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
psullivan@purcellvilleva.gov

Mailing Address:
Community Development Department
Town of Purcellville
221 South Nursery Avenue
Purcellville, VA 20132
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.

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

Mailing Address:
Community Development Department
Town of Purcellville
221 South Nursery Avenue
Purcellville, VA 20132
540-338-2304 www.purcellvilleva.gov

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.

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

Mailing Address:
Community Development Department
Town of Purcellville
221 South Nursery Avenue
Purcellville, VA 20132
540-338-2304 www.purcellvilleva.gov

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

Mailing Address:
Community Development Department
Town of Purcellville
221 South Nursery Avenue
Purcellville, VA 20132
540-338-2304 www.purcellvilleva.gov

Town of Purcellville Virginia
Community Development Department

March 13, 2015

Martinsburg Plaza, LC
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. Parcel ID Numbers: 488-37-5267; 488-37-5457; 488-37-6460

Dear sir:

You are the owner of record for Parcel ID number 488-37-7354 located at 130 21St Street, Purcellville Virginia and Virginia Code Va Code 15.2-2204(H). requires that the owner of the property be notified when a zoning determination has been made for a property that you own.

This letter is in response to a 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 488-37-6460, 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.

A determination has been requested 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

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

Mailing Address:
Community Development Department
Town of Purcellville
221 South Nursery Avenue
Purcellville, VA 20132
540-338-2304 www.purcellvilleva.gov

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? 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

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

Mailing Address:
Community Development Department
Town of Purcellville
221 South Nursery Avenue
Purcellville, VA 20132
540-338-2304 www.purcellvilleva.gov

unanimously approved by Council. Clearly, Council considered the demolitions and the construction of the new building intrinsically linked.

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.

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

Mailing Address:
Community Development Department
Town of Purcellville
221 South Nursery Avenue
Purcellville, VA 20132
540-338-2304 www.purcellvilleva.gov

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.

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

Mailing Address:
Community Development Department
Town of Purcellville
221 South Nursery Avenue
Purcellville, VA 20132
540-338-2304 www.purcellvilleva.gov