

**Zoning Ordinance Advisory Committee  
Final Report and Recommendations  
December 2010**

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This represents the final report of the Zoning Ordinance Advisory Committee (ZOAC). Our appointments expire along with the committee itself on December 31, 2010, and the committee is of the opinion that extension of the ZOAC will not result in a new zoning ordinance within a reasonable period of time. The reasons are multiple and are detailed in the body of this report. However, the ZOAC has reached a firm consensus on both broad and more specific recommendations on changes to the zoning ordinance that the Council should undertake. The recommendations are broken into residential and commercial recommendations.

The ZOAC feels that the residential section of the zoning ordinance is salvageable and workable if applied as written, with some modifications to reflect changes that have occurred over time. Still, there are changes recommended.

The commercial recommendations are much more comprehensive and address the core of how commercial property is developed. The goal of the commercial recommendations is to follow our understanding of Virginia law and improve the development review process. The recommendations are intended to improve the negotiating position of the City and to provide a process that will be more familiar and provide greater certainty for applicants.

The ZOAC does not recommend the public review draft provided by the consultant hired by the City as a replacement for the current zoning ordinance. The ZOAC has concerns about the policy implications of many proposed changes, does not feel that the public review draft can be reasonably compared to the current ordinance to identify changes that will impact property owners, and does not feel that the public review draft represents an easier to use zoning code. There is much good work that can be incorporated into the Code including the basic layout and use of diagrams and pictures, but in total the consultant's public review document is not recommended as the basis for a new zoning code.

The ZOAC is presenting a number of residential and commercial recommendations that should be considered and implemented. The City Council, the planning commission, and staff should take immediate actions to implement these recommendations on an aggressive timeline.

All of these recommendations are intended to provide the basis to implement a revised comprehensive plan and make changes to the zoning code. Some of the recommended changes will be fairly easy to implement in terms of money, time, and other resources. Other recommended changes, such as the new R-1C zoning district, will ultimately require rezoning property.

Additionally, the City should also review and incorporate state code changes that have been passed since this process started in 2008. For example, there have been important changes

38 related to replacement of nonconforming structures without the need for a variance when damage  
39 was the result of an act of God.

40 These recommendations, like the zoning code, are fluid, and the expectation is that once changes  
41 are made, additional changes will be necessary to keep the zoning code up to date.

42 The following is an executive summary of the recommendations presented in this report. Unless  
43 followed by a Vote figure, the recommendations were adopted unanimously by the members on  
44 December 22, 2010.

45 Summary of Residential Recommendations

- 46 1. Create an R-1C zoning district for neighborhoods where all of the current parcels are  
47 substandard for the R-1B district. An example is Greenway Downs, where virtually all of  
48 the houses are nonconforming.
- 49 2. Change townhouse requirements to eliminate the three acre minimum for townhouses and  
50 allow runs of three or four. This could be allowed by special use in the R districts.
- 51 3. Prohibit single family houses in the combined T district, (see commercial  
52 recommendations for the combined T district) but allow townhouses and live/work units.
- 53 4. Modify the current height restrictions for substandard lots by area to include substandard  
54 lots by width or area.
- 55 5. Eliminate the setback bonuses for houses built on substandard lots.
- 56 6. Add an “intent statement” to the code, indicating that lots that were jointly developed  
57 after February 14, 1944 were under joint ownership and reasonably combined at that time  
58 and do not have individual development rights. An example of an intent statement is, “It  
59 is the intent of this section that individual substandard lots of record jointly developed at  
60 any time after February 14, 1944 to meet the requirements of the zoning code may not  
61 separately be used for a one-family dwelling because they were under common  
62 ownership when combined at the time of the joint development.”
- 63 7. Allow up to one-bedroom accessory dwelling units, separated from the primary use, in  
64 the R-1A and R-1B districts – subject to the lot coverage and impervious surface  
65 coverage requirements in place.
- 66 8. Increase the lot coverage or impervious coverage on lots in the R-1A, R-1B, and R-1C  
67 districts by no more than 10 percentage points each if the new structure is certified under  
68 a recognized standard (such as LEED or Virginia Earthcraft) and there is an approved  
69 mitigation plan that will limit runoff to the 25%/35% “by right” levels, or require an  
70 appropriate contribution of funds to storm water filtration facilities that will be required  
71 by the City under the Chesapeake Bay requirements.

- 72 9. Increase protection of historic structures by enabling mandatory HARB approval for  
73 exterior renovations that impact the historic character of the structure. Virginia code  
74 appears to allow mandatory HARB approval prior to issuing a building permit for any  
75 renovations. (Vote – 6:1)

76 Summary of Commercial Recommendations

- 77  
78 1. Change development review process.  
79  
80 2. Replace current Special Exception process with conditional rezoning to planned  
81 development district applicable to commercial and possibly transitional districts.  
82  
83 3. Introduce Floor Area Ratio (FAR) requirements and bonus density incentives in the  
84 proposed planned development districts. (Vote – 6:1).  
85  
86 4. Eliminate MUR districts.  
87  
88 5. Require minimum LEED NC or CS Silver certification for new commercial and LEED  
89 NC Silver for multifamily development with specific point requirements.  
90  
91 6. Require first floor retail with appropriate floor to floor heights and ventilation.  
92  
93 7. Create a single transitional district merging T-1 and T-2.  
94  
95 8. Use the planned development process to incentivize underground parking and shared  
96 parking between commercial uses.  
97  
98 9. Change certain by-right uses to special permit uses.  
99  
100 10. Implement “Area Planning” for commercial areas to provide more specific planning  
101 guidance and then follow with additional code modifications that are consistent with the  
102 planning effort.  
103  
104

105 The ZOAC has reviewed and discussed current zoning shortcomings for almost three years. This  
106 report begins with a review of the history of the ZOAC and discussion of the Clarion scope.  
107 With the background set, each of the recommendations above is provided with additional detail.  
108 Finally, the report also includes detailed examples or background in attachments at the end of the  
109 report.

110 **History and Background for the ZOAC**

111  
112 The zoning ordinance rewrite project began with the award of a contract to Clarion and  
113 Associates for a new zoning code for the City of Falls Church. Clarion prepared a “diagnosis  
114 and annotated outline” of the current zoning ordinance and interviewed numerous elected

115 officials, staff members, members of boards and commissions and representatives of the general  
116 public. The ZOAC reviewed the initial diagnosis and recommended several important changes  
117 to the entire process. The consultant was recommending a unified development ordinance, while  
118 the ZOAC proposed an update to the current zoning ordinance with a focus on fixing the  
119 identified problems rather than starting from scratch and making changes in areas that were not  
120 “broken”. The ZOAC's initial response to the diagnosis and annotated outline from early 2008 is  
121 included as attachment one to this report. While the position of the ZOAC evolved over time,  
122 many of the initial issues are included within the list of recommendations in this report.

123 The process with Clarion involved preparation of three separate modules with staff and ZOAC  
124 comments as each module was prepared. Many of the initial drafts included changes of a policy  
125 nature that were not requested, and in some cases without a definite need identified in the  
126 diagnosis. The proposed code included numerous items that are better handled in an  
127 administrative manual with policies and practices that do not need the strictness of code. In fact,  
128 codification of many of the administrative procedures would have been cumbersome when  
129 changes are required because of the need to amend the zoning code. ZOAC and City Staff  
130 agreed that a separate Administrative Manual was the best way to address these issues.

131 With the receipt of each module, ZOAC and staff prepared and forwarded comments to the  
132 consultant. As the business of the City continued, each time a zoning issue was raised by City  
133 Council, the Planning Commission or other board and commissions, the response was that “*it*  
134 *would be addressed in the new zoning ordinance.*” Unfortunately, some of these issues were not  
135 noted or kept in a central location to be given adequate consideration. In fact, many are probably  
136 not addressed in these recommendations because the ZOAC was not aware of the issues or the  
137 promise to address them in the new zoning ordinance. The scope of the new zoning code rewrite  
138 was one of the consultant’s producing a total new code and just not changes and updates to the  
139 existing zoning code. This resulted in a format where specific issues were not traceable or  
140 identifiable “on the other end” until the final consultant drafts.

141 The Zoning Code Rewrite project has finalized the Public Review Draft stage of the zoning code  
142 rewrite project; this benchmark in the project provides a draft zoning code document for public  
143 review purposes. The city staff and Zoning Ordinance Advisory Committee (ZOAC) completed  
144 their review of the last part of the consultant’s three code draft “modules” or Module Three, Staff  
145 Review Draft in early, May 2010. The consultant Clarion Associates finalized the edits and  
146 combining the three modules into one single document and new proposed draft zoning code that  
147 was delivered to the city staff on July 23, 2010.

148 As background an overview of the project goals and scope are listed followed by the project  
149 chronological history, ZOAC and staff activities to date is included in Attachment 4.

150 The ZOAC considered a number of different options for public review. The first was to present  
151 the public review draft for comment. Alternatives included presenting a “top 10” list of changes

152 or to provide a side-by-side comparison of relevant code sections. This resulted in the proposal  
153 to integrate the best of the current code into the format of Chapter 48.

154 The proposed *integration technique* was an idea by the Planning Director for staff to draft a  
155 *companion zoning code* document or optional code format for consideration. Staff was to work  
156 from the recently recodified city code, Chapter 48, Zoning and incorporating significant portions  
157 of the draft Clarion Zoning Code in the development of a *companion zoning code* draft that  
158 might be considered as a *hybrid version* that would have the familiarity of the existing code  
159 (merged/coupled) with the new contemporary elements of the separate Clarion draft zoning code.

160 The idea was to develop a hybrid zoning code that keeps what we like in the existing code and its  
161 familiarity, while utilizing the Clarion draft code in updating the old code and adding the new  
162 code elements and structure of the Clarion draft code. The ZOAC was supportive of this staff  
163 initiated *hybrid concept* as an alternative to consider as an option. The ZOAC would then have a  
164 choice to consider the parallel staff effort to produce a *hybrid code* or the *Clarions Draft Code –*  
165 *Public Review Draft* version to recommend for informal public review.

166 In summary, while considerable work from the ZOAC and staff has been applied to the Clarion  
167 Zoning Code rewrite effort, the public review draft is not recommended as a replacement for  
168 Chapter 48. As noted, there are many good points that can be used but the ZOAC recommends  
169 that those points be integrated into Chapter 48 as amendments rather than as a complete  
170 replacement.

#### 171 **Report on Residential Recommendations**

172 The Zoning Ordinance Advisory Committee feels that the residential section of the code  
173 regarding single-family “R” districts is not in need of a complete revision. The ZOAC agrees  
174 that most of the requirements and allowances in the code are perfectly appropriate if they are  
175 applied and enforced as written. There are a number of changes in residential districts that are  
176 needed and a number of changes that are desirable. These primarily address existing conditions  
177 in the City (i.e. proposal to create an R-1C district) or the mix of housing types that could be  
178 available in the City (e.g. elimination of the three acre requirement for townhouses and allowing  
179 separate accessory dwelling units). The ZOAC looked at a number of options prior to  
180 developing the recommendations. Staff prepared a series of maps that visually displayed the  
181 impact of changing district lot sizes in R-1A and R-1B. The goal was to see if lot sizes could be  
182 reduced to bring more lots into conformity with the requirements of the zoning code while not  
183 creating too many new “by right” subdivision opportunities. After careful review, the ZOAC  
184 determined that the lot sizes in R-1A and R-1B should remain as they are. Still, there are many  
185 nonconforming lots in the City. Each of the recommendations is listed below with a short  
186 summary of the ZOAC reasoning.

187           1. Create an R-1C zoning district for neighborhoods where all of the current parcels are  
188           substandard for the R-1B district. An example is Greenway Downs where virtually  
189           all of the houses are nonconforming.

190           There are limited areas in the City that were subdivided and developed prior to the existence of  
191           the City of Falls Church. Greenway Downs is an example where the developed single family  
192           houses do not meet the requirements of the current R-1B district, but are in fact harmonious and  
193           consistent with a neighborhood character. One of the basic rules of zoning in Virginia is that  
194           zoning should reflect the actual conditions that exist. The 1959 code failed to account for the  
195           existing conditions. It is safe to assume that this was an oversight rather than an intentional  
196           effort to eliminate the entire neighborhood. Nonconforming uses are regulated more strictly than  
197           conforming uses and this places an unreasonable burden on the entire neighborhood. There have  
198           been changes to the State Code that have reduced some of the hurdles to replacing the existing  
199           houses in the event of disasters, but the City owes these property owners a zoning district that  
200           makes the existing conditions on the ground conforming. The ZOAC is not proposing where this  
201           new zone should be applied but suggests that it be regulated by lots of 50 feet in width, 6000  
202           square feet in area, with front setbacks of 25 feet, rear setbacks of 30 feet, and side yard setbacks  
203           of 8 feet. If applied to neighborhoods that followed those requirements when developed, there  
204           will be no additional “by right” development allowed but the existing property owners will have  
205           all of the rights that come with conforming status.

206           2. Change Townhouse requirements to eliminate the three acre minimum for  
207           townhouses and allow runs of three or four. This could be allowed by special use in  
208           the R districts.

209           The ZOAC is making this recommendation because of the need for a more diverse housing stock  
210           and to provide for alternatives to single family homes, particularly near the metro stations. This  
211           is recommended in the R districts, possibly by a special use permit. Another alternative to  
212           implement this would be a conditional rezoning as has been proposed for commercial  
213           developments. The major hurdle to developing townhouses in Falls Church is the enactment of a  
214           three acre minimum in the current code.

215           3. Prohibit single-family houses in the combined T district (see commercial  
216           recommendations for the combined T district) but allow townhouses and live/work  
217           units.

218           Allowing single-family houses in the transitional district brings single-family houses into direct  
219           contact with more intense business districts. The goal of a transitional district is to allow less  
220           intense commercial uses or residential uses that are more dense that will form a transition from  
221           the intense business uses allowed in the B districts to avoid direct contact. Single-family houses  
222           directly abutting commercial districts create neighborhood problems such as the parking  
223           problems along S. Oak Street and Lee Street where there are no transitional districts. The new

224 single-family houses at the corner of Park and Virginia are an example of unnecessary conflict of  
225 uses in transitional districts.

226 4. Modify the current height restrictions for substandard lots by area to include  
227 substandard lots by width or area.

228 The zoning code was changed to limit the height of houses built on substandard lots based on the  
229 level of substandard area. The intent was to bring houses developed on substandard lots in line  
230 with the existing housing stock. However, the change did not address lot width. Lots that are  
231 substandard in width by up to 1/3 are being used to develop new houses with no restriction on  
232 height if the lots are not substandard by area. In other cases, the area is less substandard than the  
233 width and the full 35' or close to it is being used to build tall, narrow houses. The Virginia  
234 Supreme Court has upheld the substandard height restrictions based on area in the Schefer case.  
235 This change should be made to protect neighborhood character to the extent possible. (See  
236 Attachment Two regarding substandard lots for additional details)

237 5. Eliminate the setback bonuses for houses built on substandard lots.

238 The current zoning code perversely grants additional development rights to substandard lots that  
239 are not available to lots that conform to the zoning code. This may have been an attempt to  
240 accommodate the neighborhoods that did not meet the R-1B lot size requirements but over time  
241 has resulted in unintended consequences when applied to lots that were previously developed  
242 jointly. This creates an incentive to continue and expand nonconforming uses, which is in  
243 opposition to the stated intent of the code. When combined with the change that is requested for  
244 a new R-1C zoning district, the potential problems are addressed through a base zoning district  
245 change rather than an exception that is subject to abuse if not controlled tightly. Elimination of  
246 the reduced setbacks for substandard lots along with the proposed restriction on height based on  
247 the level of nonconformity by area and width will help bring redevelopment within existing  
248 neighborhoods more in line with existing development. (See Attachment Two on substandard  
249 lots for additional details)

250 6. Add an intent statement to the code indicating that lots that were jointly developed  
251 after February 14, 1944 were under joint ownership and reasonably combined at that  
252 time and do not have individual development rights. An example of an intent  
253 statement is, "It is the intent of this section that individual substandard lots of record  
254 jointly developed at any time after February 14, 1944 to meet the requirements of the  
255 zoning code may not separately be used for a one-family dwelling because they were  
256 under common ownership when combined at the time of the joint development."

257 The history of the zoning code in the Town of Falls Church and the City of Falls Church since  
258 the initiation of zoning in 1934 has not provided development rights to any substandard lots  
259 under common ownership. Despite the clear language of the code, numerous parcels that were  
260 previously combined and developed with a single family house have been redeveloped into two

261 (and sometimes more) new single family houses. Adding an intent statement to the existing code  
262 to guide property owners and those in the City charged with application of the code will remove  
263 any perceived ambiguity. (See Attachment Two on substandard lots for additional details)

264 7. Allow 1 bedroom accessory dwelling units, separated from the primary use, in the R-  
265 1A and R-1B districts – subject to the lot coverage and impervious surface coverage  
266 requirements in place.

267 The current requirements for accessory dwelling units only allow them for a family member by  
268 special use permit that does not transfer to new owners. This results in almost cost prohibitive  
269 conditions if a family wishes to create a separate auxiliary dwelling unit for an elderly family  
270 member because the unit will most likely not be allowed for other uses in the future. The code  
271 should allow the creation of one-bedroom or studio accessory dwelling units separate from the  
272 principal residence that can be used as rental units in the future to increase the mix of housing  
273 types and price levels in the City of Falls Church. Affordable housing is at a premium in the  
274 entire region and with suitable regulations for on site parking and similar neighborhood  
275 considerations can be accommodated in Falls Church.

276 8. Increase the lot coverage or impervious coverage on lots in the R-1A, R-1B, and R-  
277 1C districts by no more than 10 percentage points each if the new structure is certified  
278 under a recognized standard (such as LEED or Virginia Earthcraft) and there is an  
279 approved mitigation plan that will limit runoff to the 25%/35% “by right” levels, or  
280 require an appropriate contribution of funds to storm water filtration facilities that  
281 will be required by the City under the Chesapeake Bay requirements.

282 The ZOAC is extremely focused on the environmental impacts of development but also sees that  
283 the burden of current regulations falls almost exclusively on the homeowners in the City of Falls  
284 Church. Rather than provide stricter requirements on commercial development that is badly  
285 needed in the City, the committee proposes methods that will grant greater flexibility to  
286 homeowners at a cost. Increases in storm water runoff and non point source pollution are to be  
287 avoided or adequately mitigated. Any expansion of building coverage or impervious surface  
288 must hold the impacts at the currently allowed levels or provide a substantial contribution toward  
289 new requirements for storm water treatment. This recommendation could be coupled with  
290 limitations on lawn area, on site retention and filtration, or a substantial contribution toward the  
291 high cost of future storm water filtration requirements. For example, a “price” of \$2,500 per  
292 percentage point above 25% building and 35% impervious surface could result in an offset of  
293 \$50,000 for each property that took full advantage of the new allowance. If only 20 houses took  
294 full advantage, the City could recoup \$1,000,000 in planned costs for mandated filtration  
295 facilities. Any change should also state or reinforce the fact that any new development shall not  
296 increase the volume or velocity of runoff draining on adjacent properties.

297 9. Increase protection of historic structures by enabling mandatory HARB approval for  
298 exterior renovations that impact the historic character of the structure.

299 Virginia law allows mandatory approval by historical architectural boards before exterior  
300 modifications are made. The ZOAC recommended on a 6 to 1 vote to change HARB from  
301 advisory to mandatory approval. The ZOAC noted that this was consistent with a previous  
302 recommendation from the Preservation Partners taskforce.

### 303 **Report on Commercial Recommendations**

304  
305 1. Change the development review process.

306  
307 The ZOAC considered the current review process as it relates to development applications and  
308 recommends several changes. The current process as the Committee understands it is as follows:

- 309
- 310 a. Application received and reviewed by Staff for technical completeness and policy  
311 guidance;
  - 312 b. Following staff review, the Economic Development Committee (EDC) (a  
313 subcommittee of City Council) meets with applicant as needed to review the proposal  
314 and reach a tentative agreement on the plan and voluntary concessions;
  - 315 c. When the application is deemed ready, City Council holds First Reading and refers  
316 the application to Boards and Commissions;
  - 317 d. City Council holds Second Reading, where Boards and Commissions report back to  
318 Council after having considered the application, and makes a final decision on the  
319 application;
  - 320 e. If the application is approved at Second Reading, the applicant then completes its site  
321 plan and submits to Planning Commission for final site plan approval.

322  
323 The ZOAC members expressed concerns about this process, including (1) boards, commissions  
324 and the public are not afforded early input into the application, (2) the process is not consistent  
325 with surrounding jurisdictions, and (3) the process requires City Council to negotiate concessions  
326 “up-front” and diminishes the ability to address significant issues or make any new requests  
327 later, including those raised by boards, commissions or the public.

328  
329 The ZOAC recommends changing the current process when using the conditional rezoning or  
330 planned development process recommended here:

- 331
- 332 1. Staff review and presentation to PC. At this stage, an applicant  
333 should be required to submit additional information as needed to  
334 address any questions regarding the extent of potential waivers,  
335 compliance with the comprehensive plan, and other technical  
336 requirements,.
  - 337 2. PC review and refer to a new application review subcommittee  
338 (review, and discussion with a representative from council, boards,  
339 commissions, neighborhood reps, or other parties). The  
340 application review subcommittee ultimately makes a

341 recommendation to the full PC. The PC then refers the application  
342 to City Boards and Commissions for their input.

- 343 3. The PC conducts the required public hearings and makes a  
344 recommendation on what is essentially a preliminary site plan.  
345 The preliminary site plan, along with all required waivers,  
346 variances or exceptions for the proposed development is then  
347 forwarded to the City Council for consideration and public  
348 hearings.
- 349 4. Council public hearing and first reading.
- 350 5. Council public hearing and second reading with formal approval of  
351 the rezoning.
- 352 6. If approved, the proposed development is referred back to the  
353 Planning Department for formal approval of the site plan by the  
354 Planning Commission.

355  
356 The ZOAC feels that this will provide adequate specificity for projects prior to Council action  
357 and still require fully engineered site plans to be developed only after Council approval. The  
358 ZOAC believes this process would encourage more timely input from different constituencies  
359 and improve applications earlier in the development review process before they go to public  
360 hearing. It results in a transparent public process while the Council retains full authority and  
361 negotiating power through the entire legislative process. This process will provide applicants  
362 with greater certainty of final approval.

- 363  
364
- 365 2. Replace current Special Exception process with conditional rezoning planned  
366 development districts applicable to commercial and possibly transitional districts.

367  
368  
369 The current development approval process for major commercial development projects in the  
370 City is to seek one or more “special exceptions” that allow an applicant to increase height,  
371 density, add use types, etc. above the limits allowed by the underlying code. The Committee is  
372 primarily concerned that the requirements for a special exception are not fully defined and that  
373 the process may be inconsistent with state law that allows mandatory conditions but not  
374 necessarily voluntary concessions for special exceptions, and therefore recommends replacing it  
375 with a consistent process for property owners to rezone into a commercial “overlay district” or  
376 “planned development” district applicable to all business districts in the City. Such a process  
377 would define certain expectations for applicants, improve the efficiency of the development  
378 approval process, and more clearly comply with Virginia State laws as it relates to obtaining  
379 voluntary or mandatory proffer concessions. Special exceptions would still be needed in the City  
380 code for certain minor modifications, however for larger development projects that require more  
381 significant changes such as increasing height, density, adding uses, etc. applicants would be  
382 required to rezone into an overlay district or a new planned development district that would  
383 permit such changes under well-defined circumstances.

384  
385 In order to create such a process, one or more new districts would need to be established by the  
386 City, and specific areas would be designated as eligible for the district. For example, a district

387 could be created for the East Falls Church Metro Area, and all property owners in this designated  
388 area would be required to seek a rezoning of their land if they wish to develop their property  
389 beyond what is otherwise permitted “by-right”. The district itself would be drafted in a way that  
390 permits maximum heights, densities and additional uses beyond those permitted “by-right”, and  
391 would also require specific conditions to be met in order to be eligible for such a rezoning. In  
392 this way, using conditional rezoning would provide more specific criteria than the current  
393 Special Exception process, and permitted height, density and uses could be tailored to a specific  
394 area rather than considered on a project-by-project basis. Another option to implement this  
395 process would be a single district that references area plans or other detailed planning documents  
396 or sections of the comprehensive plan for specifics.

397  
398 The Committee had extensive discussion on overlay districts, including how many would be  
399 appropriate for the City, what heights, densities and uses ought to apply to each area, and what  
400 conditions would be required and/or encouraged in return for granting a rezoning. The result was  
401 that the Committee found it difficult to make specific “planning” recommendations without  
402 having more guidance from the Comprehensive Plan (or future Area Plans), however it did  
403 produce the following list of desired conditions or development performance standards that  
404 might be uniformly required across all commercial planned development or overlay districts:

- 405
- 406 • Urban design guidelines are followed for locating and designing structures, including  
407 bringing the building to the sidewalk (ie. no surface parking between a road and  
408 sidewalk).
- 409 • Incorporate appropriate interparcel connectivity and convenient access from parking to  
410 uses.
- 411 • City-specified streetscape and street furniture are required as part of the application  
412 (including tree pits, sidewalk material, benches, bike racks, street lights, trash receptacles,  
413 etc.).
- 414 • Public plazas and/or pocket parks
- 415 • Sidewalk widths must allow sufficient space for streetscape/furniture (above) as well as  
416 at least 6’ to 10’ of pedestrian clear space, depending on the nature of the fronting street.  
417 For example, if fronting a major road such as Washington Street, at least 10’ of  
418 pedestrian clear space should be provided in addition to space required for  
419 streetscape/furniture. In general, a twenty foot (20ft) wide streetscape area would be  
420 required to the extent possible on Broad and Washington Streets. This is consistent with  
421 extensive survey data provided by staff for the ZOAC committee and the city’s recently  
422 adopted N. Washington Street Streetscape Plan.
- 423 • Undergrounding of all utilities in and around the perimeter of the property is required.
- 424 • On-street or equivalent parking must added along the perimeter of the site.
- 425 • Traffic Demand Management plan required with regular reporting to the City on  
426 performance.
- 427 • High quality building architecture and construction materials must be used.
- 428 • Building height transition (ie. step-down) is required as structures approach existing  
429 residential neighborhoods, and balconies above the height of adjacent residential  
430 structures would be regulated.

- 431 • Retail space shall be provided on the first floor (especially when fronting a major street
- 432 or in a designated retail area) with at least 18’ floor to floor height and proper ventilation
- 433 for restaurants.
- 434 • Office parking is required to be open to the public during nights and weekends.
- 435 • Any above grade parking structures are required to be wrapped with finished architectural
- 436 materials or plantings.
- 437 • All dumpsters, electrical equipment, loading areas, etc. to be screened.

438  
439 Additionally, the Committee discussed items that should be encouraged in an Overlay District,

440 perhaps through the use of a sliding scale of bonus height/density:

- 441 • Lot consolidation
- 442 • Underground parking
- 443 • Modifying building setbacks to allow additional space for sidewalk seating
- 444 • Adding Civic uses (library, police, school, arts, etc.) into portions of the development
- 445 • Higher LEED Certifications

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448  
449 3. Introduce Floor Area Ratio (FAR) requirements and bonus density incentives in

450 the proposed planned development districts.

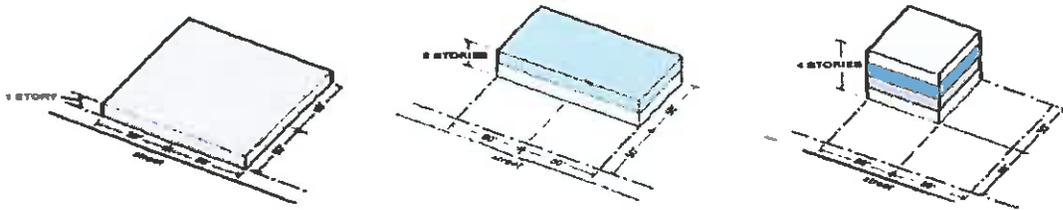
451  
452 The Committee voted 6 to 1 to recommend introducing Floor Area Ratios (FAR) into our code,

453 for specific areas and zoning districts to be implemented through the proposed new development

454 approval process. Floor Area Ratio (FAR) is the ratio of total floor area of a building to the area

455 of the lot on which the building is located. (Formula: Total Floor Area / Total Lot Area.) The

456 diagram below illustrates three ways that a 1.0 FAR might be achieved on the same lot:



457  
458  
459  
460 Our current code does not include FAR (with the exception of the MUR, see above), however it

461 is very common for jurisdictions elsewhere to use FAR in their base code.

462  
463 By using FAR, an architect can plan for either a single-story building consuming the entire

464 allowable area in one floor, or a multi-story building that rises higher above the plane of the land,

465 but which must consequently result in a smaller footprint than would a single-story building of

466 the same total floor area. By combining the horizontal and vertical limits into a single figure,

467 some flexibility is permitted in building design, while achieving a hard limit on overall size. The

468 City’s current code limits size on the basis of height and setbacks only, and as a result limits

469 design flexibility for architects.

470

471 Additionally, by governing size based primarily on height, the only incentive that can be  
472 provided to landowners is additional stories. This framework limits the City's ability to provide  
473 more incremental and targeted incentives, which could be instrumental in achieving some of the  
474 desired items the Committee listed in #1 (Overlay Districts) above.

475  
476 For example, FAR incentives could be structured to encourage lot consolidation. In Tampa,  
477 Florida, they offer a .25 FAR bonus for each contiguous .25 acres over 2.0 acres, which provides  
478 incremental increases in density as lots are consolidated. Because the City has so many small lots  
479 in its commercial areas, and the success of redeveloping properties depends upon assembling  
480 land, some members of the Committee felt this could be a particularly useful tool for  
481 encouraging lot consolidation. We could, for example, establish a minimum FAR of say 2.0 FAR  
482 for one-acre lots, with a .25 FAR bonus for each additional half-acre in land area. (See  
483 Attachment Three.) By doing this, landowners would have a sliding scale of density bonuses that  
484 would encourage the process of land assemblage.

485  
486 Another example would be encouraging underground parking through FAR bonuses. In San  
487 Diego, they offer a bonus of one square foot of above-grade building for every square foot of  
488 underground parking garage. In another City, the incentive is one square foot of building bonus  
489 for every two square feet of underground garage built. This type of incentive requires an FAR  
490 based framework in order to work, as height-based incentives would not provide the same level  
491 of precision for these incremental bonuses.

492  
493 In addition to introducing FAR, the Committee agreed that height limits should remain in the  
494 code however the interplay between height and FAR must also be studied to determine how they  
495 can be used together to provide incentives.

496  
497 The Committee further agreed that FAR and bonus densities should be introduced into the  
498 overlay or planned development districts only. The underlying code should not be changed in  
499 this respect; however there must be sufficient incentive in increased height and density for  
500 landowners to desire to rezone into an overlay district.

501  
502 (NOTE from the one no vote: It is unclear how a density bonus will work in an overlay district  
503 or planned development district when the economically viable FAR is already less than the base  
504 districts allow. If FAR is going to be used as an incentive, the base districts need to be  
505 downzoned and converted to a FAR basis so that bonus FAR is possible. The primary incentives  
506 available to the City in the absence of a downzoning are parking reductions and residential uses.  
507 Additional height bonuses (which would translate into a higher FAR) would be possible as well  
508 without the potential financial risk of downzoning existing commercial districts. )

509  
510 4. Eliminate MUR districts

511  
512 The Committee reviewed the existing MUR districts, which is one form of using FAR and bonus  
513 densities. It was determined there are a number of material issues with how bonus densities were  
514 structured and where they were applied that explains why the MUR has failed to yield any  
515 results:

516

- 517 • Total Project Acreage requirement is too high to meet: most properties in the City are a  
518 fraction of an acre. There are only a handful of properties in the City that are currently  
519 big enough to qualify in this scale. A more targeted approach of encouraging  
520 consolidations of between and 1.0 and 2.0 acres that are more reasonable given current  
521 lot sizes could be more effective.
- 522 • The minimum FAR of .75 is too low, this is a suburban-level density that encourages  
523 more asphalt and parking lots.
- 524 • The Percentage Density Bonus “starts” at 3.0 acres. Again, only a handful of landowners  
525 can reach that size, therefore there is little incentive for most properties.
- 526 • Also, a 2% density increase is too low to provide meaningful incentive.
- 527 • Maximum FAR’s are much too low. All of our recent redevelopment projects approved  
528 through Special Exception received at least a 2.0 FAR and up to a 3.0 FAR. Why would  
529 anyone pursue the MUR if the maximum density were 1.74, which requires 10 acres.
- 530 • Max Building Heights up to 75’ is not meaningful incentive either, which corresponds  
531 with the low maximum FAR, and is lower than what’s already permitted in our B-  
532 districts. In particular, the B-2 district with a special exception permits up to 105’.

533  
534 The Committee feels the MUR simply did not provide meaningful incentive, and was applied too  
535 narrowly in specific areas of the City. For these reasons, we recommend eliminating the MUR.

536

- 537 5. Require minimum LEED NC or CS Silver certification for all new commercial  
538 and LEED NC Silver for multifamily development with specific point  
539 requirements.

540

541 The Committee reviewed the state of commercial building sustainability standards, including  
542 customized municipal sustainability standards, and decided on the U.S. Green Building  
543 Council’s LEED NC certification, an internationally recognized green building certification  
544 system, providing third-party verification that a building was designed and built using strategies  
545 aimed at improving performance across all the metrics that matter most: energy savings, water  
546 efficiency, CO<sub>2</sub> emissions reduction, improved indoor environmental quality, and stewardship of  
547 resources and sensitivity to their impacts. LEED provides building owners and operators a  
548 concise framework for identifying and implementing practical and measurable green building  
549 design, construction, operations and maintenance solutions.

550

551 The Committee reviewed the LEED New Construction (NC) ratings of LEED NC Standard,  
552 LEED Silver, LEED Gold and LEED Platinum. Committee members spoke with several real  
553 estate developers regarding the cost of meeting these ratings. The consensus of the developers  
554 was that if a developer’s design team integrated LEED Silver standards early on in the design  
555 process, LEED Silver buildings could be built today for little or no extra cost compared to non-  
556 LEED buildings. It may be a possibility that as LEED ratings are updated, LEED Silver  
557 buildings might be built at a modest cost premium. At the same time, third-party studies show  
558 that LEED certified building realize significant cost savings over the life of the building, and that  
559 LEED certified buildings are being sought after by potential tenants. The Committee believes  
560 that LEED NC Silver represents a “sweet spot” for a sustainable community while encouraging  
561 real estate development, and recommends that LEED NC Silver be adopted.

562  
563 The Committee believes that real estate developers and building owners place a high value on  
564 predictability, and using USGBC's LEED NC Silver rating provides them with an industry-  
565 recognized standard. At the same time, within each category of the LEED NC Silver rating  
566 system, such as Sustainable Sites, Water Efficiency, Energy and Atmosphere, Materials and  
567 Resources, Indoor Environmental Quality, and Innovation and Design Process, there are points  
568 that can be awarded in specific areas that the City of Falls Church may find desirable for our  
569 community. The Committee recommends that within the LEED NC Silver rating, that certain  
570 points, which might include site selection, development density and community connectivity,  
571 alternative transportation, storm water design optimal energy performance, enhanced  
572 commissioning, measurement and verification, construction waste management and others be  
573 identified as mandatory so the City of Falls Church can reach its desired sustainability goals.  
574 These desired points would be the same for all commercial projects in the City. The Committee  
575 recommends that the City Staff, aided by the City Council-appointed Environmental Services  
576 Council, identify the desired specific points as part of the LEED NC Silver standard for  
577 commercial development in the City.

578  
579 In summary, the Committee recommends to the Council that the LEED NC – Silver certification,  
580 with mandatory achievement of certain specific points, be the commercial real estate  
581 development building standard for the City. At the same time, City Staff and the City Council  
582 would not be precluded from asking for specific sustainability-related actions by developers. In  
583 fact, such actions might be the source of LEED NC points.

584  
585 6. Require first floor retail with appropriate floor to floor heights and ventilation  
586

587 The committee discussed the limited amount of commercial areas in our City and that all new  
588 developments should be required to add street-level retail uses in portions of buildings fronting  
589 major boulevards (i.e., Washington, Broad, etc.), any identified retail streets, and throughout the  
590 downtown district (i.e., City Center and south of City Center).

591  
592 Retail requirements should be developed and added to the overlay district to provide additional  
593 guidance to landowners. For example, the Committee discussed the following as important  
594 attributes for retail to be successful:

- 595 • High floor to ceiling heights, for example 18' +/-.
- 596 • Ventilation installed with the base building to allow for restaurant users.
- 597 • Storefronts should be pre-dominantly glass to provide views into the store (but glass  
598 would not need to be the exclusive material).
- 599 • Appropriate awnings and lighting should be considered.
- 600 • Tenants should be able to create unique entry ways that distinguishes their brand identity.

601  
602  
603 7. Create a single transitional district  
604

605 The current zoning code includes two transitional districts, T-1 primarily along the Broad Street  
606 commercial corridor and T-2 primarily along the Washington Street commercial corridor. The  
607 intent of transitional districts is to provide a buffer between intense commercial uses and less

608 intense residential (e.g., single-family) uses. Over the years, a large portion of the T districts has  
609 been rezoned on a piecemeal basis to business zoning districts. The differences between the  
610 districts are minimal and a consolidated T district should focus on being a transition that is used  
611 to moderate intensity, density, and height.

612

613 8. Use the planned development process to incentivize underground parking and  
614 shared parking between commercial uses

615

616 The Committee recommends the City adopt specific policies that would allow shared parking  
617 and parking reductions where appropriate. Reduced parking would encourage other modes of  
618 transportation including walking, biking, carpooling and mass transit. Additionally, high parking  
619 requirements adds significantly to the cost of new developments, thus discouraging underground  
620 parking. With sufficient parking reductions, underground parking would be more affordable and  
621 thus more likely to be included in new development projects.

622

623 The Committee discussed that not all situations would warrant parking reductions, and there was  
624 concern specifically over shared parking arrangements between residential and retail uses. It is  
625 therefore the Committee's recommendation that the City adopt a policy permitting parking  
626 reductions for the following scenarios:

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- Proximity to metro and/or major bus lines;
- Proximity to shuttle or other direct linkages to metro;
- Ability to manage parking reductions through Transportation Demand Management (TDM) programs, for example by providing dedicated zip car or carpool parking stalls, providing tenants with metro fares, etc.;
- Change the statement to reduced requirements for affordable housing and senior housing;
- Shared parking arrangements between office uses and retail uses;
- Shared parking arrangements between office uses and hotel uses;
- Shared parking arrangements between hotel uses and retail uses;

638 9. Change certain by-right uses to special permit uses

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The Committee discussed changing certain uses in our commercial districts to be permitted by "special exception" rather than "by-right". The following uses were proposed:

- Churches
- Gas stations
- Used/New car sales and rentals

Current allowed uses would be "grandfathered," (or rendered nonconforming) this would only affect "new" applications for such uses going forward.

10. Initiate "Area Planning" for commercial areas to provide more specific planning guidance, and then follow with additional code modifications that are consistent with the planning effort.

654 The Committee faced many challenges as it developed the recommendations above, the greatest  
655 of which was not having sufficient guidance in the current Comprehensive Plan to draft actual  
656 language for the proposed overlay districts. Much of what would be written into an overlay  
657 district has to do with planning, and the Committee decided it was not the mission of ZOAC to  
658 plan specific areas of the City. Many questions related to overlay districts need to be addressed  
659 and decided through additional planning efforts, for example:

- 660 • What are the boundaries for specific commercial overlay districts?
- 661 • How many districts should there be?
- 662 • Should they be tailored differently to each area? What specific items were desirable in  
663 one area but not another?
- 664 • What density and height limits are appropriate for each commercial area?
- 665 • What bonus densities are appropriate?

666

667 These questions need to be addressed through a more concentrated planning effort between the  
668 City, Residents and Property Owners before any specific code can be drafted and adopted. The  
669 Committee therefore supports recent discussions by City Council to initiate area planning of the  
670 commercial sectors.

671

672 As a next step, this Committee recommends the City adopt these more general recommendations  
673 as a framework, and further recommends the City immediately undertake more detailed  
674 comprehensive planning (i.e., area planning) of the commercial areas.

675

676 As part of the Area Plan process (or immediately following), the Committee believes it would be  
677 appropriate at that time to draft overlay districts and make appropriate code changes that are  
678 consistent with the planning effort.

679

680

## 681 **Summary**

682 There are three important recommendations in this report from the ZOAC.

683 First, the ZOAC does not recommend that the consultant public review draft be used as a  
684 replacement for Chapter 48. The committee recommends taking the best material from the draft  
685 (including formats and use of pictures and diagrams as well as technical changes deemed to be  
686 appropriate) and incorporating it into a revised Chapter 48 clearly indicating all of the changes  
687 for any interested party.

688 Second, the ZOAC recommends a list of changes to the content of residential districts that can be  
689 undertaken without a complete revision of the zoning ordinance.

690 Finally, the ZOAC recommends substantial revisions to commercial development review using  
691 overlay districts or planned development in place of the current special exception process. The  
692 ZOAC feels that the commercial sections of the code need considerable work from both  
693 technical and procedural perspectives. It is critical to get the commercial zoning updated based

694 on the emergence of new projects and the critical nature of commercial development to the long  
695 term fiscal health and viability of the City of Falls Church.

696 The ZOAC presents these recommendations with several caveats. First, the zoning ordinance  
697 should be a tool to implement the vision in the Comprehensive Plan. In some ways, this process  
698 put the cart before the horse because a review of the Comprehensive Plan was scheduled after the  
699 completion of a new zoning code. Second, all recommendations for change should be reviewed  
700 by the City Attorney to ensure compliance with law and to avoid undue financial exposure that  
701 zoning changes can create. Third, most of the recommendations are short of technical specifics  
702 and all technical recommendations should be reviewed by staff and elected officials to determine  
703 the policy desired. Finally, the ZOAC is not satisfied with these recommendations in lieu of a  
704 complete update of the zoning code. Chapter 48 requires considerable updating based on the  
705 current and future changes to the Comprehensive Plan. Area planning will require code or comp  
706 plan changes to adequately incorporate with meaningful specificity. In the absence of planning  
707 specificity, the ZOAC has provided a general guideline of what should be priorities for future  
708 changes to the zoning code.

709 **Attachment One: Initial ZOAC report to Clarion**

710 **Zoning Ordinance Advisory Committee**  
711 **Review of Clarion Draft Diagnosis and Annotated Outline of**  
712 **Zoning Ordinance Rewrite**

713

714 **Introduction**

715 The initial draft report from Clarion includes many positive suggestions for improvement. It is  
716 forward thinking in terms of economic, social, and environmental sustainability and promotion  
717 of neighborhood character, and makes many suggestions based on best practices used in other  
718 jurisdictions. The Clarion report suggests using some of the unique authority granted to Falls  
719 Church in the Charter for design regulations, a complete review of all development procedures  
720 with a revision representing a unified development ordinance approach, and detailed proposals  
721 for modifications to many of the existing zoning districts in Falls Church. In addition, there are  
722 proposals for a number of new overlay districts to address future development patterns.

723 The Zoning Ordinance Advisory Committee supports many of the proposals and suggestions and  
724 welcomes the opportunity to solicit Council and Planning Commission input on some of the  
725 policy changes that are included in the draft prior to public release of the Draft Diagnosis and  
726 Annotated Outline of Zoning Ordinance Rewrite. City Council input on policy direction early  
727 and often will be necessary for the successful completion of the zoning code update process.

728 The Committee would like to get the public process off on the right foot from both policy and  
729 public perception points of view. In particular, there are a number of issues that, while well  
730 intentioned, could generate unnecessary public concern and hinder progress toward community  
731 acceptance of a revised zoning ordinance. The Committee suggests that additional changes be  
732 considered and policy issues confirmed before the draft is released to the public.

733 Our first report highlights some of the major policy changes, identifies some potential pitfalls in  
734 the draft diagnosis, and presents our thoughts after an initial review. The report is presented in  
735 two parts. The first part includes a brief statement of conditions in the City, identifies some  
736 policy change highlights, and identifies some possible pitfalls. The second part follows the  
737 organization of Part II – Diagnosis in the Clarion report and includes more specific comments  
738 based on the specific language and suggestions of Clarion. This report is not exhaustive but  
739 rather points out areas that generated considerable discussion within the group over the past three  
740 months.

741 **I. Overall Policy Considerations for the Zoning Ordinance Rewrite**

742 Major Policy Issues:

743 a) Unified development ordinance vs. revision of Chapter 38, Zoning;

- 744 b) Mixed-use development;
- 745 c) Design standards – residential and commercial;
- 746 d) Beneficial use determination;
- 747 e) Substandard single-family lots;
- 748 f) Zoning district changes and comprehensive plan changes;
- 749 g) Affordable housing percentages; and
- 750 h) Hot button issues included in the draft.
- 751

752 Each of these issues is discussed in summary below.

- 753 a) Unified Development Ordinance vs. revision of Chapter 38, Zoning:
- 754

755 The current code is not well suited to the type of development that is taking place in Falls  
756 Church. The code is complex, often contradictory, and very hard to use in a practical manner.  
757 There are overlapping sections with contradictory requirements, ambiguous language, glaring  
758 omissions, and standards more applicable to an automobile based exurb. The General Assembly  
759 has made numerous changes to enabling legislation that might be useful to include in the zoning  
760 code while others require careful consideration within Falls Church.

761 In recent years, Falls Church has seen two major development trends: residential infill  
762 development in single-family zoning districts and more dense mixed-use development in  
763 commercial corridors. These development trends have resulted in an increasing number of civil  
764 actions, proposals for referendums, and in extensive public debate and action on numerous  
765 developments. While there will always be those who support and oppose any particular  
766 development project, public debate has resulted in a coalescence of opinion that the zoning code  
767 in Falls Church needs to be updated.

768 Clarion’s Diagnosis and Annotated Outline Zoning Code Rewrite considers these underlying  
769 trends and information gathered through personal interviews with numerous members of the  
770 public, boards and commissions, staff, and Council members. Clarion recommends a complete  
771 overhaul of the current development processes in the City of Falls Church. Their unified  
772 development ordinance approach is a major policy change for the City. The unified development  
773 ordinance would bring together separate chapters of the current city code that are related to land  
774 use and development. This approach brings together Chapter 23, Outdoor Lighting; Chapter 28,  
775 Private Schools, Special School and Day-Care Facilities; Chapter 31, Subdivision; Chapter 35,  
776 Trees, Shrubs, and Weeds; Chapter 36, Underground Utilities; and Chapter 38, Zoning. The  
777 Committee does note that Chapters 6 and 9, covering erosion and sediment control and buildings  
778 are not recommended for inclusion. Runoff from new developments is a concern in the City.  
779 However, the Committee is wary of unintended consequences and urges caution if a unified  
780 development ordinance is the policy direction to be taken.

781 As an alternative to a complete overhaul of the development framework in Falls Church, the City  
782 Council should also consider the option of a more targeted effort focusing on a rewrite of  
783 Chapter 38 with a focus on the realities in place and the ambiguous, conflicting, and missing  
784 authorities allowed by the Charter and State Code. The task of straightening out the current code  
785 will be a substantial one without the additional issues of subdivision standards and attempting to  
786 align and update four additional chapters of the code. A new administrative procedures manual  
787 would have to be developed concurrently but is not within the scope of the Clarion contract. The  
788 Committee would like to see many of the detailed proposals and recommendations made by  
789 Clarion included in a re-write of Chapter 38 without the additional consolidation of lighting,  
790 trees, subdivisions, schools, and other proposed inclusions.

791 Regardless of the approach chosen by Council, a list of conflicting or ambiguous code provisions  
792 should be identified early in this process and suggestions or recommendations made to clarify the  
793 intent or eliminate the conflicts. That is not part of the diagnosis but is a major complaint that  
794 has been mentioned over and over.

795 b) Mixed-Use Development:

796 The policy for addressing mixed-use development is important to the zoning code revision  
797 process. The committee had extensive discussions of current Special Exception process in Falls  
798 Church which is used to review major mixed-use projects. The committee recommends an  
799 approach that will allow mixed use development while controlling the process to a somewhat  
800 greater extent than currently practiced under the SE. The approach includes a mixed use overlay  
801 district that would apply to all B-1 to B-3 properties. The mixed-used designation would be  
802 granted through a rezoning rather than by-right. The basic format and intent of the SE can be  
803 retained. The State does authorize the acceptance of proffers under a rezoning.

804 The process would also require that all rezonings or mixed use special exceptions be  
805 accompanied by a site plan that would be approved concurrently. The rezoning contingent on an  
806 approved site plan would retain negotiating leverage throughout the process. The mixed use  
807 process should allow a mix of uses by project rather than requiring a mix of uses in individual  
808 buildings. In order to ensure that various phases are completed, the code should identify an  
809 appropriate trigger point for issuing building permits for residential structures that will guarantee  
810 the completion of the commercial pieces when uses are mixed by rather than within buildings.  
811 All of these recommendations are intended to allow mixed use projects but improve the control  
812 of the process.

813 c) Design Standards—Residential and Commercial:

814 The Committee is not comfortable with the application of strict design standards to single family  
815 residential development. The committee feels that the Charter power should be used to develop  
816 minimal design standards such as aspect ratios and review should continue to be guided by the  
817 Design Guidelines. The Guidelines should be updated to include more green elements. Any

818 design standards will limit unique development and there should be a process to request a waiver  
819 from the Planning Commission, BZA, architectural review board, or other appropriate body.  
820 Design standards for commercial development should be somewhat more detailed to ensure that  
821 issues such as ingress and egress, frontage, loading and other potentially problematic issues are  
822 regulated.

823 d) Beneficial Use Determination:

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825 A beneficial use determination is a decision that there is beneficial economic use of a property  
826 taken as a whole when the zoning and land use ordinances are applied. Beneficial use does *not*  
827 mean that a property owner can do whatever they desire. A taking on the other hand would  
828 mean that no reasonable house could be built. When there is no reasonable beneficial use of a  
829 property taken as a whole because of the application of the zoning ordinance a regulatory taking  
830 claim could be raised by a property owner.

831 In Virginia, Boards of Zoning Appeals are authorized to grant variances from the strict  
832 application of the zoning code when there is a hardship that approaches a taking. The Virginia  
833 Supreme Court has defined hardship as no reasonable beneficial economic use of a property  
834 taken as a whole.

835 The committee understands the process for variances as a relief valve and has concerns that a  
836 new beneficial use determination procedure in addition to variances will cause additional  
837 confusion and potentially new pitfalls. The ripeness doctrine requires a party to use all available  
838 administrative remedies prior to use of the courts. There is an existing process in Virginia and  
839 incorporation of an additional determination will potentially create ripeness problems for  
840 aggrieved parties. If there is no application for a variance, a case will not meet the ripeness  
841 doctrine. If a second process is added, that must also be used before a case is ripe. Two  
842 processes could preclude an aggrieved party from using all available administrative relief  
843 options. Under these conditions, the committee recommends against a beneficial use  
844 determination process as described in the diagnosis.

845 e) Substandard Single Family Lots:

846 A major policy consideration that is not included in the draft deals with one aspect of the  
847 nonconforming lot issue in the City. The Committee recommends adding a new single family  
848 district with lot size smaller than R-1B for neighborhoods where most of all of the lots are  
849 nonconforming under the requirements of R-1B. Areas such as Greenway Downs have been the  
850 subject of several zoning actions. All of the lots are substandard and existed prior to the City of  
851 Falls Church. Zoning should accommodate the existing patterns. These owners are at a  
852 considerable disadvantage because the code that was developed did not take into account reality.

853 There are several other areas where all or many of the existing lots are nonconforming due to  
854 width or area that might also be considered for a new single family district (R-1C maybe).

855 For areas that are outside of the proposed new designated single-family district, the Committee  
856 supports the Clarion recommendation to combine lots where a house has been built across two or  
857 more existing substandard lots. Any substandard lots that were not encumbered by a structure  
858 would remain eligible for development as under the current code. The Committee sees this as a  
859 compromise between the existing character of neighborhoods and the rights of property owners.

860 f) Zoning District Changes and Comprehensive Plan Changes:

861

862 There are a number of proposed zoning district changes that will require evaluation and possible  
863 changes to the comprehensive plan and future land use map prior to implementation. The  
864 Committee is aware of the controversy that is associated with both up-zoning and down-zoning  
865 property. In part II, the committee addresses some specific zoning district proposals to hopefully  
866 minimize controversy with the passage of a revised zoning ordinance.

867 g) Affordable Housing Percentages:

868 Clarion recommends a change to the affordable housing ratio from 12% to 6.5% which is about  
869 the average obtained by the City since the policy was put in place. Further, Clarion proposes that  
870 the 6.5% be codified. The committee is concerned about both the reduction and the codification  
871 of the requirement.

872 The committee is aware of the recent charter change granted by the General Assembly for the  
873 City to have an affordable housing program. The committee suggests that the program remain a  
874 policy rather than a requirement for all development projects that include residential  
875 components. At the very least, codification should exclude single family residential  
876 development or redevelopment below certain thresholds (e.g, fourplex or townhouses). There  
877 are no large parcels of land that are zoned for substantial new subdivision and single family  
878 development. Requiring infill or single family redevelopment to meet the percentage of  
879 affordable housing will only increase the cost of that housing in the City.

880 The committee would like to see an increased emphasis on retaining the substantial amount of  
881 affordable housing that is already available in the City before requiring new affordable housing  
882 to replace lost opportunities. Codification is an inflexible approach. A policy that must be  
883 applied to rezonings or special exceptions would be a preferable and more flexible approach.

884 h) Hot Button Issues Included in the Draft:

885 There are also some “hot button” topics in the report. In the current environment, the  
886 recommendation for greater use of administrative adjustments and waivers could generate

887 backlash from the residents of Falls Church. The Committee requests policy guidance on this  
888 issue. If the decision is to limit administrative adjustments and waivers, it will be more effective  
889 to eliminate those sections of the draft prior to release.

890 The committee is concerned about the recommendation to rezone all parks to the proposed TRO  
891 district (transitional office use). The Committee fears that an effort to rezone all parks to  
892 something called office use will not be well accepted by the citizens of Falls Church. If  
893 consistent zoning is to be applied to parks, a parks and/or city owned open space zone might be a  
894 more acceptable approach.

895 A limit on driveway widths that would preclude two car driveways could also generate  
896 significant controversy and should only be included if there is strong policy support. The  
897 Committee does not feel that the limit is needed.

898 This is not a complete list but rather highlights some of the major policy changes and potential  
899 problems discussed by the Committee. An important point is the need for a change to the cover  
900 used on the report. The report is a diagnosis and set of suggestions and recommendations from  
901 Clarion. The report should include Clarion's logo rather than the logo of the City of Falls  
902 Church to avoid the impression that the proposals contained are set in stone.

## 903 **II. Specific Comments on Part II of the Diagnosis.**

### 904 *Section II pages 1-12: Making the Code User Friendly*

#### 905 New Development Neighborhood Meetings

- 906 • A requirement for neighborhood meetings is a good idea for any development that is not  
907 allowed by right. Neighborhood meetings should be strongly encouraged for by right  
908 development but not required. A requirement for pre-application meetings would codify  
909 the current practice.

910

#### 911 Combined Application Requirements/Administrative Waivers

- 912 • Reviews are currently structured based on the needs of the individual requests. Clarion is  
913 recommending a common review procedure. It is unclear how this would be put into  
914 practice since rezonings, subdivisions, variances, special use permit applications all  
915 require different reviews and different submission materials. A home occupation special  
916 use permit application would not need as extensive a review as the City Center.  
917 Allowing administrative waivers of requirements will be necessary and therefore  
918 compromise the common application and review procedures. We suggest that the  
919 submission requirements for the various applications be put in one place but that we not  
920 have the same procedures for all application types.

921

#### 922 Application Completeness Certification

- 923       • The proposal for a completeness review and certification of all applications has some  
924 benefits particularly if there are rules about acting on applications that have not been  
925 certified as complete. On the other hand, the potential for jurisdiction problems or at  
926 least questions on appeals is a concern. If the Zoning Administrator is responsible for  
927 completeness determinations, the BZA is the body to hear appeals of his determinations.  
928 The BZA should not act on completeness determinations where the application falls  
929 within the underlying original jurisdiction of the BZA. The BZA should also not have to  
930 decide appeals for completeness of actions such as subdivisions that are not within their  
931 jurisdiction.

932

933       The committee recommends that the planning director or designee certify applications as  
934 complete based on administrative requirements included by reference in the zoning  
935 ordinance. If the requirements are listed out, there is no appeal process. An application  
936 meets the requirements or does not as a factual matter.

937    Zoning Compliance Permit

- 938       • The Committee fully supports a separate zoning compliance permit process. A zoning  
939 compliance permit should be a public action, posted in a timely manner on the Internet  
940 site, and a building permit should not be issued until the zoning compliance permit is  
941 obtained. The process may need different rules for actions requiring a building permit  
942 and new uses that only require an occupancy permit. A set point in time based on the  
943 issuance of a zoning compliance permit would resolve many of those issues.

944

945    Temporary Storage Containers

- 946       • One temporary use that should be addressed is storage containers with limits on  
947 placement and length of time they are permitted to stay on properties in the City.

948

949    Design and Presentation Layout of the Revised Ordinance

- 950       • The presentation issues discussed in pages 1-12 are all useful. The Committee is  
951 concerned that the current provider of web presentation of the code may not be able to  
952 accommodate all of the new features. The suggestions for a contents section, index, and  
953 most of the other suggestions on pages 9-11 should be included regardless of whether this  
954 is a unified development ordinance or a more targeted re-write of Chapter 38 alone.

955

- 956       • The committee recommends that any photos used are not of structures within the City of  
957 Falls Church.

958

959    *Section II pages 13-22 Modernize the Zoning Districts and Uses*

960    Multi-Family Districts

- 961       • The Committee feels that as a policy, it would be best to retain the R-M district. The  
962 committee felt that R-M is potentially more of a problem if land is rezoned within current  
963 single family districts. Special requirements for mutli-family buildings would be a good  
964 idea for Falls Church. An affordable housing policy could be applied when there is a  
965 rezoning to the R-M district.  
966

967 Townhouse Districts

- 968       • The Committee agrees that the R-C and R-TH districts can be improved. One  
969 improvement would be to combine the R-C and R-TH districts and maintain the best  
970 parts of both. There has been some criticism that the R-TH regulations are too rigid.  
971 This would provide the opportunity to add some flexibility to town house development  
972 acknowledging that residential housing will trend toward greater density within the  
973 Beltway.  
974

975       The committee recommends removing the 3 acre minimum for these developments but  
976 retaining a minimum standard based on the number of units. (e.g., based on groupings 4  
977 or 6 units in a project?)

978 Commercial and Light Industrial Districts

- 979       • The committee suggests retaining the B-1 to B-3 districts as well as the M-1 district (see  
980 earlier comments on mixed-use development). While there is very little M-1 property in  
981 the City, the committee feels that there should be some areas that could be used for a  
982 future property yard or other more intense nonresidential uses.  
983

984 Transitional Districts

- 985       • The committee does not support the combination of T-1, T-2, and OD into a single office  
986 transition use district. The committee recommends combining the T-1 and T-2 districts  
987 but recommends the OD district be retained because of the usefulness of that when  
988 dealing with historic structures.  
989

990 Overlay Districts

- 991       • The committee does not recommend new overlay districts for neighborhood  
992 conservation, city center, or affordable housing. Appropriate zoning regulations for each  
993 of these should be addressed in the underlying districts.  
994

995 *Section II – pages 23-33 Upgrade Development Standards*

996 Parking Requirements

997 • The committee agrees that parking is a contentious issue if there is either too much  
998 parking or not enough parking. Speculative development pushes for the minimum while  
999 formula driven development by national chains is more rigid in parking requirements that  
1000 sometimes exceed the code minimum requirements. Finding a balance that is flexible  
1001 enough to meet a wide range of needs is not an easy task. The committee understands  
1002 that maximum parking ratios might avoid over parking situations but also understands  
1003 that maximum ratios might cause other businesses to avoid the City of Falls Church. The  
1004 committee suggests that Clarion provide additional information on parking practices in  
1005 other, similar jurisdictions where they have worked.  
1006

1007 It is difficult to find financing for speculative projects with inadequate parking.  
1008 Maximum parking ratios will deter other development. The committee advocates an  
1009 approach that is flexible with both minimum and maximum parking requirements and a  
1010 waiver process that can be applied when appropriate for desired development.

1011

1012 Lighting/Fencing Requirements

1013 • The committee agrees that the lighting standards and fencing requirements need to be  
1014 reviewed and updated. The Committee supports Clarion's position on regulations that  
1015 stress parcel connections rather than privacy fences, particularly between uses in a single  
1016 project or zoning district. In general, parcel connections make the City a more walkable  
1017 environment.  
1018

1019 Open Space – Public and Private

1020 • The committee feels that this is a good section and long overdue. The committee would  
1021 like to see open space defined in different, more specific terms. Recent projects have  
1022 included in the community benefits "open space" that is only accessible to the inhabitants  
1023 of the project. Separate definitions of public vs. private open space and separate  
1024 definitions of green space vs. impervious open space should be included. The committee  
1025 feels that a one size fits all of public open space will be a negative element for  
1026 developers. The committee recommends further input on whether a 5% or 10% set-aside  
1027 is the right figure precisely. In addition, projects should have the alternative to make  
1028 cash contributions in lieu of public open or green space when the project parameters  
1029 would result in less useful public space. Public green and open space should be an  
1030 integral part of the project design rather than an after thought inserted to meet a code  
1031 requirement. The committee suggests additional clarity on these requirements but is  
1032 fully supportive of the approaches.  
1033

1034 Design Standards

- 1035       • The committee generally supports the suggested design standards for multifamily and  
1036 transitional uses but does not agree with specifics such as color standards in transitional  
1037 districts. As noted previously, the committee supports a goal of improved inter-parcel  
1038 access, flow, and continuity.  
1039

1040    Affordable Housing Incentives

- 1041       • The committee agrees that the current affordable housing density bonus permitted under  
1042 the Special Exception process is not being used by applicants. The committee suggests  
1043 consideration of parking reductions rather than density bonuses, a more firm percentage  
1044 for all projects, new accessory dwelling unit regulations, and possible requirements for  
1045 owned or rental affordable units. The committee feels that a mixture of owned and rented  
1046 units should be regulated to maintain diversity. The committee believes that these items  
1047 should be in a policy manual rather than being codified.  
1048

1049    *Section II – pages 34-41 Protecting Neighborhood Character (change to Promoting)*

1050    Promoting Neighborhood Character

- 1051       • The committee feels that the focus should be positive, promoting rather than protecting  
1052 neighborhood character. As noted previously in Part I, the committee does not support  
1053 rigid design standards in single-family neighborhoods. Design standards limit diversity,  
1054 foster sameness, and create a substantial regulatory expense.  
1055

1056    Nonconforming Lot Provisions

- 1057       • The committee recommends a new residential single-family zoning district to make a  
1058 large number of currently nonconforming lots into conforming lots. If adopted and  
1059 properly applied, only truly nonconforming lots will need to be addressed. The  
1060 committee does support the provision that when a structure is built across two or more  
1061 nonconforming platted lots, the lots are deemed to be combined. The committee does not  
1062 support a structure limit of 55% of the lot width but favors the use of aspect ratios (height  
1063 to width) and fixed setback requirements such as those currently in place.  
1064

1065    Pipestem Lots

- 1066       • The committee feels that the recent changes to the zoning and subdivision code related to  
1067 pipestem lots sufficiently address many problems and should be retained. The proposal  
1068 for common/shared access might be reasonable in some cases while a problem in others  
1069 (see illustration on page II-37).  
1070

1071    Single Family Design Standards

- 1072 • The committee provided general comments in single-family design standards in Part I. In  
1073 particular, the committee does not support proposals for standards related to articulation  
1074 of façade, roof form, alignment of windows and doors, materials requirements (see  
1075 Attorney General’s Opinion 01-117 regarding building material requirements in Suffolk),  
1076 axis requirements, and allowed one story wing encroachments into required setbacks.  
1077

1078 Single Family Building Limits

- 1079 • The committee does support reasonable allowances for front porches to encroach in  
1080 setbacks but not requirements that new houses have front porches based on the existing  
1081 pattern in the neighborhood. Porches should be encouraged but not required. The  
1082 committee encourages consistent façade orientation and building direction requirements,  
1083 and averaging front set backs (measured to the existing structures, not the minimum  
1084 required front yard average as is the current practice).  
1085

1086 Garage Provisions

- 1087 • The committee supports the Clarion proposal for garage setbacks behind the main façade  
1088 of houses. Garages are accessory uses and as such should not be the primary focus of  
1089 single family housing in Falls Church. The committee notes that it might be necessary to  
1090 allow garages that are in line with the front of houses but recommends that they should  
1091 not extend beyond the front of the main structure.  
1092

1093 *Section II – pages 42-49 Foster Redevelopment in the Village Core*

1094 The committee supports most of the recommendations in this section but feels that greater  
1095 emphasis can be added to developing linkages for pedestrians, bikes, and even cars.

- 1096 • Referring back to the mixed-use development points in Part I, the committee feels that if  
1097 residential uses are allowed by right in business districts, the by-right component should  
1098 be as proposed on page II-45, “ including upper story residential uses incidental to the  
1099 primary use”.  
1100

- 1101 • The committee also supports more defined tapering between adjoining districts. The  
1102 committee feels that this will be of increasing importance with new development trends  
1103 in Falls Church. In addition, attempts to foster more clustering of use types would  
1104 benefit the City. For example, a section Broad that had four residential building next to  
1105 each other could then switch to office with retail for the next four blocks. This pattern is  
1106 common in Cities and can be seen on upper Connecticut and Wisconsin Avenues.  
1107 Clustering of retail creates a destination in this scenario.  
1108

1109 • The committee supports bringing commercial district building forward but this must be  
1110 done within the goal of adequate sidewalks, streetscape plans, and more pedestrian  
1111 friendly commercial development.  
1112

1113 • The committee notes the importance of many of the bulleted points on pages 46-48  
1114 regardless of whether or not a specific City Center zoning district is created (overlay or  
1115 base). The step back proposal might be clearer with a drawing or diagram indicating the  
1116 desired step backs. The committee would like additional input on the reasonableness and  
1117 appropriateness of public art or fees in lieu of said equal to 0.2 percent of the project cost.  
1118 It may be reasonable to also include additional open space instead of art.  
1119

1120 *Section II – pages 50-52 Incorporate Sustainability Concepts*

1121 The committee feels that a revision of the zoning code is an opportunity to get out front of the  
1122 environmentally sustainable development trend and create appropriate incentives for green  
1123 development in Falls Church. We agree with the section as proposed but would like to see added  
1124 a discussion of environmental standards to commercial development. The residential  
1125 requirements are strict but the commercial ones are lacking. Better balance is necessary.

1126

1127

1128 **Attachment Two: Substandard Residential Lot Issues**

1129 **Introduction**

1130 Current City practice allowing development of single substandard lots that were previously  
1131 developed jointly is not supported by the plain language of the Code. This practice can be  
1132 changed with the addition of an intent statement to Section 48-1102 (b). A statement providing  
1133 clear guidance to property owners and to those applying the City Code is needed immediately.  
1134 Under the current City practice (unsupported by the Code), owners of homes built across  
1135 multiple nonconforming lots have the best of both worlds: they have the ability to sell or develop  
1136 each substandard lot but they are taxed as if they have a single building lot. Part I provides  
1137 some background on substandard lots. Part II discusses how single substandard lots that were  
1138 previously jointly developed are being individually developed and expands on the potential  
1139 impact of not correcting this erroneous practice. Part III presents the case for why there are not  
1140 development rights for individual substandard lots that were previously developed jointly.

1141 **Part I: Background**

1142 In recent years, existing houses built across multiple lots of official record have been demolished  
1143 and the City has approved building houses on the individual substandard lots. When a parcel is  
1144 conforming but the individual lots that make up the parcel are substandard, neighborhood  
1145 character problems arise. Existing housing was developed by applying zoning requirements to  
1146 the parcel rather than the lot. New houses redeveloped on lots of official record almost always  
1147 take advantage of reduced setback requirements. This is out of character with the existing  
1148 development on the parcels.

1149 *Some Definitions are Helpful* - A lot is defined in the Code as, “any parcel of land occupied or  
1150 intended to be occupied by a principal building and its accessory uses and structures, together  
1151 with open spaces as are required by this chapter, which adheres to the minimum requirements  
1152 prescribed in the respective zoning districts.” This can also be called a zoning lot.

1153 A lot of official record is defined as a separate platted lot, legally created, and recorded with the  
1154 county of record meeting all of the requirements in place at the time the lot was created.

1155 The term “parcel” is not defined in the zoning code, but in practice it is the unit that is under  
1156 common ownership and is used to meet the lot definition in the City Code. The City Assessor  
1157 treats multiple lots of official record that have been used jointly to develop a single family house  
1158 as a single parcel not multiple individual building lots. The terms lot and parcel are not the same  
1159 and are used to describe different things for development and taxation in Falls Church.

1160 *Existing City Policy for Nonconforming Uses* - According to the City Zoning Ordinance, the  
1161 policy of the City is to allow legal nonconformities to continue but not be expanded or enlarged.  
1162 Section 48-140 “*Intent*. It is the intent of this section that nonconforming uses are inconsistent  
1163 with the purpose of this chapter, that they are recognized and permitted to continue only because  
1164 they are antecedent to the ordinance, that they be restricted closely, and that although they may  
1165 be continued, they shall not be enlarged or extended.” The Code then delineates sections on  
1166 continuation, limitations, and special provisions for the enlargement of residential structures in  
1167 the R-1A, R-1B or R-C districts when an existing structure is nonconforming as to current  
1168 setback requirements.

1169 *Existing City Policy on Residential Neighborhoods* - Both the City Code and the Comprehensive  
1170 Plan state unambiguously that the goal of the City is to “continue the basic low density single-  
1171 family character of the community yet allow for a little greater variety of types of dwelling  
1172 accommodations available for persons with different requirements.” (Section 48-1(c)(2)) The  
1173 Comprehensive Plan for the City specifically focuses on preservation of existing residential  
1174 neighborhood character in Goal 7 in Chapter 4, Land Use. The strategies focus on limiting large  
1175 new houses by considering changes to lot coverage by buildings, impervious surface limits, and  
1176 modifications to height limits to maintain harmony. In 2006, the zoning code was changed to  
1177 limit height on substandard lots by area and to change the measurement of height to  
1178 predevelopment measurements when they are lower. However, these changes did not solve the  
1179 problem of demolishing a single house on multiple substandard lots and replacing it with  
1180 multiple new houses.

1181 *Interaction of the Code Conflicts with the Stated Intent of the Code and the Comprehensive Plan*  
1182 - In an ironic twist, although the City policy is to grudgingly allow legally nonconforming uses,  
1183 the Code in residential neighborhoods actually grants special development rights to  
1184 nonconforming lots of official record that are not available to conforming lots of official record.  
1185 This makes some sense for individual nonconforming lots but grants a special bonus when  
1186 individual substandard lots that were jointly developed in the past are separated and redeveloped  
1187 individually. A legally nonconforming house on a conforming lot is not eligible for setback  
1188 reductions but a new house on a legally nonconforming lot is eligible for setback reductions.  
1189 This treatment in the zoning ordinance does not comport with the policy on nonconformities or  
1190 the protection of the character of residential neighborhoods.

## 1191 **Part II: How Are Multiple Houses Are Being Built**

1192 A review of a typical, though hypothetical, case can be illustrative. 1000 City Street has a  
1193 single-family house built across two lots of official record that are each 40 feet wide and 150 feet  
1194 deep. The house was built in 1945 (after the 1944 Town Zoning Code) and because the “lot”  
1195 used for zoning calculations was 80’X150’ or 12,000 square feet, it met the requirements for the  
1196 R-1B district in which it is located. Houses in the general neighborhood were built at the same  
1197 time under similar conditions.

1198 In 2009, a builder purchases the home. He immediately transfers ownership of one of the lots of  
1199 official record to New House 1 LLC and the other lot of official record to New House 2 LLC.  
1200 The official lots of record are no longer under common ownership and according to City practice  
1201 can now each be developed individually with a new single family home. Recently, it appears that  
1202 this has become so entrenched that in at least one case the ownership change did not occur until  
1203 *after* permits were issued based on the area of both lots combined and under common ownership.  
1204 Although this brazen tactic was clearly inconsistent with the plain language of the code, the  
1205 permits were issued. A permit that was issued in violation of the code is void under the plain  
1206 language of City Code. Subsequent changes cannot amend a permit that is void.

1207 *Fiscal Issues* - The house at 1000 City Street from the example was taxed as a single parcel.  
1208 Ignoring the improvements and focusing on the land, the following is a rough approximation of  
1209 the process used by the City Assessor to value parcels. Although not exact, assume that the  
1210 Assessor values land at \$60 per square foot for the first 6000 square feet (basic building lot for  
1211 assessment purposes) and \$15 per square foot for all additional area. The value of the 12,000  
1212 square foot parcel would be \$450,000. However, if each lot of official record were taxed  
1213 separately, the value of the land would be \$720,000. As long as the lots are under common  
1214 ownership in a single parcel, the owner is taxed on a land value of \$450,000 rather than for two  
1215 separate building lots.

1216 *Neighborhood Character Impacts*- The existing character of neighborhoods is impacted when  
1217 two new houses are built on individual substandard lots that once held a single house.

1218



1223

1224

1225 This photo, exported from the City on-line real estate assessment service, demonstrates the issue.  
1226 Two houses have been built on a parcel that was once used for a single family house. The two  
1227 adjacent lots (taxed as a single parcel) were still occupied by a single family house when the GIS  
1228 photo was taken but have subsequently been developed individually with new houses. As you  
1229 can see, there are now separate parcels identified throughout this particular neighborhood based  
1230 on the historic lots rather than the tax parcels that once contained single houses. While it may be  
1231 too late for this neighborhood because the character has been substantially changed, other

1232 neighborhoods are at risk although no houses have been demolished. A review of property  
1233 records for the 600 Block of N. Oak Street shows that there are 13 original houses that are  
1234 developed on 27 individual lots of official record.

1235  
1236 This is not a small problem with limited impacts. An initial analysis by City Staff provides the  
1237 following rough numbers<sup>1</sup>:

1238

1239	District	Parcels	Lots of Record
1240	R-1A	2,311	2,666
1241	R-1B	<u>1,219</u>	<u>1,922</u>
1242	Total	3,530	4,588

1243

1244 In an environment where all lots that currently may be developed with single family houses are  
1245 developed (a worst case scenario) the City could gain over 1050 new single family houses under  
1246 the current practice of allowing a new single family house to be built on multiple lots that were  
1247 previously developed as a single parcel to meet the requirements of the zoning code. This is not  
1248 realistic because many of the lots of official record are small remainder lots legally transferred  
1249 from vacations of easements or are too small to be reasonably developed. Still, the potential for  
1250 at hundreds of new single family houses raises serious fiscal questions for the City.

1251 **Part III: There are No Separate Development Rights for Substandard Lots Jointly**  
1252 **Developed in the Past<sup>2</sup>**

1253 When considering the language of Section 48-1102 (b) of the code of the City of Falls Church, a  
1254 threshold question is whether or not a right to develop a single family house exists for individual  
1255 substandard lots. The determination of the existence of individual development rights for  
1256 multiple substandard lost is based on both the history of development and the history of the  
1257 creation and transfer of ownership of substandard lots of record over time.

---

<sup>1</sup> Based on GIS and Assessor parcel data. Some parcels areas are shown as "0" and therefore the numbers are at best a rough approximation.

<sup>2</sup> The opinions provided here are not legal opinions but rather a set of logical arguments presented based on a reading of the applicable statutes and relevant case law.

1258 If it can be shown through a factual analysis that the owners did not have a right to develop the  
1259 multiple substandard lots individually when they acquired the lots, there can be no compensable  
1260 taking because regulatory restrictions cannot damage a nonexistent right. (*See City of Virginia*  
1261 *Beach v. Bell*, 255 Va. 395 (Va. 1998); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003  
1262 (1992))

1263 Evaluating whether or not a right existed that can be damaged requires a review of the  
1264 regulations in existence at the time of development is necessary. In particular, the provisions of  
1265 the Town Zoning Codes in 1934 and 1944 and the language of the 1959 City Zoning Ordinance  
1266 related to nonconforming lots, lot definitions, and actions taken to develop lands to meet those  
1267 requirements, and these should be considered when attempting to determine if development  
1268 rights exist for current owners.

1269 The 1934 zoning code included an important provision is:

1270 Article II Section 13 – “A LOT is a subdivision of a block as shown by any record [sic]  
1271 plat of an addition to, or subdivision of, the Town of Falls Church; or any portion of land,  
1272 whether platted or unplatted [sic] considered as a unit of property and described by metes  
1273 and bounds; if one or more lots are built upon as a unit of property, they shall be for the  
1274 purpose of this ordinance considered as a single lot.

1275 Based on this language, any combination of lots that were jointly developed under the 1934  
1276 zoning code was considered a single lot for the purposes of the ordinance. This provision  
1277 remained in effect from November 12, 1934 until the Town of Falls Church adopted a revised  
1278 zoning code on February 14, 1944.

1279 The 1944 Town of Falls Church zoning ordinance substantially changed the zoning districts and  
1280 requirements in residential districts. As related to substandard lots, the code provided:

1281 1944 Zoning Ordinance of the Town of Falls Church (February 14, 1944)

1282 Section III.

1283 R-1A One-Family Residence District

1284 C. Each one-family dwelling with its accessory buildings shall be located on a lot having  
1285 an area of not less than 11,250 square feet and an average width of not less than 75 feet:  
1286 Provided, however, that any lot having an established area or average width at the time of  
1287 the adoption of this ordinance less than the above area or average width may be used as a  
1288 building site for one-family dwelling, and shall be deemed to be a lot, if all other  
1289 regulations prescribed herein are complied with; and provided further, that the limitations  
1290 of this paragraph shall not apply to any lot having an area of less than 11,250 square feet  
1291 or an average width of less than 75 feet, or both, if the use of said lot for the site of a one-

1292 family dwelling shall have been approved by the Town Planning Commission and by the  
1293 Town Council.

1294 R-1B One-Family Residence District

1295 C. Lot Area Required:

1296 1. Each one-family dwelling with its accessory buildings shall be located on a lot  
1297 having an area of not less than 7,500 square feet and an average width of not  
1298 less than 50 feet: Provided , however, that any lot having less than then the  
1299 above area or average width which was in one ownership at the time of this  
1300 ordinance, and when the owner thereof owns no adjoining land, may be used  
1301 as a building site for one one-family dwelling, and shall be deemed to be a lot,  
1302 if all other regulations prescribed herein are complied with.

1303

1304 "Lot" was defined in Section II definitions as: "Land occupied, or to be occupied, by a building  
1305 and its accessory buildings together with such open spaces as are required under the terms of this  
1306 ordinance and having its principal frontage on a street, and not having less than the minimum  
1307 area required by this ordinance for a lot in the district in which such lot is located."

1308 The 1944 ordinance did not add development rights to any lots that were under combined  
1309 ownership in the R-1B district. Adjoining substandard lots under common ownership at the time  
1310 of the ordinance were not granted the right to individual development. Any substandard lots  
1311 under common ownership on February 14, 1944 were specifically not granted development  
1312 rights for single-family houses. Thus any substandard lots developed jointly from 1934 forward  
1313 or adjoining lots under common ownership as of February 14, 1944 did not have individual  
1314 development rights. Any subsequent transfer of ownership did not transfer a right to develop the  
1315 substandard lots individually because under the code in effect at that time, no such right existed.  
1316 Any transfer of ownership of single substandard lots that were under common ownership and did  
1317 not meet the requirements of the zoning ordinance did not transfer with a right to develop a  
1318 single-family home.

1319 In 1959, (as modified slightly in 1961) the City of Falls Church adopted a revised zoning code  
1320 that again addressed nonconforming lots. In relevant part,

1321 Section 81-54.B.2 Substandard Lots Any lot of official record as of February 14, 1944 or  
1322 any lot of a subdivision approved by the City from February 14, 1944, to the effective date of  
1323 this chapter, which does not meet the lot size requirements for the District in which it is  
1324 located, may be used for a on-family dwelling, provided:

- 1325 (a) it is in an "R" district, and  
1326 (b) it cannot reasonably be combined with other property to meet the minimum size  
1327 requirements.

1328

1329 In such event, each side yard may be reduced to not less than twenty percent (20%) of the lot  
1330 width, but not less than seven and one-half (7 1/2) feet in any case; likewise the rear yard  
1331 may be reduced to not less than thirty percent (30%) of the lot depth but not less than twenty  
1332 feet in any case.

1333 That is how the code read when amended on February 13, 1961 by Ordinance 287. That  
1334 ordinance amended the language in the City Code to replace the words from the date of this  
1335 ordinance with February 14, 1944. It remains essentially unchanged today as Section 48-1102  
1336 (b).

1337 In cases where multiple lots were developed jointly to meet the requirements of the 1944 Town  
1338 Zoning Code, they were treated as a single lot for zoning purposes. When jointly developed, it is  
1339 axiomatic that these lots were reasonably combined when developed. Joint development of  
1340 individual substandard lots was also an affirmative action to abandon a nonconforming use. The  
1341 Virginia courts have not even required an affirmative action. In *Gray v. Zoning Appeals Bd.*, Va.  
1342 Cir. 281 (Norfolk 2004) the court ruled that common ownership was enough to require  
1343 conformity even in the absence of an affirmative act to abandon the nonconforming use. Under  
1344 such circumstances, the 1934, 1944, and 1959 zoning ordinances did not grant individual  
1345 development rights to individual substandard lots that were developed jointly to meet the  
1346 requirements of the zoning code. Any substandard lots jointly developed from 1934 onward thus  
1347 do not have individual development rights based on the plain language of the code.

1348 Any jointly developed substandard lots acquired after the enactment of those ordinances were  
1349 purchased subject to existing rights (or lack thereof). The current owner of a single substandard  
1350 lot previously developed jointly to meet the requirements of the zoning code did not acquire the  
1351 right to develop the lot with a single family house because of restrictions in place when the lot  
1352 was purchased. A new right cannot be created simply because the house was demolished and the  
1353 ownership of the individual lots transferred to new separate parties.

1354 Substandard lots without a right to development still might be subject to a variance. The  
1355 variance would be limited to lots that existed at the time that the ordinances were enacted and the  
1356 standard of proof for the applicant would include proof that the lots existed (in 1934?, 1944?,  
1357 1959?, etc). If the lots were jointly developed in the past, demolition of the house and transfer of  
1358 ownership could be seen as self inflicted and not eligible for a variance. Private issues between  
1359 buyers and sellers of real estate regarding the fitness for use or the existence of a right to develop  
1360 land should be just that, private matters not public matters.

#### 1361 **Summary**

1362 The current practice of allowing development of individual substandard lots that were previously  
1363 developed jointly is not supported by, and is contrary to, the plain language of Section 48-1102  
1364 (b) of the Code of Falls Church. A review of historical codes and the development history  
1365 clearly supports this assertion. The inclusion of an intent statement such as, "It is the intent of

1366 this section that individual substandard lots of record jointly developed at any time after  
1367 February 14, 1944 to meet the requirements of the zoning code may not be used for a one-family  
1368 dwelling because they were under common ownership were reasonably combined at the time of  
1369 the joint development.” will provide important guidance to property owners and to City staff  
1370 when applying the code. There are neighborhood character impacts, fiscal impacts, and issues of  
1371 basic fairness to the tax payers of the City that require Council action.

1372 Attachment Three: Example Bonus Density Chart

Bonus Plan Density Chart

Allowable FAR	2.00
Bonus Density (after 1.0 acre)	0.25
Maximum FAR w-Bonus Density	4.00

Lot Size (Acres)	FAR	Total Building SF
1.0	2.00	87,120
1.5	2.25	147,015
2.0	2.50	217,800
2.5	2.75	299,475
3.0	3.00	392,040
3.5	3.25	495,495
4.0	3.50	609,840
4.5	3.75	735,075
5.0	4.00	871,200

<- 2-acre consolidation a pretty good target?

Comparison with Actual Parcels

Parcel	Redevelopment Process	Acres	Current FAR	FAR Under Bonus Plan	Bonus - Actual
<i>Recent Redevelopments:</i>					
Broadway	Special Exception	1.58	2.84	2.25	-0.59
Byron	Special Exception	2.00	1.76	2.50	0.74
Spectrum	Special Exception	3.20	2.55	3.00	0.45
Pearson Square	Special Exception	4.70	2.10	3.75	1.65
Read Building	Special Exception	0.68	1.18	2.00	0.82
Flower Building	By-Right, setback variance	0.90	1.18	2.00	0.82
Northgate (approved only, not yet redeveloped)	Special Exception	1.53	2.41	2.25	-0.16
<i>Proposed Redevelopments:</i>					
City Center	Special Exception	8.77	2.97	4.00	1.03
Gateway	Special Exception	2.59	2.50	2.75	0.25
<i>Larger Properties Not Yet Redeveloped</i>					
809 W. Broad (existing office building)	Property Not Redeveloped	2.87	0.81	2.75	1.94
Giant shopping center	Property Not Redeveloped	4.63	0.41	3.75	3.34
Staples shopping center	Property Not Redeveloped	4.85	0.31	3.75	3.44
155 Hillwood (S.	Property Not Redeveloped	2.91	0.30	2.75	2.45

FINAL per changes through 12/30/2010

Washington Shopping Plaza)					
Eden Center	Property Not Redeveloped	15.32	0.30	<b>4.00</b>	3.70

*Smaller Properties Not Yet  
Redeveloped*

Too many to list...but this plan encourages combining lots to at least 1.0 acre, and higher consolidation is rewarded incrementally.

1373

1374 Attachment 4: Project Overview and History

1375 **Project Overview**

1376 **1. Goals – to:**

- 1377 • Make the City’s zoning code more user-friendly
- 1378 • Modernize and make it contemporary – zoning districts and uses
- 1379 • Upgrade the development standards
- 1380 • Protect neighborhood character
- 1381 • Foster redevelopment in village core, city center and transportation corridors
- 1382 • Incorporate sustainability concepts
- 1383

1384 **2. Scope –** The scope of services consists of basically six tasks to be completed by the  
1385 consultant, Clarion Associates:

- 1386 • Task 1: Project Initiation and Scoping
- 1387 • Task 2: Diagnosis/Annotated Outline
- 1388 • Task 3: Initial *Staff Review Draft* Zoning Ordinance
- 1389 • Task 4 *Public Review Draft* of Zoning Ordinance
- 1390 • Task 5: *Public Hearing Final Draft* of Zoning Ordinance
- 1391 • Task 6: Final Adopted New Zoning Ordinance (Staff/Consultant)
- 1392

1393 **3. Project Chronological History - New Zoning Code Drafting -**

1394 The drafting of the city’s new zoning code was organized into three *modules* with  
1395 three versions of each module. Modules 1, 2 & 3 each had individual *staff review*,  
1396 *public review versions* and then were combined (Modules 1, 2 & 3) into a final  
1397 draft *public review*. After a future planned public review process the *public*  
1398 *review* version was to be revised and a final draft *public hearing* version compiled  
1399 and then taken forward as the official public hearing version for first reading and  
1400 eventual adoption reflected in Task 6. The following represent milestones and  
1401 accomplishments to date and the project’s current status:

1402

- 1403 • Zoning Code Rewrite Project initiated – August 2007.
- 1404 • Project scoping completed in October 2007.
- 1405 • Diagnosis/Annotated outline public draft, December 2007.
- 1406 • Joint City Council, Planning Commission/Advisory Committee work session with  
1407 Clarion and staff, January, 2008.
- 1408 • ZOAC and staff comments to consultant, June 2008.
- 1409 • Finalized Diagnosis/Annotated Outline, August 2008.
- 1410 • Clarion initiated drafting new code, September 2008.
- 1411 • Clarion releases Module One, *Staff Review Draft*, January 2009.

- 1412 • Staff and ZOAC review comments completed Module One, Staff review Draft, April  
1413 2009.
- 1414 • Staff meets with Clarion in Chapel Hill, N.C, to review comments and agree on changes  
1415 to draft text, content and code structure, April 2009.
- 1416 • Clarion releases Module Two, *Staff Review Draft*, March 2009.
- 1417 • Clarion revises Module One, *Public Review Draft*, July 2009.
- 1418 • Staff/ZOAC complete review comments on Module Two, *Staff Review Draft*, July 2009.
- 1419 • Clarion releases revised Module Two, *Public Review Draft*, September 2009.
- 1420 • Joint City Council, Planning Commission/Advisory Committee work session and project  
1421 update held. Clarion, ZOAC Chair and staff, September 21, 2009.
- 1422 • Clarion releases Module Three, *Staff Review Draft* to staff, in late November 2009 and  
1423 early December 2009, in two parts, as an initial staff review draft.
- 1424 • Staff scopes and initiates processes to develop a combined zoning code draft from the  
1425 City's recently recodified city code by *Municode* that included the Zoning Chapter  
1426 (formerly Chapter 38, now Chapter 48) and the new proposed Clarion draft zoning code  
1427 and how an incorporation of the two codes might be a hybrid zoning code option.
- 1428 • Staff reviews Module Three, *Staff Review Draft* and proposed *City Center Overlay*  
1429 *concept*, January – April 2010.
- 1430 • Staff has developed a draft of the new *Administrative Manual* that is a companion piece  
1431 to the new zoning code. It will provide development procedural, application, fee, filing  
1432 requirements and other related information to prospective applicants, citizens, business  
1433 owners and developers.
- 1434 • Staff/ZOAC reviewed Module Three, *Staff Review Draft* in a series of meetings that  
1435 included previous Module Two items related to sustainability, substandard residential  
1436 lots, from January – April 2010.
- 1437 • Staff completed its review of Module Three, *Staff Review Draft*, as well as, a further  
1438 review of Modules One and Two, *Public Review Draft*, as the three modules were  
1439 released in three parts and are now one combined document and the full context and  
1440 relationships between the parts were finally evident – May 2010.
- 1441 • Clarion in June initiated its review, conducted follow-up conference calls to clarify issues  
1442 and questions, and started the process of incorporating the final round of staff edits for  
1443 Modules One, Two *Public Review Drafts* and specifically the first edits on Module  
1444 Three, *Staff Review Draft* into a final combine document.
- 1445 • Clarion completed Module Three, *Staff Review Draft* edits and then combined them into  
1446 one draft code document or the *Public Review Draft*. The Consultant delivered the  
1447 *Public Review Draft* in July, 2010. This included final updates to pending code draft  
1448 elements related to City Center alternatives, substandard lot options and LEED based  
1449 sustainability applications.
- 1450

1451 **Zoning Ordinance Advisory Committee (ZOAC)** The advisory committee has been continuing  
1452 its advisory role in the zoning ordinance rewrite project. They have met regularly to review,  
1453 discuss and make recommendations on the consultant's latest draft code.

- 1454 • In November 2007, the City Council completed its appointments to the Zoning Ordinance  
1455 Advisory Committee (ZOAC) and the committee initiated its work and reviews in  
1456 December 2007 and continued to meet monthly through 2008.
- 1457 • In 2009-10 ZOAC held meetings even more frequently as the consultant produced draft  
1458 zoning code module text for review, totaling 14 meetings in 2009 and 17 in 2010.
- 1459 • In June 2010 the ZOAC initiated a concerted effort throughout the summer to work  
1460 through major zoning code policy issue areas. These issues included - Land Use  
1461 Objectives; Land Use Tools; Commercial Districts; Commercial Overlay Districts;  
1462 Planned Development Districts; Overlay Districts; Residential District uses; Substandard  
1463 Residential Lots; Commercial Buffer requirements and a general wrap-up of other issues.
- 1464 • ZOAC held additional meetings on June 6 & 30 July 14 & 28 August 4, 11 & 25,  
1465 September 9, and October 27, 2010.
- 1466 • ZOAC developed guidance and specific comments on “policy issues” related to the  
1467 Module Three, Staff Review Draft.
- 1468 • ZOAC specifically focused on the pending key issues of “sustainability” and  
1469 “substandard residential lots” in discussing and developing further zoning options. Legal  
1470 reviews of both topics were provided by Clarion’s subcontractor McGuire, Woods &  
1471 Battle on the consultant’s recommended options for substandard residential lots. The  
1472 City Attorney also provided an opinion of LEED standards as potential development  
1473 requirements under the sustainability review and recommendations.

1474

1475 **ZOAC/Staff “Module” Review Process** The framework of the “module” review included the  
1476 following elements, tasks and content:

1477 Module One – (Code Articles - *General Provisions, Administration, Nonconformities,*  
1478 *Enforcement & Definitions*) had primarily formatting, policy and technical issues. Organization  
1479 of the draft code, while following the outline had become voluminous and somewhat complex to  
1480 the extent that the objective of a more user- friendly code needed to be revisited. The resulting  
1481 revisions by Clarion and the breaking out of an “Administrative Manual” to be completed by  
1482 staff, appears to have adequately addressed this issue in the next draft. Development of the  
1483 Administrative Manual is progressing smoothly.

1484 The City Staff had been developing an Administrative Manual to house the “process and  
1485 procedural” elements of the new zoning code. This *integration* of portions of the new Clarion  
1486 draft zoning code with the existing city zoning code administrative procedures related to zoning  
1487 and development is a staff initiative.

1488 Module Two (Code Articles – *Zoning Districts & Use Standards*) had some policy, technical and  
1489 format issues that the staff and ZOAC commented on and transmitted to Clarion in August 2009  
1490 correspondence. The “policy issues” included zoning district names changes, new residential  
1491 zoning district, substandard residential lots, residential yard setback averaging, multi-family  
1492 residential minimum lot size, new mixed-use district, use standards, drive-through uses and other  
1493 various district and use issues.

1494 Module Three (Code Articles – *Development Standards & Design and Sustainability Standards*  
1495 *and City Center Overlay concept*) Clarion provided the first draft of Module Three, *Staff Review*  
1496 *Draft* in December 2009. The staff and ZOAC comments, questions and edits were transmitted  
1497 to Clarion in May 2010 after several months of review. Issues reviewed included commercial  
1498 development, the planned development concept, development standards and allowed land uses.  
1499 Also some pending code elements, while they were initially drafted, will require under further  
1500 discussion include substandard residential lots, City Center concept, and commercial zoning  
1501 districts as the draft code and options are finalized.

1502 **Planned Next Steps/Schedule, as of Summer 2010** (currently on-hold)

1503 The 2009 city code recodification by Municode will require a complete reformatting of the  
1504 numbering sequence of the Clarion code draft.

1505

- 1506 • Staff to complete integration version of updated, recodified existing city zoning code and  
1507 Clarion draft zoning code as an incorporated zoning code for deliberation as the public  
1508 review zoning code.
- 1509 • Prepare schedule and supporting summary documents for the public release of a draft  
1510 zoning code for public review and comment with the initiation of public review process  
1511 in the Fall/Winter of 2010.
- 1512 • Spring 2011 – public review and comment process to be completed.
- 1513 • Late Spring/Early Summer 2011, complete zoning code revisions based upon public  
1514 comments.
- 1515 • Summer/Fall 2011, Proposed Zoning Ordinance given first reading for formal public  
1516 hearings and adoption process.

1517