



Town of Farmville Board of Zoning Appeals

Members
Pam Butler, CBZA, Chair
Penny Pairet, CBZA, Vice Chair
Cameron Patterson
Sam Carey
Zach Preston

Town Council Chambers of the Town Hall, 116 North Main Street, Farmville, Virginia

Agenda for Friday, January 24, 2025 @ 3:00pm

1. **Call to Order** (Please Silence Devices)
2. **Roll Call**
3. **Determination of Quorum**
4. **Consideration of Minutes**
 - a. Minutes of the Regular Board of Zoning Appeals Meeting – February 22, 2024
5. **Election of Officers**
 - a. Election of Chairperson
 - i. Nominations
 - ii. Vote
 - b. Vice-Chairperson
 - i. Nominations
 - ii. Vote
6. **Hearing of Cases**
 - a. **BZA25-001:** to consider the appeal of subdivision administrator's decision filed by Smart Development, LLC, regarding a boundary line adjustment of Tax Map parcels 37-7-5 and 37-7-5A.
7. **New Business**
 - a. Consideration and Adoption of Standing Meeting Schedule for 2025
 - b. Consideration and Adoption of 2024 Annual Report
 - c. Staff Updates/Other Items of Interest
8. **Adjournment**

**Town of Farmville Board of Zoning Appeals
Farmville Town Hall Council Chambers
116 North Main Street, Farmville, VA
Thursday February 22, 2024**

Members Present: Chairperson Pam Butler, Vice-Chair Penny Pairet, and Sam Carey

Member Absent: Cameron Patterson and Zachary Preston

Staff Present: Director of Community Development Ashley Atkins-Austin, Administrative Assistant II Michelle Watkins

Call to Order: Chairperson Butler called the meeting to order at 3:00 pm.

Determination of Quorum: With three (3) members being present, a quorum was established.

APPROVAL OF MINUTES

Minutes of Board of Zoning Appeals Meeting- January 25, 2024

On motion by Mr. Carey, Seconded by Ms. Pairet, with all present members voting “aye”, the minutes were approved with no corrections.

HEARING OF THE CASE

BZA24-001-VAR- Walmart Real Estate, property owner and applicant, requests a variance of fifteen additional wall signs to the two allowed per business per street frontage, a 339.79 square foot variance to the 100 square foot maximum sign area for wall signs, and a 534.79 square foot variance to the 150 square foot total signage allowed in the B-3 District as stated in Section 29-31.f.

Ms. Ashley Atkins-Austin provided a brief background of the case. Staff recommended denial of the variance request by the applicant.

Mr. Zeiner, a resident of the town, spoke in opposition to the variance request. Ms. Watkins shared a written statement with the Board in opposition to the variance request from Matt Schewel, representative of Allegheny Partners LLC and owner of Schewel Home Store. Brian Lorenze, representative of Walmart Real Estate, introduced himself to the Board and offered to field any questions.

The Board had no questions and there was no deliberation.

On a motion by Ms. Pairet, seconded by Mr. Carey, and with all present members present voting “aye”, the motion to deny variance request BZA24-001-VAR was passed.

UNFINISHED BUSINESS

There was no unfinished business before the Board.

NEW BUSINESS

There was no new business before the Board.

ADJOURNMENT

With no further business before the Board of Zoning Appeals, Chairperson. Butler called for a motion to adjourn.

On a motion by Ms. Pairet, seconded by Mr. Carey, with all members present voting “aye”, the meeting was adjourned at 3:13 pm.

Respectfully submitted by Michelle D. Watkins, Administrative Assistant II

Pam Butler, Chairperson

Ashley Atkins-Austin,
Director of Community Development

DRAFT



Identification and Location Information

Appellant	Dale G. Mullen, Esq. on behalf of Smart Development, LLC
Property Owner	Longwood Village Housing Foundation, Inc.
Location	Clark Street, Tax Map # 37-7-5 & 37-7-5A
Zoning	B-3 Highway Commercial
Staff Contact	Ashley Atkins-Austin, CZA, Director of Community Development Phone: 434-392-8465 Email: aaustin@farmvilleva.com

Summary

The applicant, Dale G. Mullen, Esq., on behalf of Smart Development, LLC has requested an appeal of the Subdivision Administrator’s decision to approve a boundary line adjustment and composite map for Tax Map Parcels 37-7-5 and 37-7-5A, owned by Longwood Village Housing Foundation, LLC.

An appeal of the Subdivision Administrator’s decision is to be reviewed by the Board of Zoning Appeals following the criteria below set forth in the Town of Farmville Zoning Code and Virginia Code.

Article II. Section 29-12(b)(2)a of the Zoning Code states:

Appeals. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration of this chapter. No such appeal shall be heard except after notice and hearing is provided by Code of Virginia. § 15.2-2204.

Virginia Code 15.2-2309 states:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

On Friday, September 13, 2024, staff received an email from Lori Blackwood with the Longwood University Real Estate Foundation that contained a preliminary plat for review. Staff forwarded the preliminary plat to a third-party reviewer for review and comments. Received comments from third-party reviewer on Monday, September 16, 2024, to say the plat meets all ordinance requirements and there are no known overlay districts associated with the parcels except zoning.

On Tuesday, September 24, 2024, Ms. Blackwood dropped off five copies of the final plat for signatures. Staff completed a review of the final plat on Monday, September 30, 2024.



The Subdivision Administrator begins the review verifying compliance with the dimensional standards for base zoning districts listed in Sec. 29-22(b) of the Zoning Code. Then proceeds with the review based on Sec. 29-63(b)(2) and Sec. 29-64 of the Zoning Code.

Per Town Code Sec. 29-64.a.1.b, the agent may permit a boundary line adjustment, vacation, or the separation of one (1) parcel from a tract of land without complying with all requirements of the zoning chapter if it meets the following four items:

1. Not in conflict with the general meaning and purpose of the chapter.
2. No new streets are required to serve the parcel.
3. Meets or exceeds all zoning requirements
4. In this case, only one (1) line shall be required and shall be labeled “subdivision agent”.

The submitted plat was viewed as a boundary line adjustment based on Sec. 29-66(b) of the Zoning Code. *Boundary Lines*. As allowed by Code of Virginia, § 15.2-2275, the boundary lines of any lot or parcel of land may be vacated, relocated, or otherwise altered as part of an otherwise valid and properly recorded plat of subdivision or resubdivision approved as provided in this article or properly recorded prior to the applicability of this article, and executed by the owner or owners of the land. The action shall not involve the relocation or alteration of streets, alleys, easements for public passage, or other public areas. No easements or utility rights-of-way shall be relocated or altered without the express consent of all persons holding any interest therein.

The Subdivision Administrator found that no new parcels were created and no new streets were required to serve the parcels. There is no minimum lot size area or lot street frontage requirement for the B-3 Highway Commercial zoning district. Based on compliance with the dimensional standards and no new streets required, the plat was found to be in agreement with the general meaning of the chapter.

Staff signed five copies of the plat, returning four to the Longwood Real Estate Foundation and keeping one copy for staff records.

Based on the ordinance provisions as noted above, the subdivision administrator’s decision is correct and the appeal has no merit.

Recommendation

Staff Recommendation

Staff recommends that the Board of Zoning Appeals uphold the subdivision administrator’s decision and deny appeal BZA25-001 of the Subdivision Administrator’s decision to approve a boundary line adjustment and composite map for Tax Map Parcels 37-7-5 and 37-7-5A, as the decision was in compliance with the Town Zoning Code.



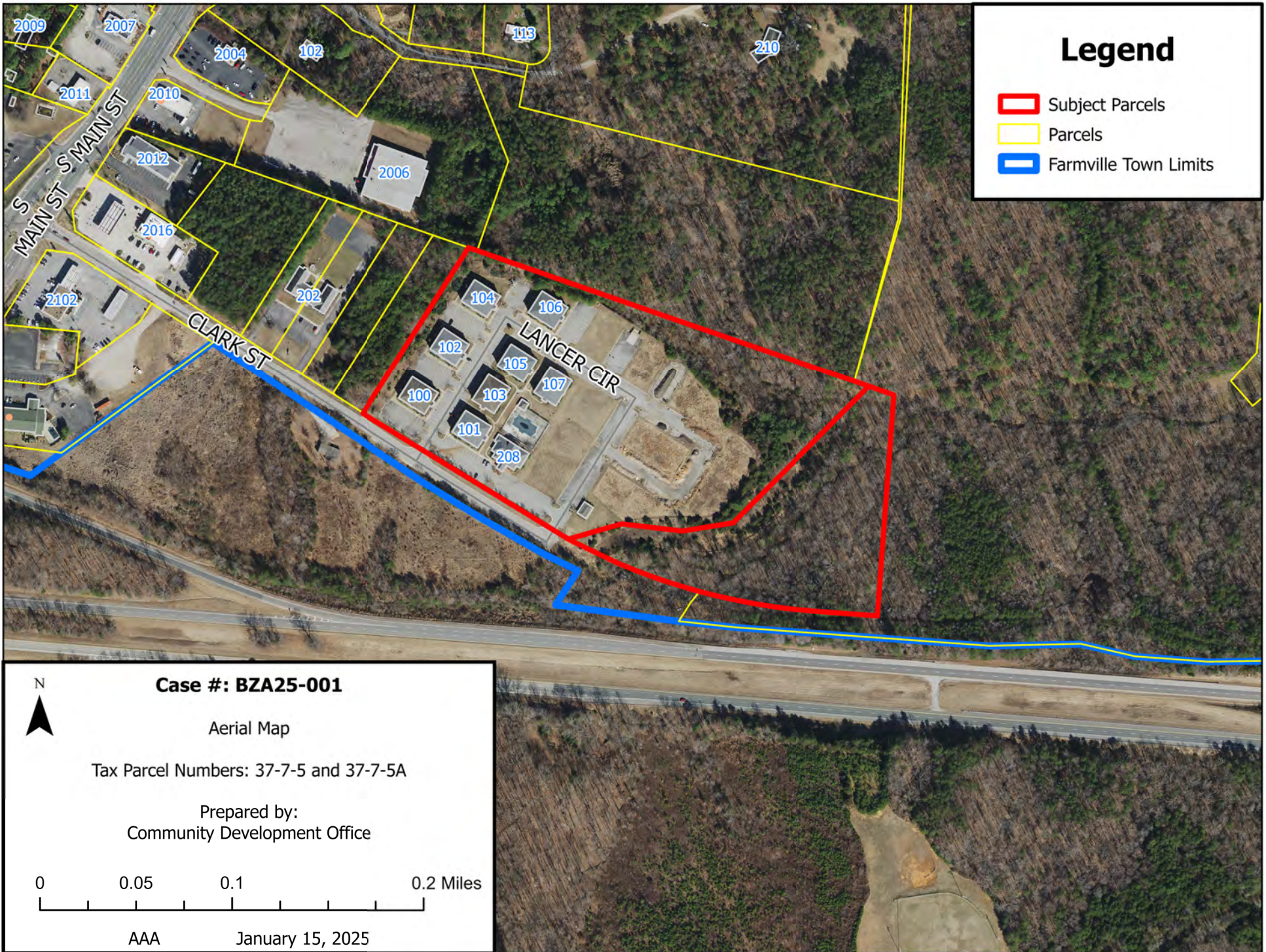
116 North Main Street
Farmville, Virginia 23901
434-392-8465
www.farmvilleva.com

Department of Community Development
**Staff Report: BZA25-001 Smart Development LLC – Appeal
of Subdivision Administrators Decision**

Meeting Date: Friday, January 24, 2025 at 3pm

Attachments

1. Aerial Map
2. Approved Boundary Line Adjustment Composite Plat; approved 2024
3. Approval Letter to Longwood Real Estate Foundation
4. Plat of Resubdivision approved in 2003
5. Appeal Application
6. Smart Development Appeal





Legend:

IPS = Iron pin to be set
(NDL) = New division line

NEW DIVISION LINES

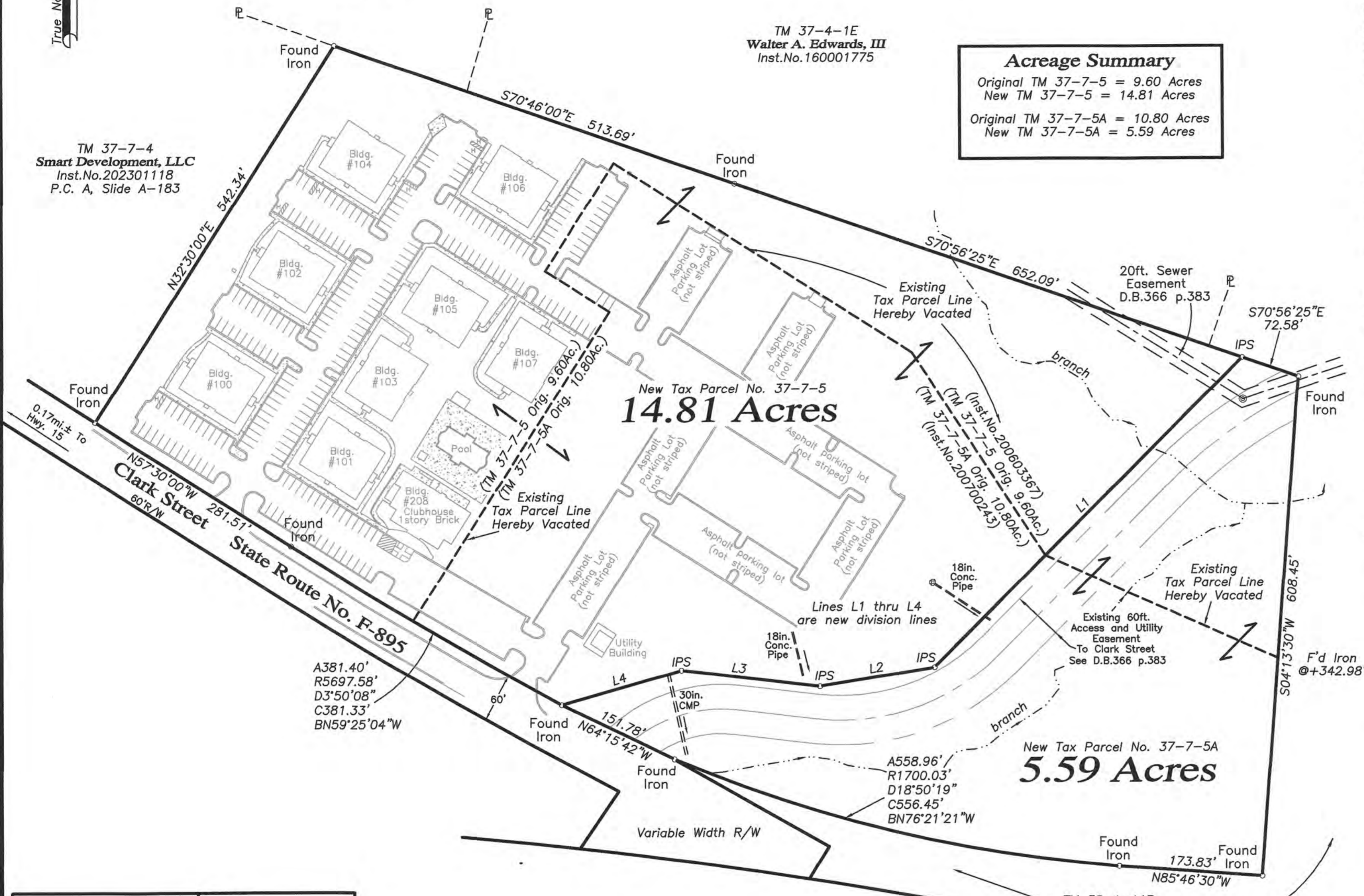
LINE	BEARING	DISTANCE
L1	S44°52'33"W	530.10'
L2	S80°45'57"W	140.90'
L3	N83°22'21"W	169.72'
L4	S73°56'31"W	151.27'

TM 37-8-3
Farmville Bowl, L.L.C.
D.B.335 p.356
P.B.6 p.152

TM 37-4-1E
Walter A. Edwards, III
Inst.No.160001775

Acres Summary
 Original TM 37-7-5 = 9.60 Acres
 New TM 37-7-5 = 14.81 Acres
 Original TM 37-7-5A = 10.80 Acres
 New TM 37-7-5A = 5.59 Acres

TM 37-7-4
Smart Development, LLC
Inst.No.202301118
P.C. A, Slide A-183



Surveyor

I, E.E. Hodges, III, L.S. do hereby certify that the
Boundary Line Adjustment

as shown on this plat contains 20.40 Acres, more or less, is that land owned by Longwood Village Housing Foundation, LLC by Instrument No. 200603367 and Instrument No. 200700243.

September 12, 2024
Date

Land Surveyor

Owner

The boundary line adjustment as shown on this plat is in accordance with the desire of undersigned Owner(s), Proprietors or Trustees.

9/23/24
Date

Representative for Longwood Village Housing Foundation, LLC

Notary

STATE OF Virginia
CITY/COUNTY OF Prince Edward

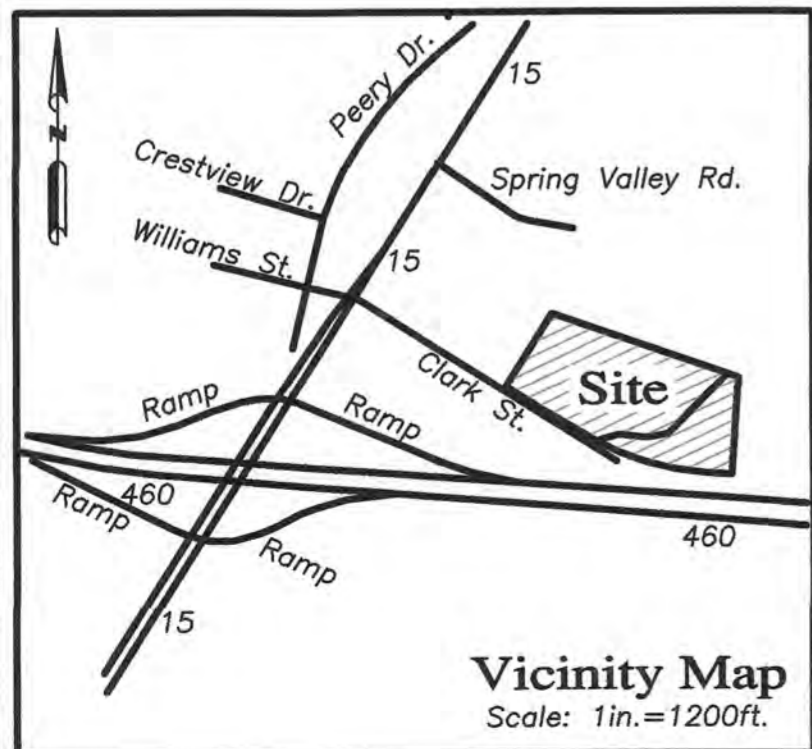
I, Jennifer Baldwin, a Notary Public in and for the State and City/County aforementioned; do hereby certify that Lori A. Blackwood whose name is signed above has on this 23 day of September, 2024 acknowledged the same before me.

Notary Public
Notary Registration Number

My Commission expires 31 day of May, 2026

Notes:

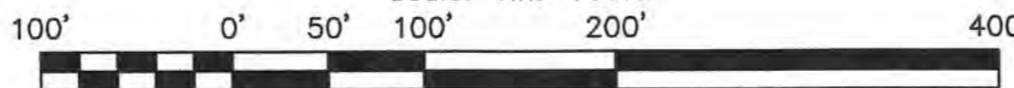
1. Tax Map Parcel No.37-7-5 and 37-7-5A.
2. This plat has been prepared without the benefit of a title examination and therefore does not necessarily indicate all encumbrances on the property.
3. This land is situated in F.I.R.M. flood plain Zone X (area determined to be outside the 2% annual chance floodplain) as shown on Town of Farmville, Virginia Map Number 51147C0095D. Effective Date April 19, 2023.
4. This composite plat is based on field work completed January 2007 with new division line based on a current field survey.
5. Property currently zoned B3.



**Boundary Line Adjustment Composite Map
Tax Parcel 37-7-5 and 37-7-5A**
Town of Farmville, Prince Edward County, Virginia

September 12, 2024

Scale: 1in.=100ft.



This boundary line adjustment survey is approved by the undersigned in accordance with existing regulations and may be admitted to record.

9-30-2024
Date

Subdivision Administrator

Maxey & Associates, P.C.
Land Surveyors • Engineers • Planners • Consultants
P.O. Box 90 • Farmville • Virginia • 23901 • Tel:434-392-8827



COMMUNITY DEVELOPMENT DEPARTMENT

Ashley Atkins-Austin, CZA
Director of Community Development

Phillip A. Moore, Building Official

John R.C. Ramsay
Residential Code Inspector

Michelle D. Watkins
Administrative Assistant II Permit Technician

September 30, 2024

Longwood University
Lori Blackwood
201 High Street
Farmville, VA 23901

Re: SUB24-006 (Boundary Line Adjustment)
Longwood Village Housing Foundation, LLC
Approval Letter

Dear Ms. Blackwood:

As the designated subdivision agent, I hereby *administratively* approve for recordation the final plat of this subdivision on **Monday, September 30, 2024**, pursuant to *Farmville Town Code Section 29-64.1.b*.

The site is located on Clark Street, approximately 1000 feet southeast of its intersection with South Main Street on Tax Parcels 0037000(07)00-005 and 0037000(07)00-005A. The site is zoned B-3 Highway commercial. The existing lot identified as Tax Parcel 0037000(07)00-005 is on Town water and sewer.

The plat vacates the existing boundary line between the parcels and creates a new boundary line between the two parcels. Tax Parcel 0037000(07)00-005 is 14.81 acres and Tax Parcel 0037000(07)00-005A is 5.59 acres.

No new utilities or streets were proposed. This approval does not grant any waivers, exceptions, or variances, and no conditions are attached to the approval. Future development, however, must comply with the ordinances, codes, and laws prevailing at the time of application.

Please don't hesitate to contact me at aaustin@farmvilleva.com or 434-392-8465 if you have any questions or comments.

Sincerely,

Ashley Atkins-Austin, CZA
Director of Community Development

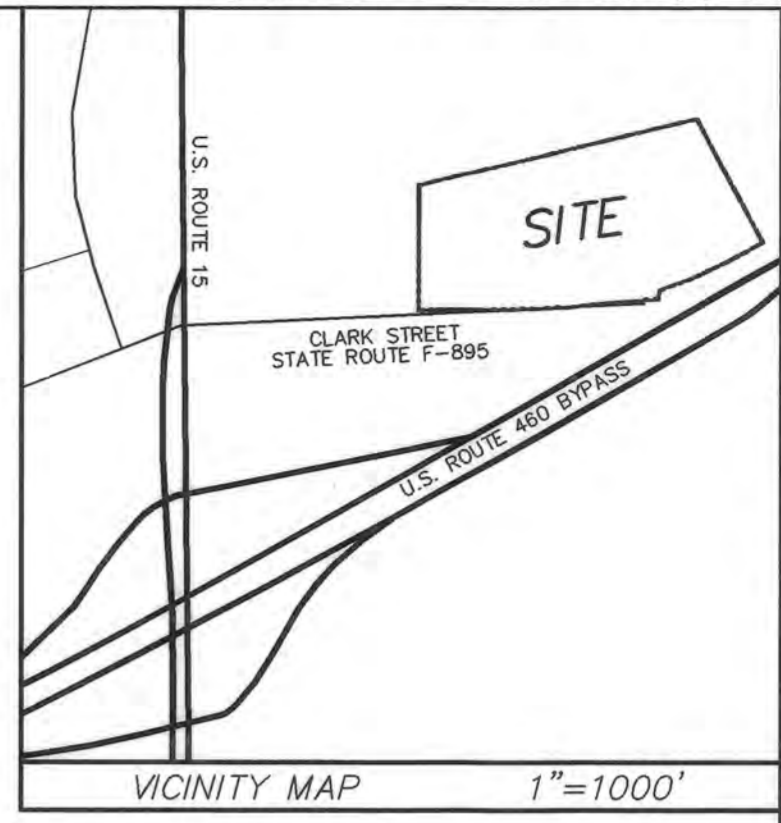
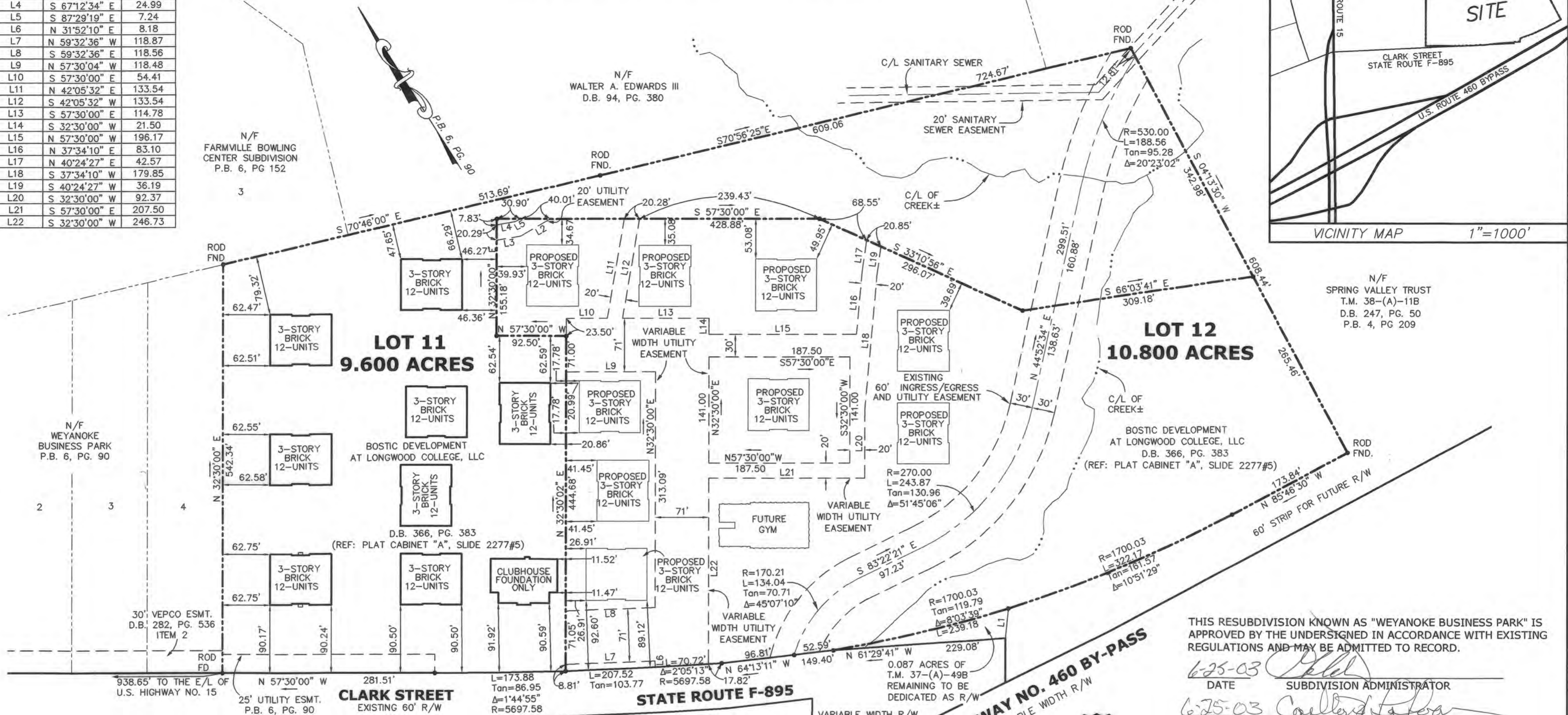
Instrument # 200301771 Slide A-296 #6

LINE	BEARING	DISTANCE
L1	S 38°14'33" W	39.57
L2	S 87°29'19" E	45.47
L3	S 67°12'34" E	31.98
L4	S 67°12'34" E	24.99
L5	S 87°29'19" E	7.24
L6	N 31°52'10" E	8.18
L7	N 59°32'36" W	118.87
L8	S 59°32'36" E	118.56
L9	N 57°30'04" W	118.48
L10	S 57°30'00" E	54.41
L11	N 42°05'32" E	133.54
L12	S 42°05'32" W	133.54
L13	S 57°30'00" E	114.78
L14	S 32°30'00" W	21.50
L15	N 57°30'00" W	196.17
L16	N 37°34'10" E	83.10
L17	N 40°24'27" E	42.57
L18	S 37°34'10" W	179.85
L19	S 40°24'27" W	36.19
L20	S 32°30'00" W	92.37
L21	S 57°30'00" E	207.50
L22	S 32°30'00" W	246.73

NOTE: ALL IMPROVEMENTS NOT SHOWN.

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE BINDER AND THEREFORE MAY NOT SHOW ALL EXISTING EASEMENTS OR OTHER PERTINENT FACTS WHICH MAY AFFECT THE PROPERTY.

THIS PROPERTY IS IN ZONE "C" OF THE HUD DEFINED FLOOD HAZARD AREA AS SHOWN ON F.E.M.A. FLOOD INSURANCE RATE MAP, COMMUNITY PANEL #510239 0050 A DATED 9-1-78

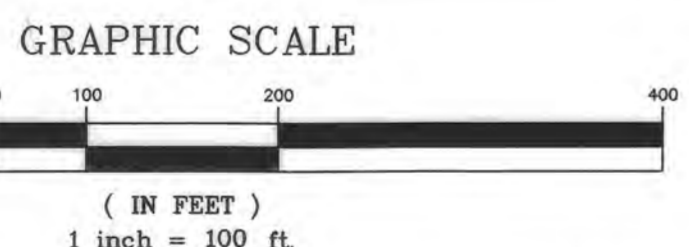


N/F WEYANOKE BUSINESS PARK P.B. 6, PG. 90

N/F FARMVILLE BOWLING CENTER SUBDIVISION P.B. 6, PG. 152

N/F WALTER A. EDWARDS III D.B. 94, PG. 380

N/F SPRING VALLEY TRUST T.M. 38-(A)-11B D.B. 247, PG. 50 P.B. 4, PG. 209



THIS RESUBDIVISION KNOWN AS "WEYANOKE BUSINESS PARK", CONTAINING 20.400 ACRES MORE OR LESS, LIES IN THE TOWN OF FARMVILLE, PRINCE EDWARD COUNTY. THIS IS WITH FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNER/TRUSTEE.

6/17/03 DATE [Signature] OWNER/TRUSTEE

NORTH CAROLINA GUILFORD, COUNTY
I, Kim M. Cyr, A NOTARY PUBLIC IN AND FOR THE COUNTY AND STATE AFOREMENTIONED DO HEREBY CERTIFY THAT Michael S. Hartnett WHOSE NAME IS SIGNED ABOVE HAS ON THE 17 DAY OF June 2003, ACKNOWLEDGED THE SAME BEFORE ME.

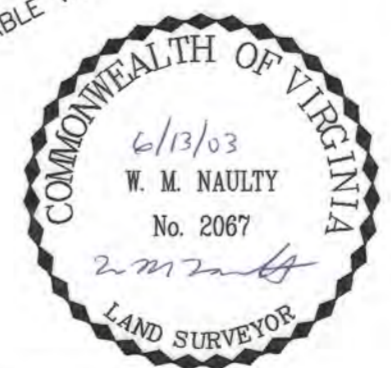
Kim M. Cyr
NOTARY PUBLIC

Kim M. Cyr, Notary Public
Commission Expires:
April 4, 2006

RES 4 DAY OF April 2003

PLAT SHOWING A RESUBDIVISION OF
LOT 10, 20.400 ACRES
FORMING
LOT 11, 9.600 ACRES & LOT 12,
10.800 ACRES OF LAND
WEYANOKE BUSINESS PARK
SITUATED ON THE NORTHERN LINE OF
STATE ROUTE F-895

TOWN OF FARMVILLE
PRINCE EDWARD COUNTY, VIRGINIA



THIS RESUBDIVISION KNOWN AS "WEYANOKE BUSINESS PARK" IS APPROVED BY THE UNDERSIGNED IN ACCORDANCE WITH EXISTING REGULATIONS AND MAY BE ADMITTED TO RECORD.

6-25-03 DATE [Signature] SUBDIVISION ADMINISTRATOR
6-25-03 DATE [Signature] PRESIDENT OF TOWN COUNCIL

THIS MAP WAS RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF PRINCE EDWARD COUNTY, VA. ON THE 25th DAY OF June, 2003. THE MAP WAS RECEIVED AND ADMITTED TO RECORD IN PLAT CAB. A SLIDE 296 # 6.

TESTE Frank R. Overton 1:42pm
CLERK OF CIRCUIT COURT
By: [Signature] C.D.C.

I, W.M. NAULTY, L.S. DO HEREBY CERTIFY THAT "WEYANOKE BUSINESS PARK" AS SHOWN ON THIS PLAT CONTAINS 20.400 ACRES, MORE OR LESS, BEING THE LAND OWNED BY BOSTIC DEVELOPMENT AT LONGWOOD COLLEGE, L.L.C. SEE DEED BOOK 366, PAGE 383

6/13/03 DATE [Signature] LAND SURVEYOR

DATE: JUNE 13, 2003	SCALE: 1"=100'
SHEET 1 OF 1	J.N.: 10688RM-1
DRAWN BY: JNL	CHECK BY: WMN

Weyanoke Business Park

TIMMONS GROUP

Technology
Infrastructure
Residential
Site Development

These plans and associated documents are the exclusive property of TIMMONS GROUP and may not be reproduced in whole or in part and shall not be used for any purpose other than the specific project, location, lot and/or construction shown without the express written consent of TIMMONS GROUP.

RECEIVED
OCT 11 2024



116 North Main Street
Farmville, Virginia 23901
434-392-8465
www.farmvilleva.com

Department of Community Development Board of Zoning Appeals Application

Application Details

Application for: Appeal (\$500.00) Variance (\$500.00) Boundary Interpretation (\$500.00)

Date received: _____ Property Address: _____

Appeal Details:

Date of Decision: Sept. 30, 2024 Regarding: Boundary Line Adjustment

Variance Details:

Provide Zoning Ordinance Code Section:

Variance request basis:

- Unreasonable Restriction
- Hardship due to physical condition of the property

To allow:

Owner Information

Name: Smart Development, LLC

Mailing Address: Whiteford, Taylor & Preston, LLP
1021 E. Cary St. Suite 2001

City: Richmond State: VA Zip Code: 23219

Phone: 804 799 7854 Email: dnullen@whitefordlaw.com

Applicant Information

Name: Dale G. Mullen, Esq

Company: Whiteford, Taylor & Preston, LLP

Mailing Address: 1021 E. Cary Street, Suite 2001

City: Richmond State: VA Zip Code: 23219

Phone: 804 799-7854 Email: dnullen@whitefordlaw.com



116 North Main Street
Farmville, Virginia 23901
434-392-8465
www.farmvilleva.com

Department of Community Development
Board of Zoning Appeals Application

Property Information

Address of Property: Longwood Village - Clark Street
 Tax Map Number: TMP 37-7-S And TMP 37-7-SA
 Zoning District: B-3 Present Use: _____

Application Checklist

- Letter detailing justification of request (Variance & Appeals)
- A scale drawing of the property & proposed project, with location map

Signatures

I certify that the information supplied on this application and on the attachments provided (maps and other information) is accurate and true to the best of my knowledge. In addition, I hereby grant permission to the agents and employees of the Town of Farmville to enter the above property for the purposes of processing and reviewing the above application.

Signature of Owner: Dale G. Mull Date: 10/30/2024
 Signature of Owner: Attorney AT LAW For Date: _____
 Signature of Agent: SMART Development LLC Date: _____

Submit this form and associated documents to:

Town of Farmville
Community Development Department
P. O. Drawer 368
Farmville, VA 23901

Department Use Only

Case Number		
Completed Application	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Date of Completed Application:	Date Returned:	
BZA Meeting Date:	BZA Action:	

RECEIVED
OCTOBER 30 2024

AHAA
Community Development
Town of Farmville VA

WHITEFORD, TAYLOR & PRESTON L.L.P.

DALE G. MULLEN
PARTNER
DIRECT LINE (804) 799-7854
DIRECT FAX (804) 762-6863
DMullen@whitefordlaw.com

TWO JAMES CENTER
1021 E. CARY STREET
SUITE 2001
RICHMOND, VIRGINIA 23219
MAIN TELEPHONE (804) 977-3300
FACSIMILE (804) 977-3299

DELAWARE*
DISTRICT OF COLUMBIA
KENTUCKY
MARYLAND
NEW YORK
VIRGINIA

WWW.WHITEFORDLAW.COM
(804) 987-8705

October 30, 2024

VIA HAND DELIVERY

Town of Farmville, Virginia
Zoning Administrator
Community Development
116 North Main Street
Farmville, VA 23901

**Re: Notice of Appeal to the Board of Zoning Appeals
Town of Farmville, Virginia
TMP 37-7-5 and TMP 37-7-5A
From Approval Dated September 30, 2024**

This Notice of Appeal is filed pursuant to Virginia Code sections 15.2-2311, 15.2-2309, and 15.2-2314, and addressing the approval of vacation of certain lot lines and other elements in a September 30, 2024, attached as Exhibit 1. The grounds therefore are set out in the pleading filed on this date in the Circuit Court for Prince Edward County and those reasons are incorporated by reference here as if set forth fully herein. More specifically, the grounds for this appeal are that Smart Development is aggrieved by a decision of the zoning administrator, also serving as the Subdivision Administrator and/or Subdivision Agent and made the September 30, 2024, approval in violation of state law and local ordinance.

Please take notice that Smart Development, LLC, a Virginia limited liability company, hereby appeals the decision of the zoning administrator, also serving as the Subdivision Administrator and/or Subdivision Agent, to approve a boundary line adjustment and composite map for Tax Map Parcel 37-7-5 and 37-7-5A, owned by Longwood Village Housing Foundation, LLC, in the Town of Farmville, Virginia, dated September 30, 2024, and recorded in the Clerk's Office of Prince Edward County as Instrument No. 202401234 (the "Approval"). A copy of the Approval is attached as Exhibit 1, to the Circuit Court filing all of which it attached as Notice of Appeal **Exhibit A**.

This Notice of Appeal is filed pursuant to Virginia Code sections 15.2-2311 and 15.2-2309 and is timely filed within 30 days of the date of the Approval. The grounds for this appeal are that Smart Development is aggrieved by the Approval, which was made in violation of state law and local ordinance, and which causes irreparable harm to Smart Development's property rights and interests.

The specific grounds for this appeal are set forth in detail in the Petition for Review of Boundary Line Adjustment and Complaint for Declaratory and Injunctive Relief filed by Smart Development in the Circuit Court for Prince Edward County on October 30, 2024, a copy of which is attached. The Petition challenges the legality and validity of the Approval on several grounds, including, but not limited to, the following:

- The Approval is not a mere boundary line adjustment, but a partial vacating of a prior plat of resubdivision approved by the Town Council in 2003, which requires compliance with the procedures and requirements of Virginia Code and the Town Code of Ordinances.
- The Approval violates the mandatory provisions of Virginia Code for the minimum standards for subdivision ordinances, and the Town Code of Ordinances, which establish the platting requirements and design standards for subdivisions in the Town.
- The Approval will involve the relocation or alteration of streets, alleys, easements, or other public areas, without the express consent of all persons holding any interest therein, including Smart Development, which owns an existing 60-foot access and utility easement that crosses the subject property and is affected by the Approval.
- The Approval conflicts with the general meaning and purpose of the Town's subdivision ordinance.
- The Approval is unreasonable, arbitrary, capricious, and unlawful, as it ignores the existing and potential impacts of the subdivision on the surrounding properties, the environment, the public infrastructure, and the Town's land use goals and policies, as set forth in the Town's comprehensive plan, zoning ordinance, and other applicable regulations.
- The Approval is the result of an abuse of discretion and a failure to exercise independent judgment by the Town. The Approval was made without proper authority, oversight, or review by the Town Council, the Planning Commission, the Virginia Department of Transportation, or any other public agency or official concerned with the subdivision of land in the Town.
- In our opinion, the Approval suffers from a positional conflict of interest and a lack of impartiality, as the Town and Longwood Village Housing Foundation, LLC, are co-defendant's/co-respondents in a pending lawsuit filed by Smart Development in the Circuit Court for Prince Edward County, which involves the same properties and related issues of utility capacity, stormwater management, and excessive erosion.

For these and other reasons stated in the Petition, Smart Development requests that the Board of Zoning Appeals of the Town of Farmville reverse the Approval and declare it to be unlawful and void *ab initio* and grant such other and further relief as may be appropriate.

We look forward to scheduling a date, time, and place for the hearing on this appeal, and provide us with a copy of the record of the zoning administrator's decision and any other relevant documents or materials. We reserve the right to supplement or amend this Notice of Appeal as may be necessary or appropriate.

Town of Farmville, Virginia
October 30, 2024
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "Dale G. Mullen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dale G. Mullen
Counsel for Smart Development, LLC



116 North Main Street
Farmville, Virginia 23901
434-392-8465
www.farmvilleva.com

Department of Community Development

Board of Zoning Appeals Application

Application Details	
Application for: <input checked="" type="checkbox"/> Appeal (\$500.00) <input type="checkbox"/> Variance (\$500.00) <input type="checkbox"/> Boundary Interpretation (\$500.00)	
Date received: _____ Property Address: _____	
Appeal Details: Date of Decision: <u>Sept. 30, 2024</u> Regarding: <u>Boundary Line Adjustment</u>	
Variance Details: Provide Zoning Ordinance Code Section: _____ Variance request basis: <input type="checkbox"/> Unreasonable Restriction <input type="checkbox"/> Hardship due to physical condition of the property	To allow:

Owner Information

Name: Smart Development, LLC
 Mailing Address: Whiteford Taylor + Preston, LLP
1021 E. Cary St. Suite 2001
 City: Richmond State: VA Zip Code: 23219
 Phone: 804 799 7854 Email: dnullen@whitefordlaw.com

Applicant Information

Name: Dale G. Mullen, Esq
 Company: Whiteford Taylor + Preston, LLP
 Mailing Address: 1021 E. Cary Street, Suite 2001
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Department of Community Development

Board of Zoning Appeals Application

Property Information

Address of Property: LONGWOOD Village - Clark Street
 Tax Map Number: TMP 37-7-S And TMP 37-7-SA
 Zoning District: B-3 Present Use: _____

Application Checklist

- Letter detailing justification of request (Variance & Appeals)
- A scale drawing of the property & proposed project, with location map

Signatures

I certify that the information supplied on this application and on the attachments provided (maps and other information) is accurate and true to the best of my knowledge. In addition, I hereby grant permission to the agents and employees of the Town of Farmville to enter the above property for the purposes of processing and reviewing the above application.

Signature of Owner: Dale G. Mullen Date: 10/30/2024
 Signature of Owner: Attorney AT LAW For Date: _____
 Signature of Agent: SMART Development LLC Date: _____

Submit this form and associated documents to:
 Town of Farmville
 Community Development Department
 P. O. Drawer 368
 Farmville, VA 23901

Department Use Only

Case Number		
Completed Application	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Date of Completed Application:	Date Returned:	
BZA Meeting Date:	BZA Action:	

Plaintiffs-Petitioners

EXHIBIT A

VIRGINIA:

IN THE CIRCUIT COURT FOR PRINCE EDWARD COUNTY
TENTH JUDICIAL CIRCUIT

SMART DEVELOPMENT, LLC,

Plaintiff-Petitioner,

v.

Case No. _____

THE TOWN COUNCIL FOR THE
TOWN OF FARMVILLE,

THE TOWN OF FARMVILLE, VIRGINIA,

C. SCOTT DAVIS, LP. D.

Town Manager

Town of Farmville, Virginia

*in his official capacity as Town Manager of the
Town of Farmville*

Serve: 116 N Main Street

Farmville, VA 23901

ASHLEY ATKINS-AUSTIN, CZA

in her official capacity as

Zoning Administrator, Subdivision

*Administrator, and/or Subdivision Agent
of the Town of Farmville*

Serve: 116 N Main Street

Farmville, VA 23901

LONGWOOD VILLAGE HOUSING
FOUNDATION, LLC

Serve: Lori A. Blackwood

Executive Director

Longwood University Real Estate

Foundation

315 High Street

Farmville, Virginia 23901

Defendants-Respondents.

**PETITION FOR REVIEW OF VACATION OF LOT LINES DATED SEPTEMBER 30,
2024, AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

Plaintiff-Petitioner—Smart Development, LLC, a Virginia limited liability company, (“**Petitioner**” or “**Smart Development**”)—by counsel, pursuant to §§ 8.01-184, 8.01-620, seek a declaratory judgment construing the provisions of *inter alia* §§ 15.2-2271, 15.2-2272, 15.2-2275, and 15.2-2240, of the Code of Virginia (the “**Code**”) and § 29-64 of the Code of Ordinances of the Town of Farmville (the “**Subdivision Ordinance**”), hereby files this Petition for Review of the putative “Boundary Line Adjustment,” dated September 30, 2024, Complaint for Declaratory and Injunctive Relief (the “**Petition**”).

The Petition seeks declaratory, and injunctive relief, recovery of all reasonable costs incurred in this cause, and such other and further appropriate relief from an unreasonable, unlawful, improper, and void *ab initio* administrative action taken by the Town of Farmville (“**Town**”) Zoning Administrator also acting in her capacity as Subdivision Administrator and Subdivision Agent in granting the Approval by signature and stamp on the Boundary Line Adjustment and Composite Map, Tax Map Parcel 37-7-5 and 37-7-5A (hereinafter referred to as the “**The Foundation Property**”), Town of Farmville, Prince Edward County, Virginia (the actions in vacating the lot lines and resubdivision approving the Final Plat are referred to as the “**Approval**”).

Assuming, without conceding, that the Town Ordinance is otherwise a valid exercise of subdivision authority, the Town (by and through its Subdivision Administrator) violated its own Code of Ordinances of the Town of Farmville (collectively “**Town Ordinances**”), specifically Town Ordinance § 29-64. This is because, among other reasons, the Approval also attempts to change boundary lines of real property that is:

- (1) encumbered by a *lis pendens* in favor of another private landowner (*Smart Development, LLC v. Longwood Village Housing Foundation, LLC and Town*

of Farmville, Virginia, Case No. CL23000397-00 (the "Litigation"),
Memorandum of Lis Pendens Recorded in the Clerk's Office of Prince Edward
County on August 28, 2023, at 4:04 PM, Instrument No. 202301301);

- (2) the subject of the Litigation, pending in this Court;
- (3) in the process of staging for subsequent development and use and/or sale of the Longwood Village Development which, on information and belief will involve relocating or altering streets, alleys, easements for public passage, drainage, and/or utilities;
- (4) not lawfully subject to a boundary line adjustment in the sole discretion of a Subdivision Administrator; and,
- (5) whose boundary line adjustment has not been signed, approved or otherwise consented to by all of the owners or persons with a legal interest (including creditors whose debts are secured by a recorded deed of trust or mortgage) of lots shown on the plat or the owners of easements or contiguous to the areas vacated from the prior subdivision plat.

The "two (2) primary mechanisms for achieving the town's land use goals are the zoning and subdivision ordinances. The zoning ordinance sets forth the regulations that legally enforce land use policies and establishes the rules guiding the development of land within the town. Similarly, the subdivision ordinance establishes the rules by which land can be divided, often setting the stage for subsequent development under the zoning regulations." Town Ordinance § 29-2.

Smart Development, LLC, brings this suit to rectify the Town's abuse of the subdivision process and to prevent the infliction of an irreparable harm on Smart Development, LLC: that is, the relocation or vacation of boundary lines in violation of the Code and in violation of the Town Ordinance.

In support of the Amended Petition, Smart Development, LLC, states the following:

PARTIES & PROPERTY

Smart Development, LLC

1. Smart Development, LLC is a Virginia limited liability company, active and in good standing with the Virginia State Corporation Commission and is shown as the record owner of properties to the northwest and southeast of the Longwood Village Housing Foundation, LLC. See **Exhibit 1**.

2. Smart Development is the record owner of the “Existing 60 ft. Access and Utility Easement to Clark Street” shown on **Exhibit 1**.

3. Smart Development is the record owner of lots shown on the plat or the owners of easements on or contiguous to the areas vacated from the prior plat approved under the Town as a resubdivision in 2003 (the “2003 Resubdivision”). See **Exhibit 2**.

4. At least one lot of the property that was resubdivided in 2003 was sold and certain lot lines are explicitly “vacated” by the purported Approval and recordation of the written instrument. These vacated portions of the lot lines appearing in the 2003 Resubdivision cross over access and utility easements for the benefit of Smart Development. These same lot lines now appear to run directly adjacent to the easement for the benefit of Smart Development.

Longwood Village Housing Foundation, LLC

5. Defendant-Respondent, Longwood Village Housing Foundation, LLC, is a Virginia limited liability company and is the record owner of two parcels of land (TMP 37-7-5 and TMP 37-7-5A) in the Town of Farmville, Prince Edward County. See **Exhibit 1**. The two parcels are about 20.40 (14.81 and 5.59) acres according to the Approval.

6. The Foundation (also called “**Longwood Village**”) property is a residential housing development along Clark Street in the Town of Farmville. On information and belief,

Longwood Village was originally used for Longwood University students and has eight (8) buildings and ninety-six (96) total housing units.

7. Clark Street (State Route No. F-895 on Exhibit 1) does not extend along the entire right of way of the property that was formerly TMP 37-7-5 and terminates short of the entirety of TMP 37-7-5 as it was configured before the Approval. Post-approval, there is no street that may serve TMP 37-7-5A. Instead, the Subdivision Administrator approved creation of new boundary lines that will involve the relocation or alteration of streets, alleys, easements for public passage, or other public areas. The purported boundary line adjustment also follows the line of and bisects, and therefore alters easements and utility rights of way without the express consent of all persons holding any interest therein.

The Town of Farmville and its Agents

8. The Town of Farmville is a body politic and corporate, a municipal corporation, and a political subdivision of the Commonwealth of Virginia within Prince Edward County and Cumberland County, Virginia, having been initially established in 1798, and incorporated and chartered in 1833. TOWN OF FARMVILLE CHARTER, Art. I, § 1-1.

9. C. Scott Davis and Ashley Atkins-Austin are the Town Manager and Town Zoning Administrator, respectively. On information and belief, Ms. Atkins-Austin serves as the Zoning Administrator, Subdivision Administrator, and Subdivision Agent. They are named parties in this action in their official capacity only. While the Petitioner does not purport to have full knowledge of the business of the Town, or of legislative act of the Town Council, the Town Ordinances do not appear to have granted general *agency* authority over boundary line adjustments to the Town Zoning Administrator, Subdivision Administrator or Subdivision Agent, except to the extent of the Town Ordinance provisions noted herein.

Town Parties & Subdivision Powers

10. The Town has been delegated subdivision power by the General Assembly of Virginia. *See* Va. Code § 15.2-2271 (vacation of plat before sale of lot therein; ordinance of vacation); Va. Code § 15.2-2272 (vacation of plat after sale of lot), Va. Code § (effect of vacation under § 15.2-2272), and Va. Code § 15.2-2275 (relocation or vacation of boundary lines). The Code further restricts the power of towns, including the power to make subdivisions of land, by providing that town ordinances meet certain mandatory provisions. *See* Va. Code § 15.2-2241 (mandatory provisions of a subdivision ordinance).

11. The Town Council is ultimately vested with “[a]ll powers of the Town of Farmville as a body politic and corporate.” TOWN OF FARMVILLE CHARTER, Art. I, § 4.

12. A locality, through its governing body, may authorize the boundary lines of any lot to be vacated, relocated or otherwise altered as part of an otherwise valid and properly recorded plat of subdivision or resubdivision. Va. Code § 15.2-2275. However, no easements or utility rights of way may be relocated or altered without the express consent of all persons holding any interest therein. *Id.* This procedure may be used only if it does not involve relocating or altering streets, alleys, easements, or other public areas. *Id.*

13. Alternately, a locality may allow lot lines to be vacated by deed provided that no easements or utility rights of way located along any of the lot lines may be extinguished or altered without the express consent of the easement holders. *Id.* The deed must be approved in writing on its face by the locality and must reference the recorded plat by which the lot line was originally created. *Id.*

14. However, Virginia Code § 15.2-2271(1) and (2) provide the sole lawful means for vacation of a plat after a lot is sold: by either (1) written instrument stating agreement to the vacation or (2) Ordinance allowing substantive and procedural due process considerations for owners of property shown on the plat. *See also* *Booher v. Board of Supervisors of Botetourt*

County, 65 Va. Cir. 53 (Botetourt Cnty. 2004) (holding that both 15.2-2271(2) and 15.2-2272(2) provide a statutory right of appeal where the plat or a portion of the plat is vacated by an ordinance and that it conveys the power to nullify that ordinance if irreparable damage is shown). Neither statute requires invalidation of the ordinance, hence it does not require a showing of unreasonableness. *See id.*

15. The subdivision power, including the power to vacate, relocate, or otherwise alter boundary lines must be exercised in conformity with state law and the Subdivision Ordinance.

16. The chief executive officer of the Town of Farmville is the Town Manager, Mr. C. Scott Davis, LP D.

17. Various Town officials are appointed by the Town Council or the Town Manager to exercise executive, administrative and ministerial duties under the Town Ordinances and are charged with ensuring compliance therewith.

18. The Zoning Administrator of the Town of Farmville, Ms. Ashley Atkins-Austin, CZA, signed the Approval for the Town.

JURISDICTION & VENUE

19. This Court has jurisdiction pursuant to Code §§ 8.01-184, and 8.01-620, because this Petition seeks a declaratory judgment and injunctive relief based on unlawful acts by officials of the Town of Farmville ("**Town Officials**"), who are acting within the boundaries of the Town and with its authority. All of these acts occurred within the portion of the Town, which is wholly located within Prince Edward County, Virginia.

20. Venue lies in this Court pursuant to Code §§ 8.01-185, 8.01-257, 8.01-262, and 8.01-627.

GENERAL ALLEGATIONS

Property Background

21. TMP 37-7-5 and TMP 37-7-5A in the Town of Farmville, Prince Edward County, are two (2) parcels having a total area about 20.40 acres according to the Approval.

22. The Foundation (also called "Longwood Village") property is a residential housing development along Clark Street in the Town of Farmville. On information and belief, Longwood Village was originally used for Longwood University students and has eight (8) buildings and ninety-six (96) total housing units.

23. There are no roads, currently constructed to state standards, serving TMP 37-7-5A because Clarke Street (State Route No. F-895 on Exhibit 1) does not extend along the entire right of way of the property which was formerly TMP 37-7-5 and terminates short of the entirety of TMP 37-7-5 in its configuration before the Approval.

24. Post-approval, there is no street that may serve TMP 37-7-5A. Instead, the Subdivision Administrator approved creation of new boundary lines that will involve the relocation or alteration of streets, alleys, easements for public passage, or other public areas.

25. The purported boundary line adjustment also follows the line of and bisects, and therefore alters, easements and utility rights of way without the express consent of all persons holding any interest therein. No apparent easement exists for the 8" sewer that crosses the stream and ties into the manhole. The location of this line is not shown on the Approval. See Exhibit 1.

26. After 2003, a lot or lots in the subdivision/resubdivision were sold to The Foundation.

27. Petitioner's property is immediately adjacent to the subject property and is shown on the plat of boundary line adjustment in Exhibit 1.

28. The subject property is zoned B-3.

The Approval

29. "Subdivision" is defined by the Town: "Subdivision. To divide any tract, parcel or lot of land into two (2) or more parts for the purpose of transfer of ownership or building development." Town Ordinance § 29-81.

30. Defendant-Respondents appear to rely on Town Ordinances for approval in this fashion. Specifically, the Town Ordinances require the following for approvals given solely by the Subdivision Agent and not submitted to the governing body:

Sec. 29-64. - Final plats.

(a) Final plat—Submission; contents; form.

(1) The subdivision plats submitted for final approval by the governing body and subsequent recording shall be clearly and legibly drawn in ink at a scale not smaller than one hundred (100) feet to the inch on sheets having a size of not more than eighteen (18) by twenty-four (24) inches. In addition to the requirements of the preliminary plat, the final plat shall, as required by Code of Virginia, § 15.2-2241, meet the standards for plats under § 42.1-82 of the Virginia Public Records Act and include the following:

a. Two (2) signature lines shall be drawn and labeled "subdivision agent" and "president of town council".

b. Except the agent may permit a boundary line adjustment, vacation or the separation of one (1) parcel from a tract of land without complying with all requirements of this chapter if it is:

1. Not in conflict with the general meaning and purpose of this chapter.
2. No new streets are required to serve the parcel.
3. Meets or exceeds all zoning requirements.
4. In this case, only one (1) line shall be required and shall be labeled "subdivision agent."

31. The requirements of the chapter are not met for the subdivision agent to act without the Planning Commission or Governing Body because (1) the approval by the agent, without the governing body is in conflict with the general meaning and purpose of the chapter, (2) new streets will be required to serve the parcel, and (3) the boundary line adjustment does not meet or exceed all zoning requirements. By way of illustration, all

platting requirements and design standards of the Town Ordinances for platting requirements and design standards are not met or exceeded. *See e.g.* Town Ordinance § 29-62.

32. Additionally, it appears that the Town shortcut and circumvented its own defined subdivision process to benefit The Foundation because, on information and belief, the Town appears to have taken no steps to address: (1) suitability of land (“The agent shall not approve the subdivision of land if, from adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public the site is not suitable for platting and development purposes of the kind proposed.”) *id.*; (2) land subject to flooding (land subject to flooding and land deemed to be topographically unsuitable, having unsuitable soils or inadequate light and air shall not be platted for residential occupancy nor for such other uses as may increase danger of health, life or property or may aggravate erosion or flood hazard. Such land within the subdivision shall be set aside on the plat for such uses as shall not be endangered by periodic or occasional inundation or shall not produce conditions contrary to public welfare); (3) improvements (“[a]ll required improvements shall be installed by the subdivider at his cost. In cases where specifications have been established either by the Virginia Department of Transportation (VDOT) for streets, curbs, etc., or by local ordinances and codes, such specifications shall be followed”); (4) bonding (“the subdivider’s bond shall not be released until construction has been inspected and approved by the appropriate official”); (5) other accordance with the requirements and design standards set forth in the zoning and subdivision articles.

33. Stormwater and erosion and sediment control measures do not meet state standards for land development.

34. The need for erosion and sediment control, and the resulting damage to Smart Development’s easement is the subject of the Litigation currently pending in this court. The

Town and The Foundation are Defendant-Respondents in the Litigation, nevertheless, the Zoning Administrator/Subdivision Agent/Subdivision Administrator did not address these platting requirements and design standards.

35. Similarly, certain mandatory provisions of Virginia Code § 15.2-2241 (mandatory provisions of the subdivision ordinance) were ignored. These include, but are not limited to, plat details, coordination of streets, drainage flood control and other public purposes, design for streets, public utilities and community facilities, dedication of right-of-way and improvements for public use, vehicle ingress and egress, critical slope stabilization, stormwater management facilities, phased subdivisions, security to guarantee construction of required improvements, security to provide for maintenance of a dedicated street until acceptance into the state-maintained system, conveyance of easements for cable television and certain utilities, monuments, period of validity of final plat, administration and enforcement, and release of security, the arrangement of streets in new subdivisions, hardship to owners of adjoining property when they plat their own land and seek to provide for convenient access to it, prohibitions against half streets along the boundary of land proposed for subdivision, and service drives.

36. Whenever a proposed subdivision contains or is adjacent to a limited access highway or expressway, provision shall be made for a service drive or marginal street approximately parallel to the right-of-way at a distance suitable for an appropriate use of the land between the highway and the proposed subdivision. Such distances shall be determined with due consideration of the minimum distance required for ingress and egress to the main thoroughfare. The right-of-way of any major highway or street projected across any railroad, limited access highway or expressway, shall be of adequate width to provide for the cuts or fills required for any future separation of grades.

37. Notably, the subdivider was never required to provide all necessary information needed to determine what improvements are necessary to properly develop the subject property, including contour intervals, drainage plans and flood control devices, a properly qualified licensed engineer's or surveyor's statement that improvements, when properly installed, will be adequate for proper development. Adequate fire hydrants at locations approved by the agent were not required, public water and sewer were ignored as were easements for drainage through adjoining properties. *See e.g.*, Town Ordinance § 29-62.

38. Finally, there are numerous errors to the Approved plat:

- a. Does not show all sanitary sewer lines.
- b. Does not accurately depict adjacent property owners (Spring Valley Trust has a residual triangular piece).
- c. Physical monumentation was not properly installed at the time the plat was recorded.
- d. No physical sign of the drainage structures are identified on the plat.
- e. Significant stream eroding and meandering of the stream, which does not appear to be accurately shown.

39. The Town appears to have intentionally ignored its own meetings and processes in issuing the Approval.

- a. Pre-Application Meeting and Preliminary Sketch, which includes involving the Development Review Committee.
- b. Providing the preliminary plat and consulting with the Planning Commission.
- c. Virginia Department of Transportation ("VDOT") review of the preliminary plat.
- d. Third-party engineer review for stormwater, E&S, utilities, and streets.

e. Submission to the Town Council for review and decision. The Town Planning Commission was never consulted. *See e.g.* Va. Code § 15.2-2255, and Town Ordinance § 29-67.

40. The Town Ordinances require approval by the *Agent* and **not** the *Administrator*. Town Ordinance § 29-81. Nevertheless, for reasons unknown, although the Zoning Administrator, Subdivision Agent, and Subdivision Administrator all appear to be the same person, the Approval was made only under the auspices of an Administrator and not an Agent.

41. The new Tax Parcel 37-7-5A (5.59 acres) does not have access to a VDOT or Town-maintained road. On information and belief, new roads need to be constructed. The paved road ends approximately 27 to 29 feet prior to the new Tax Parcel 37-7-5A. The Town of Farmville maintains all the paved roads with an agreement and funding with VDOT. To access the new parcel a new paved road must be constructed.

42. Many applicable sections of the Town's own checklist were struck through or marked "N/A" on the checklist. There is no evidence in administrative records provided under the Virginia Freedom of Information Act ("**FOIA**") that the Town Council or Town Planning Commission ever gave approval for the Zoning Administrator/Subdivision Agent/Subdivision Administrator to approve this administratively or give authority to the "Subdivision Administrator" to approve this subdivision/Boundary Line Adjustment.

43. Although there is a *lis pendens* and the Litigation is pending, no notice of any description was provided to the parties thereto or to adjoining/adjacent landowners who also hold rights to the 60' ingress/egress and utility easement apparently altered by the vacating of property lines and replacement of the 2003 Resubdivision. That easement is originally called out in **Exhibit 1 and 2** as the "Existing 60' Ingress/Egress and Utility Easement." The Approval refers to it as "60' Access and Utility Easement."

44. The Town is party to the Litigation and is fully aware of several of the outstanding issues regarding utility capacity, stormwater management and excessive erosion that would need to be considered as part of any Subdivision/Resubdivision/Boundary Line Adjustment, including a conflict over utilities.

45. While the Approval purports to be a “boundary line adjustment” it is, instead, a complete vacatur of the 2003 Resubdivision as many of the key features approved by the governing body are omitted from the Approval.

46. This administrative approval appears to have been in response to the Litigation and the vacation of existing lot lines in favor of newly drawn lot lines follows the easement that is at issue in the Litigation.

47. The property had a change in land use with the update to the Farmville Comprehensive Plan and was rezoned to B-3 Highway Commercial. The previous zoning of B-4 allowed for 10 units per acre, while the current B-3 Highway Commercial appears to have no density requirements.

* * *

COUNT I - DECLARATION THAT THE APPROVAL IS VOID AB INITIO AND INJUNCTION AGAINST ANY ACTION OR OMISSION IN RELIANCE THEREON

48. Smart Development realleges and incorporates the allegations of paragraphs 1–46 and the recitations, *supra*, of this Petition as if set forth herein in their entirety.

49. This is not a mere boundary line adjustment. Instead, it is an attempt to extinguish the 2003 Resubdivision, approved by the Town, and replace it. As such, it should be treated as a vacation of that Subdivision/Resubdivision plat. *See* Va. Code § 15.2-2271, *et seq.* Because the procedural and due process rights of adjoining and affected landowners were violated, and because the requirements of state law and local ordinance were not followed, it is *ultra vires* and void *ab initio*.

50. Void *ab initio* acts may be challenged as such at any time, even if the challenge is not brought “within thirty days of the decision.” See *Kole v. City of Chesapeake*, 247 Va. 51, 57 (1994) (holding that “the time period in Code § 15.1–493(G),” the predecessor statute to Code § 15.2-2285(F), “would bar only a judicial review of the reasonableness of the rezoning enactment.” *Fairfax County v. Miller & Smith, Inc.*, 242 Va. 382, 384 (1991). The 30-day period would not bar the Petitioner’s claims that the Approval is void *ab initio* upon the several grounds alleged. See also *Singh v. Mooney*, 261 Va. 48, 52 (2001) (holding that void *ab initio* judicial orders, another species of lawless governmental action, are “a complete nullity” and as such “may be ‘impeached directly or collaterally by all persons, anywhere, at any time, or in any manner.’” (quoting *Barnes v. Am. Fertilizer Co.*, 144 Va. 692, 705 (1925))).

51. Being void *ab initio*, the Approval “. . . confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never [occurred].” *City of Richmond v. Eubank*, 179 Va. 70, 84 (1942) (quotation marks omitted).

52. The Approval was granted pursuant to the putative authority of the Subdivision Ordinance.

53. The Zoning Administrator/Subdivision Administrator/Subdivision Agent plainly lacked the authority to grant the Approval. Therefore, any Approval by any of the Town Officials authorizing use of the Property in any way would also be void.

54. As was affirmed by the Supreme Court of Virginia in *WANV, Inc. v. Houff*, “[i]f a building permit is issued in violation of law, it confers no greater rights upon a permittee than an ordinance itself, for the permit cannot in effect amend or repeal an ordinance, or authorize a structure at a location prohibited by the ordinance. Its issuance . . . is unauthorized and void.” 219 Va. 57, 63 (1978).

55. No Town Official has the authority to authorize, permit or otherwise approve use of the Property in any way contrary to state law or local ordinance.

56. Smart Development is aggrieved by and alleges irreparable harm from the vacation of the lot lines created by the 2003 Resubdivision.

57. This harm results from, among other harms, the Town's expenditure of public funds and the use of public resources to advance the development of a single developer, including the processing of the permits, as well as by the development activity undertaken on the Property and that development continuing unabated, as well as the harms continuing as alleged in its pending suit in this court and incorporated by reference as if fully set forth herein.

58. Smart Development, as landowners whose land lies adjacent to the subject property, have a direct, immediate, pecuniary, and substantial interest in the Approval and in the compliance with state law and Town Ordinance in the orderly development and approval process for the Town.

59. While others will be negatively affected by the Approval, Smart Development—because of the proximity of its lands, the nature of the damages done to its easement and riparian features and/or other characteristics—have and will suffer irreparable harm to and burdens upon its interests from this approval.

60. Moreover, its due process rights are personal to it and the harm to those due process rights is real and ongoing.

61. An actual controversy exists between Smart Development, the Town, and the Town Officials with respect to whether the purported approval is lawful or *ultra vires* and void *ab initio*.

62. This Court should adjudicate such antagonistic assertion and denial of right, review the Approval and declare the Approval to have been adopted in contravention of the Virginia Code and local ordinance and thus to be void *ab initio*.

63. Moreover, equity will restrain actions of public officers taken under color of a law that is void *ab initio*, including the issuance of approvals and the exercise of other essential governmental powers. *See, e.g., Campbell v. Bryant*, 104 Va. 509 (1905) (enjoining Town's collection of void *ab initio* tax); *Owens v. City Council of City of Norfolk*, 75 Va. Cir. 91 (Norfolk 2008) (issuing preliminary injunction against issuance of building permit premised on potentially unlawful zoning amendment).

64. Both the balance of the equities and the public interest support issuance of an injunction to uphold the plain limits of the Code on zoning amendments by governing bodies, and to preserve the status quo and to protect individual's continued quiet use and enjoyment of land, which enjoys special solicitude in a court of equity. *See generally Manchester Cotton Mills v. Town of Manchester*, 66 Va. (25 Gratt.) 825 (1875) (granting preliminary equitable relief against construction activities, noting that “[u]niversal experience demonstrates how ineffectual such a remedy is to afford a just compensation, especially in controversies with a corporation backed by all the appliances of wealth and the influence of public sentiment.”).

65. Denying equitable relief would impose upon Smart Development irreparable harm, namely the violation of law governing the actions of its governing bodies, the expenditure of public funds, and the permanent disturbance of their personal and property rights as herein alleged, including the value and their use and enjoyment of real estate, the amount of which may not be readily quantified and for which the law gives no adequate remedy.

66. Specific to the Approval, “[e]quity will not restrain an act merely because it is in violation of a town ordinance; but, where the violation of the ordinance results in special

and irreparable injury to private property, *the owner is entitled to injunctive relief.*” *Landon v. Kwass*, 123 Va. 544, 547 (1918) (emphasis added) (collecting authorities); *see also Black & White Cars, Inc. v. Groome Transp., Inc.*, 247 Va. 426 (1994) (affirming grant of an injunction against activities in violation of local ordinance).

67. Therefore, and in addition to entering the above-prayed-for declaration, the Court should go on to enjoin the Town Council, the Town, the Town Officials, and The Foundation from taking any further action whatever, or omitting any duty, in reliance upon, under or pursuant to the putative authority of the Approval.

PRAYER FOR RELIEF

WHEREFORE, the Citizens pray that the Court:

(1) Grant the Petition in favor of Smart Development and against the Town, the Town Officials and, as applicable, The Foundation;

(2) Enter a declaratory judgment in the Smart Development’s favor, declaring the Approval to be in violation of Virginia Code and the Subdivision Ordinance and so rendering that Approval and recordation unlawful and void *ab initio*, a nullity, and of no force or effect;

(3) Enjoin further action by the Town, including the Town Officials, and The Foundation in reliance upon the Approval;

(4) Enjoin further consideration of applications by the Town, including the Town Officials, and Town Council for vacation of the 2003 Resubdivision and related lot lines absent substantive and procedural due process (notice and an opportunity to be heard) or consent;

(5) Enter a declaratory judgment in favor of Smart Development, declaring that the Approval is of no effect or impact on the *lis pendens*, the Litigation, or any other property rights of Smart Development;

(6) Vacate the Approval;

(7) Award reasonable costs expended in this cause; and

(8) Grant other and further relief as justice may require and to equity may seem meet.

Dated: October 30, 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dale G. Mullen", written over a horizontal line.

By Counsel

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Counsel for Plaintiffs-Petitioners

Plaintiffs-Petitioners

EXHIBIT 1



COMMUNITY DEVELOPMENT DEPARTMENT

Ashley Atkins-Austin, CZA
Director of Community Development

Phillip A. Moore, Building Official

John R.C. Ramsay
Residential Code Inspector

Michelle D. Watkins
Administrative Assistant II Permit Technician

September 30, 2024

Longwood University
Lori Blackwood
201 High Street
Farmville, VA 23901

Re: SUB24-006 (Boundary Line Adjustment)
Longwood Village Housing Foundation, LLC
Approval Letter

Dear Ms. Blackwood:

As the designated subdivision agent, I hereby *administratively* approve for recordation the final plat of this subdivision on **Monday, September 30, 2024**, pursuant to *Farmville Town Code Section 29-64.1.b*.

The site is located on Clark Street, approximately 1000 feet southeast of its intersection with South Main Street on Tax Parcels 0037000(07)00-005 and 0037000(07)00-005A. The site is zoned B-3 Highway commercial. The existing lot identified as Tax Parcel 0037000(07)00-005 is on Town water and sewer.

The plat vacates the existing boundary line between the parcels and creates a new boundary line between the two parcels. Tax Parcel 0037000(07)00-005 is 14.81 acres and Tax Parcel 0037000(07)00-005A is 5.59 acres.

No new utilities or streets were proposed. This approval does not grant any waivers, exceptions, or variances, and no conditions are attached to the approval. Future development, however, must comply with the ordinances, codes, and laws prevailing at the time of application.

Please don't hesitate to contact me at aaustin@farmvilleva.com or 434-392-8465 if you have any questions or comments.

Sincerely,

Ashley Atkins-Austin, CZA
Director of Community Development



TM 37-8-3
Farmville Bowl, L.L.C.
D.B.335 p.356
P.B.6 p.152

TM 37-4-1E
Walter A. Edwards, III
Inst.No.160001775

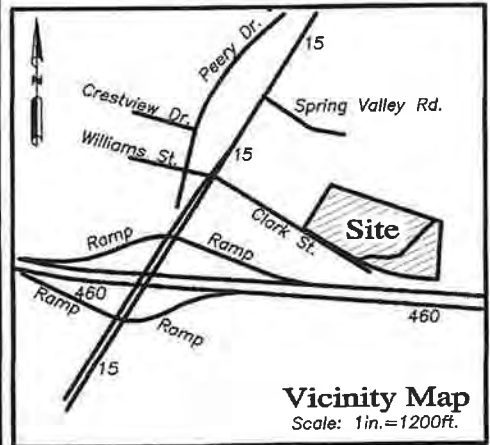
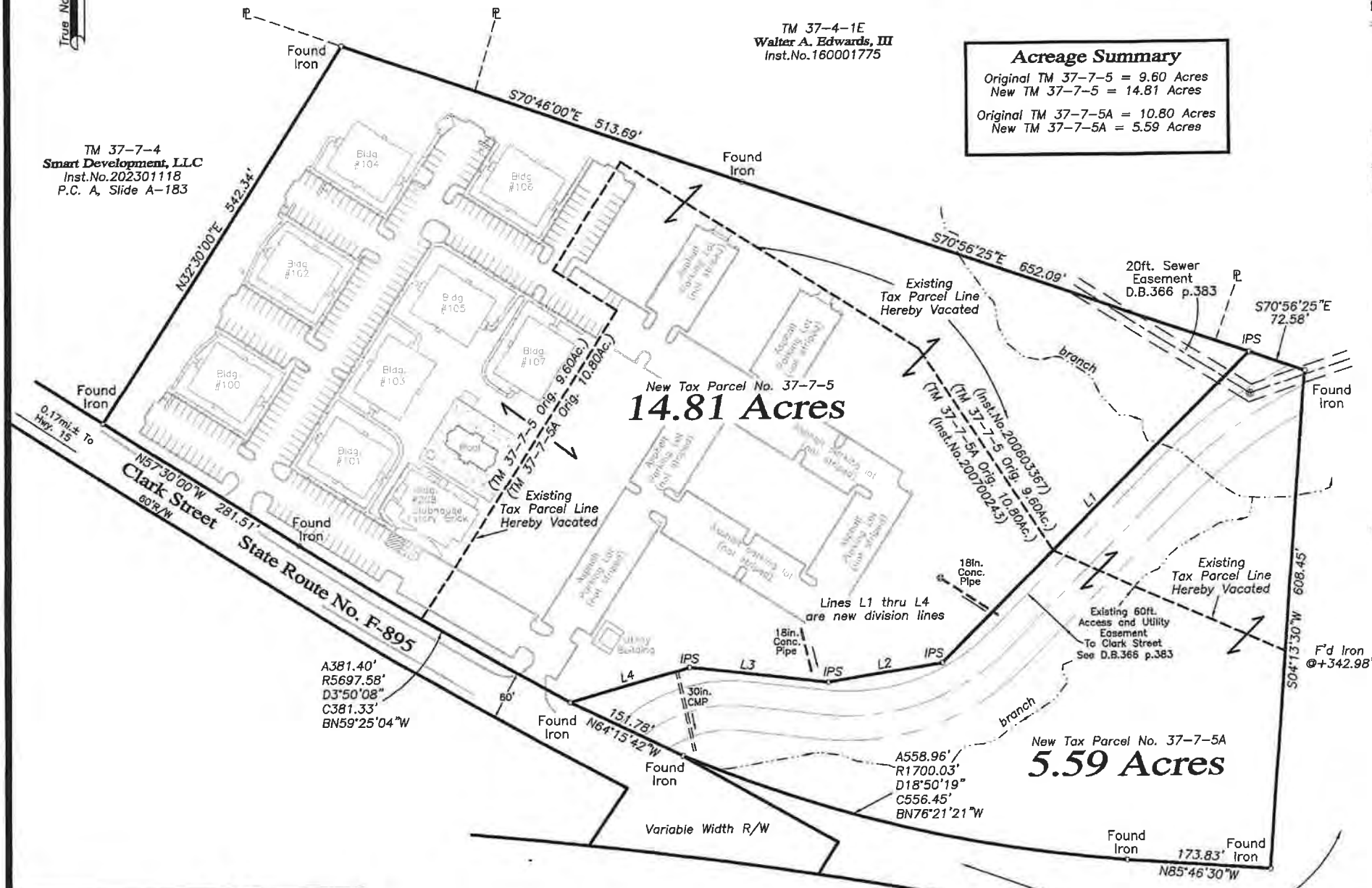
TM 37-7-4
Smart Development, LLC
Inst.No.202301118
P.C. A, Slide A-183

NEW DIVISION LINES

LINE	BEARING	DISTANCE
L1	S44°52'33"W	530.10'
L2	S80°45'57"W	140.90'
L3	N83°22'21"W	169.72'
L4	S73°56'31"W	151.27'

Acreage Summary
 Original TM 37-7-5 = 9.60 Acres
 New TM 37-7-5 = 14.81 Acres
 Original TM 37-7-5A = 10.80 Acres
 New TM 37-7-5A = 5.59 Acres

Legend:
 IPS = Iron pin to be set
 (NDL) = New division line



Boundary Line Adjustment Composite Map
Tax Parcel 37-7-5 and 37-7-5A
 Town of Farmville, Prince Edward County, Virginia

September 12, 2024
 Scale: 1in.=100ft.
 100' 0' 50' 100' 200' 400'

Surveyor

I, E.E. Hodges, III, L.S. do hereby certify that the
Boundary Line Adjustment

as shown on this plat contains 20.40 Acres, more or less, is that land owned by Longwood Village Housing Foundation, LLC by Instrument No. 200603367 and Instrument No. 200700243.

September 12, 2024
 Date

E.E. Hodges, III
 Land Surveyor

Owner

The boundary line adjustment as shown on this plat is in accordance with the desire of undersigned Owner(s), Proprietors or Trustees.

9/23/24
 Date

Lori A. Blackwood
 Representative for Longwood Village Housing Foundation, LLC

Notary

STATE OF Virginia
 CITY/COUNTY OF Prince Edward

I, Jennifer Baldwin, a Notary Public in and for the State and City/County aforementioned; do hereby certify that Lori A. Blackwood whose name is signed above has on this 23 day of September, 2024 acknowledged the same before me.

Jennifer Baldwin
 Notary Public
 7332.105
 Notary Registration Number

My Commission expires 31 day of May, 2026.

Notes:

1. Tax Map Parcel No.37-7-5 and 37-7-5A.
2. This plat has been prepared without the benefit of a title examination and therefore does not necessarily indicate all encumbrances on the property.
3. This land is situated in F.I.R.M. flood plain Zone X (area determined to be outside the 2% annual chance floodplain) as shown on Town of Farmville, Virginia Map Number 51147C0095D. Effective Date April 19, 2023.
4. This composite plat is based on field work completed January 2007 with new division line based on a current field survey.
5. Property currently zoned B3.

Approved
 SEP 10 2024
 Town of Farmville



This boundary line adjustment survey is approved by the undersigned in accordance with existing regulations and may be admitted to record.

9-30-2024
 Date

Shelley Allison Austin
 Subdivision Administrator

Maxey & Associates, P.C.
 Land Surveyors • Engineers • Planners • Consultants
 P.O. Box 90 • Farmville • Virginia • 23901 • Tel:434-392-8827

Plaintiffs-Petitioners

EXHIBIT 2



Farmville Board of Zoning Appeals 2025 Meeting Schedule

Farmville Board of Zoning Appeals will hold their regular monthly meetings for 2025 on the following dates:

Thursday, January 23, 2025
Thursday, February 27, 2025
Thursday, March 27, 2025
Thursday, April 24, 2025
Thursday, May 22, 2025
Thursday, June 26, 2025
Thursday, July 24, 2025
Thursday, August 28, 2025
Thursday, September 25, 2025
Thursday, October 23, 2025
Thursday, November 27, 2025
Thursday, December 25, 2025

Farmville Board of Zoning Appeals meetings are held in the Council Chamber on the second floor of the Town Hall, at 116 North Main Street, Farmville Virginia, at 7:00 p.m., unless otherwise scheduled.

This list does not include any special meetings which may be called from time to time.



Board of Zoning Appeals

2024 ANNUAL REPORT TO THE TOWN COUNCIL

Section 15.2-2308 of the Code of Virginia states:

The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

Members

Pam Butler

Term Expires: 12/31/2025

Penny Pairet

Term Expires: 12/31/2025

Cam Patterson

Resigned: 8/07/2024

John Miller

Term Expires: 2/28/2026

Sam Carey

Term Expires: 5/31/2026

Zachary Preston

Term Expires: 2/28/2027

Appointments

Pam Butler – Chairperson

Penny Pairet – Vice Chairperson

Meetings

The Board of Zoning Appeals met twice in the calendar year 2024.

2024 Cases

BZA24-001-VAR – Walmart Real Estate, Property Owner and Applicant, are requesting the following variances from the Town’s Sign Ordinance as follows:

- A variance allowing 534.79 sq. ft. of total signage where 150 sq. ft. maximum is allowed, pursuant to Section 29-31.f.
- A variance allowing a total of 18 wall signs where two (2) are allowed, pursuant to Section 29-31.f – Table 4.
- A variance allowing 439.79 sq. ft. of wall signage where 100 sq. ft maximum is allowed, pursuant to Section 29-31.f – Table 4.

The subject property is a 25.175 acre site located at 1800 Peery Drive on Parcel 0037000(14)00-002 and zoned B-3 Highway Commercial Zoning District.

Goals and Objectives for the Coming Year

- Request that Town Council continue to budget for two Board of Zoning Appeals members to attend the Certified Board of Zoning Appeals Program that is conducted through the Land Use Education Program (LUEP) at Virginia Commonwealth University. Staff estimates that the combined cost for two commissioners in 2025 would be \$2,000.
- Prepare and submit the 2025 annual report to Town Council.