Section-specific Questions, Comments, and Suggestions on the Proposed New City of Lexington Zoning Ordinance

(Based on "Strikeout" public review version received 4-19-201, in order of appearance)

I. Chapter 420. Zoning

1) §420-1.2. Purpose, pages 1-2. The changes proposed to Purpose of the ordinance do not specifically address but possibly *should* address the following – providing for the compatibility of land uses (minimization of nuisances and conflicts between land uses), preventing pollution and promoting environmental/ecosystem health, habitat preservation, air quality, walkability, the City's contribution to/responsibility for climate change, and processes for citizen input and resolution of disputes.

   Other items specifically addressed that are unexplained or where implementation is unclear include:

   a. Item 7 - "enlarge the tax base" is proposed. Suggest replacing with "a sustainable tax base."

   b. Item 8 – "Preservation of agricultural and forestal lands" is proposed – Where and how? Not included as a goal in any of the zones established.

   c. Item 9 – "Protect…heliports and airports." The licensed heliport and any applicable safety and/or approach zones in Lexington are not designated on the map. Any specific height restrictions, lighting, or other requirements to fulfill this purpose should be included in the ordinance.

   d. Item 11 – "Provide reasonable protection against encroachment upon military bases…" Is this a state mandate?

2) §420-1.3. Applicability, page 2. The ordinance states that it applies to "all property within the corporation limits of the City of Lexington, Virginia" as is commonly done, and therefore the underlying zoning of the large area associated with VMI *should* be restored and shown on the map. The County is not listed under the governmental ownerships *not* subject to the provisions in this section. *Question* - Can the City enforce zoning requirements on County-owned property?

3) §420-1.5. Establishment of Districts, **Residential Light Commercial (R-LC)**, page 4. The "small manufacturing" and "light commercial" facilities *should* be defined (they are not). The phrase "allowed in a manner which will provide for a suitable and comfortable living environment for people of all ages" is a good general standard for emphasizing the compatibility of uses within a residential environment, and for maintaining compatibility, stability, value, and primary character of residential uses both within the zone and in adjacent residential zones. *However*, specifics such as hours of operation, volume of traffic, number of employees, window coverings, air emissions, outside activities, noise and light trespass, etc. for non-residential uses *should* be included.

   The ordinance *should* clarify that R-LC is one of the four districts where residential uses are a primary function, as distinct from an "LC-R" district or the C districts where residential uses may be *encouraged and accommodated although in a largely commercial setting.*

   Most importantly, it should also be noted that unlike larger urban areas, in a small city like Lexington, these zones are almost entirely composed of edge parcels adjacent to R-1, R-2, and R-M zones meaning that non-residential uses in the R-LC zones will directly impact the residential uses and tax values in the contiguous zones as well as the residential uses in the R-LC zone.
   Input from neighbors on site-specific conditions and compatibility issues will be essential to the

success of these zones, and warrants reclassifying the non-residential uses in this zone as conditional to ensure thorough review and mitigation of potential conflicts for successful integration of mixed use activities.

Post publication note – Mobile Restaurants were added at the Planning Commission hearing as a permitted use in this District *after* the public review period, and *should* be limited to facilities that do not use generators for power to prevent noise and air pollution *if* the proposed addition does not make that clear.

4) §420-1.5. Establishment of Districts, **Parks, Cemeteries, and Open Space District, P-OS**, Page 6.
The Purpose of this section *should* be expanded to include the role of this zone in creating and sustaining green infrastructure, preserving water and air quality, aiding storm water management and recharge, providing ecosystem services, enhancing livability and allowing contact with nature, attracting and retaining businesses and residents, and serving the community's needs for burial and memorial grounds.

Pedestrian and bicycle pathways are not a unique function of this zone and *should* be moved to a section as a function of all zones in contributing to the interconnected bikability and walkability of the community and meeting 'complete streets' goals of the City.

5) §420-2.3. **Incentive Zoning**, page 14. As written this provision does not seem to provide any benefit beyond the PUD provision and establishes a non-transparent process for negotiation of zoning variances between the zoning administrator and prospective developers. In view of the lack of clear benefit, transparency, community notification and opportunity for input, and the potential for misuse or exposing the City to "spot zoning" and other challenges, this section *should* be deleted in its present form or revised to include substantial public notice and input.
(Please also refer to the comment on this provision under Definitions - Article XX §420-32.1. found below.)

6) §420-2.4. **Site plans** required; exceptions, page 15 - 16. The term "relatively minor developments" which are eligible for site plan waivers *should* be defined (it is not defined in this section or in the definitions and *should* be established and carefully constrained to apply only to 'de minimis' modifications in non-historic structures and districts, with no offsite or visual impacts.

The changes proposed would also remove the authority for waving site plan requirements from the City Manager and his agent (e.g. City Planner) and give it to the Zoning Administrator or his agents, and would also eliminate Planning Commission approval thus removing any opportunity for public or elected official notice, knowledge, or input further eroding transparency.

The combination of the lack of definition of situations eligible for waiver and the absence of protections for public notice or elected official review creates a potential for inappropriate use which *should* be addressed.

Item I (and Section M.5 on page 20) refers *to* **storm water management** techniques which may not represent best practices or preferred Low Impact Development (LID) techniques and *should* be revised to encourage more current approaches including: run-off prevention through design and materials selection, as well as management, decontamination and recharge at the site of generation (e.g. rain gardens, green roofs, vegetated buffers, permeable pavers, cisterns, Filterra-

type devices, infiltration galleries, hugelkulture swales, constructed wetlands, etc.) rather than collection, concentration, and discharge offsite.

Item L. makes landscape plans optional unless requested. These *should* be required, unless waived for inapplicability on a site/project specific basis.

7) §420-2.7. Approval; issuance of permit, Public Notice A.3., page 16. Excellent proposed addition - to post site plan submittals to the City website!

8) §420.2.8 **Performance guarantees**, page 19. Increased detail including storm water and landscaping performance guarantees are positive improvements. Question: Was street signage intentionally left out of the new language? (Please also see Comment #15)

9) Article V. **Planned Unit Development (PUD)** §420-25.1, pages 26 - 34. The intent and purpose of the *existing* PUD provision is specifically to 'encourage and permit variation in residential developments' and to 'expand housing opportunities for persons of all income levels'. The current PUD provision also expressly limits allowed uses in a PUD to those allowed in the district in which it is located with flexibility to allow any of the housing types authorized in the any of the City's residential districts at a total project density no greater than specified in the underlying district.

These existing PUD purposes and provisions aimed at enhancing housing while maintaining the character and integrity of the underlying and surrounding district are proposed to be eliminated in the new PUD provision.

This raises *significant concerns*:

Chief among the concerns is the proposed provision in §420-25.3 and .4 (page 30) to allow ALL industrial, commercial, and residential uses (permitted by right or conditionally in *any* district of the City), to occur in a PUD regardless of the underlying zoning and adjacent uses where the PUD is located. This essentially authorizes industrial and commercial activities of any sort allowed in Lexington, to be located in any residential or other zone where there is a 5 acre parcel, or where parcels adding up to 5 acres can be acquired, having the potential to fragment and degrade existing neighborhoods. As written, this provision *should* be withdrawn.

The proposed 5-acre minimum PUD size (§420-25.6) is both a benefit in that it reduces the number of opportunities for potential fragmentation of coherent neighborhoods (although one could easily imagine the future sale of publicly owned park or open space, school property, or other large parcel(s) in the midst of a residential zone), and a missed opportunity for addressing the preponderance of smaller infill opportunities on vacant land in the City – a goal of the Comprehensive Plan and often stated by current staff and officials.

The 5-acre minimum requirement unfortunately also directs density-enhanced PUD's to the perimeter of the City where most of the few remaining 5+ acre vacant parcels exist. Concentrating population at the perimeter creates traffic impacts in adjoining neighborhoods and limits walkability to downtown and existing major commercial area, while also potentially reducing demand for downtown restaurants, coffee shops, or other services that might be duplicated in the PUD.

Although mixed use development with a variety of housing types are encouraged, they are not required in the proposed replacement PUD ordinance (§420-25.5), so that PUD's that do nothing

to address housing needs of the community (also a goal of the Comprehensive Plan) are still eligible for the density bonuses, waivers from underlying zoning, etc.

In addition, although 30% of the total acreage of the PUD is required to be in open space, the minimum required to be accessible for recreational use is 5000 sq. feet– or less area than two tennis courts - per 5 acre district, meaning that the majority of qualifying open space could be cliffs, sink holes, or other unstable or inaccessible areas.

A fundamental question posed by the proposal of such a radical change to the PUD ordinance is: Does the resulting dense development which may include industrial and commercial uses not permitted in the underlying and surrounding zone, but which is not required to expand housing options or offer public amenities - address the priorities, needs, desires, and goals of the City as a whole? These will not be defined until the update of the Comprehensive Plan when current data will be collected.

It is recommended that the current PUD ordinance be kept until the Comprehensive Plan update provides the data and goals needed to identify and support any needed changes.

10) Article X. **General Floodplain District**, page 47. The proposed floodplain overlay boundary is inaccurately correlated with actual flood risk. While it references the FEMA flood insurance maps, it equates FEMA Zone AE (based on some detailed study) with Zone A (an approximated boundary for which no detailed hydraulic analysis has been performed – no base flood elevations are established in this zone). This approach places the burden on property owners to perform a prohibitively expensive detailed engineering study and to obtain a Letter of Map Revision from FEMA (even for a simple change from one permitted use to another), thus diminishing the value and attractiveness of these properties for development. This is especially true in the R-LC zone where the City is proposing to promote increased economic activity. The City *should* take the responsibility for bringing all mapping up to a consistent standard with accurately calibrated and drawn boundaries, perhaps asking large institutional land owners to contribute to the expense in lieu of taxes, and adjust the mapped boundaries.

11) §420-20.5. **Description of districts**, page 48. See previous comment, and in A.3. add Professional Geologists to the specified credentialed professionals qualified to perform hydrologic and hydraulic analyses.

12) §420-20.11, page 50. **Permitted uses in the floodway district.** Open Space *should* be added as a permitted use in the floodway district.

13) §420-20.12, pages 50-51. **Flood-fringe and approximated floodplain districts**. Section B *should* be clarified. As written it is unclear and seems to possibly allow development in the approximated floodplain district and/or floodway of the approximated floodplain district to raise the hundred-year flood elevation as much as just under one foot. (The missing section reference in Section C. may help clarify (i.e. IF §420-20.10. is the intended citation). However, it would still appear that development that increases the 100-year flood elevation as much as just under a foot in the flood fringe may be permitted (as long as flood proofed). Although minimal impact flood fringe development (e.g. posts, footings, etc.) may be acceptable, the cumulative impact of an allowance for magnitude of development resulting in a one foot increase in flood levels on every parcel throughout the watershed would severely increase flood elevations**.**

14) §420-20.13.C, page 51. The use of the term "floods" in the third sentence seems to ***confuse stream flood waters with surface storm-water runoff***. Assuming the latter is intended, replace the term "floods" with the appropriate references to surface runoff and storm frequencies or magnitudes. See also Comment below on the second sentence in Item E.

15) §420-20.13.E, page 51. Permeable paving, vegetated buffer/infiltration strips, rain gardens, etc. would be extremely beneficial. Parking areas *should* be added to Streets and Sidewalks in the first sentence. A specific performance standard for commercial parking lots (e.g. no net increase in run-off) would help guide effective infiltration design.

16) §420-31.3, page 58. **Commercial Uses Automobile Repair** Visual screening (opaque fencing, evergreen vegetative screen, etc.) and storm water run-off containment requirements *should* be added for vehicle storage areas.

17) §420-31.3.B (10), **Business Short Term Rental, Business License and other requirements**, page 60. The Sections from which institutional overlay districts are exempt are not given in the public review versions of the draft revisions which does not allow for public review before approval. Provisions such as off-street parking and the assurance of considerate comportment of guests provided by resident owners are essential to the successful accommodation of short term rentals in residential neighborhoods and *should* be required in areas of institutional overlays where they directly abut residential districts including R-LC.

In addition, the section refers to a City approved "Master Plan" which, although capitalized, is not defined in the definitions, nor is the process for notifying adjacent property owners and public, and approving the Master Plan given in the Institutional Overlay district description or definitions.

18) §420-31.3.B (11), **Business Short Term Rental, Business License and other requirements**, page 60. As previously noted, the R-LC district leads with R indicting the overall residential fabric of live/work life possible in this district. The assurance of considerate and lawful comportment of guests provided by resident owners is essential to the successful accommodation of short term rentals in neighborhoods where families live and to maintaining the value of the residential properties. The R-LC district *should* be removed from this exemption from the primary resident requirement.

19) §420-31.3.G, Business **Short Term Rental, Nonconforming Use** Clause, page 62. This clause was not provided in the version issued for public review.

20) §420-31.3, **Construction sales and service**, page 62. Screening and fencing requirements *should* be added for outdoor storage. In addition, add restrictions on flammable and hazardous materials storage. Also, night-time lighting should not be allowed after operating hours, except for motion activated lighting.

The title includes construction "service" but the section is silent on any provisions to abate impacts from noise, dust, odors or other air emissions, hours of operations, screening or other requirements that would be reasonable for services such as sawing, welding, painting, hammering, power fastening, etc. Question: Are these activities allowed outdoors?

21) §420-31.3, **Drive-thru facilities**, page 63. As many other communities have done, a Section D requiring a no-idling sign at all drive-thru facilities *should* be added.

22) §420-31.3, Entertainment Establishment, **adult (Sexually Oriented Business), general standards,** page 65. Item B. restricts this use from within 500 feet of a "residential zoning district" which *should* be made clear (here and elsewhere) includes the R-LC district. And although the use is not without its historic roots, it is suggested that the Historic Downtown Overlay district could be added to the areas from which a distance is required.
Item G. also allows operations until 1:00 a.m. further supporting the set back of this use from these two additional zones.

23) §420-31.3, **Financial Institutions**, page 66. Item A is vague and may be interpreted to establish less restrictive lighting requirements for Financial Institutions than the general International Dark-Sky Association based requirements. It is suggested that the IDA-based standards apply here too, and that timer-based or motion activated exterior lighting be used to minimize lighting after hours.

24) §420-31.3, **Home Occupations**, page 66. To prevent online or home sales distribution centers in residential areas, in Item D the phrase "or distributed from" should be added after "No merchandise shall be sold on" and before "the premises."

Consider adding a daily cap to the definitions of Home Occupations that allow for 5 (in Class A), to 10 customers at a time plus two employees (in Class B). Uncapped, at those rates a home business that involves hourly serial group services would induce round trip traffic demand for 45 to 82 customer visits in an 8-hour day and 24 to 64 offsite hourly parking demand. It is also suggested that business hours for customers be limited to typical daytime office hours, and/or that light-blocking window coverings be required for any after-dark hours.

25) §420-31.3, **Restaurants, drive-in**, page 68. As many other communities have done, a Section E. *should* be added to require a no-idling sign at all drive-thru facilities.

26) §420-31.3, **Restaurants, mobile**, page 68 - 69. Limit the hours of operation from 9 a.m. to 9 p.m. for mobile restaurant use in any of the residential areas (including R-LC), except as may occasionally be allowed at an approved catered event. Also consider a cap on number of days per year at any location within a residential area (including R-LC) to prevent essentially permanent restaurants, and adding authorization for requiring a change of location for complaints about odors and smoke, as is allowed for noise. (Note: the Zoning Use Matrix shows "Restaurant, Small" as a new conditional use in R-LC which *should be changed to "*Restaurants, Mobile*"*).

Gas or diesel generator use is not only noisy, but emits significant air emissions. A restriction to Item O allowing only plug in food trucks or other silent, non-polluting modes of operation in residential areas (including R-LC) *should* be added.

27) §420-31.3, **Retail**, page 69. Consider a conditional use exception for ***seasonal outdoor display of plant materials.***

28) §420-31.3, **Shooting range, indoor**, page 69. A requirement that no noise be detectable beyond the property boundary *should* be added. Clarify that the lighting requirement in Item B is in

addition to the IDA-based general lighting standards and is not a substitute standard for this use. Also, any lighting after hours *should* be required to be motion-activated.

29) §420-31.3, **Store, adult**, page 69 - 70. In Item B, and throughout the ordinance, it should be clarified that the residential zoning district includes R-LC. The Historic Overlay district should be added to the list areas from which set-backs are required (refer to previous comment on §420-31.3, Entertainment Establishment, adult).

30) §420-31.4, Industrial Uses, **Telecommunications Towers**, page 71 - 72. The term used in the definitions is "Broadcasting or Communications Tower." The two terms need to be consistent.

Paragraph A proposes to increase the size of amateur towers to be exempted from 'General guidelines and requirements' from 50 feet to 75 feet, and the Zoning Use Matrix proposes to add amateur towers as a by-right use to all residential districts. Unless this is a change required by State statute, the original height for amateur towers *should* be retained or reduced to be in keeping with other residential use height restrictions, and amateur towers *should* only be permitted as conditional uses in residential areas (including R-LC).

Requirements for designing commercial communications towers to blend in to the surrounding architecture (e.g. chimney look-alikes) or natural landscape (e.g. tree-like design) or other aesthetically pleasing forms *should* be added, along with requirements for coating to eliminate reflection, no measurable noise or vibration offsite, no lighting except as FAA required, and no unwanted EMF trespass in neighboring residential uses. Also, it is unclear what the basis is for the more lenient minimum setback of 400 feet from off-site residential structures – 100 feet less than the 500-foot setback for adult businesses - given the highly visible nature and impact that traditional commercial communications towers would have on residential areas.

31) Article XII, **Off-Street Parking and Loading Requirements**; §420-7.2, Location Generally, page 72. Section B and C – Final citations highlighted in blue were not available in the public review version and therefore could not be reviewed.

32) §420-7.6, **Design Standards**, pages 73 – 74.

Item A, Surfacing. The list of erosion-proof driving surfaces leaves out examples of permeable pavement types (see all-weather driving surface definition) which *should* be added and encouraged. Change to 3 vehicles is great.

Item D, Entrances and Exits. Expand the provision for commercial uses in Commercial Districts to include interior circulation and/or ***shared access*** to neighboring commercial properties wherever topography allows.

Consider adding an Item J, Shading, to require a minimum shade tree coverage of commercial parking areas as many other communities have done (e.g. 1 shade tree or more per 8 spaces). Consider offering a solar collector canopy option to provide shaded parking and minimize heat island effects of commercial parking lots.

33) §420-7.7, **Obligations of owner**, page 74. Item C. Clarify that "residential zoning district" includes R-LC here and throughout.

An Item D, a requirement to inspect screening (§420-7.6, Items H and possible new J) and shade trees regularly and schedule any needed replacement in the next possible planting season could be added.

34) §420-7.8, **Schedule of required spaces**, pages 75 – 77. The basis for required minimum parking seems to underestimate the need in some cases including:

- ***Assemblies (public and religions),*** etc. – Very few attendees will arrive in vehicles carrying 6 or more passengers, and there also is no provision for Sunday school teachers, clergy, musicians, caterers, and other staff and guest presenters. Suggest this minimum requirement (1 for 6 seats be increased to reflect more typical vehicle occupancies (amusement, entertainment, sports, and recreation facilities are required to have 1 per 3 or 4 maximum occupants), and that demonstrated arrangements for additional off-site capacity be allowed as partial satisfaction of the requirement.
- ***All Commercial and Non-Residential Uses*** – Spaces required for employees currently vary from none required, to 1 space per one employee, and should be made consistent at 1 space per each employee on the largest shift throughout all the commercial and non-residential uses.
  Also, no mention is made of providing bicycle parking at non-residential uses which would support bikability and Complete Streets within the City and reduce traffic impacts and costs for everyone.
- ***Educational Facility*** – the space requirement should also include additional spaces for school-owned vehicles and buses, and for facilities serving students 16 years or older and adults, one space per student at peak attendance.
- ***Family Home Day Care*** – It is not clear what "residential requirement" refers to, nor whether "1 plus" that amount would be adequate for facilities that care for up to 13 and may have employees. Question: What is the corresponding Section citation for residential requirement?
- The line below Family Home Day Care is shaded for a separate use, but that use is not identified. Question: Is this a separate use?
- ***Fraternity or Sorority*** – the current requirement does not include spaces for non-resident employees, service providers, maximum occupancy for events, or the likely constant presence of visiting friends and guests and should be increased to address those.
- ***Home Occupation***, Class A and Class B – Allowed maximum onsite visitorship is 5 for Class A, and 10 plus 2 employees for Class B. Required parking required is 2 and 4 respectively plus "residential requirement" meaning that as many as additional 3 to 8 offsite spaces will be needed. Suggest that the conditional use of Class B in R-LC include demonstrated ability to provide on or off-site capacity for the 8 potential additional spaces needed, or on-street parking that would fit within the parcel's street-frontage for the 8 additional spaces needed. Question: What is the corresponding section citation for the "residential requirement?"

35) §420-7.9, **Off-street loading**, page 77. Question: Are there adequate provisions for off-street loading of students and attendees of day care facilities?

36) Old Article VIII and §420-8.2 through old §420-28.22, pages 77 – 124. These sections are shown as *deleted* without cross reference to corresponding new sections so completeness of replacement could not be determined.

In addition, *section numbering gaps* appear in the public review version between §420-20.15, page 52 and §420-31.1, page 56; and §420-7.9, page 77 and §420-28.1, page 124. A thorough proofreading for sequence, cross-references, and citation accuracy is advised.

37) §420-28.4, **Prohibited Signs**, pages 126 – 127. Uplighted signs that are on after dark do not meet IDA guidelines and should be added to the list of prohibited signs. Also consider restricting the hours of operation of all types of lighted signs – not just those adjacent to residential uses (see §420-30.3) except those at 24-hr. businesses, and for emergency facilities.

38) §420-28.9, **General requirements for all signs**, page 131. Item D, Lighting – R-LC *should* be added to the list of residential districts where illuminated signs may not shine into residential dwellings, and a requirement that any illuminated signs in those districts be extinguished at close of business or 9 p.m. whichever comes first *should* be added.

39) §420-29.5, **Buffering**, page 134; and §420-29.6, **Screening**, page 135. The requirement that the Zoning Administrator monitor vegetation and notify owners before there is a duty for the owner to remove dead and dying buffer plantings within 30 days seems to place an undue burden on the City to conduct monitoring, and on the owner once notified for immediate removal. There should be no need to wait for a notice from the City before removal, and some flexibility could be allowed for plantings hit hard by drought or pests to recover in the succeeding season before removal is decided. Perhaps a requirement for annual inspection by the owner, with removal and replacement by the owner in the next viable planting season, or upon notice by the Zoning Administrator, working in conjunction with the City Arborist, would be effective and less burdensome?

40) §420-29.7 **Parking Lot Landscaping**, page 135. A higher density of shade trees (e.g. 1 per 8 spaces) than other towns have used should be considered. Also suggest an option for functioning solar collector canopies. (See previous comments on §420-7.6, Design Standards, pages 73 – 74.)

41) §420-29.9, **Recommended Plants**, pages 136 – 137. Excellent general statement encouraging native plants, biological diversity, and sustainability! Heat tolerance could also be listed as a suggested characteristic to consider in anticipation of the projected significant increases in 90+ degree days for the Rockbridge area. Suggest that the Lexington Tree Board review of the list of recommended plants to remove those that have recently become disease prone, ensure good representation of plants that meet the general recommendation for native/diverse/sustainable, and make any other suggestions.

42) Article XV. **Exterior Lighting,** §420-30.3, General Standards, page 138. In Item A, at a minimum consider replacing the term “residential development” with “residential use,” but also consider extending the limits on hours of operation to all exterior lighting, not just those adjacent to residential uses, except as provided for safety or security, at 24-hr. businesses, and for emergency facilities (see also §420-28.4). Consider a stronger provision for motion sensor activation for new construction and replacement units, and encourage embedded or low pathway lighting instead of pole mounted fixtures.

In Section B, consider including new residential construction and replacement fixtures in existing single-family detached and duplex dwelling in the requirements for shielding. Also, RACC would be willing partner with the City and others on outreach with local lighting retailers and tradespeople to

provide fixtures and guidance on acceptable fixtures (chain stores may want to consult with locations in other IDA jurisdictions (e.g. Tucson, AZ).

43) Article XVI, **Nonconforming Uses**, §420-3.1, Continuation, page 140. In Items C and D, The proposed sections appear to allow administrative approval of changing one existing non-conforming use to another non-conforming use without public or adjacent property owner notice. Although existing non-conforming uses cannot be required to cease, they should not permitted to expand or change to another non-conforming use, rather should be allowed to eventually expire after cessation of the activity for a designated period (i.e. 2 years) to bring the district into conformance over time. It is strongly recommended that Items C and D should be removed**.** Any proposed change of an existing non-conforming use to another non-conforming use that is not permitted in the district should go through the process provided for in Article XVII, Amendments, §420-4.1, General procedure for proposed text amendments, including notice to the public and adjacent property owners, and public hearing.

44) Article XVII, Amendments, §420-4.1, **General procedure for proposed text amendments**, pages 141 – 142. In the second sentence of Item A, the word "may" after Planning Commission *should* be changed to "shall," as well as a requirement to directly notify all adjacent property owners. The deadline for Planning Commission to conduct a hearing and advise City Council, making it consistent with the new 100-day allowance should be restored. In Item B, consider adding the requirement that if Planning Commission failed to notify the public and adjacent property owners, and to hold a hearing, that Council will fulfill those requirements as part of its consideration prior to taking action.

45) §420-4.2, **Amendments**, pages 142 – 143. In Subsection A.3.i, the proposed reduction of the time to 5 days between second published notice of the hearing and first allowable hearing date results in a minimum time from first published notice to the hearing of 12 days which is insufficient. The minimum time from first notice to hearing *should* be at least 15 days, and preferably 30 days. The allowance of a joint Planning Commission and City Council hearing in Subsection A.3.ii, makes it doubly important that adequate public notice is given when there will only be one chance for public participation and comment.

The Code of Virginia establishes a minimum of 5 days prior written notice of the hearing to the owners of affected parcels, abutting property owners and those across the street, etc., but we can choose to do better in Lexington. The recent experience with the Planning Commission hearing on the new proposed zoning ordinance showed that some residents did not receive their notices until after the hearing. It is recommended that written notices be *received* by the affected parties at least 15 days before the hearing, and preferable 30 days which would provide reasonable accommodation of any school breaks, holidays, personal vacations, and other common reasons that would cause residents in our community not to receive notice in time under the state minimums**.** Experience also shows that mailing dates should anticipate Post Office delivery times of up to a week so that notices are received by the prior notice deadline.

46) §420-4.3, **Conditional zoning**, pages 143 – 146. In subsection B, Proffer of conditions, a requirement for the City to develop and make available to the public, mechanisms for recording, tracking, and enforcing proffers (a current difficulty in Lexington) should be added.

In subsection C, since proffers related to conditional zoning are to be made prior to Council's public hearing upon public and affected party notice, and as provided in subsection C, are deemed part of and nonseverable from the rezoning, any subsequent Council consideration of amendments or substantive variations should also receive public and affected party notice and the opportunity for

public hearing. This will provide a transparent process that will protect Council and the public from insincere or overpromising of proffers and any potential "bait and switch" strategies by developers, as well as provide developers who have honestly encountered changing conditions a fair opportunity to amend original proffers. Requirement for public and affected party notice and public hearing for substantive changes and variations *should definitely* be added.

In subsection I, the deadline of 30 days for appeal of Zoning Administrator decisions by any aggrieved person, makes it especially important that all potentially affected parties including adjacent property owners, receive timely notification of Zoning Administrator decisions. Failure to inform potentially affected parties essentially eliminates the right of appeal.

47) Article XX. **Definitions.** §420-32.1. Definitions, pages 155 to 208. Because the Definitions serve as the primary description of many of the uses permitted in each zone as listed in the matrix it is essential that they be complete and specific.

a. ***Accessory Use or Structure***, Page 156. Question: Is it intended that accessory structures, including detached garages, not require building permits?

b. **Bed and Breakfast**, page 159. The first sentence adequately completes the revised definition.

The second sentence addresses how nonconforming Bed and Breakfasts will be treated and would be more appropriately located in the section of the Chapter dealing with nonconforming uses.

As currently worded, the second sentences appears to create a special right of perpetual nonconforming use for nonconforming Bed and Breakfasts regardless of termination of the business, substantial loss of the building, abandonment, or other cessation that would typically end the nonconformity – and is silent about expansion (except number of bedrooms) and other limitations which may apply to non-conforming Bed and Breakfasts. The wording should be revised – or the location of this non-definition sentence changed - to clarify that: 'Bed and Breakfasts with non-owner resident managers and/or greater than 5 bedrooms are nonconforming uses subject to the limitations that apply to other nonconforming uses**.**'

c. **Boardinghouse**, page 160. The Boardinghouse definition is deleted. Question: Will these no longer be allowed, or are they now included under another use term?

d. **Building Accessory**, page 161. The definition prohibits the use of accessory structures for "housekeeping purposes," but that term is not defined in the ordinance. Question: Is the intended meaning "dwelling unit"?

e. Business, **Short-Term Rental**, page 162. Question: Is this term intended to include Airbnb, VRBO, etc. type businesses? Either way, the definition might include a statement giving common examples of the types of activities included or not included to clarify. The current definition also appears to be limited to a "dwelling unit" rental, and is not clear whether it is intended to apply to single or shared room rentals within a dwelling unit as many Airbnb, VRBO's, etc. are. In addition, there is no mention in the definition of any requirements for owner occupancy in residential zones.

f. **Care Home**, page 162. This term and definition are deleted. For clarity, suggest referring readers to the term now used for this activity – and all other deleted terms and definitions

throughout the definitions section as applicable. See the revised definition for Cellar as an example.

g. Cemetery, page 163. Question: It is not clear whether the exclusion of areas for scattering or burying ashes, or columbaria containing ashes "*on church grounds"* would also apply to non-religious properties too and if not, whether a special exemption for religious organizations (e.g. as opposed to other non-profit organizations) is legal. It may also be preferable to use a more inclusive term than "church" which is not usually associated with non-Christian houses of worship or other spiritual or non-profit organizations.

h. Cemetery, Private, page 163. It is not clear where the City's current cemetery falls in the definitions given since plots *are* sold.

i. Conservation Easement, page 166. As worded, the proposed definition implies that a property in Conservation Easement no longer has any development rights eliminating all future development and economic uses which is incorrect for properties in the Commonwealth of Virginia's program. From VA statute:

> VIRGINIA CONSERVATION EASEMENT ACT § 10.1-1009. Definitions. As used in this chapter, unless the context otherwise requires: "Conservation easement" means a nonpossessory interest of a holder in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

A more "user friendly" version for City ordinance might be something like:

> The granting of some or all of a property's unused development rights to an agency or land trust organization under an agreement that establishes limits on the allowable future development and uses in perpetuity, in order to retain or protect natural or open-space values; assure the property's availability for agricultural, forestal, recreational, or open-space use; protect natural resources; maintain or enhance air or water quality; or preserve the historical, architectural or archaeological aspects of the property.

j. Curb Cut, page 168. The definition includes only breaks in the street curb connecting driveways to streets and providing vehicular access. It does not include breaks in the street curb for connecting sidewalks, trails, or bike paths to streets or providing pedestrian, bike, stroller, or handicapped access. Question: Is this intended? Suggest expanding this section to include Complete Streets, ADA, and other non-motor vehicle situations.

k. Day Care Center, page 168. The definition lists the types of facilities included and those excluded from the definition, but does not indicate the status of facilities for 12 or fewer children or adults. Suggest including a cross reference to Family Home Day Care.

l. Funeral Home, page 174. The definition does not include crematories which is fine, however there is also no separate definition for crematories, a significant distinct activity due to the advisability of considering potential air quality impacts when locating incineration operations.

m. Height, Tree, page 177. The proposed measurement "…to the top of the trunk" is unusual and it is not clear how this dimension is relevant. Question: Is "… to the top of the crown" intended?

n. **Incentive Zoning**, page 179. As discussed in the summary letter transmitted separately, the introduction of this administrative, privately negotiated provision for waivers from zoning requirements in the absence of notice to adjacent property owners and other affected parties, without an advertised public review process, and lacking strictly limited and precisely defined circumstances for appropriate use based on Comprehensive Plan goals, is ill-advised, not transparent, and creates a potential for misuse and community mistrust.

As written, the definition allows "increased density *and other benefits* [not defined] to a developer" for including unspecified, unlimited features. Among the examples of the features to receive density and other benefits are basic standard good practices such as energy efficient design, traditional neighborhood development, features desired by the locality, etc.

RECOMMENDATION: Remove this definition and provision or at the very least redraft after revision of the Comprehensive Plan is complete and include the public notice and review protections listed above and require dedicated green spaces preferably with public access.

o. Industry, Light, page 179. The list of example industries include many which are likely to have significant offsite impacts, induce heavy vehicle traffic, use hazardous materials, operate for extended hours, and create significant demand for water, sewer, power, and waste disposal services. Given that Lexington's C-2 districts are surrounded by residential areas and are immediately adjacent to schools and healthcare facilities, uses of this type *should* be "Conditional" rather that the proposed "By Right" so that site-specific health, safety and compatibility concerns can be identified and addressed.

p. Street, Public, page 204. Question: Is a ROW of 50 feet accurate for existing streets, or desirable in all areas of the City?

q. Vegetative Filter Strip, page 207. Suggest striking the phrase "adjacent to the shoreline of a watercourse" to include rain gardens and vegetative filters in parking lots and other non-shoreline locations.

48) General - No Table of Contents is included or organizational changes (e.g. annotations identifying where strikeout sections are now located if the topic is not entirely deleted from the ordinance) shown. These are needed for a complete review and should be included in future public review versions of this and other City ordinances and plans.

II. Zoning Use Matrix

1) The most sweeping change of the proposed zoning overhaul is the consolidation of zones, addition of new uses, and elimination of public notice, input, and site-specific evaluation by substantially limiting the Conditional Use review process and granting by right status to an extensive list of uses.

The overall direction taken by the consolidation is upzoning meaning that the number and intensity of uses will increase for areas joining the combined zones that were previously more restricted. Although consolidation introduces a simpler structure, the zones themselves become more generalized and less precise tools for directing uses to locations that minimize potential conflicts and provide maximum opportunity.

In addition, because Lexington is a small City, the zones themselves are not large and many of the more intense use zones have large edge-to-interior ratios which has the result that new more intense uses will frequently occur along the border of the zone and impact contiguous residential neighborhoods.

Managing potential excessive impacts can be done through the Conditional Use process but the proposed changes also significantly reduce the use of conditional use permitting. For example, the proposed matrix introduces 22 new by-right uses to the R-LC zone, 24 to the C-1 zone, and 33 to the C-2 zone. This means that not only will new more intense uses be introduced, but that they will be introduced into the expanded zones and adjacent to currently stable residential areas without the knowledge of residents and neighboring landowners or the transparency and information on potential site-specific mitigation that may make co-existence successful and that is frequently brought to light in the conditional use permitting process.

Given the comprehensive nature of the proposed changes and the potential negative synergistic effects of simultaneously implementing both 1) more intense uses with 2) less public notice and site-specific evaluation, it is strongly recommended that most of the <u>new</u> <u>non-residential</u> uses be introduced first as conditional uses and then reviewed for possible conversion to by-right after we have some experience with how successful the transition has been. This is especially important for the Commercial, Civic, and Miscellaneous uses proposed in the R-LC, and in and bordering the other Residential zones. We don't want to impact and reduce our residential tax base more than we increase our commercial tax base, or lose public and investor confidence and come out worse off than before.

This 'incremental approach' will also allow time to complete the planned review and update of the Comprehensive Plan which will further define the City's goals which zoning can then more accurately be adjusted to align with before unalterable by-right development is permitted to occur.

2) **FP, Flood Plain Overlay** – Parks and Recreational areas are frequently compatible uses and *should* be added as a conditional use without impacting the goal to keep floodways clear and not increase flood heights.

III. City of Lexington Proposed Zoning Map *(version rec'd 4-21-17)*

1) There is no indication on this or the Proposed Future Land Use Map of which parcels are publicly owned (City, County, State, and Federal). This is essential information for evaluating the adequacy of – and future needs and opportunities for – Parks and Open Space zoning and green infrastructure planning, as well as for public, potential buyer/developer, and economic development use. A separate ownership status map may be appropriate.

   Consider including a 'Public or Semi-Public land' land-use category to designate public schools, libraries, City Hall and City administrative and support facilities. A selected review of land-use maps and zoning ordinances from Lynchburg, Harrisonburg, Staunton and Roanoke illustrates various means of differentiating public and civic uses from private uses. For example, in Lynchburg 'public use' is defined as 'Property owned and operated by government including City Hall and other City government buildings, public schools, police stations, fire stations, libraries, museums and others. State and federal facilities such post offices are included.'

2) The underlying zoning in the VMI area has been eliminated and should be reinstated consistent with the other State, County, and Federally-owned parcels in the City – and with an institutional overlay as appropriate. Underlying zoning is the basis for communicating City goals and compatible uses to VMI's campus planners and to its State funding and oversight entities, as well as to any future owners. Underlying zoning and institutional overlay also provide the stability and assurance of future intentions that is needed for investment in neighboring districts.

   a. Question: Has VMI ownership of all the parcels in question been verified (e.g. Alumni and Marshall Foundation sites, VMI Foundation and multiple small residential parcels on Main Street and in the Diamond Hill neighborhood, etc.)?

   b. Even if VMI is currently legally exempt from zoning enforcement by the City, underlying zoning and institutional overlay designation provide the City and adjacent residents and businesses a basis and credibility for discussing uses, siting, and mitigation with future VMI planners and administrators, and elected and appointed State officials. Failure to fulfill the City's responsibility for providing for orderly future development through zoning detracts from its credibility and persuasive position. It may also open the City up to legal challenges in the event of a sale, or a transfer to others under increasingly common Public Private Partnerships or other situations.

   c. There are many small parcels in the proposed unzoned VMI area that border residential areas. These and other unzoned parcels may be subject to future sale or transfer and *should* retain underlying zoning to ensure that future uses are compatible with and protect the contiguous General Residential Diamond Hill and other neighborhoods, Historic Residential Overlay, and Central Business Commercial areas.

3) Question: It is not clear why publicly owned public school sites are proposed to be zoned residential and why there is no 'Civic Use' or some other indicator here and on the Proposed Future Land Use Map, with that designation?

4) The solid pattern designating Floodplain Overlay hides underlying zoning and lot lines and *should* be stippled for easier interpretation. The field mapped and estimated areas of the zone *should* also be

differentiated, or the Map Key revised to indicate "undifferentiated A and AE" along with a note citing the reference where the separate A and AE designations may be found. The boundary of the flood plain also appears to be inaccurately transferred to the zoning map in some locations and should be more precisely registered with the City's map and field checked.

5) Question: Is the "Train Station" property on McLaughlin St. still in Institutional Overlay now that it has been sold to a private owner? How will the existing conditions and proffers be enforced?

6) The three shades of red and orange designating R-LC, C-1, and C-2 are difficult to distinguish when printed and do not adequately symbolize the progression of intensity of uses. Suggest that R-LC be shown in a lighter shade than the other two, and with a shade of "residential color" (yellow or green) that communicates its significant residential component and relationship to and compatibility with the surrounding R-1, R-2, and R-M districts.

7) Question: What will status of "conditionally zoned" parcels be after upzoning either through rezoning or expansion of underlying zoning uses?

8) Question: Which parcels are currently in "non-conforming" use? Will the status of any of these change under the proposed new zoning ordinance, matrix, and/or map?

9) Streets that do not exist are shown extending McLaughlin and White Streets through the park adjacent to Woods Creek, and *should* be removed or dashed designating undeveloped Right of Way (ROW) if such ROW exists. Furthermore, if any ROW is indicated on the map, then all ROW *should* be included throughout the City.

IV. City of Lexington Proposed Future Land Use Map (*downloaded from City website 4-2017).*

This map was NOT reviewed in detail since any revisions of the current map will occur with the Comprehensive Plan review. This map SHOULD NOT BE APPROVED as part of the proposed package being considered now. It may be a useful planning tool to guide changes in zoning ordinances but should not be adopted now in advance of an open, community-based process for development of a new comprehensive land use plan.

1) Indicate non-conforming and conditional uses, public ownership, and uses such as public schools, and institutional overlay use areas.

2) Please refer to the information provided by the owner, Virginia Outdoors Foundation, and RACC regarding the ***McThenia parcel*** immediately adjacent to the City-owned Public Works facility and former dump site. Site-specific review of conditions on this particular parcel show that it is unsuitable for inclusion in an area where large scale development or intense use are encouraged. The developer's proposed small scale Conservation Development plan to cluster a few houses in the limited buildable area and keep the rest of the property in open space with public recreational amenities protected by a conservation easement is more appropriate for the site conditions and consistent with the Natural Resources Chapter of the Comprehensive Plan.

V. General Questions, Observations, and Recommendations

1) It would be very helpful to indicate which of the changes to the ordinance are required for conformance to state statute so citizens don't waste their time or the City's commenting on items that are required. Question: Could a list of those sections be developed for the current revision process and could they be denoted in future revision processes?

2) A significant portion of the new material proposed for the ordinance seems to focus on fostering satellite development away from the central downtown business district. If a community priority is the economic health and vitality of the downtown business district, zoning *should* implement goals such as rehabilitation, redevelopment, and reuse of existing downtown space.

3) Solar access/encroachment does not seem to be mentioned and may be worth addressing as more homeowners and businesses are installing solar panels.

4) Multiple undated versions of maps, text, and matrices throughout the process made tracking and knowing which versions were current nearly impossible for the public. It is suggested that document titles or footers include dates and version numbers in the remainder of this – and future – revision processes.

5) It is recommended that the City make sure that the final version of documents for comment at future hearings are posted to the website and confirmed to be accessible before hearings are advertised, otherwise the time available for review may be compromised as happened during the review before the Planning Commission hearing.

Editorial and Proofreading Items

A. Chapter 420. Zoning *(strikeout public review version received 4-19-2017)*

1) §420-1.5. Establishment of Districts, Parks, Cemeteries, and Open Space District, P-OS, Page 6. Add a comma in first line after "recreational areas."

2) §420-20.5. *Description of districts*, page 48. A.1. Floodway district – The wording of this section is confusing and would be improved by editing for understanding by the general public. Suggest:

> For purposes of this article, the Floodway District is the area within the floodplain extending outward from both banks of the stream channel that would be capable of carrying the entire volume of water of the 100-year flood for that section in a scenario where the floodwaters were confined within the projected area, with a resulting maximum calculated water level of one foot higher than the natural unconfined flood.

A simple graphic illustration would also be helpful.

3) §420-20.13.E, page 51. The second sentence referring to drainage opening may possibly be misplaced and seems more relevant to Item C. of this section. *Furthermore, the term "flood flows" in this sentence seems to be referring to "storm water run-off" rather than stream channel flood flows.* If correct, relocate this sentence and reword to clarify.

4) §420-28.1, *Purpose and Intent*, page 124. Although the content of the text indicates this section addresses signs, the title does not nor is it located sequentially with its corresponding Article or Section introduction. *Is something missing here?*

5) §420-29.9, Recommended Plants, pages 136 – 137. Correct the typo in the spelling of "katsura."

6) Article XIX, *Board of Zoning Appeals*, §420-6.2 Powers and duties, pages 150 – 153. Editorial changes: In subsection A.2, correct a typo in the third line of the proposed new text, changing "ad" to "and". In subsections A.2.v, D, H, I, and J insert "Code of Virginia" before section numbers citing State code.

7) Article XX. *Definitions.* §420-32.1. Definitions, pages 155 to 208.

a. ¶ 1 Page 156 - Correct typo in "should".

b. Alley, Page 157. Typo, should be "right-of-way".

c. Lot Depth, page 181. Editorial - It is not clear whether "average" refers to the arithmetic mean, median, or mode, and how it is to be calculated for irregular shapes.

d. Pedestrian Ways, page 187. Editorial – spell out first use of American Association of State Highway and Transportation Officials (AASHTO), or include in glossary of acronyms.

e. Location, page 197. Editorial – out of alphabetical order. Move to "L".

f. Temporary Signs, page 200. Editorial – suggest "one-time per year event signs" or "annual event signs" if that is the intent.

B. City of Lexington Proposed Zoning Map *(version rec'd 4-21-17)*

1) There appear to be ***unexplained lot line changes and a missing road*** in the VMI area along Woods Creek about 1000 feet from the confluence with the Maury River when compared to the existing Zoning Map (2010) downloaded from the City website in April 2017.

2) When printed, a ***random light green overlay*** appears in the R-1 and R-2 zones that creates two additional color designations that are not contiguous with lot lines. Confirm that future versions posted online have one shade per zone when printed.