16 Additional Regulations

1. No more than eight (8) single-family attached (townhouse) units shall be included in any one physically

contiguous grouping.

2. Where adjacent property is zoned under a district other than R-12, all buildings shall be set back at least 40 feet from the common property line.

3. Single-family attached (townhouses) dwelling groups shall be separated from one another by a minimum of 20 feet between front and rear lot lines and end unit side yard lot lines.

4. Where a group of single-family attached dwelling units are adjacent to a private drive, parking area, or walkway intended for the common use of the development's occupants, there shall be a minimum building set back of 15 feet from the drive, area, or walk.

5. Development in the R-12 District shall require site plan approval as set forth in Division 23 of this Chapter.

6. In the R-12 District, open space, recreational facilities, private streets, walkways and parking areas, and other common areas shall be maintained by and be the sole responsibility of the developer-owner of the R-12 District development until such time as the developer-owner conveys such common area to a non-profit (homeowners') entity consisting of at least all of the individual owners of the dwelling units in the development.

The land shall be conveyed to and be held by the non-profit entity solely for the recreation, open space, private access easements, circulation, and parking purposes.

The conveyance from the developer-owner to the non-profit entity shall include restrictions and covenants requiring that the failure to pay any tax assessments, charges and costs of maintenance of such common areas shall constitute a pro-rata lien upon the individual dwelling lots of those owners who fail to pay and that such lien shall be inferior only to taxes and recorded trusts. Further, the covenants shall specify the means by which the non-profit entity shall govern and manage itself and maintain building exteriors, landscaping, lighting, recreation areas, walkways, parking areas, and travelways.

All deed restrictions, covenants, non-profit (homeowners') entity incorporation documents, and other information related to such conveyance shall be prepared by the developer-owner and presented at the time of plat and plans submission for approval by the City Attorney.

7. The City Council may, upon recommendation of the Planning Commission or its agent, approve a special exception waiving the minimum district size requirement for the R-12 District

only if:

- A. Such lot does not adjoin any other lot or parcel of land that is all or partially owned by the same person applying for such special exception; or
  - B. Such lot has not been reduced in width or area to a width or area below the minimum requirements set forth in this Division; and
  - C. The owner demonstrates that (1) consolidation with adjacent lots represents an undue economic hardship or physical impossibility, and (2) the proposed development will not have a deleterious effect on contiguous properties.
8. Multiple family dwelling units shall be separated from one another by a distance not less than the height of the tallest residential structure.
9. All refuse shall be contained in completely enclosed facilities.
10. On a corner lot, no curb cut shall be located closer than 75 feet to the curb line extended from the corner.
11. No curb cut shall be located closer than 30 feet to a side or rear lot line, unless a common curb cut serves adjacent uses, and in no instance shall the distance between separate curb cuts serving adjacent uses be less than 60 feet.
12. A freestanding use shall have no more than two curb cuts on any single right-of-way, and such curb cuts shall have a minimum distance of 60 feet between them.

III. This ordinance shall be effective immediately.

First Reading: November 10, 1987

Second Reading: November 24, 1987

Approved as to Form: [Signature] 12/15/87  
City Attorney

**Clerk's Certificate**

Certificate:

I, the undersigned, certify that I am Clerk of the Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of an Ordinance duly adopted at a meeting of City Council held 11/24/87 at which a quorum was present and voted.

Given under my hand and the official seal of the City.

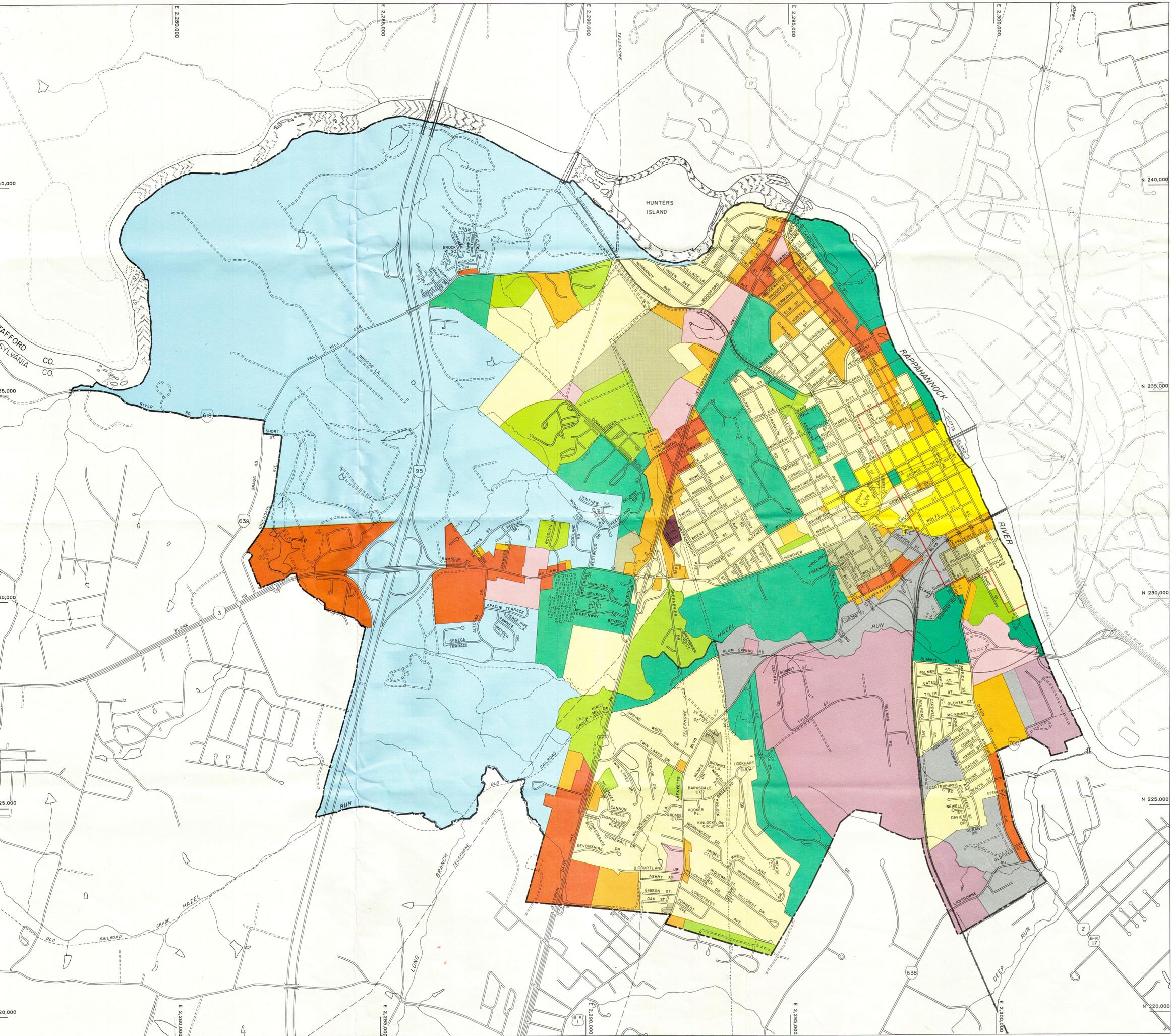
12/19/87  
Date

[Signature]  
Clerk of the Council

# CITY OF FREDERICKSBURG VIRGINIA

## MAP OF: STREETS & ZONING

- R-1 RESIDENTIAL
- R-2 RESIDENTIAL
- R-4 RESIDENTIAL
- R-8 RESIDENTIAL
- R-16 RESIDENTIAL
- R-30 RESIDENTIAL
- RMH RESIDENTIAL MOBILE HOME
- C-T TRANSITIONAL COMMERCIAL/OFFICE
- C-D DOWNTOWN BUSINESS
- C-SC COMMERCIAL SHOPPING CENTER
- C-H HIGHWAY RETAIL COMMERCIAL
- I-1 LIGHT INTENSITY INDUSTRIAL
- I-2 GENERAL INDUSTRIAL
- HFD OLD & HISTORIC FRED. DISTRICT

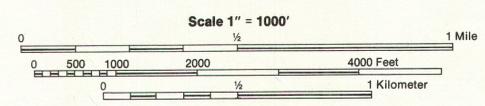


Zones portrayed are a graphic representation, verification must be made through the Fredericksburg City Planning Department.

- LEGEND:**
- HARD SURFACE ROADS
  - DIRT ROADS
  - TRAILS
  - RAILROADS
  - BRIDGES
  - DAMS
  - POWER LINES
  - RIVER, FALLS, RAPIDS
  - STREAMS
  - LAKES, PONDS, RESERVOIRS
  - CULVERTS



Prepared By:  
City Planning Department  
June 1988



## Chapter 10

### Zoning Map and Text Amendments

#### 10-100 Introduction

The uses that may be allowed on land may be changed either by amending the regulations of the zoning district in which the land is situated (a *zoning text amendment*) or by amending the zoning map and changing the zoning district in which the land is situated (a *zoning map amendment*, more commonly referred to as a *rezoning*). This chapter primarily addresses zoning map amendments (rezonings).

The zoning and rezoning of land is wholly legislative, and cannot be accomplished in any fashion other than by an appropriate ordinance or map amendment. See *Laird v. City of Danville*, 225 Va. 256, 302 S.E.2d 21 (1983).

One who owns land always faces a possibility of it being rezoned. *Cole v. City Council of City of Waynesboro*, 218 Va. 827, 241 S.E.2d 765 (1978). There is “no vested property right in the continuation of the land’s existing zoning status. [citations omitted].” *Board of Supervisors of Stafford County v. Crucible, Inc.*, 278 Va. 152, 160, 677 S.E.2d 283, 287 (2009). However, the policy that permissible land use should be reasonably predictable assures a landowner that the uses will not be changed suddenly, arbitrarily or capriciously, but only after a period of investigation and community planning, and only where circumstances substantially affecting the public interest have changed. *Cole, supra*. This “stability and predictability in the law serve the interest of both the landowner and the public.” *Board of Supervisors of Fairfax County v. Snell Construction Corp.*, 214 Va. 655, 659, 202 S.E.2d 889, 893 (1974).

Typically, a zoning map amendment either *upzones* or *downzones* the land. An *upzoning* is the rezoning of land that increases the permitted intensity of use or development by right, and it may include an increase in permitted density. A *downzoning* is the rezoning of property that reduces the permitted intensity of use or development by right, including a reduction in permitted density. *Board of Supervisors of Culpeper County v. Greengael, LLC*, 271 Va. 266, 626 S.E.2d 357 (2006). Land may also be upzoned or downzoned by a zoning text amendment by liberalizing or restricting, respectively, the by-right uses in the zoning district.

#### Eight Key Terms and Principles

- Zoning text amendments change the zoning regulations.
- Zoning map amendments change the zoning district in which the land is situated; commonly referred to as a *rezoning*.
- Zoning text and map amendments are legislative acts of the governing body.
- Upzonings are usually rezonings (though an upzoning may be achieved by a zoning text amendment) that increase the permitted intensity of use or development by right, including an increase in density.
- Downzonings are usually the rezoning of property (though a downzoning may be achieved by a zoning text amendment) that decreases the permitted intensity of use or development by right, including a reduction in permitted density.
- A denied upzoning is lawful if it is fairly debatable that the existing zoning is reasonable, even if the proposed zoning is also reasonable.
- Downzonings are lawful if they are comprehensive in their scope; piecemeal downzonings are lawful only where there is a change in circumstances, a mistake in fact, or fraud.
- Zoning decisions should be based on sound zoning principles, seeking to achieve the purposes of zoning listed in Virginia Code § 15.2-2283 and based on the factors articulated in Virginia Code § 15.2-2284.

Upzonings are by far the more common type of rezoning and are typically initiated by the landowner. The analysis beginning in section 10-300 is presented in the context of cases in which, in most cases, applications for upzonings were denied. Downzonings are less common and are typically initiated by the locality. The analysis beginning in section 10-400 examines those cases that have considered whether a downzoning was comprehensive or piecemeal. Section 10-500 re-examines the cases in section 10-300 in the context of the reasonableness of the zoning decision at issue under the fairly debatable test, which is the test by which the validity of a zoning decision (most often, a denied upzoning) would be considered by the courts.

## 10-200 Initiation of the process

Zoning text and zoning map amendments can be initiated by the locality or by a landowner or his or her authorized representatives.

### 10-210 Zoning text amendments

Zoning text amendments must be initiated by a resolution of intent adopted by the governing body or a motion adopted by the planning commission. *Virginia Code § 15.2-2286(A)(7)*; *Ace Temporaries, Inc. v. City Council of the City of Alexandria*, 274 Va. 461, 649 S.E.2d 688 (2007) (multiple amendments of the same zoning text each require their own resolution or motion to initiate the process). The resolution or motion must state the public purposes for the proposed action. *Virginia Code § 15.2-2286(A)(7)*. It is sufficient for the resolution to merely recite the purposes set forth in Virginia Code § 15.2-2286(A)(7) (public necessity, convenience, general welfare, or good zoning practices), rather than state specific, independent purposes. *County of Fairfax v. Southern Iron Works, Inc.*, 242 Va. 435, 410 S.E.2d 674 (1991). However, it need not necessarily state the exact language of the statute provided that a statement of public purpose is given. *In re Zoning Ordinance Amendments by the Board of Supervisors of Loudoun County*, 67 Va. Cir. 462 (2004).

The text of the proposed zoning ordinance need not be available when the resolution of intent or the motion to initiate a zoning text amendment is adopted. *Virginia Code § 15.2-2286(A)(7)*; see *Ace Temporaries, supra*, (the “General Assembly did not include a requirement in Code § 15.2-2286(A)(7) that the text of an amendment be in written format at the time of initiation”); *In re Zoning Ordinance Amendments Enacted by the Board of Supervisors of Loudoun County*, 67 Va. Cir. 462 (2004).

When adopting a zoning text amendment, the governing body need not have the full text of the proposed ordinance before it when it takes action if the materials before the governing body are sufficiently clear as to what it is adopting. *Southern Iron Works, Inc.*, 242 Va. at 445-46, 410 S.E.2d 680-81 (holding the board of supervisors did not unlawfully delegate legislative power to staff in directing it to compile the text supplement setting forth the text amendment, where the staff made no substantive changes to what the board adopted).

### 10-220 Zoning map amendments

Zoning map amendments (*rezonings*) are initiated by petition of the owner of property, a contract purchaser with the owner’s consent, or the owner’s agent. Virginia Code § 15.2-2286(A)(7) provides in part that a zoning map amendment (“rezoning”) may be initiated:

(iii) by petition of the *owner*, contract purchaser with the owner’s written consent, or the owner’s agent therefore, *of the property which is the subject of the proposed zoning map amendment*, addressed to the governing body or the local planning commission, . . . (italics added)

Zoning map amendments also may be initiated by the governing body or the planning commission. *Virginia Code § 15.2-2286(A)(7)*.

### 10-221 General requirements

Within business 10 days after a rezoning application is submitted, the locality must submit the proposal to VDOT if the proposal will substantially affect transportation on state-controlled highways. *Virginia Code § 15.2-2222.1(B)*. The rezoning application must include a traffic impact statement if required by local ordinance or VDOT regulations. *Virginia Code § 15.2-2222.1(B)*.

Within 45 days after its receipt of the traffic impact statement, VDOT must either provide written comment on the proposed rezoning to the locality or schedule a meeting with the locality’s planning commission or other agent (to be held within 60 days after VDOT received the traffic impact statement) and the applicant to discuss potential modifications to the proposal to address concerns and deficiencies. *Virginia Code § 15.2-2222.1(B)*. VDOT must

complete its initial review of the rezoning proposal within 45 days, and its final review within 120 days, after it receives the rezoning proposal from the locality. *Virginia Code § 15.2-2222.1(B)*.

### **10-222 Consent requirements**

As noted in section 10-220, Virginia Code § 15.2-2286(A)(7)(iii) provides in part that a zoning map amendment may be initiated “by petition of the *owner*, contract purchaser with the owner’s written consent, or the owner’s agent therefore, *of the property which is the subject of the proposed zoning map amendment.*” What does that mean, especially when the parcel proposed to be rezoned is but one parcel that is subject to a single set of proffers or is part of a planned development?

In *Town of Leesburg v. Long Lane Associates*, 284 Va. 127, 726 S.E.2d 27 (2012), the Virginia Supreme Court held that a locality does not need to obtain the consent of a neighboring property owner to rezone a parcel that was originally part of an undivided property that was previously rezoned and subject to a single set of proffers. The Court concluded that the owner of the neighboring property has no vested right in its expectation that the neighboring property would continue to develop in accordance with the prior proffered zoning, which existed at the time the landowner purchased its property and developed it in accordance with the prior proffers. The Court also concluded that Virginia Code § 15.2-2303(A) does not require that all successors in title agree or consent to any portion of the subdivided land being thereafter rezoned.

Related to the issue before the Virginia Supreme Court in *Long Lane Associates*, Virginia Code § 15.2-2302 allows a landowner subject to proffered conditions to apply to amend the proffers after providing written notice of the application to the owners of other parcels subject to the same existing proffers. The notice must be provided within 10 days after receipt of the application as provided in Virginia Code § 15.2-2204(H). *Virginia Code § 15.2-2302. See also section 11-380.* The reasoning of the Virginia Supreme Court in *Long Lane Associates* would appear to apply to rezonings pertaining to planned developments as well.

### **10-300 The relevant factors to be considered in a rezoning**

Virginia Code § 15.2-2284 states that zoning ordinances and districts must be drawn and applied by reasonably considering the following:

- The existing use and character of property.
- The comprehensive plan.
- The suitability of the property for various uses.
- The trends of growth or change.
- The current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies.
- The transportation requirements of the community.
- The requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services.
- The conservation of natural resources, the preservation of flood plains, the protection of life and property from impounding structure failures, the preservation of agricultural and forestal land and the conservation of properties and their values.
- The encouragement of the most appropriate use of land throughout the locality.

Every proposed rezoning should be accompanied by an analysis of how the amendment satisfies one or more of the factors listed above. Some of these factors are closely related to one another and are considered together below. A locality is not required to consider all nine factors in each zoning decision. Many of these factors may be addressed in the comprehensive plan and, in that case, the locality’s analysis may focus on whether the proposed rezoning is consistent with the plan.

One of the central themes running through this section is that the reasonableness of the existing zoning is critical to the analysis and the application of these nine factors. No single factor is necessarily determinative. The cases cited below appear repeatedly throughout the various factors discussed.

<b>Summary of the Relevant Factors in a Rezoning and How Courts Have Looked at Those Factors</b>	
<b>Factor</b>	<b>Courts’ Perspectives</b>
Existing use and character of the property	Relevant to understanding whether existing use and zoning is reasonable; courts also will look at the abutting property
Consistency with the comprehensive plan	Critical factor, not only as to use and density, but other elements of the plan; decision consistent with the plan likely to be found reasonable; decision inconsistent with the plan not necessarily unreasonable because other factors in play
Suitability of the property for various uses; encouragement of most appropriate uses	Both the relative value of the property under the existing and proposed zoning, and the economic feasibility of developing under the existing zoning were key factors in a number of older cases; though still relevant, factor appears to play a lesser role in more recent cases
The trends of growth or change	The change in the character of an area since the existing zoning was established is a critical factor; courts have shown willingness to protect established neighborhoods even if change is occurring outside the neighborhood
Current and future requirements of the community for using land for various purposes as determined by population and economic studies and other studies	Reliance on this factor requires more than a decision-makers’ belief that “we have too much ( <i>e.g.</i> , commercial/industrial) zoning” or “we need more ( <i>e.g.</i> , commercial/industrial) zoning”; studies are required to show what the needs of the community are; cannot be relied upon to squelch competition
The transportation requirements of the community; the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services	Adequate public facilities are key factors in a zoning decision and the importance of these factors will only continue to grow, particularly with the new requirements that transportation planning be incorporated into the locality’s comprehensive plan and VDOT play a more direct role; if the existing zoning is reasonable, the courts are likely to affirm a denied upzoning on the ground that impacts to public facilities are not addressed
The conservation of natural resources, the preservation of flood plains, the preservation of agricultural and forestal land and the conservation of properties and their values	These factors have not been directly addressed in the case law; issues related to these factors have been discussed when considering the suitability of property for various uses and the trends of growth or change (see above)

### **10-310 The existing use and character of the property**

The existing use and character of the property is an important factor that is key to understanding whether the existing use and zoning is reasonable. The courts have considered the use and character of not only the property subject to the upzoning, but also of the abutting and nearby property.

If abutting parcels are zoned or used similarly to the subject parcel, the existing zoning may be found to be reasonable. *Gregory v. Board of Supervisors of Chesterfield County*, 257 Va. 530, 514 S.E.2d 350 (1999) (abutting parcels, as well as the subject parcel, were zoned agricultural and in agricultural use, where residential zoning was sought); *Patrick v. McHale*, 54 Va. Cir. 67 (2000) (where residential zoning was sought, existing agricultural zoning was reasonable even though abutting properties on two sides were zoned residential, where two other abutting properties were zoned agricultural).

## 10-320 Consistency with the comprehensive plan

Whether a proposed rezoning is consistent with the comprehensive plan is perhaps the most important consideration in modern zoning decision-making. It is important to remember that consistency pertains not only to the use, but also to many other policies in the comprehensive plan. Note also that although this section breaks out each of the factors identified in Virginia Code § 15.2-2284, the breadth and scope of the Albemarle County comprehensive plan incorporates a number of the factors to be considered in a zoning decision. *See chapter 9 for a discussion of the role of the comprehensive plan.*

If the existing density or use is consistent with the comprehensive plan, a decision to deny an upzoning should be upheld. *Board of Supervisors of Roanoke County v. International Funeral Services*, 221 Va. 840, 275 S.E.2d 586 (1981) (adding that, where both the existing and the proposed uses are reasonable, the locality may retain the use permitted under the existing zoning even if the proposed use is more appropriate or even the most appropriate use of the land); *Atlantic Town Center Development Corp. v. Accomack County Board of Supervisors*, 94 Va. Cir. 35 (2016) (denial to rezone from agricultural to residential was upheld and not necessarily unreasonable, even though the application was consistent with the comprehensive plan; the “test for arbitrary and capricious is not wholly based upon compatibility with a comprehensive plan. The plan may create expectations in the mind of the landowner but it is the Board’s acceptance or denial of the applicant’s specific plan that is at issue”); *Williams v. Board of Supervisors of Fairfax County*, 1996 Va. Cir. LEXIS 528 (1996) (even though the property was more valuable if developed under the proposed zoning and the proposed zoning better met the county’s demand for affordable housing, the existing zoning was consistent with the comprehensive plan and reasonable); *Turock Estate, Inc. v. Thomas*, 7 Va. Cir. 222 (1984) (upholding denial of rezoning from R-4 (multiple residence) to C-2 (limited commercial), even though land had previously been zoned C-2, because decision was reasonably based on the city’s plan for the neighborhood that recommended that revitalization be achieved by devoting as much land as possible to housing and concentrating commercial uses only to limited areas).

If the existing zoning is inconsistent with the use identified in the comprehensive plan, the existing zoning is not necessarily unreasonable if other factors justify the denial of the rezoning. *Gregory v. Board of Supervisors of Chesterfield County*, 257 Va. 530, 514 S.E.2d 350 (1999); *City Council of City of Salem v. Wendy’s of Western Virginia, Inc.*, 252 Va. 12, 471 S.E.2d 469 (1996); *Patrick v. McHale*, 54 Va. Cir. 67 (2000) (where residential zoning sought, agricultural zoning was reasonable even though the comprehensive plan provided for residential zoning in the area, where a significant portion of the area within the plan area was still zoned agricultural).

If the existing zoning is inconsistent with the comprehensive plan, and the proposed density or use is consistent with the comprehensive plan, a decision to deny an upzoning should nonetheless be upheld if other factors delineated in Virginia Code § 15.2-2284 are not satisfactorily addressed, such as:

- The applicant fails to adequately address explicitly identified impacts from the project by not proffering cash as articulated in the comprehensive plan to address the *pro rata* share of impacts caused by the proposed zoning on the future cost of public facilities. *Gregory v. Board of Supervisors of the County of Chesterfield*, 257 Va. 530, 514 S.E.2d 350 (1999) (applicant failed to make cash proffer as outlined in the comprehensive plan; cash proffer intended to address the per lot share of the county’s cost to provide public facilities such as schools, roads, parks, libraries and fire stations, existing zoning shown to be reasonable).
- The existing zoning is shown to be reasonable, based on specific and well-articulated evidence. *Gregory, supra*; *City Council of City of Salem v. Wendy’s of Western Virginia, Inc.*, 252 Va. 12, 471 S.E.2d 469 (1996).
- The proposed density or use would adversely affect the existing neighborhood. *Board of Supervisors of Fairfax County v. Jackson*, 221 Va. 328, 269 S.E.2d 381 (1980).
- The proposed density or use fails to satisfy other comprehensive plan guidelines for the rezoning, such as the minimum size of the zone. *Hertz v. Fairfax County Board of Supervisors*, 37 Va. Cir. 508 (1992).

- The proposed density or use is premature, based upon specific, objective timing criteria stated in the comprehensive plan. *Board of Supervisors of Loudoun County v. Lerner*, 221 Va. 30, 267 S.E.2d 100 (1980); see *Cussen v. Frederick County Board of Supervisors*, 39 Va. Cir. 561 (1990) (denial of upzoning upheld where the existing zoning was found to be reasonable and the comprehensive plan merely provided that new development in the urban area may be approved “when utilities and roads with sufficient capacity have been provided”).
- The proposed use or density is premature because the subject parcel is in an area whose uses are still devoted to the existing zoning. *Patrick v. McHale*, 54 Va. Cir. 67 (2000).

If the existing zoning is inconsistent with the comprehensive plan, and the proposed density or use is inconsistent with the comprehensive plan, a decision to rezone the property to a different use or density that is consistent with the comprehensive plan should be upheld. *Board of Supervisors of Fairfax County v. Pyles*, 224 Va. 629, 300 S.E.2d 79 (1983) (upholding rezoning to residential classification consistent with the comprehensive plan, where applicant sought rezoning to commercial use; unaddressed traffic and access issues).

### **10-330 The suitability of the property for various uses; the encouragement of the most appropriate use of land throughout the county**

There appear to be two classes of cases that fall under these combined, related categories – those pertaining to the relative value and the potential development of the land under its existing zoning and the proposed zoning, and those that pertain to the economic feasibility of developing under the existing zoning. These combined categories are also related to certain elements of the trends of growth or change discussed in section 10-340.

#### **10-331 Relative value/potential development of the land under its existing zoning and the proposed zoning**

The Virginia Supreme Court has said that in judging the reasonableness of an existing zoning classification, consideration should be given to economic factors. *Town of Vienna Council v. Kobler*, 218 Va. 966, 244 S.E.2d 542 (1978). The relative value of the land under its existing zoning and the proposed zoning has been a factor considered by the courts to determine the reasonableness of the existing zoning, but it is a factor whose weight appears to have diminished over the past 30 years.

In *Board of Supervisors of Fairfax County v. Williams*, 216 Va. 49, 216 S.E.2d 33 (1975), one of several factors considered by the Virginia Supreme Court in concluding that the existing, lower-density residential zoning was unreasonable was evidence that the land would be worth \$2,445,000 more if it was rezoned to the proposed zoning (the evidence also showed, however, that the owners could develop under the existing zoning and not lose money). In *Board of Supervisors of Fairfax County v. Allman*, 215 Va. 434, 211 S.E.2d 48 (1975), the Court observed that the existing residential zoning was unreasonable, where a more intensive residential zoning classification was sought, because the land would be worth \$2,467,000 more if it was rezoned (“It was clearly established that the property is suitable for a more valuable use than RE-1 . . .”). However, in the more recent *Gregory v. Board of Supervisors of Chesterfield County*, 257 Va. 530, 514 S.E.2d 350 (1999), the Court found that the potential development of the 30-acre tract at issue under existing zoning into two or three lots was a reasonable use of the land, where an 81-lot subdivision was sought under the proposed zoning.

In *Runion v. Board of Supervisors of Roanoke*, 65 Va. Cir. 41 (2004), a challenge to an *approved* upzoning, neighbors contended that the board’s upzoning of a 22.75-acre tract of land from agricultural rural (“AR”) to residential single family (“R-1”) was contrary to the community plan, bore no reasonable relation to the public health, safety or general welfare, and failed to address community impacts. The circuit court upheld the board’s decision as reasonable, finding that under the AR zoning, the tract could be developed with 38 units with multiple driveway connections to an existing public street, and with no proffers. Under R-1 zoning, the tract could be developed with 44 units, but with more controlled access to the public street, and with proffers for fencing, easements, dedication of land, design review and a limitation on logging. In addition, the court found that the R-1 zoning reasonably comported with the community plan and that it was in line with the scheme of development in the neighborhood.

### **10-332 Economic feasibility of developing land under existing zoning**

In some older cases, the courts considered the economic feasibility of developing under existing zoning as evidence of the existing zoning's unreasonableness. In *Board of Supervisors of Fairfax County v. Williams*, 216 Va. 49, 216 S.E.2d 33 (1975), the cost of development under the existing lower-density zoning was one of several factors considered by the Virginia Supreme Court in concluding that the existing zoning was unreasonable. The comparatively higher per-unit cost of development under the existing zoning made higher-density development extremely feasible and reasonable. Note, however, that there was also evidence that the owners could develop under the existing zoning and not lose money.

In *Boggs v. Board of Supervisors of Fairfax County*, 211 Va. 488, 178 S.E.2d 508 (1971), the Court found that it was economically unfeasible to develop the land under its existing residential zoning (the county conceded that the existing residential zoning in an emerging commercial area was inappropriate), noting that the owners would have to spend \$185,000 to make extensive on-and-off site improvements, particularly for drainage, before they could develop under the existing zoning. See also *City Council of the City of Fairfax v. Swart*, 216 Va. 170, 217 S.E.2d 803 (1975) (uncontradicted evidence that it was economically unfeasible to develop 3.285 acre parcel under existing single family residential zoning where nearby parcels were zoned for high density residential or commercial uses); *County Board of Arlington County v. God*, 216 Va. 163, 217 S.E.2d 801 (1975) (developing parcels for single family residential use, where surrounding area zoned and devoted to apartment uses, was economically unfeasible).

### **10-340 The trends of growth or change**

The case law makes it readily apparent that the trends of growth or change in the vicinity of the land subject to a rezoning application are a common and key consideration in a zoning decision.

### **10-341 The change in the character of an area**

The change in the character of an area since the existing zoning was established is an important factor that may show the unreasonableness of the existing zoning. *Boggs v. Board of Supervisors of Fairfax County*, 211 Va. 488, 178 S.E.2d 508 (1971) (existing single family residential zoning was unreasonable where "fantastic" change had occurred in the character of the area, with more than 33 rezonings from single family residential to apartments and commercial); *County Board of Arlington v. God*, 216 Va. 163, 217 S.E.2d 801 (1975) (existing single family residential zoning was unreasonable where the zoning was established in 1950 and since then the block on which the owner's parcels were located were almost entirely zoned and devoted to apartment uses).

### **10-342 Protecting an established stable neighborhood may buck a perceived trend**

Evidence that a specific neighborhood is an established and stable neighborhood may successfully counter evidence of the trends of growth or change over a broader area.

Thus, where the existing zoning is residential and the proposed zoning is commercial or industrial, or even a more intensive residential use, protecting the viability of an existing residential neighborhood is an important factor that will show the reasonableness of the existing zoning. *City Council of the City of Salem v. Wendy's of Western Virginia, Inc.*, 252 Va. 12, 471 S.E.2d 469 (1996) (residential neighborhood was old, beautiful, tree-lined, with good housing stock, even though commercial and industrial development was occurring on its periphery); *Board of Supervisors of Fairfax County v. Pyles*, 224 Va. 629, 300 S.E.2d 79 (1983) (expansion of commercial zoning would destabilize and disrupt stable residential communities); *Board of Supervisors of Fairfax County v. Jackson*, 221 Va. 328, 269 S.E.2d 381 (1980) (existing residential zoning classification was reasonable in face of request for rezoning that would allow smaller residential parcel sizes, where the existing zoning reflected the land use in the area, there had been no major rezonings, subdivisions or resubdivisions of lands in the immediate area in over 20 years, and the rezoning would establish a precedent that would have an adverse impact on a stable, established residential subdivision).

### 10-343 How potentially conflicting evidence may be evaluated

Whether relied upon to support or overturn the decision of the locality, the character of the surrounding neighborhood is routinely identified by the courts to support their decision:

- Where the evidence describing the character of the existing neighborhood and current and future trends is such that the existing and the proposed zoning are both appropriate, the locality has the prerogative to choose the applicable classification. *City Council of City of Salem v. Wendy's of Western Virginia, Inc.*, 252 Va. 12, 471 S.E.2d 469 (1996); *Board of Supervisors of Fairfax County v. Jackson*, 221 Va. 328, 269 S.E.2d 381 (1980).
- Where the evidence describing the character of the existing neighborhood is such that the parcel is in a transition area between different zoning districts, the governing body may draw a boundary line somewhere provided it does so in a reasonable manner. *Board of Supervisors of Fairfax County v. Pyles*, 224 Va. 629, 300 S.E.2d 79 (1983) (reasonably drawn); *Town of Vienna Council v. Kohler*, 218 Va. 966, 244 S.E.2d 542 (1978) (unreasonably drawn).
- Where the character of the neighborhood has changed to such an extent that the existing zoning is unreasonable and development of the parcel under the existing zoning is economically unfeasible, the existing zoning may be found to be unreasonable, especially where there is insufficient evidence produced by the locality of the existing zoning's unreasonableness to make the issue even fairly debatable. *City Council of the City of Fairfax v. Swart*, 216 Va. 170, 217 S.E.2d 803 (1975); *County Board of Arlington County v. God*, 216 Va. 163, 217 S.E.2d 801 (1975); *Boggs v. Board of Supervisors of Fairfax County*, 211 Va. 488, 178 S.E.2d 508 (1971).
- Where the proposed zoning is consistent with the comprehensive plan, but the character of the neighborhood is such that it was consistent with the existing zoning, the existing zoning will be found to be reasonable. *Gregory v. Board of Supervisors of Chesterfield County*, 257 Va. 530, 514 S.E.2d 350 (1999); *Patrick v. McHale*, 54 Va. Cir. 67 (2000); *Custer v. City of Harrisonburg*, 44 Va. Cir. 342 (1998) (existing residential zoning on parcel in a residential neighborhood was reasonable, even though it was cut off from any residential area by being in the middle of the conjunction of an interstate highway and a four-lane heavily traveled thoroughfare).

### 10-350 The current and future requirements of the community for using land for various purposes as determined by population and economic studies and other studies

Under modern zoning practices, the current and future requirements of the community for land uses should be identified in the comprehensive plan, based upon studies conducted for the comprehensive plan. This section considers the role the comprehensive plan and other studies may play in identifying the current and future requirements of the community and other relevant considerations. *See section 10-320 for a discussion of the comprehensive plan as a factor to be considered in zoning decisions generally.*

### 10-351 The role of the comprehensive plan as a tool to control the timing of growth

The board of supervisors may deny a rezoning application if it is inconsistent with the comprehensive plan. *Board of Supervisors of Loudoun County v. Lerner*, 221 Va. 30, 267 S.E.2d 100 (1980). Therefore, if the comprehensive plan contains specific, objective standards for adequate public facilities and when land use may intensify within a plan area, a locality may time or phase development according to its plan. *See Lerner; see section 9-920 for additional discussion of this issue.*

In *Board of Supervisors of Fairfax County v. Allman*, 215 Va. 434, 211 S.E.2d 48 (1975), the board denied the applicant's request to rezone its property to a higher density that was consistent with the density recommended for the property in the comprehensive plan. The Virginia Supreme Court held that the denial of the rezoning was unreasonable. Although the comprehensive plan considered in *Allman* spoke to density, it was silent as to whether necessary public facilities should be provided in advance of higher density zoning. The unwritten policy of the county was to promote Reston for development first, followed by the properties on the periphery, such as the

applicant's. The Court noted: "The obvious inference is that Allman and other property owners zoned RE-1 should await the full development of Reston before seeking a rezoning, even though the proposed zoning is in accordance with the County's Master Plan."

In *Lerner, supra*, the board denied the applicant's request to rezone its property from industrial park to shopping center. The board's decision was based upon the proposed rezoning's inconsistency with the comprehensive plan, which required that regional shopping centers have a minimum supporting population of 100,000 to 200,000 within a radius of 5 to 15 miles for a center containing 400,000 to 1,000,000 square feet. The Court concluded that the plan's standard was a valid basis to deny the rezoning application, thereby supporting the county's policy of timing or phasing development to a particular land use when the standards of the comprehensive plan were satisfied. *Lerner* provides three important principles: (1) the decision to phase or time development should be expressed in the comprehensive plan; (2) the criteria for phasing development should not be so vague so as to permit discriminatory application; and (3) the actual timing of development should be determined by the application of reasonably objective criteria, rather than by general statements that public facilities should be adequate.

### **10-352 The need for certain housing stock or other uses**

In overturning the county's denial of a rezoning in *Board of Supervisors of Fairfax County v. Allman*, 215 Va. 434, 437, 211 S.E.2d 48, 50 (1975), the Virginia Supreme Court considered that the parties had "conceded that a critical housing need for low and moderate income families" existed in Fairfax County. The evidence showed that within the Upper Potomac Planning District (under Fairfax's comprehensive plan), an overwhelming percentage of the land was zoned to require one or more acres of land per dwelling unit, and this resulted in the vast majority of housing built in the plan area being limited to those in a high-income bracket.

In *Board of Supervisors of Fairfax County v. Williams*, 216 Va. 49, 216 S.E.2d 33 (1975), one of several factors considered by the Virginia Supreme Court in overturning the county's denial of a rezoning was evidence of a tremendous shortage of buildable lots in Fairfax County and that a developer would not attempt to develop at the existing zoning density, as opposed to the proposed, higher density, zoning.

### **10-353 Market need or market saturation**

The decision to grant or deny a rezoning may be supported by studies showing that the current or future requirements of the community create a need for the particular class of uses proposed, or that show that the community's needs are already satisfied. For example, a study showing that the locality has, or will have, a significant need for multi-family residential dwellings over the next decade may justify the granting of a rezoning that would allow that use; a study showing that the locality has a multi-family dwelling housing stock that satisfies current and/or future demand may justify the denial of the rezoning application.

On the other hand, if the basis for the locality's decision to deny an upzoning is to restrict competition or to protect a previously approved commercial use, the decision will be overturned. *Board of County Supervisors of Fairfax County v. Davis*, 200 Va. 316, 106 S.E.2d 152 (1958) (board improperly denied rezoning to allow regional shopping center where primary reason was the perceived adverse economic effect it would have on previously approved smaller shopping center in vicinity; no study performed); *compare, Northern Virginia Community Hospital v. Loudoun County Board of Supervisors*, 70 Va. Cir. 283 (2006) (in sustaining board's demurrer on issue and distinguishing itself from *Davis*, court refused to examine motives of board in denying rezoning and permit applications to allow hospital in the face of claim by hospital that the board was trying to restrict competition; because the board's acts were legislative in nature, the court said that it "may not generally explore whether the motive to act was inspired by a desire to restrict competition or by some other purpose"), citing *Blankenship v. City of Richmond*, 188 Va. 97, 49 S.E.2d 321 (1948) and *Helmick v. Town of Warrenton*, 254 Va. 225, 492 S.E.2d 113 (1997). These are improper factors on which to base a zoning decision, and they bear no relation to the public health, safety or welfare of the community. *Davis, supra*; see also *1986-87 Va. Op. Atty. Gen. 124* (denial of pending application for rezoning to permit the construction of a shopping center based primarily on the desire to insulate existing retail businesses from competition is not a proper function of zoning; the opinion notes that the governing body's concerns were based on

what some members “believed,” rather than on studies showing the current or future requirements of the community).

### **10-360 The transportation requirements of the community; the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services**

The transportation requirements of the community and the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services (collectively, “adequate public facilities”) are two very significant factors, particularly for large rezoning applications within urbanizing areas where traffic and other burdens on public facilities already exist or are emerging.

It does not appear that adequate public facilities issues must necessarily be set out in the comprehensive plan in order for a governing body to base a zoning decision on these factors because: (1) while it is desirable for a community to identify its public facilities requirements in the comprehensive plan, these requirements are delineated as separate factors under Virginia Code § 15.2-2284, so they may be considered in a zoning decision even though they are not set out in the comprehensive plan; and (2) the impacts of a proposed project on the public facilities within a community may not be known until studies of the specific project’s impacts are conducted.

In *2003 Va. Op. Atty. Gen. LEXIS 57, 2003 WL 23150084 (2003)*, the Attorney General was asked whether express enabling legislation was required for a local governing body to deny a rezoning request solely on the basis of the lack of adequate public facilities and services to meet the needs generated by development of rezoned property. The Attorney General concluded that there is “no express statutory authorization that expressly grants to localities an ability to specifically require developers to provide adequate public facilities or to defer development until such services are provided.” The Attorney General based its decision on Virginia Code § 15.2-2286, which delineates what a locality may include in its zoning ordinance. The Attorney General’s opinion, however, failed to consider Virginia Code § 15.2-2284, which delineates the factors that a governing body is to consider when adopting or amending its zoning ordinance or zoning map. The Attorney General’s opinion also failed to consider *Gregory v. Board of Supervisors of Chesterfield County*, 257 Va. 530, 514 S.E.2d 350 (1999), in which the Virginia Supreme Court upheld the denial of a rezoning to a use that was consistent with comprehensive plan because impacts to public facilities were not adequately addressed through proffers.

### **10-361 Existing zoning is reasonable; impacts to public facilities are identified, but not addressed or mitigated by the applicant**

If the proposed rezoning will result in impacts to public facilities that are identified but are neither addressed nor mitigated, and the existing zoning is reasonable, the locality’s decision should be upheld. *Gregory v. Board of Supervisors of the County of Chesterfield*, 257 Va. 530, 514 S.E.2d 350 (1999); *Hertz v. Fairfax County Board of Supervisors*, 37 Va. Cir. 508 (1992); *Cussen v. Frederick County Board of Supervisors*, 39 Va. Cir. 561 (1990); *Custer v. City of Harrisonburg*, 44 Va. Cir. 342 (1988); *Moulden v. Frederick County Board of Supervisors*, 10 Va. Cir. 307 (1987). In other words, the proposed zoning will be found to adversely impact public health, safety and welfare, and be found to be unreasonable. *Gregory, supra*.

Following are summaries of cases where the locality’s decision to deny an upzoning was upheld and the existing zoning was found to be reasonable, and impacts to public facilities (primarily transportation) under the proposed rezoning were unaddressed or unmitigated by the applicant:

- In *Gregory v. Board of Supervisors of the County of Chesterfield*, 257 Va. 530, 514 S.E.2d 350 (1999), a proposed development would have added 47 school-age children to schools and added 850 daily vehicle trips on off-site streets to a traffic volume already exceeding the acceptable level; because the staff-identified impacts were \$5156 per unit, and the applicant proffered only \$1500, the impacts were not adequately mitigated.
- In *Hertz v. Fairfax County Board of Supervisors*, 37 Va. Cir. 508 (1992), the proposed use on a 1.2 acre parcel would have had its sole access to a busy congested highway; the court said that the adverse traffic impact was a legitimate matter for the board to consider in denying the rezoning.

- In *Cussen v. Frederick County Board of Supervisors*, 39 Va. Cir. 561 (1990), the court said that the board could properly consider the traffic impacts the rezoning would have on an area road that was already congested.
- In *Custer v. City of Harrisonburg*, 44 Va. Cir. 342 (1988), the proposed use on a 1.053 acre parcel was one of the most highly traffic-intensive uses to which the parcel could be put and would impose an unreasonable burden on highly congested intersections.
- In *Moulden v. Frederick County Board of Supervisors*, 10 Va. Cir. 307 (1987), the board denied the upzoning of a 1.310 acre parcel from a residential classification to a commercial classification that would have allowed a proposed convenience store; although the applicant's expert testimony was that the proposed ingress and egress to the property would create no traffic dangers, the board was concerned of the danger of using a crossover to make left turns to enter and exit the site from Route 11, particularly because of existing congestion nearby.

The evidence in each case indicated that the requested change in use would make existing traffic congestion worse. *Hertz*, *Custer* and *Moulden* are noteworthy since those rezonings involved very small parcels, whose traffic impacts relative to the existing congestion would likely be minimal (though contributing), and whose size likely made mitigation of those impacts both practically and economically impossible.

The courts have never said that the failure or inability of an applicant to address or mitigate impacts on public facilities is evidence that the *existing* zoning is reasonable. It appears, however, that the courts may at least be more inclined to find that the existing zoning is reasonable if the proposed zoning would exacerbate existing undesirable conditions.

#### **10-362 Existing zoning is unreasonable; impacts to public facilities are identified, but not addressed or mitigated by the applicant**

The question of adequate public facilities is more easily considered when the existing zoning is reasonable. *See section 10-361*. As noted above, it appears that a proposed zoning's impacts on public facilities may influence a court's view of the reasonableness of the existing zoning in a proper case.

If the existing zoning is found to be unreasonable, the courts will then look to determine whether the proposed zoning is reasonable. A locality can anticipate having any decision denying a rezoning closely scrutinized for justification. In several key cases, the Virginia Supreme Court dealt with this issue, and the question of adequate public facilities was at the forefront of each case.

In *Board of Supervisors of Fairfax County v. Williams*, 216 Va. 49, 216 S.E.2d 33 (1975) and *Board of Supervisors of Fairfax County v. Allman*, 215 Va. 434, 21 S.E.2d 48 (1975), the impacts of the proposed rezonings on roads and schools were at issue. In both cases, the court rejected the board's "inadequate public facilities" argument, noting that the necessary public facilities were either available *or would become available by the time the project had been developed*. The court also stated in *Allman*, 215 Va. at 439, 21 S.E.2d at 51 and reiterated the principle in *Williams*, that: "As a practical matter, and because of the ever-existing problem of finance, the construction and installation of necessary public facilities usually follow property development and the demand by people for services."

*Allman* and *Williams* should be addressed by: (1) identifying the impacts the project would have on public facilities; (2) determining that the public facilities are inadequate to handle those impacts and that they will not be satisfactorily addressed or mitigated by the applicant; and (3) confirming that the public facilities will not be available by the time the project is developed. Another lesson from these cases is that clearly articulated, relevant, and material evidence to support the locality's claim of inadequate public facilities is essential. *See also the discussion of 2003 Va. Op. Atty. Gen. LEXIS 57, 2003 WL 23150084 (2003) in section 10-360*.

### 10-370 The conservation of natural resources, the preservation of flood plains, the preservation of agricultural and forestal land and the conservation of properties and their values

Of the nine factors delineated in Virginia Code § 15.2-2284, the conservation of natural resources has garnered little attention in the published court decisions. The conservation of properties and their values have been considered in different contexts, and are discussed in sections 10-330 and 10-340.

### 10-400 Downzonings

As stated at the beginning of this chapter, a *downzoning* is the rezoning of property that reduces the permitted intensity of use or development by right, including a reduction in permitted density. See *Board of Supervisors of Culpeper County v. Greengael, LLC*, 271 Va. 266, 285, 626 S.E.2d 357, 368 (2006) (“the use of the land, rather than the profit expectation, is determinative of whether a rezoning is a downzoning”); *Turner v. Board of County Supervisors of Prince William County*, 263 Va. 283, 559 S.E.2d 683 (2002) (finding a piecemeal downzoning partly based on reduction of residential density); *Virginia Code § 15.2-2286(A)(11)* (defining downzoning in context of voluntary agreements between localities and landowners to mean an action resulting “in a reduction in a formerly permitted land use intensity or density”). In *Greengael LLC, supra*, the rezoning of land from R-4 (allowing high density multi-family residential use) to LI (light industrial) was not a downzoning because the LI designation allowed more intense coverage of land than the R-4 designation (50% versus 35%), and more expansive uses than R-4, including manufacturing and other industrial uses.

The key inquiry in determining the legality of a downzoning is whether it is *comprehensive* or *piecemeal*. Comprehensive downzonings are lawful provided that all other requirements for a lawful rezoning are satisfied and the downzoning itself does not result in a taking. Piecemeal downzonings are impermissible under Virginia law except where there is a change in circumstances, a mistake in fact, or fraud.

Summary of the Distinctions Between Comprehensive and Piecemeal Downzonings	
Comprehensive	Piecemeal
<ul style="list-style-type: none"> <li>It affects all or a substantial part of the land within the community</li> <li>It is the product of a long study and careful consideration</li> <li>It is initiated by the locality’s governing body or planning commission, rather than a citizen</li> <li>It regulates all uses within the zoned area</li> </ul>	<ul style="list-style-type: none"> <li>It affects less than a substantial part of the community and as little as a single parcel</li> <li>It is initiated by the locality on its own motion</li> <li>It reduces the permitted intensity of use or development by right, including reducing density, below that recommended and attainable in the comprehensive plan</li> </ul>

### 10-410 Comprehensive downzonings

If the following four common elements exist, a downzoning will likely be found to be comprehensive and, therefore, valid provided all other requirements for a lawful rezoning are satisfied: (1) it affects all or a substantial part of the land within the community; (2) it is the product of a long study and careful consideration; (3) it is initiated by the locality’s governing body or planning commission, rather than a citizen; and (4) it regulates all uses within the zoned area. A comprehensive downzoning may be accomplished either by a zoning text amendment (*e.g.*, by further restricting what uses, structures or activities are allowed in the zoning district) or a zoning map amendment (*e.g.*, by changing the zoning district in which the land is located to one that is less intensive).

In *Hennage Creative Printers v. City of Alexandria*, 37 Va. Cir. 63 (1995), the downzoning of the plaintiff’s property from an industrial to a mixed use zoning district was held to be a comprehensive, rather than a piecemeal, downzoning. The circuit court noted that: (1) the city had been broken down into 14 small areas for purposes of study as part of a city-wide master plan; (2) neither the plaintiffs’ property nor the small area in which plaintiffs’ property was located was singled out; (3) the zoning studies were conducted city-wide rather than aimed at specific parcels or small areas; and (4) the resulting density of the plaintiffs’ property was not less than provided in the master plan adopted as a result of the city-wide study.

## 10-420 Piecemeal downzonings

If a downzoning is not comprehensive, then it is piecemeal. Typically, a downzoning will be found to be piecemeal if it affects less than a substantial part of the community, and as little as a single parcel of land. See *Turner v. Board of County Supervisors of Prince William County*, 263 Va. 283, 559 S.E.2d 683 (2002) (downzoning of 492 of county's 220,000 acres held to be piecemeal); *City of Virginia Beach v. Virginia Land Investment Association No. 1*, 239 Va. 412, 389 S.E.2d 312 (1990) (downzoning of 3,500 acres, which included one-fourth of the land zoned for development but only two percent of the city's area, held to be piecemeal); *Board of Supervisors of Fairfax County v. Snell Construction Corp.*, 214 Va. 655, 202 S.E.2d 889 (1974) (the board downzoned a portion of the plaintiff's property from high density to medium density); see also *Board of Supervisors of Fairfax County v. Carper*, 200 Va. 653, 107 S.E.2d 390 (1959) (though not analyzed as a downzoning case, the court held that the reduction in permitted density on lots in the western two-thirds of the county was arbitrary and capricious).

The use of the land, rather than the profit expectation, is determinative of whether a rezoning is a downzoning. *Board of Supervisors of Culpeper County v. Greengael LLC*, 271 Va. 266, 285, 626 S.E.2d 357, 368 (2006) (rejecting the landowner's argument that its land was more valuable residential, R-4, and holding that the rezoning of the land to the light industry, LI, zoning district was not a downzoning because the LI district allowed more intense coverage of land than the R-4 district, and more expansive uses).

### Whether permitted uses or profit expectations determine whether a rezoning is a downzoning

In *Board of Supervisors of Fairfax County v. Snell Construction Corp.*, 214 Va. 655, 202 S.E.2d 889 (1974), the Virginia Supreme Court said that barring mistake or fraud in the prior zoning regulations, a landowner's "legitimate profit prospects will not be reduced by a piecemeal zoning ordinance reducing permissible use of his land until circumstances substantially affecting the public interest have changed." The competing highlighted phrases appeared to some to leave the door open that a piecemeal downzoning could be established if the locality's zoning action reduced a landowner's profit expectations.

This issue was clarified by the Virginia Supreme Court in *Board of Supervisors of Culpeper County v. Greengael LLC*, 271 Va. 266, 626 S.E.2d 357 (2006) when it held that "the use of the land, rather than the profit expectation, is determinative of whether a rezoning is a downzoning," adding that if downzonings were determined by their effect on profit expectations, governing bodies desiring to amend their zoning regulations would be required "to undertake speculative and costly analyses of the future profit potential of the affected properties under multiple development scenarios." *Greengael*, 271 Va. at 285, 626 S.E.2d at 368 (rezoning from R-4 to Light Industry not a downzoning).

A piecemeal downzoning has occurred when: (1) the zoning change is initiated by the locality on its own motion; (2) the downzoning is addressed to less than a substantial part of the community and as little as a single parcel; and (3) the downzoning reduces the permitted intensity of use or development by right, including reducing density, below that recommended and attainable in the comprehensive plan. See *Snell, supra*; *Turner, supra* (although land was downzoned to a density consistent with the comprehensive plan, the downzoning was piecemeal because density was not attainable under applicable zoning regulations); *Greengael LLC, supra* (as for the second prong of the test, the court said that a piecemeal downzoning "selectively addresses the landowner's single parcel"); *Purcellville West LLC v. Board of Supervisors of Loudoun County*, 75 Va. Cir. 284 (2008) (sustaining the county's demurrer because the "pleadings, while they refer to decreasing densities on 'only a very small remaining portion of the Rural Policy Area,' do not support the necessary prerequisite of selective application necessary to support this claim"). Of course, a request by a landowner for the downzoning of his or her property would not be an invalid piecemeal downzoning.

An aggrieved landowner can make a prima facie case that a rezoning was a piecemeal downzoning upon a showing that "since the enactment of the prior ordinance there has been no change in circumstances substantially affecting the public health, safety, or welfare." *Snell*, 214 Va. at 659, 202 S.E.2d at 893; see also *Greengael, LLC, supra*. At that point, the burden shifts to the governing body to offer evidence of mistake, fraud or changed circumstances sufficient to make reasonableness fairly debatable. *Greengael, LLC*; see also *Virginia Land Investment Association No. 1, supra* (piecemeal downzoning is valid if there has been a change in circumstances substantially affecting the public

health, safety, or welfare, or that the prior zoning was based on a mistake or fraud); *Snell, supra* (where the landowner makes out a prima facie case that the downzoning was piecemeal, the locality then must establish that the existing zoning was the product of fraud or mistake, or that there has been a change in circumstances substantially affecting the public health, safety or welfare).

A *mistake* is demonstrated when there is probative evidence to show that material facts or assumptions relied upon by the governing body at the time of the previous rezoning were erroneous. *Board of Supervisors of Henrico County v. Fralin and Waldron, Inc.*, 222 Va. 218, 278 S.E.2d 859 (1981) (no evidence of mistake or changed circumstances). A mistake does not include judgmental errors. *Fralin and Waldron, supra*. Moreover, a difference of opinion or a change of heart is not a mistake. *Conner v. Board of Supervisors of Prince William County*, 7 Va. Cir. 62 (1981).

*Fraud* means a false representation of a material fact, made intentionally and knowingly, with the intent to mislead, upon which the defrauded person relies to his detriment. *Winn v. Aleda Construction Company, Inc.*, 227 Va. 304, 315 S.E.2d 193 (1984); *Peet v. Peet*, 16 Va. App. 323 (1993).

*Changed circumstances* mean a changed condition since the prior ordinance, as shown by objectively verifiable evidence that substantially affects the character of the neighborhood insofar as the public health, safety or welfare is concerned. *Turner, supra* (holding that the “prior ordinance” is the last ordinance adopted by the locality before it enacted the ordinance that downzoned the land); *Fralin and Waldron, supra*. In *Seabrooke Partners v. City of Chesapeake*, 240 Va. 102, 393 S.E.2d 191 (1990), the Virginia Supreme Court held that the city’s downzoning of 9.88 acres of a neighborhood from multi-family to single family housing was valid where the city presented sufficient evidence of changed circumstances. The Court found that the neighborhood defined by the city had changed since 1969 when the multi-family zoning was established because the surrounding area had developed, or was planned to be developed, as single-family housing. If developed as multi-family housing as desired by the plaintiffs, the Court concluded that it was fairly debatable that the island of multi-family housing would substantially affect the public health, safety, or welfare.

#### **10-430 A closer look at *Turner v. Board of Supervisors of Prince William County***

*Turner v. Board of County Supervisors of Prince William County*, 263 Va. 283, 559 S.E.2d 683 (2002) is a downzoning case that warrants a closer examination.

Despite various amendments from 1958 to 1998, the Prince William County zoning ordinance allowed the owners within the part of the county at issue to subdivide their property into parcels having a minimum size of 10,000 square feet. In 1998, the county downzoned this area – comprising only 492 of the county’s 220,000 acres, or 0.22% of the county’s total land area – by increasing the permitted minimum lot size for development.

Applying the factors from *Board of Supervisors of Fairfax County v. Snell Construction Corp.*, 214 Va. 655, 202 S.E.2d 889 (1974) described in section 10-420, the Virginia Supreme Court held that the downzoning was piecemeal because it was initiated by the board of supervisors, targeted certain property, and effectively reduced the potential residential density in the targeted area below that recommended by the county’s comprehensive plan (the Court said that although the downzoning was to a density recommended in the plan, it was nonetheless piecemeal because the density was not attainable under applicable zoning regulations). Conversely, the Court said that the downzoning was not comprehensive because it did not include “a review of the entire County, [nor] of any known division of the County, such as a magisterial district, [nor] of any known region or zone or designated area of the County.”

As for the county’s claim that changed circumstances existed, the Court first determined that the proper baseline against which changes were to be measured was the last ordinance adopted by the board of supervisors prior to the downzoning. The Court determined that this last prior ordinance was the county’s 1991 zoning ordinance, not the original 1958 ordinance relied on by the trial court. As for the changed circumstances – increased traffic – relied on by the county, the Court held that “the County failed to present sufficient evidence to support a finding of a change in circumstances regarding the impact of increased traffic between [the 1991 and 1998 ordinances].” The Court then held that the trial court erred when it relied upon the *future* impact of future residential

development on traffic conditions because future impacts are not a permissible factor that a court may consider in a piecemeal downzoning case.

### **10-500 Evaluating the validity of a zoning decision under the fairly debatable test**

The first inquiry in a challenge to a decision on a zoning decision is whether the decision was made in violation of or in compliance with the applicable zoning regulations. If the decision was made in violation of the zoning regulations (*e.g.*, there was an express prerequisite for eligibility to obtain the zoning, such as having a specific pre-existing underlying zoning designation), the action will be found to be arbitrary and capricious and not fairly debatable, thereby rendering the decision void and of no effect. *Newberry Station Homeowners Association v. Board of Supervisors of Fairfax County*, 285 Va. 604, 740 S.E.2d 548 (2013), quoting *Renkey v. County Board of Arlington County*, 272 Va. 369, 376, 634 S.E.2d 352, 356 (2006) and discussed in section 10-510; *see Levine v. Town Council of Abingdon*, 94 Va. Cir. 556 (2016) (failure of motion approving rezoning to identify any permitted public purposes for the rezoning did not invalidate the decision; the motion was made after full public hearings “that clearly considered the rezoning to be necessary to serve the ‘general welfare’ and ‘public necessity’” and other significant benefits).

Once it is shown that the decision was made in compliance with the applicable zoning regulations, it is reviewed under the *fairly debatable* test. *Gregory v. Board of Supervisors of Chesterfield County*, 257 Va. 530, 514 S.E.2d 350 (1999). For a succinct explanation of the fairly debatable test for ordinances generally, *see Town of Leesburg v. Giordano*, 280 Va. 597, 701 S.E.2d 783 (2010) (pertaining to surcharge on water and sewer rates imposed on non-residents).

The decision of a locality to deny an application for an upzoning is a legislative act that is presumed to be reasonable. *Gregory, supra*. This presumption will stand until the applicant presents probative evidence that the legislative act was unreasonable. *Gregory, supra*. If the applicant’s challenge is met by the locality with evidence of reasonableness that is sufficient to render the issue fairly debatable, then the legislative action must be sustained. *Gregory, supra*. An issue is fairly debatable when the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions. *Gregory, supra; City Council of City of Salem v. Wendy’s of Western Virginia, Inc.*, 252 Va. 12, 471 S.E.2d 469 (1996); *Board of Supervisors of Fairfax County v. Williams*, 216 Va. 49, 216 S.E.2d 33 (1975).

The burden is on the denied landowner to first prove the unreasonableness of the current zoning classification. *Gregory, supra; Board of Supervisors of Roanoke County v. International Funeral Services*, 221 Va. 840, 275 S.E.2d 586 (1981). If the landowner produces probative evidence that the existing zoning classification is unreasonable, the governing body is required to produce sufficient evidence of reasonableness to make the issue fairly debatable. *Gregory, supra*. As part of its inquiry, the court also considers evidence of the reasonableness of the proposed zoning classification. *Gregory, supra; Wendy’s, supra; Board of Supervisors of Fairfax County v. Pyles*, 224 Va. 629, 300 S.E.2d 79 (1983); *International Funeral Services, supra*. The evidence to be sufficient for this purpose must meet not only a quantitative but also a qualitative test; it must be evidence that is not only substantial, but also relevant and material. *Williams, supra*.

If the issue is fairly debatable, the governing body’s decision must be sustained. If both the existing zoning and the proposed zoning are appropriate, it is the governing body, not the landowner or the court, who determines the appropriate use. *Wendy’s, supra*.

### **10-510 Void acts are never fairly debatable**

When a governing body does not adhere to its own regulations, the action will be found to be arbitrary and capricious, not fairly debatable, and therefore void and of no effect.

Thus, a zoning action that ignores a regulatory prerequisite to the zoning action is void. In *Renkey v. County Board of Arlington County*, 272 Va. 369, 634 S.E.2d 352 (2006), the board of supervisors rezoned a portion of the property at issue from the R-5 to the C-R (Commercial Redevelopment) zoning district. The zoning regulations provided that in order to be eligible for the C-R zoning district, the site had to be zoned C-3. Thus, the residents challenging the board’s decision claimed that the board violated its own zoning ordinance. The county argued that the sentence

referring to eligibility for the C-R zoning district was a general statement of intent or a preamble. The Virginia Supreme Court concluded that the language was not merely a preamble and that the provision providing only those sites zoned C-3 being eligible for C-R zoning was “an operative, essential, and binding part of the ordinance.” *Renkey*, 272 Va. at 375, 634 S.E.2d at 356. The Court concluded that “the County acted in direct violation of ACZO § 27A. When the County re-zoned a portion of FBCC’s property from “R-5” to “C-R” without complying with the eligibility requirement set out in its own ordinance, its action was arbitrary and capricious, and not fairly debatable, thereby rendering the re-zoning void and of no effect.” *Renkey*, 272 Va. at 376, 634 S.E.2d at 356.

In *Levine v. Town Council of Abingdon*, 94 Va. Cir. 556 (2016), the town council’s decision to approve a rezoning application was challenged on the ground that the motion approving the rezoning application failed to identify any permitted public purposes for the rezoning. The trial court held that the failure of the town council to identify a public purpose in the motion did not invalidate the decision. The court said that the motion was made after full public hearings “that clearly considered the rezoning to be necessary to serve the ‘general welfare’ and ‘public necessity’” and other significant benefits.

### **10-520 Factors relevant to the reasonableness or unreasonableness of the existing zoning**

This section examines the most commonly considered factors delineated in Virginia Code § 15.2-2284 and discussed at length in section 10-300, but does so within the context of the fairly debatable test.

- *The zoning of abutting or nearby parcels:* Whether abutting parcels are zoned similarly to the subject parcel is a factor showing the reasonableness of the existing zoning. *Gregory v. Board of Supervisors of Chesterfield County*, 257 Va. 530, 514 S.E.2d 350 (1999). *See section 10-310.*
- *The actual land uses of abutting or nearby parcels:* Whether abutting parcels are used similarly to the subject parcel under its existing zoning is a factor showing the reasonableness of the existing zoning. *Gregory*, *supra*. *See section 10-310.*
- *Whether the existing use or the proposed use is consistent with the comprehensive plan:* If the existing zoning is consistent with the use identified in the comprehensive plan, the existing zoning should be found to be reasonable. *Board of Supervisors of Roanoke County v. International Funeral Services*, 221 Va. 840, 275 S.E.2d 586 (1981); *Williams v. Board of Supervisors of Fairfax County*, 1996 Va. Cir. LEXIS 528 (1996); *Turock Estate, Inc. v. Thomas*, 7 Va. Cir. 222 (1984). However, if the existing zoning is inconsistent with the use identified in the comprehensive plan, this inconsistency does not establish that the existing zoning is unreasonable where other factors exist. *Gregory v. Board of Supervisors of Chesterfield County*, 257 Va. 530, 514 S.E.2d 350 (1999); *City Council of City of Salem v. Wendy’s of Western Virginia, Inc.*, 252 Va. 12, 471 S.E.2d 469 (1996). *See section 10-320.* The other factors most relevant are the existing zoning and actual uses of abutting or nearby parcels, the character of the area, and the potential impacts to public facilities.
- *Change in the character of the area since the existing zoning was established:* The change in the character of an area since the existing zoning was established is an important factor that may show the unreasonableness of the existing zoning. *Boggs v. Board of Supervisors of Fairfax County*, 211 Va. 488, 178 S.E.2d 508 (1971); *County Board of Arlington County v. God*, 216 Va. 163, 217 S.E.2d 801 (1975). *See section 10-341.*
- *The viability of an existing residential neighborhood:* Where the existing zoning is residential and the proposed zoning is commercial or industrial, or even a more intensive residential density, the viability of the existing residential neighborhood is an important factor that will show the reasonableness of the existing zoning. *Wendy’s*, *supra*; *Board of Supervisors of Fairfax County v. Pyles*, 224 Va. 629, 300 S.E.2d 79 (1983); *Board of Supervisors of Fairfax County v. Jackson*, 221 Va. 328, 269 S.E.2d 381 (1980). *See section 10-342.*
- *Discriminatory zoning actions; other rezonings, close in time and space, of similarly situated parcels:* Where some similarly situated lands are upzoned and others are not, the courts have found the existing zoning to be lacking a reasonable basis. *Town of Vienna Council v. Kobler*, 218 Va. 966, 244 S.E.2d 542 (1978); *Board of Supervisors of Fairfax County v. Allman*, 215 Va. 434, 211 S.E.2d 48 (1975); *Board of Supervisors of Fairfax County v. Williams*, 216 Va. 49,

216 S.E.2d 33 (1975); however, the reader should also consider more recent cases in which the Virginia Supreme Court considered discriminatory zoning actions in the context of special use permits and conditional use permits discussed in section 12-730.

- *Economic feasibility of developing land under existing zoning:* In some older cases, the Virginia Supreme Court considered the economic feasibility of developing the land under existing zoning as a factor showing its unreasonableness. *Williams, supra; Boggs, supra; God, supra; City Council of the City of Fairfax v. Swart*, 216 Va. 170, 217 S.E.2d 803 (1975). However, in the more recent *Gregory* case, the Court found that the potential development of the 30-acre tract at issue under existing zoning into two or three lots (where an 81-lot subdivision was sought under the proposed zoning) was a reasonable use of the land. *See sections 10-331 and 10-332.*
- *The need for certain housing stock or other uses:* An identified shortage of a certain type of housing stock or uses (such as lots for residential uses) is a factor that may show the unreasonableness of the existing zoning. *Allman, supra; Williams, supra. See section 10-352.*

### **10-530 Factors relevant to the reasonableness or unreasonableness of the proposed zoning**

Because the fairly debatable test requires that the reasonableness of the existing zoning be the threshold analysis, the courts have spent much more time engaged in that analysis, rather than considering the reasonableness of the proposed zoning. Nonetheless, the courts have occasionally ventured to expressly describe the proposed zoning in terms of its reasonableness.

- *Adverse impacts not addressed as prescribed in the comprehensive plan:* The proposed zoning may be found to be unreasonable if the applicant fails to adequately address explicitly identified impacts from the project by not proffering cash as articulated in the comprehensive plan to address the *pro rata* share of impacts on the future cost of public facilities. *Gregory v. Board of Supervisors of the County of Chesterfield*, 257 Va. 530, 514 S.E.2d 350 (1999). *See sections 10-361 and 10-362.*
- *Adverse impacts not otherwise addressed by project-specific solutions:* The proposed zoning may be found to be unreasonable if the adverse impacts arising from the proposed use are not addressed by project-specific solutions. *Custer v. City of Harrisonburg*, 44 Va. Cir. 342 (1998) (rezoning to commercial district to allow gas station/convenience store/car wash would be unreasonable given that the proposed use of the property was one of the most highly traffic intensive uses to which the property could be put and would place an unreasonable burden upon an already congested intersection, and the proposed use's hours of operation and signage would intrude on surrounding residential neighborhood on west side of freeway; existing zoning found to be reasonable). *See sections 10-361 and 10-362.*
- *Proposed zoning is premature under the comprehensive plan:* The proposed density or use is premature, based upon specific, objective timing criteria stated in the comprehensive plan, *Board of Supervisors of Loudoun County v. Lerner*, 221 Va. 30, 267 S.E.2d 100 (1980). *See section 10-351.*
- *Proposed zoning is consistent with the comprehensive plan:* The decision to deny a rezoning that is consistent with the comprehensive plan is not necessarily unreasonable. *Atlantic Town Center Development Corp. v. Accomack County Board of Supervisors*, 2016 Va. Cir. LEXIS 112 (2016) (the trial court added "The test for arbitrary and capricious is not wholly based upon compatibility with a comprehensive plan. The plan may create expectations in the mind of the landowner but it is the Board's acceptance or denial of the applicant's specific plan that is at issue").
- *Missing or incomplete information:* An approved rezoning is not unreasonable merely because the decision-maker does not information that addresses every unknown or uncertainty. In *Lewine v. Town Council of Abingdon*, 94 Va. Cir. 556 (2016), the trial court held that the town council's approval of a rezoning was not unreasonable even though the traffic study was not completed at the time of the first of two public hearings and the site plan submitted in conjunction with the rezoning application was only "substantially" complete. The evidence showed that the town council had sufficient information to make a reasonable decision on the rezoning application.

Undoubtedly, the factors applied to determine the reasonableness of the existing zoning are also relevant when determining whether the proposed zoning is reasonable. The most important factors in making this determination include: (1) whether the proposed zoning is consistent with the comprehensive plan; (2) the zoning and actual land uses of the abutting or nearby properties; (3) the change in the character of the area since the existing zoning was established; (4) rezoning actions of similarly situated properties; and (5) the impacts of the proposed zoning on the existing neighborhood.

#### **10-540 Denial allegedly based on unconstitutional proffers; the right to damages**

Virginia Code § 15.2-2208.1(A) provides that any rezoning approved that included an unconstitutional proffer, or any rezoning denied because the applicant refused to submit an unconstitutional proffer, is “entitled to an award of compensatory damages and to an order remanding the matter to the locality with a direction to approve the rezoning without the unconstitutional condition and may be entitled to reasonable attorney fees and court costs. Virginia Code § 15.2-2208.1 applies conditions attached to other types of land use applications as well, including special use permits. What may be an unconstitutional proffer is discussed in section 6-440.

Virginia Code § 15.2-2208.1(B) provides that if the aggrieved applicant proves that an unconstitutional proffer or condition has been proven to have been a factor in the grant or denial of the application, the trial court must presume, absent clear and convincing evidence to the contrary, that the applicant’s acceptance of or refusal to accept the unconstitutional condition was the controlling basis for such impermissible grant or denial. An applicant must object to the condition in writing prior to the locality’s action. *Virginia Code § 15.2-2208.1(B)*.

In *Atlantic Town Center Development Corp. v. Accomack County Board of Supervisors*, 94 Va. Cir. 35 (2016), the applicant sought to rezone its land from agricultural to residential. The board of supervisors denied the rezoning and the applicant challenged the decision. One of the issues was whether the board denied the rezoning because the applicant failed to proffer an alleged unconstitutional proffer under Virginia Code § 15.2-2208.1(B). The circuit court held that the board of supervisors did not deny the applicant’s rezoning because it failed to proffer an unconstitutional proffer. The county’s planning staff had discussed a phasing proffer with the applicant in an effort to ameliorate the county’s concern that the density proposed by the applicant (432 units) was excessive. There was no evidence that phasing the project was demanded either by the board or county staff, or that the board even considered the need for a phasing proffer.

#### **10-600 Transportation planning in the rezoning process**

Virginia Code § 15.2-2200 declares the legislative intent of the General Assembly in adopting the laws pertaining to planning, zoning and the subdivision of land. The following passage highlights those statements most applicable to roads:

This chapter is intended to encourage localities to improve public health, safety, convenience and welfare of its citizens and to *plan for the future development of communities to the end that transportation systems be carefully planned; that new community centers be developed with adequate highway . . . facilities . . . and that the growth of the community be consonant with the efficient and economical use of public funds.* (italics added)

In summary, Virginia Code § 15.2-2200 speaks to *planning* transportation systems for *future* development, and assuring that *new* community centers have adequate highway facilities.

In recent years the General Assembly has amended and added key pieces of enabling authority to require that transportation planning be coordinated with a locality’s comprehensive plan and its zoning decisions. One of those key pieces of legislation was adopted as Chapter 896 of the 2007 Acts of Assembly. In *Marshall v. Northern Virginia Transportation Authority*, 275 Va. 419, 657 S.E.2d 71 (2008), the Virginia Supreme Court held that the portion of the legislation that vested taxing authority in a regional transportation authority that was not a county, city, town or regional government and was not an elected body, was unconstitutional.

Within 10 business days after a rezoning application is submitted, the locality must submit the proposal to VDOT if the proposal will substantially affect transportation on state-controlled highways. *Virginia Code* § 15.2-2222.1(B). The rezoning application must include a traffic impact statement if required by local ordinance or VDOT regulations. *Virginia Code* § 15.2-2222.1(B).

Within 45 days after its receipt of the traffic impact statement, VDOT must either provide written comment on the proposed rezoning to the locality or schedule a meeting with the locality's planning commission or other agent (to be held within 60 days after VDOT received the traffic impact statement) and the applicant to discuss potential modifications to the proposal to address concerns and deficiencies. *Virginia Code* § 15.2-2222.1(B).

VDOT must complete its initial review of the rezoning proposal within 45 days, and its final review within 120 days, after it receives the rezoning proposal from the locality. *Virginia Code* § 15.2-2222.1(B). If the locality has not received any comments from VDOT within the specified periods, it may assume that VDOT has no comments. *Virginia Code* § 15.2-2222.1(D).

See 24 VAC 30-155-40 for the regulations for a traffic impact analysis and traffic impact statement required for a rezoning, and 24 VAC 30-155-60 for the required elements of a traffic impact statement.

## **10-700 Zoning actions that may be susceptible to challenge**

This section addresses several types of rezoning actions that may give rise to a challenge, and may raise a variety of constitutional issues.

### **10-710 Spot zonings**

A *spot zoning* is the upzoning (allowing more intensive uses) of land to a classification that is different than that of the surrounding land. The common element found in a spot zoning is the rezoning of a particular parcel from an original zoning classification that was identical to parcels similar in size and use and situated in close proximity to the parcel rezoned. *Guest v. King George County Board of Supervisors*, 42 Va. Cir. 348 (1997). However, the fact that adjacent land is not similarly zoned does not necessarily make a rezoning a spot zoning. *Clark v. Town of Middleburg*, 26 Va. Cir. 472 (1990).

Illegal spot zoning occurs when the purpose of a zoning text or zoning map amendment is solely to serve the private interests of one or more landowners, rather than to further the locality's welfare as part of an overall zoning plan that may include a concurrent benefit to private interests. *Riverview Farm Associates v. Board of Supervisors of Charles City County*, 259 Va. 419, 528 S.E.2d 99 (2000); *Board of Supervisors v. Fralin & Waldron, Inc.*, 222 Va. 218, 278 S.E.2d 859 (1981); *Wilhelm v. Morgan*, 208 Va. 398, 157 S.E.2d 920 (1967); *Runion v. Board of Supervisors of Roanoke*, 65 Va. Cir. 41 (2004) (rezoning land from AR to R-1 was not illegal spot zoning because the rezoning was part of a continuing plan of development for the county, the community plan recognized that development in the area was inevitable, granting the rezoning with proffers allowed the county to better protect the interests of the county than merely allowing the property to develop under its AR classification (particularly in this case where the increase in density went from 38 to 44), and the rezoning was compatible with the surrounding area).

A spot zoning that is consistent with the comprehensive plan should be found to be lawful since, by being consistent with the plan, it is furthering the locality's welfare.

### **10-720 Zoning to depress land values**

One of the purposes of zoning is to "encourage economic development activities that provide desirable employment and enlarge the tax base." *Virginia Code* § 15.2-2283. One of the factors to be considered in any zoning decision is the "conservation of properties and their values." *Virginia Code* § 15.2-2284. These two provisions indicate a legislative intent that a legitimate purpose of zoning is to protect and enhance land values.

The opposite is not a legitimate purpose of zoning. A governing body may not use its zoning power to depress the value of land in order to lower the costs of a public taking. *Gayton Triangle Land Co. v. Board of Supervisors of Henrico County*, 216 Va. 764, 222 S.E.2d 570 (1976).

### 10-730 Contract zoning

A locality has no authority to enter into a private agreement with a property owner to amend a zoning ordinance, thereby contracting away its police power. *Pima Gro Systems, Inc. v. Board of Supervisors of King George County*, 52 Va. Cir. 241 (2000). “An agreement made to zone or rezone for the benefit of an individual landowner is generally illegal. It is an *ultra vires* act bargaining away the police power. Zoning must be governed by the public interest and not by benefit to a particular landowner.” *Pima Gro, supra*, citing 83 *Am.Jur.2d, Zoning and Planning*, § 46.

Localities are enabled to enter into a voluntary agreement with a landowner that would result in a downzoning of undeveloped or underdeveloped lands in exchange for a tax credit equaling the amount of excess real estate taxes paid due to the higher zoning classification. *Virginia Code* § 15.2-2286(A)(11). This, of course, is not illegal contract zoning.

### 10-740 Socio-economic zoning

For purposes here, socio-economic zoning attempts to achieve sociological or economic objectives not related to the regulation of land on issues that are not otherwise expressly enabled. Socio-economic zoning is invalid if its effect is to favor one sociological or economic interest over another. In *Board of Supervisors of Fairfax County v. DeGross Enterprises, Inc.*, 214 Va. 235, 198 S.E.2d 600 (1973), the Virginia Supreme Court invalidated a regulation that required certain developments having 50 or more dwelling units to build at least 15 percent of the dwelling units for low and moderate income housing. The Court stated:

The amendment, in establishing maximum rental and sale prices for 15% of the units in the development, exceeds the authority granted by the enabling act to the local governing body because it is *socio-economic zoning* and attempts to control the compensation for the use of land and the improvements thereon.

Of greater importance, however, is that the amendment requires the developer or owner to rent or sell 15% of the dwelling units in the development to persons of low or moderate income at rental or sale prices *not fixed by a free market*. Such a scheme violates the guarantee set forth in Section 11 of Article 1 of the Constitution of Virginia, 1971, that no property will be taken or damaged for public purposes without just compensation.

*DeGross Enterprises, Inc.*, 214 Va. at 235, 198 S.E.2d at 601.

The Court concluded “that the legislative intent [in the state enabling legislation] was to permit localities to enact only traditional zoning ordinances directed to physical characteristics and having the purpose neither to include nor exclude any particular socio-economic group.” *DeGross Enterprises, Inc.*, 214 Va. at 238, 198 S.E.2d at 602. The General Assembly has since responded by enabling localities to establish *voluntary* affordable housing programs in their zoning ordinances. *Virginia Code* §§ 15.2-2304 and 15.2-2305. Affordable housing programs that comply with *Virginia Code* §§ 15.2-2304 or 15.2-2305 are not unlawful socio-economic zoning.

In *Board of Zoning Appeals of Fairfax County v. Columbia Pike Ltd.*, 213 Va. 437, 192 S.E.2d 778 (1972), the Virginia Supreme Court held that a zoning regulation requiring that persons constructing office space in a commercial high rise office building zone construct four parking spaces for each 1000 square feet of office space: (1) did not require that the parking spaces be leased only with and as part of the lease or rental of office space; and (2) did not prohibit the landlord from charging employees and tenants in the building for using or reserving the parking spaces. Thus, the Court held that the BZA could not prohibit the landlord from leasing parking spaces separate from the lease of office space. The Court stated that the BZA had “*confused the use of property with compensation for use of property*.” These are two entirely separate and distinct things.” The Court added that:

Under Article 8 of Chapter 11 of Title 15.1 of the Code the General Assembly has authorized local governing bodies by ordinance to control the use and development of lands within their respective jurisdictions. *There is no legislation, however, which enables these governing bodies to control the compensation of land or the improvements thereon.*

(italics added) *Columbia Pike, Ltd.*, 213 Va. at 438, 192 S.E.2d at 779.

#### **10-750 Illegitimate or personal reasons not based on zoning principles**

A zoning action may be improper when an owner has been singled out for adverse treatment based on illegitimate or personal reasons. *Marks v. City of Chesapeake*, 883 F.2d 308 (4<sup>th</sup> Cir. 1989). In *Marks*, a palmist sought a conditional use permit and the city initially supported granting the permit. However, after certain local citizens displayed overt religious hostility to the presence of the palmist, the city council denied the permit. Thus, the public's negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible grounds for a land use decision. *Marks, supra*.