Town of Purcellville
Department of Community Development
221 S. Nursery Avenue Purcellville, VA 20132
(540)338-2304 Fax (540)338-7460

Administrative Appeal Application

Date 4/10/2015 **APPEAL NUMBER** _____

Appellant's Name Mary Ellen Stover
Agent's Name Frank Bredianus
Phone No. 540-338-3823 **Fax No.** 540 751-1008 **E-mail** maryestover@A02.com
Mailing Address P.O. Box 178 Purcellville VA 20134
Address of Subject Property, if applicable 488-37-7354, 488-37-5267, 488-37-5457
PIN _____ **Zoning District** _____

I am appealing a decision by Zoning Administrator **(Name) dated** March 13, 2015 **(Attach copy) in reference to:**

(Summarize subject of appeal): See attached written statement

Additional Submission Requirements:

- ☑ *An application properly completed.* The application must be filed in the name of the aggrieved party.
- ☑ *Statement of Justification for Appeal.* Applicant must file a statement indicating the nature of the alleged error in the decision being appealed pursuant to Purcellville Zoning Ordinance, Article 9, Section 4.
- ☑ *Payment of fee.* The fee for an appeal application must be paid at the time of submission. FEES ARE NON-REFUNDABLE.
- ☑ *Applicant must attend meetings.* Applicants or their agents must be present at the Board of Zoning Appeals meeting on the advertised public hearing date.

Agent/Owner:
I have read this completed application, understand its intent and freely consent to its filing. The information provided is accurate to the best of my knowledge.

Mary Ellen Stover
Agent/Owner's Signature

4/10/2015
Date

For Town Use Only

Application Received:		Hearing Date:		☐ Fees Paid Amount $_____
Approved:		Denied:		Appeal #

WRITTEN STATEMENT SPECIFYING GROUNDS OF APPEAL OF THE ZONING ADMINISTRATOR'S OPNION DATED MARCH 13, 2015

To: Purcellville Board of Zoning Appeals
221 South Nursery Avenue
Purcellville, VA 20132

Copy To: Patrick Sullivan, Zoning Administrator
221 South Nursery Avenue
Purcellville, VA 20132

This written statement specifies the grounds of appeal of the Purcellville Zoning Administrator's March 13, 2015 zoning determination for properties along North 21st Street and O Street, commonly called Vineyard Square.

I. Background

The Town of Purcellville Zoning Administrator, on March 13, 2015, issued a zoning determination for properties along North 21st Street and O Street, commonly called Vineyard Square, to John Chapman, Manager of Chapman Group, LLC. Attached as ***Exhibit A*** is the March 13, 2015 zoning determination (hereinafter "Determination") issued by Patrick Sullivan, Zoning Administrator for the Town of Purcellville. This Determination regards the compliance status and validity of the twelve Certificates of Design Approval (hereinafter "12 CDAs"). Specifically, the 12 CDAs are as follows: CDA 13-11, CDA 13-12, CDA 13-13, CDA 13-14, CDA 13-15, CDA 13-16, CDA 13-17, CDA 13-18, CDA 13-19, CDA 13-20, CDA 13-21, CDA and13-22.

II. Standing

Mary Ellen Stover is the owner of Mary Ellen Stover Antiques at 120 N 21 Street, Purcellville, Virginia, a property that adjoins the Vineyard Square properties. Ms. Stover has standing to appeal the Determination because she is an adjoining property owner aggrieved by the decision. See Virginia Code § 15.2-2314. Ms. Stover has a direct interest in the subject matter because she owns property immediately adjacent to the property that is the subject of the Purcellville Zoning Administrator's decision. See Carolinas Cement Co. v. Zoning Appeals Bd., 26 Cir. l99321, 52 Va. Cir. 6 (2000). Ms. Stover is challenging this decision because her property is affected by the Determination in that she would suffer direct harm because her property adjoins the applicant's properties located on 21 Street. From Ms. Stover's property, she can see the applicant's properties, smell the dust generated from the demolition and construction of the applicant's properties, and hear the noise caused by the demolition of the buildings associated with the 12 CDAs and the construction of the new building on the four properties associated with the 12 CDAs. If the Vineyard Square development is allowed to proceed, Ms. Stover's property will be directly harmed by the construction that occurs on the Vineyard Square properties.

III. Right of Appeal

In his March 13, 2015 Determination, Mr. Sullivan stated that an appeal must be filed within 30 days from the date shown on the letter. Moreover, Mr. Sullivan stated that the appeal must be filed with the Town of Purcellville Zoning Administrator and the Board of Zoning Appeals.

IV. Issues Appealed

Ms. Stover is appealing the following issues contained in the Determination:

1. The expiration dates for the twelve (12) Certificates of Design Approval.

2. Whether or not the Zoning Administrator has the right to extend the twelve (12) Certificates of Design Approval on his own authority.

3. Whether the twelve (12) Certificates of Design Approval are one project or twelve individual projects.

4. Whether or not the Zoning Administrator has authority to administer and enforce Article 54 of the Town Code.

5. Whether the Zoning Administrator's Determination complied with the Purcellville Town Code and Virginia law and provided proper notice to all affected parties.

6. Whether or not the Zoning Determination of March 13, 2015 conflicts with the May 29, 2014 opinion issued by Mr. Sullivan to the Town Council regarding the expiration dates for the 12 CDAs. See Exhibit B attached hereto.

7. Whether or not each of the 12 CDAs were started and commenced.

8. Whether each of the 12 CDAs were diligently pursued by the applicant.

V. Reasons in Support of the Appeal of the Determination by the Zoning Administrator

A. Expiration Dates of the Twelve Certificates of Design Approvals

Twelve separate certificates of design approval were issued by the Board of Architectural Review to demolish twelve buildings, and one CDA was issued for the design of the new building. Eleven CDAs were issued because each building to be torn down required a separate CDA, and the other CDA was issued for the two rick buildings. Since each building was its own project and required a separate CDA, the twelve CDAs expired on different dates. CDAs are only valid for twelve months from the date of issuance of the CDA.

The first deadline was November 14, 2014 for the demolition of all of the buildings along 21st Street, O Street, and the other buildings in back of 21st Street, with the exception of two brick buildings at the southern end of the project.

Mr. Sullivan, in Section 1 of his May 29, 2014 letter to the Town Council, stated that the

applicant must begin demolition on all ten buildings prior to November 14, 2014, or the CDAs will expire. See Exhibit C. It is important to note that Mr. Sullivan did not state that only one or two buildings needed to be demolished on or before November 14, 2014. He specifically stated that all ten buildings needed to have demolition proceed upon them by that date because Mr. Sullivan understood that each CDA was a separate and distinct project. If all buildings were to be considered one project, the Town of Purcellville would have only required the applicant to obtain one CDA.

The second deadline was December 16, 2014. This was the deadline for commencement for demolition of the two brick buildings at the southern end of the project. There was a separate condition attached to this CDA, in that the two brick buildings were not eligible for demolition until a site plan had been approved and a zoning permit issued for the new building. This condition of approval was imposed by the Town Council as a result of the December 17, 2014 appeal hearing. Mr. Sullivan lacked authority to change these conditions. It is clear that each CDA was a separate project, since each CDA contained its own conditions which were unique to that CDA.

The final deadline was January 14, 2015. This deadline required an approved site plan and zoning permit for the new buildings, along with the commencement of construction on the new building. In his May 29, 2014 letter, Mr. Sullivan stated that the effective deadline for the approved site plan and zoning permit was actually December 16, 2014, since the applicant had to commence demolition of the brick buildings by that date and the applicant could not demolish the two brick buildings, unless the new building had an approved site plan and zoning permit.

§ 54-78(f) of the Purcellville Town Code states that a certificate of design approval shall be valid for one year from the date of issuance. The date of issuance is one year from the date that the Board of Architectural Review approved the CDA. See § 54-78(d). Accordingly, the first ten buildings had a deadline of November 14, 2014. The two brick buildings had a CDA deadline of December 16, 2014, because the CDA was appealed to the Town Council, who then conditionally approved the CDA at its December 17, 2014 meeting. Mr. Sullivan attempts to extend the CDA by stating that the date of issuance is the March 19, 2014 date, when a letter was sent regarding the approval of the CDA by the Board of Architectural Review on November 13th or 14th, 2014, and by the Town Council for the two brick buildings on September 17, 2014. Mr. Sullivan correctly sets forth the deadlines in his May 29, 2014 letter, attached as Exhibit B. On the second page of his letter attached as Exhibit B, Mr. Sullivan recognizes that the twelve month period of the CDA begins to run from the date that it is approved by the Board of Architectural Review or the Town Council. This reasoning is correct because only the Board of Architectural Review or the Town Council can issue a CDA. The Town Staff letter of March 19, 2014, was not the date that the twelve CDAs were issued because Town Staff cannot issue a CDA. See § 54-78(e).

B. Whether or Not the Zoning Administrator Has the Right to Extend the Twelve Certificates of Design Approval on His Own Authority

The Zoning Administrator does not have the authority to issue a CDA, nor does he have the authority to extend a CDA. Section 54-78 of the Town Ordinance states that the Board has the authority to issue a CDA and to extend the term of a CDA. Moreover, §54-78(e) of the Purcellville Town Code states that the CDA is issued when it is approved by the Board and signed by the chairman designating the application number, name of applicant, date of approval,

identification of property involved, and a brief description of the construction approved. Accordingly, the CDA was not "issued" when a town employee sent a letter to the applicant on March 19, 2014.

Section 4-1 of the Purcellville Town Code provides that the zoning Administrator shall administer and enforce the zoning ordinances. This section does not authorize the Zoning Administrator to extend the 12 CDAs on his own initiative. Additionally, the Zoning Administrator has no authority under the Purcellville Town Code or the Code of Virginia to administer and enforce Article 54 of the Purcellville Town Code, because these provisions are not zoning ordinances, but are rather architectural ordinances, which fall outside of the Zoning Administrator's authority. Nowhere in the Purcellville Town Code is the Zoning Admin granted authority to administer architectural ordinances that are not zoning ordinances.

C. Whether the Twelve Certificates of Design Approval Are one Project or Twelve Individual Projects

The 12 CDAs are individual, stand-alone projects that have their own specific conditions associated with each of the 12 CDAs. As stated previously, there are three distinct deadlines associated with the 12 CDAs. Additionally, there are four separate parcel numbers for the properties, and the properties are owned by different land owners. The land owners are Martinsburg Plaza, LC, which owns parcel identification number 48-37-7354, Chapman Group, LLC, which owns parcel identification numbers 488-37-6460, 488-37-5267, and 488-37-5457

D. Whether or not the Zoning Administrator Has Authority to Administer and Enforce Article 54 of the Purcellville Town Code

The Zoning Administrator does not have the authority to issue a CDA, nor does he have the authority to extend a CDA. Section 54-78 of the Town Ordinance states that the Board has the authority to issue a CDA and to extend the term of a CDA. Moreover, Section 54-78(e) of the Town Code states that the CDA is issued when it is approved by the Board and signed by the chairman designating the application number, name of applicant, date of approval, identification of property involved, and a brief description of the construction approved. Accordingly, the CDA was not "issued" when a town employee sent a letter to the applicant on March 19, 2014.

Section 4-1 of the Purcellville Town Code provides that the zoning Administrator shall administer and enforce the zoning ordinances. This section does not authorize the Zoning Administrator to extend the 12 CDAs on his own initiative. Additionally, the Zoning Administrator has no authority under the Purcellville Town Code or the Code of Virginia to administer and enforce Article 54 of the Purcellville Town Code, because these provisions are not zoning ordinances, but are rather architectural ordinances, which fall outside of the Zoning Administrator's authority. Nowhere in the Purcellville Town Code is the Zoning Admin granted authority to administer architectural ordinances that are not zoning ordinances.

E. Whether the Zoning Administrator's Determination Complied With the Purcellville Town Code and Virginia Law and Provided Proper Notice to All Affected Parties.

The Zoning Administrator Did Not Have the Authority to Enforce Article 54 of the Purcellville Town Code

The Zoning Administrator does not have the authority to issue a CDA, nor does he have the authority to extend a CDA. Section 54-78 of the Town Ordinance states that the Board has the authority to issue a CDA and to extend the term of a CDA. Moreover,§ 54-78(e) of the Purcellville Town Code states that the CDA is issued when it is approved by the Board and signed by the chairman designating the application number, name of applicant, date of approval, identification of property involved, and a brief description of the construction approved. Accordingly, the CDA was not "issued" when a town employee sent a letter to the applicant on March 19, 2014.

Section 4-1 of the Town Code provides that the zoning Administrator shall administer and enforce the zoning ordinances. This section does not authorize the Zoning Administrator to extend the 12 CDAs on his own initiative. Additionally, the Zoning Administrator has no authority under the Town Code or the Code of Virginia to administer and enforce Article 54 of the Town Code, because these provisions are not zoning ordinances, but are rather architectural ordinances, which fall outside of the Zoning Administrator's authority. Nowhere in the Town Code is the Zoning Administrator granted authority to administer architectural ordinances that are not zoning ordinances.

The Zoning Administrator Did Not Provide Proper Notice to All of the Affected Parties

The Zoning Administrator only provided notice of his Determination to John Chapman of Chapman Group, LLC. The Zoning Administrator was required to provide notice to Martinsburg Plaza, LLC, which owned one of the four properties, since that company's two CDAs were affected by this Determination. Additionally, the Zoning Administrator should have provided notice to the neighboring property owners that were adversely affected by this decision.

F. The Zoning Administrator's March 29th Letter

The May 29, 2014 opinion delivered by Mr. Sullivan to the Purcellville Town Council states the different deadlines for the 12 CDAs. Additionally, the May letter states that demolition must begin on all ten buildings prior to November 14, 2014, and that the site plan and zoning permit and demolition of the two brick buildings must occur by December 16, 2014. Mr. Sullivan is equitably estopped from providing the Town Council with an opinion that provides these deadlines, and then providing the March 13, 2015 Determination, which sets forth different deadlines. As stated previously, the issue date of the CDAs is set forth in Section 54-78(e) of the Town Code. This provision states that the CDAs are issued when they are approved by the Board. Mr. Sullivan, as Zoning Administrator, has not authority to issue a CDA or make a determination about a CDA, because the Town Council and the Town Code do not provide the Zoning Administrator with authority over Article 54 of the Purcellville Town Code, which deals with architectural issues. Architectural issues under Article 54 are not zoning issues.

G. Whether or not each of the 12 CDAs Were Started and Commenced

In his May 29, 2014 letter to the Town Council, Mr. Sullivan stated that all twelve buildings needed demolition to begin on each of the separate buildings. Before November 14, 2014, ten of buildings needed demolition work to begin, and before December 16, 2014 demolition work needed to begin on each of the two buildings. Additionally, Mr. Sullivan stated that the CDA deadline requires an approved site plan and zoning permit for the new building prior to January 14, 2015. Mr. Chapman, on behalf of Chapman Group, LLC stated in his March 9, 2015 letter, a copy of which is attached hereto as Exhibit C, that his company had not demolished the ten buildings by November 14, 2014, and the two brick buildings by December 16, 2014. Additionally, Mr. Chapman admits that his company did not obtain an approved site plan and zoning permit for the new building by January 14, 2015. Accordingly, his company failed to meet the requirements set forth in the 12 CDAs. The applicant knew that they could either meet the deadlines of the 12 CDAs, apply for new CDAs, or request a text amendment to the Purcellville Town Code that would allow for the granting of one administrative extension of twelve months for each of the 12 CDAs.

H. Whether each of the 12 CDAs were diligently pursued by the applicant.

The applicant's March 9, 2015 letter, which is attached as Exhibit C, clearly shows that the applicant did not meet the requirements set forth in the 12 CDAs. The applicant did not begin demolition on each of the ten buildings prior to November 14, 2015, the applicant did not begin demolition on each of the two brick buildings prior to December 16, 2014, and the applicant did not obtain site plan approval and a zoning permit, along with commencement of the new building by January 14, 2015. Accordingly, the Zoning Administrator, who has no authority to interpret or enforce Article 54 of the Purcellville Town Code, or to issue or extend a CDA, cannot make the determinations that he did in March 13, 2015 Determination.

Dated: April 10, 2015

Respectfully Submitted,
Mary Ellen Stover
By Counsel

Frank Bredimus, Esquire (Bar No. 28793)
The Law Office of Frank Bredimus
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Hamilton, Virginia 20159
Telephone: 571-344-2278
Fax: 540-751-1008
E-mail: fbredimus@aol.com

EXHIBIT A

Town of Purcellville Virginia
Community Development Department

March 13, 2015

John Chapman, Manager
Chapman Group, L.L.C.
125 East Hirst Road, Suite 8-C
Purcellville, VA 20132

Re: Zoning Determination for properties along North 21st Street and O Street. Commonly called Vineyard Square.

Dear Mr. Chapman:

This letter is in response to your request for a zoning determination for properties located on North 21st Street, Purcellville, Virginia and further identified in the Loudoun County land records as parcel numbers 488-37-7354, 488-37-5267, and 488-37-5457 (the "Property"). The Property is located in the C-4 District. This Property is also located in Purcellville's Historic Overlay District.

You have requested a determination regarding the compliance status and validity of the 12 Certificate of Design Approvals (CDA) -- (CDA 13-11; CDA 13-12; CDA 13-13; CDA 13-14; CDA 13-15; CDA 13-16; CDA 13-17; CDA 13-18; CDA 13-19; CDA 13-20; CDA 13-21; CDA 13-22) that have been issued for the Vineyard Square project.

Relevant Ordinance to determine validity.

Town Code § 54-78(f)

(f) *Validity.* A certificate of design approval shall be valid for one year from the date of issuance. If the project for which the certificate was issued is not commenced within one year and thereafter diligently pursued in accordance with the approved certificate, a new certificate shall be obtained prior thereto.

(Ord. no. 05-04-01, 4-12-2005; Ord. No. 12.07.04, 7-10-2012)

Background.

12 CDA's were approved by the Board of Architectural Review (BAR) and the Town Council (TC) on appeal of three of them. The CDA's once approved were duly issued March 19, 2014. Once issued, a CDA is "valid for one year from the date of issuance." In this case all the CDA's are set to expire on March 19, 2015 unless "the project for which the certificate was issued is commenced and diligently pursued." The validity of a CDA is automatically extended beyond any expiration date if the project for which it was issued is deemed to have been commenced. Once issued, a CDA does not need to be finished or completed or even utilized. "Commence" is a term that is not defined in the Town Ordinance. Lacking a definition, we must look to the plain meaning of the word which is defined in the dictionary as "start or begin" (Dictionary.Com). Therefore, we must determine if the project has been started. However, before that question can be answered we have to determine – what is the project?

Patrick Sullivan, AICP CED, Director
Community Development Department
Town of Purcellville
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Community Development Department
Town of Purcellville
221 South Nursery Avenue
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540-338-2304 www.purcellvilleva.gov

Is the project the individual request of each CDA to demolish a building or is the project the totality of all the CDA's. To determine what the project is we can turn to the intent as expressed by the applicant, staff, the BAR and the Town Council.

Finally, we must consider the concept of diligent pursuit. There has to be a reasonable attempt by the applicant to pursue the project and there should be factual evidence that supports the process of diligent pursuit. If the project lapses and the applicant fails to pursue the project then the validity of the CDA will expire.

Definition of "project".

Is Vineyard Square the "project" or is it simply one independent piece of 12 individual projects? Is each CDA required to be separately commenced or can the commencement of some of the CDA's be considered the start of the project and all CDA's being part of the whole are therefore considered valid and not subject to the predetermined expiration date.

In this case I believe there are justifying circumstances that require us to consider both the demolition of buildings and the construction of the main building as being the "project". Demolition furthers construction.

There is evidence, as noted below, that the demolition CDA's were issued to further the construction of the main building and the meaning of the word project in this case refers to the development of the site as an integrated whole.

Clearly the intent of the demolitions was to prepare the site for the construction of Vineyard Square and its site. All parties involved, including the applicant, staff, BAR members and Town Council members considered the demolition to be part of an overall project, not 12 individual projects. That overall project is the construction of Vineyard Square. The applicant clearly considered the demolitions as a part of a larger whole. In the applicant's statement of justification he states that "From the outset it has been the Applicant's stated objective in numerous public hearings and workshops **to replace the existing buildings with a compact downtown center.**" Each CDA staff report states that " **This demolition is sought as a pre-cursor to the construction of Vineyard Square (CDA 13-11) a proposed 5-6 story, mixed-use building containing residences and retail.**"

Town Council also considered the project to be a compilation of demolitions and construction; one not being separate from the other. Town Council member Priscilla moved to **condition the Council's approval to demolish 138 & 130 North 21st Street upon the issuance of a Certificate of Design Approval and Zoning permit to construct a new building** at 138 North 21st Street. This was unanimously approved by Council. Clearly, Council considered the demolitions and the construction of the new building intrinsically linked.

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The BAR minutes of November 19, 2013 provided an indication of how the board considered the purpose of the demolitions; Chairman Gigilo stated in a motion "...that the applicant be required to incorporate the building facades, (130 & 138 North 21st Street)...into the design of the proposed construction for CDA 13-11 Vineyard Square." Here too the demolitions and the building construction are considered intrinsically linked.

It is my opinion that the demolition CDA's are an integral part of the construction of Vineyard Square and are intrinsically linked to the project as a whole. The project is "Vineyard Square" which includes demolitions and other site preparation work. If commencement has occurred on the "project", as the ordinance requires, then the CDA's en masse do not have to meet each validity deadline. As long as the demolitions have commenced and the project is being diligently pursued all the CDA's remain valid. It is my opinion that the expiration date was not intended to give government another shot at the design but rather its intent is to require developers to start work on and diligently pursue a project.

Commencement.

It is my opinion that the project started or commenced when the applicant received the first zoning permits for demolition of the buildings. In this case zoning permits for demolition have been pulled and three buildings have been demolished. It is my opinion that there is commencement of the Vineyard Square project.

Diligent Pursuit.

By any measure the applicant is diligently pursuing the construction of the project. Site plans have been prepared and submitted for approval, architectural renderings and elevations have been prepared, fees have been paid, demolition permits have been applied for, all the appropriate CDA's have been secured, demolition permits have been issued and some permitted demolition as part of site preparation has already occurred. All this has been accomplished within the past 36 months. The Vineyard Square applicant is proceeding with a documented effort to obtain all the necessary approvals. The applicant is diligently pursuing the project.

Decision.

It is my opinion that the demolition of buildings is part of the site preparation process and is therefore part of a larger project. If not for the construction of the project the demolitions would not have been requested. This does not undermine the process. Resolution is still available; If the applicant fails to diligently pursue the project then all permits including CDA's will be invalidated.

In this case, CDA demolition permits are designed to further the main project which is the development of Vineyard Square and as long as there is a diligent effort to pull zoning permits for the remaining buildings the project is considered commenced and the remaining CDA's are valid as long as diligent pursuit occurs.

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Right of Appeal:

This letter constitutes a decision by the Zoning Administrator that shall be final and unappealable if not appealed within thirty (30) days from the date shown on this letter. Section 15.2-2311 of the Code of Virginia, as amended, allows any person aggrieved by this decision to submit an appeal. An appeal package must be *received* by the Zoning Administrator and Board of Zoning Appeals within 30 days from the date shown on this letter at the following address: Town of Purcellville Zoning Administrator and Board of Zoning Appeals, 221 South Nursery Avenue, Purcellville, Virginia, 20132.

An appeal package must include all of the following: (1) a completed appeal application form, which is available from the Town of Purcellville Department of Community Development, located in Town Hall, 221 South Nursery Avenue, Purcellville, VA 20132, and is also available on the Town's website at www.purcellvilleva.gov; (2) a copy of this letter; (3) a written statement specifying the grounds for your appeal; and (4) an appeal fee in the form of a check payable to the Town of Purcellville in the amount of $500.

Information regarding the submission of an appeal may be found in the Town of Purcellville Zoning Ordinance, Article 9, Sections 11, 12, and 13, which may be viewed at the Town of Purcellville Department of Community Development, located in Town Hall, 221 South Nursery Avenue, Purcellville, VA 20132, and may also be viewed on the Town's website at www.purcellvilleva.gov. Questions about the submission of an appeal may be answered by contacting the Town of Purcellville Department of Community Development at 540-338-2304.

This determination applies solely to the referenced properties and is not binding upon the Town, the Zoning Administrator, or any other Town official with respect to any other property. No person may rely upon this determination with respect to any property other than the referenced property.

If you have further questions please don't hesitate to contact me.

Sincerely,

Patrick Sullivan, AICP CED
Zoning Administrator
Town of Purcellville

Cc: Sally Hankins, Town Attorney
Rob Lohr, Town Manager

Patrick Sullivan, AICP CED, Director
Community Development Department
Town of Purcellville
psullivan@purcellvilleva.gov

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EXHIBIT B

Purcellville
Virginia

May 29, 2014

Dear TC:

Re: Vineyard Square Certificate of Design Approval expiration issues.

Vineyard Square (VS) on 21st Street was required to obtain demolition permits from the Board of Architectural Review to demolish certain buildings along 21st Street. VS was also required to obtain design approval for the new mixed use building that would replace the demolished buildings. After appeals the applicant received approval for 12 Certificates of Design Approval (CDA) for the demolition of 11 buildings and one CDA for the design of the new building. Each building to be torn down required a separate CDA.

The new building is permitted by right and needs no further review by the Planning Commission or the Town Council. The next step in the process is for the applicant to submit a site plan for administrative approval and once approved, obtain a zoning permit to commence construction.

There is one limitation that they will have to address as they proceed. Each of the CDAs has a time limit of one year that is imposed by ordinance (Chapter 54 Section 54-78 (f) of the Town Code). The CDAs will expire and a new CDA will have to be applied for if the applicant does not commence construction on <u>each</u> CDA prior to its expiration date. There are three deadlines or expiration dates.

1. The first deadline is November 14, 2014. This deadline is for the demolition of all the buildings along 21st Street, O Street and the other buildings in back of 21st Street with the exception of the two brick buildings at the southern end of the project. The applicant must begin demolition on all 10 buildings prior to November 14, 2014 or he faces having these CDAs expire. There are no conditions imposed on these demolitions. The applicant can commence demolition at any time prior to November 14, 2014 but demolition must begin prior to November 14, 2014.
2. The second deadline is December 16, 2014. This is the deadline for commencement of demolition for the 2 brick buildings. There is, however, a condition attached to this CDA. The 2 brick buildings cannot be demolished until a site plan has been approved and a zoning permit issued for the new building. This was a condition of approval imposed by Town Council as a result of the appeal hearing (see attached transcript of the December 17, 2014 TC meeting).
3. The final deadline is January 14, 2015. This deadline requires an approved site plan and a zoning permit for the new building along with the commencement of construction on the new building. However, the effective deadline for the approved site plan and zoning permit is actually December 16, 2014 since they have to commence demolition of the brick buildings by that date and they can't do that unless the new building has an approved site plan and zoning permit.

Effectively the applicant has 6 months to receive site plan approval, a zoning permit, and actually commence construction. Because of these deadlines, the applicant is concerned that there might not be enough time to go through the site planning process and pull a zoning permit before the time limit on

the approved Certificate of Design Approval expires. Historically, smaller site plan submittals such as the Bank of Clark County and Blue Ridge Vets take from 4 to 6 months to review and approve; larger projects like Gateway and Loudoun Valley Shopping Center can take from 1 to 3 years to review, approve, and actually start construction.

Staff has reviewed the CDAs and the timelines and it appears that the applicant has three choices in moving forward.

1. Meet the deadlines. The CDAs were approved last year and the applicant had 12 months to submit a site plan and for whatever reason they are now down to 6 months. A concerted effort to obtain site plan approval could potentially be achieved over the next 6 months. However, there is some risk and there is no cushion if there are unexpected delays.

2. Apply for new CDAs if and when the existing ones expire. Given this scenario there is the possibility that approvals will not be forthcoming and the project would have to stop.

3. Request a text amendment to the Town Code that would allow for the granting of one administrative extension of 12 months by clearly demonstrating that they are diligently pursuing the development. This does not require Planning Commission review. Appropriate standards and benchmarks could be built into the ordinance (e.g. requiring that the site plan be submitted no later than 6 months from the date of the extension or else the extension is void). It is not unusual for a development to start, stall, and start again as it moves through the process. All of our recent major developments have gone through that cycle which results in uncertainty and the need for extended timelines in some cases. Requiring a project to start construction within one year of CDA approval is not always realistic without the ability to grant an extension if the project runs into difficulty meeting the imposed deadlines. The extension does not vest the project it simply extends the deadline. The Town of Leesburg provides for unlimited 6 month extensions, Herndon has no expiration time, Loudoun County has a 5 year commencement requirement.

Options 1 and 2 present some risk to the Town as they could potentially result in 9 of the 11 buildings being demolished to meet the first deadline and then being prevented from proceeding to construction because the deadline for the demolition of the brick buildings could not be met.

If you would like to proceed with a text amendment we can move it forward immediately and have it available for the last meeting in June, our deadline for the required advertising is Monday the 2nd of June.

EXHIBIT C

Chapman Group LLC

125 E. Hirst Road, Suite 8-C
Purcellville, VA 20132
540-338-1319
540-338-1301 Fax

March, 9, 2015

Mr. Robert W. Lohr, Jr.
Town Manager
Town of Purcellville
201 E. Nursery Avenue
Purcellville, VA 20132

RE: Vineyard Square

Dear Mr. Lohr,

On March 19, 2014, our Project, Vineyard Square, which consists of twelve existing buildings and construction of a new mixed use building to be located at the southeast corner of North 21st Street and East O Street, received three letters addressed to Chapman Group, L.C. and Martinsburg Plaza, L.C. dated March 19, 2014, notifying us that CDA13-11, CDA13-12 and CDA13-18, along with CDA13-13 through CDA13-17 and CDA13-19 through CDA13-22 had been approved by the Board of Architectural Review.

In regards to the design approval for a mixed use building on the southeast corner of 21st and O Streets (CDA13-11), the notice letter states the following:

> *In accordance with Chapter 54, Section 54-78(f) of the Code of the Town Of Purcellville, a Certificate of Design Approval is valid for one year from the date of issuance; accordingly, CDA13-11 shall expire January 14, 2015. If the project is not commenced prior to the expiration of your Certificate of Design Approval and thereafter diligently pursued in accordance with the approved certificate, new certificate shall be required.*

However, since the notice letter is dated March 19, 2014 the expiration date is March 19, 2015.

According to our Project Schedule, we will apply for our Zoning and Building Permit for CDA 13-11 as soon as the Site Plan and Architectural

Drawings are complete enough to submit to the County of Loudoun. It is normal Project procedure to complete these items along with the Utility Request Form at such time the Project is ready to pull the Building Permit to construct the Building.

In regards to the demolition of the buildings located at 130 and 138 N. 21st Street (CDA13-12 and CDA13-18), the notice letter states the following:

> *In accordance with Chapter 54, Section 54-78(f) of the Code of the Town Of Purcellville, a Certificate of Design Approval is valid for one year from the date of issuance; accordingly, CDA13-12 and CDA13-18 shall expire December 17, 2014. If the project is not commenced prior to the expiration of your Certificate of Design Approval and thereafter diligently pursued in accordance with the approved certificate, new certificate shall be required.*

However, since the notice letter is dated March 19, 2014 the expiration date is March 19, 2015.

We will be following our Project Schedule to demolish these buildings after CDA 13-11 has been executed.

In regards to the demolitions on North 21st Street (CDA 13-13 through CDA13-17 and CDA13-19 through CDA 13-22) including demolitions contingent on design approval (CDA 13-19 and CDA 13-20), the notice letter states the following:

> *In accordance with Chapter 54, Section 54-78(f) of the Code of the Town Of Purcellville, a Certificate of Design Approval is valid for one year from the date of issuance; accordingly, the following certificates shall expire on November 19, 2014, CDA13-13, CDA 13-14, CDA 13-15, CDA 13-16, CDA13-17 and CDA13-19, CDA 13-20, CDA 13-21, and CDA 13-22. If the project is not commenced prior to the expiration of your Certificate of Design Approval and thereafter diligently pursued in accordance with the approved certificate, new certificate shall be required.*

However, since the notice letter is dated March 19, 2014 the expiration date is March 19, 2015.

All three letters referenced above specifically cite Chapter 54, Section 54-78(f) of the Code of the Town of Purcellville and stipulate in each that "If the **Project** is not commenced prior to the expiration of [the] Certificate of Design Approval and thereafter diligently pursued in

accordance with the approved certificate, new certified shall be require." On November 4, 2014, our Project, Vineyard Square, submitted and had approved by the Town of Purcellville, Zoning Department CDA13-13, CDA13-14, CDA13-15, CDA13-16, CDA13-17, CDA13-19, CDA13-20, CDA13-21, and CDA13-22 for a total of nine Zoning Permits. Following this approval, all nine Zoning permits were submitted to Loudoun County, Department of Building and Development, for the issuance of Building Permit. On November 14, 2014, five Building Permits were issued by Loudoun County. The Project commenced, on November 17, 2014, when three buildings were demolished under CDA13-13 and CDA13-14.

As the existing tenants move out, we are pulling Building Permits for the Demolition of the buildings. Our Site Plan was submitted on December 31, 2014 and has been resubmitted with revisions. The Site Plan is currently awaiting approval by the Town Staff. The utility request form has been submitted and currently awaiting approval by Town Council.

We have diligently pursued the Project in accordance with the approved certificates and spent hundreds of thousands of dollars over the past year to make this Project a reality. On November 4, 2014, we started pulling Zoning Permits along with Building permits for the Project. We put the Building Permits to work for the Project when we demolished three of the existing buildings. The revised architectural drawings reflecting the Town Council conditions were filed and approved by the staff. We have put all of our tenants on notice that they are on a month to month and we have had several tenants move out.

Mr. Lohr, our Project is well under way and we have worked diligently to keep our Project moving through this process. Our Project now has 12 approved CDA's, 9 approved Zoning Permits, 5 approved Building Permits, 7 Building Permits either in process or waiting to submit. Our Project has multiple CDA's, Zoning Permits, Building Permits, a Site Plan and a Utility Request Form submitted. We are asking that we receive a letter of compliance before March 19, 2015 that states

we are in accordance with Chapter 54, Section 54-78(f) of the Code of the Town of Purcellville and that all of our Project's Certificate of Design Approval's are in compliance and remain valid as long as we continue to work diligently to move our Project forward.

Sincerely,

John M. Chapman
Manager
Chapman Group L.L.C.