

The Department of Community Development
City Hall, Lynchburg, VA 24504

434-455-3900

To: Planning Commission
From: Planning Division
Date: January 2, 2014
**Re: Future Land Use Amendment: Low Density Residential to Resource Conservation–
147 Marvin Place**

I. PETITIONER

Anne Harris Massie Winstead, 147 Marvin Place, Lynchburg, Virginia 24503

Representative: Henry C. Devening, P.C., 1900 Memorial Avenue, Lynchburg, Virginia 24501

II. LOCATION

The subject property includes one (1) tract totaling approximately thirty-four (34) acres located at 147 Marvin Place.

Property Owner: Anne Harris Massie, 147 Marvin Place, Lynchburg, Virginia 24503

III. PURPOSE

The purpose of the petition is to change the *Future Land Use Map* designation from Low Density Residential to Resource Conservation. The *Future Land Use Map* amendment would be an endorsement of the petitioner's application to the Virginia Outdoors Foundation (VOF) to hold an open-space easement for the property.

IV. SUMMARY

- The *Comprehensive Plan 2002-2020's Future Land Use Map (FLUM)* recommends a Low Density Residential use and Resource Conservation use for the property.
- An open-space easement is a legal document between a landowner and a public body designed to protect the land in perpetuity.
- The easement would maintain the private ownership of the land but generally restrict the use of the property to a single-family home, forest, open space and/or natural area.
- Adjacent properties at 300 and 304 Overstreet Lane are currently encompassed by an open-space easement held by VOF.

The Planning Division recommends approval of the FLUM amendment.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The *Comprehensive Plan 2002-2020* recommends Low Density Residential and Resource Conservation uses in this area. Low Density Residential (**page 5.5**) areas “are dominated by single family detached housing at densities of up to four dwelling units per acre ... [and] may include public and institutional uses compatible in scale with single family residential homes. Private recreation uses, including country clubs and swim and racquet clubs, and private open space are also appropriate for Low Density Residential areas.” Resource Conservation areas (**page 5.2**) “encompass lands with special natural characteristics that make their preservation in open space particularly important to the City's environmental health. The mapped Resource Conservation Areas include the City's stream valleys ... streams and rivers,

their 100-year floodplains, connected wetlands and adjacent steep slopes. The delineation of Resource Conservation Areas on the *Future Land Use Map* is based on existing mapped floodplain, slope, and soils information collected for the preparation of Chapter 12, Natural Systems.” The *Comprehensive Plan 2002-2020* recommends that the “actual boundaries of the Resource Conservation Area should be determined on a site-by-site basis using the best available environmental data and the environmental performance standards recommended in Chapter 12, Natural Systems.” The plan also provides “Resource Conservation Areas are planned to remain in vegetated open space with development limited to: 1) trails and other passive recreational facilities that involve minimal removal of vegetation, and 2) public facilities that must be located in stream valleys. The goal is to keep Resource Conservation Areas as natural as possible so as to stabilize slopes, prevent soil erosion, provide natural absorption areas for urban runoff, moderate climate, and provide wooded areas for wildlife and for the respite of City dwellers. Many of the stream valley Resource Conservation Areas are recommended to become greenways in the Parks and Recreation element, and thus may have public access trails. Other Resource Conservation Areas, not designated as greenways on the Parks & Recreation Map, are to remain in natural vegetation for purely environmental protection reasons.”

2. **Zoning.** The subject property was annexed into the City in 1976. The existing R-1, Low Density Residential zoning was established on September 12, 1989 with the adoption of the Northwest Expressway Area Study.
3. **Proffers.** N/A
4. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances would be needed for the proposed conservation easement.
5. **Surrounding Area.** There have been several items requiring City Council approval in the immediate area:
 - On July 8, 1980, Council approved the petition of McCarthy-Read to rezone five (5) acres located at 225 Coffee Road from R-2, Low-Medium Density, Single-Family Residential District to R-4, Medium-High Density, Multi-Family Residential District to bring the existing apartment buildings into compliance with the *Zoning Ordinance*.
 - On September 9, 1980, Council approved the conditional use permit (CUP) petition of Boonsboro United Methodist Church to allow a child care center at 6205 Boonsboro Road.
 - On March 8, 1988, Council approved the CUP petition of Dr. David Case to allow a veterinary hospital with indoor kennels at 6097 Boonsboro Road.
 - On September 12, 1989, Council approved the Northwest Expressway Area Study.
 - On June 8, 1993, Council approved the CUP petition of Brett R. Smith to allow a grounds keeper cottage with kitchen facilities at 5913 Raiford Circle.
 - On July 13, 1993, Council approved the CUP petition of Trinity Episcopal Church to allow a building addition at 104 Walnut Hollow Road.
 - On May 11, 1999, Council approved the petition of Perry Karnes to rezone 5909 Raiford Circle from R-2, Low-Medium Residential District to B-1C, Limited Business District (Conditional) to allow the use of an existing building for multiple offices and the expansion of the parking area.
 - On September 28, 1999, Council approved the petition of Robert Workman to rezone the property at 5996 and 6002 Boonsboro Road from R-1, Low Density Residential District and

B-3 Community Business District to B-3C, Community Business District (Conditional) to allow the construction of a convenience store.

- On September 8, 2009, Council approved the CUP petition of Trinity Episcopal Church to allow the construction of a building and parking area at 104 Walnut Hollow Road.

6. Site Description. The subject property is one (1) tract containing thirty-four (34) acres located at 147 Marvin Place. The property contains several structures including two (2) single-family homes, one of which was constructed circa 1758 and is included on the State and National Registers of Historic Places. The property also contains several outbuildings and a pool. The majority of the property is forested, sloping to the southeast towards Cheese Creek. A utility easement for gas and power lines runs across the southern portion of the property.

The property is boarded to the north by single-family homes and to the south, east and west by vacant land. The property located to the west at 300 and 304 Overstreet Lane and containing fifty (50) acres currently has an open-space easement held by the Virginia Outdoors Foundation. This existing open-space easement was endorsed by Council on May 10, 2011.

7. Proposed Use of Property. The Future Land Use Map amendment would facilitate the placement of the property into an open-space easement. The open-space easement to be held by the Virginia Outdoors Foundation would maintain the private ownership of the land but generally restrict the use of the property to a single-family home, forest, open space and/or natural area.

8. Traffic, Parking and Public Transit. N/A

9. Stormwater Management. N/A

10. Emergency Services. N/A

11. Impact. The Virginia Outdoors Foundation (VOF) was established in 1966, "to promote the preservation of open-space lands and to encourage private gifts of money, securities, land or other property to preserve the natural, scenic, historic, scientific, open-space and recreational areas of the Commonwealth." The primary mechanism for accomplishing VOF's mission is through open-space easements. Open-space easements allow land to continue to be privately owned but restricted to serve and protect land for the public good. A gift of a qualified open-space easement in perpetuity may qualify as a non-cash charitable gift which may yield a deduction for federal income tax purposes and a credit for state income tax purposes. In addition, there may be local property tax reductions and federal estate tax exemptions. An independent certified appraiser must establish the value of the easement that is primarily based on the value of the development rights forgone. Once that value is established, it becomes the basis for calculating tax benefits. The VOF would hold the open-space easement and would monitor the property to ensure that the conservation values agreed to in the easement remain intact. The VOF would also serve as the enforcement agent for any violations of the terms of the easement, if approved.

Mr. Hal Devening, attorney for the petitioner, has stated that the owner desires to preserve the property so that it will be available for "agriculture, livestock, forest and/or open space use which will protect natural habitat of wildlife, plants and other ecosystems in an area that is unsuited for intensive development". Mr. Devening also states that the "preservation of open-space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration, helping provide or preserve necessary park, recreational, historic and scenic areas and conserving land and natural resources".

The Planning Division generally does not support conservation easements within the city limits due to the limited land resources of the city. Open-space and other conservation easements are for perpetuity. Not only do they affect the city's taxable property, they also result in limiting the amount of developable property in the future. While the land may be in an area that is considered unsuitable for development for today, circumstances do and will change over the long term history of the city.

While the Planning Division does support this *Future Land Use Map* amendment from Low Density Residential to Resource Conservation to facilitate an open-space easement to be held by the Virginia Outdoors Foundation, it is doing so for the following reasons:

- The property is adjacent to another larger easement (50 acres) endorsed by Council and held by the Virginia Outdoors Foundation.
- A structure located on the property is currently on the State and National Registers of Historic Places.

The Planning Division recommends that a city policy be developed to indicate what criteria should be considered prior to any future amendments of the *Future Land Use Map* or endorsing future open-space easements. These criteria should result in a true public benefit and would include but are not limited to:

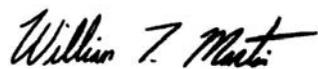
- Proximity to other open-space or conservation easements;
- Historically significant lands or structures;
- Wildlife habitat;
- Linear feet of stream stabilization and protection;
- Stormwater mitigation;
- Soil type;
- Topography;
- Availability of water/sewer infrastructure

12. Technical Review Committee. The Technical Review Committee (TRC) reviewed the preliminary site plan on December 3, 2013. Comments related to the proposed use have or will be addressed by the petitioner.

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of the petition of Annie Harris Massie Winstead to amend the *Future Land Use Map* from Low Density Residential to Resource Conservation.

This matter is respectfully offered for your consideration.



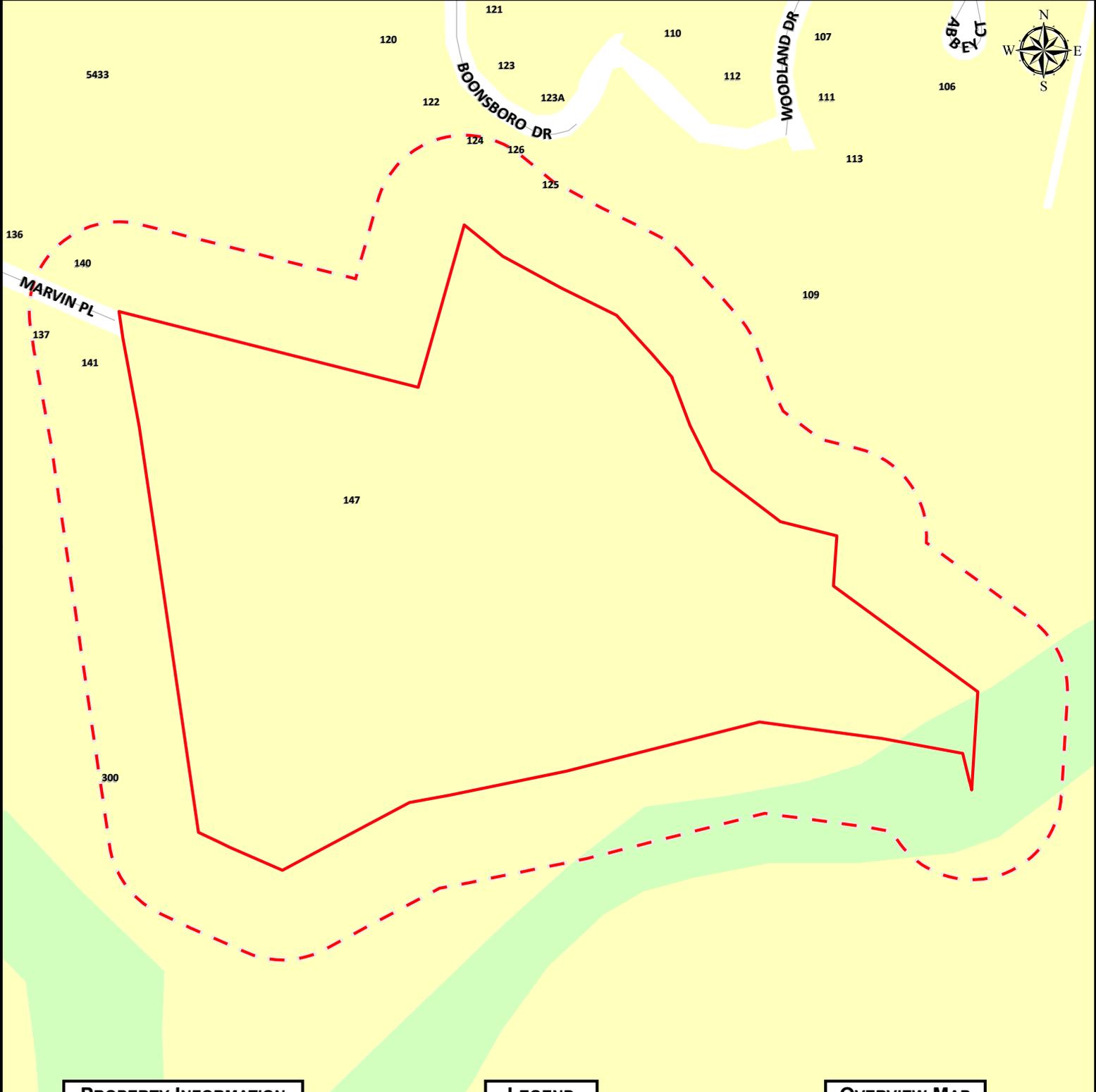
William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Ms. Bonnie M. Svrcek, Deputy City Manager
Mr. Walter C. Erwin, City Attorney
Mr. Kent L. White, Director of Community Development
Mr. J. Lee Newland, City Engineer
Ms. Cynthia Kozerow, Lynchburg Police Department
Battalion Chief Greg Wormser, Fire Marshal
Mr. Don DeBerry, Transportation Engineer
Mr. Doug Saunders, Building Commissioner
Mr. Robert Fowler, Zoning Administrator
Mr. Jacob Dorman, Environmental Reviewer
Ms. Anne Harris Massie, Petitioner
Mr. Hal Devening, P.C., Representative

VII. ATTACHMENTS

- 1. Vicinity Zoning Pattern Map**
- 2. Vicinity Proposed Land Use Map**
- 3. Watershed Location Map**
- 4. Planimetric and Topographic Map**
- 5. Narrative**
- 6. December 23, 2013 letter from Henry Devening**
- 7. Property Photograph**

Parcel ID	Address	Owner
20807002	137 MARVIN PLACE	RICHARD W & CHRISTINA ALLEN
21402003	1644 WIGGINGTON ROAD	JATA M BROWN
20801003	125 BOONSBORO DRIVE	THERESA B BRYANT
20801004	126 BOONSBORO DRIVE	C C & GRACE D CARTER
20801005	124 BOONSBORO DRIVE	C C & GRACE D CARTER
20911009	109 WOODLAND DRIVE	D KEVIN COBB
20911004	113 WOODLAND DRIVE	A TERRELL GRIFFIN
20807001	141 MARVIN PLACE	WALLACE P & EVELYN D HIGGINBOTHAM
20809001	300 OVERSTREET LANE	PETER W HOUCK
20910001	209 WHITLEY WAY	IRVINGTON PROPERTIES LLC
20802001	5433 BOONSBORO ROAD	BARRY E & PAMELA C LAYNE
20802002	147 MARVIN PLACE	ANNIE H MASSIE
20801006	122 BOONSBORO DRIVE	JASON & MELODIE MULLEN
21304004	1634 WIGGINGTON ROAD	CAROL W REID
20806001	140 MARVIN PLACE	WESLEY K & WANDA F ROYALL



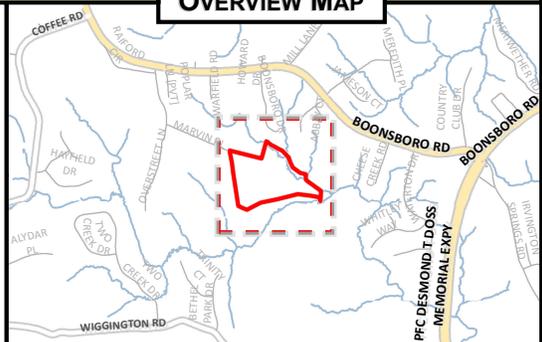
PROPERTY INFORMATION

PARCEL ID	ADDRESS
20802002	147 MARVIN PL

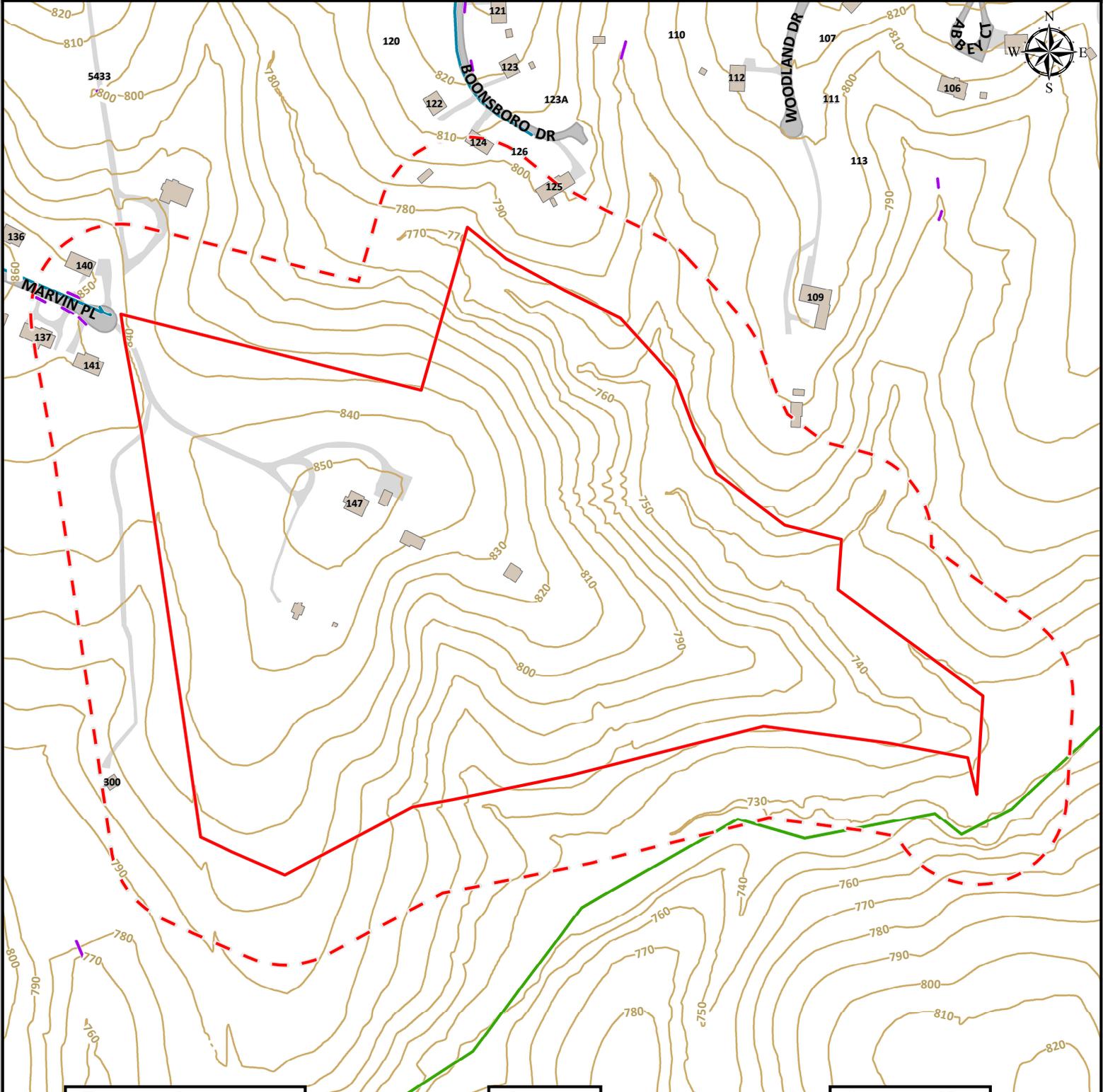
LEGEND

- Local Historic District
- Traditional Residential
- Low Density Residential
- Medium Density Residential
- High Density Residential
- Neighborhood Commercial
- Community Commercial
- Regional Commercial
- Employment Mixed Use
- Residential Mixed Use
- Employment 1
- Employment 2
- Office
- Institution
- Public Use
- Public Parks
- Resource Conservation
- General Mixed Use

OVERVIEW MAP



MAP SCALE: 1" to 300' DATE PRINTED: 12/27/2013



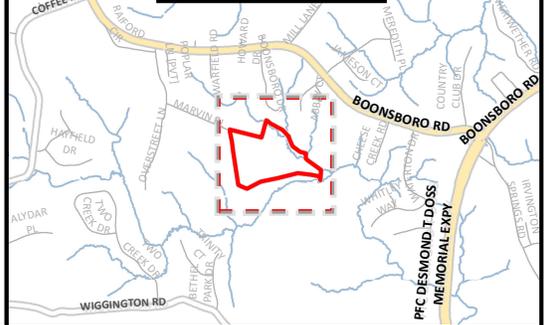
PROPERTY INFORMATION

PARCEL ID	ADDRESS
20802002	147 MARVIN PL

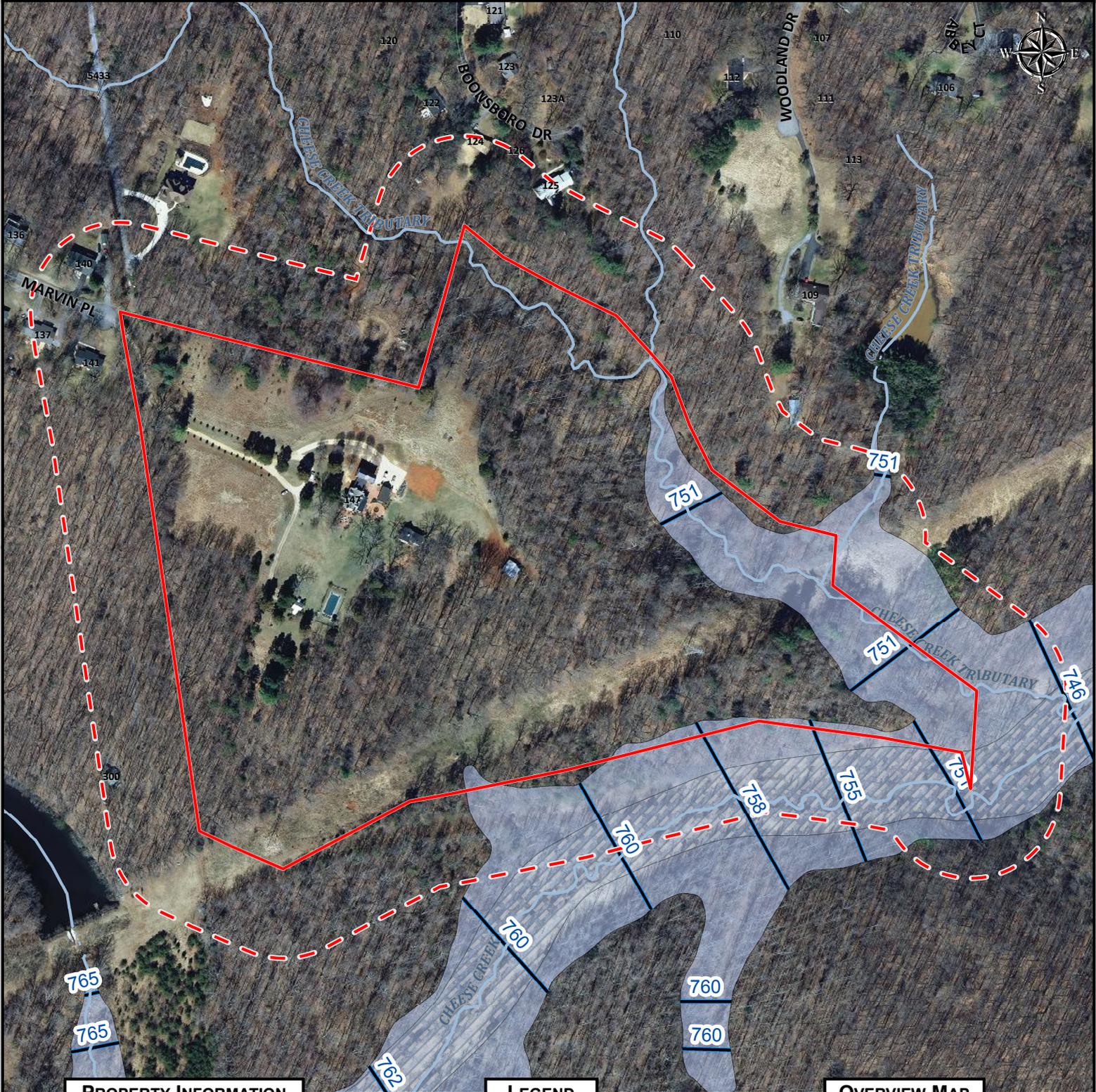
LEGEND

	Active	Proposed	Abandoned
Utilities	Water (solid blue)	Sanitary (dashed green)	Storm (dashed purple)
Structure	Paved (solid grey)	Unpaved (dashed brown)	Other (solid tan)
Planimetrics	Roadway (solid grey)	Parking (dashed grey)	Sidewalk (dashed grey)
Topography	Contour (solid brown)	10' (dashed brown)	10' Obs (dotted brown)

OVERVIEW MAP



MAP SCALE: 1" to 300' DATE PRINTED: 12/27/2013



PROPERTY INFORMATION

PARCEL ID	ADDRESS
20802002	147 MARVIN PL

LEGEND

- Subject Property**
- Base Flood Elevation**
- Floodway**
- Floodzone**
- River / Lake / Stream**

OVERVIEW MAP



MAP SCALE: 1" to 300' DATE PRINTED: 12/27/2013

Cheese Creek-Ivy Creek

DISCLAIMER: THIS MAP IS NEITHER A LEGALLY RECORDED MAP NOR A SURVEY AND IS NOT INTENDED TO BE USED AS SUCH. THE INFORMATION DISPLAYED IS A COMPILATION OF RECORDS, INFORMATION, AND DATA OBTAINED FROM VARIOUS SOURCES. THE CITY OF LYNCHBURG IS NOT RESPONSIBLE FOR ITS ACCURACY OR HOW CURRENT IT MAY BE.

Reasons for a Conservation Easement for Locust Grove

My husband and I are interested in protecting our property, Locust Grove, from future development for perpetuity. Our wish is that future generations will be able to experience its unique and extraordinary setting, just as it is today. The immediate surrounding land is in many ways unchanged from how it was when the original part of the house was first built c. 1758. The house occupies land originally part of Albemarle County (later Bedford County) in an area of colonial Virginia that was wild and largely uninhabited. Today it is still possible to come across Indian and Colonial era artifacts on the property and a number of these are held in the collection of the Knight-Capron Library at Lynchburg College.

We are committed to the preservation of our rural setting. Locust Grove is within the city limits, yet has characteristics of a rural setting. Approximately 18 of our surrounding 34 acres are wooded, and these are filled with mature native hardwood trees. We are bounded on one side by Dr. Peter Houck's property protected by a conservation easement. Our house is situated on top of a small hill that runs down to Cheese Creek and the property boundary line runs across the creek. Our front yard has an ancient poplar and several very old cedars. There are cedars throughout the property on open land and throughout the woods along what was once fence line when it was predominantly open farmland. We intentionally maintain tall native grasses and wildflowers as heavy cover for wildlife in the front two fields as you approach the house. We started an heirloom apple orchard in the fall of 2009 as a complement to the small orchard that was once here.

Wildlife is a significant presence on the property and a contributing factor to its distinctive character and charm. It is a common occurrence to have turkeys and small flocks of turkeys in our fields. Every spring female snapping turtles cross our yard from Dr. Peter Houck's pond to Cheese Creek to lay their eggs. Once hatched, the young turtles return to the pond. We see deer every day, and have seen newborn fawns as well as older bucks with large antlers. There are countless birds including owls, a great blue heron, and several woodpeckers that also call our home theirs. We have foxes, raccoons, possums, bobcats, and skunks. If, in the future, our land were ever developed, we have asked ourselves where would the wildlife go? And my husband and I continue to ask this more frequently as development takes more and more of their habitat.

Our sense of stewardship comes with a deep personal connection to the property, as the house was built by Elizabeth Willis Manson, daughter of my great great great grandfather, and her husband Edmund Cobbs, Jr. (It was next occupied by their daughter Lucy and her husband Nicholas Hamner Cobbs, the distinguished Bishop of Alabama, who built Trinity Episcopal Church, Boonsboro; St. Stephen's Episcopal Church, Forest; and St. Thomas Episcopal Church, Sedalia. The house is on the State and National Registers of Historic Places).

The property has gradually declined in size and is now 34 acres in total. Owned by the Cobbs family, Locust Grove once comprised 294 acres, a small part of what was once a

two-thousand acre tract first owned by John Wayles, later inherited by Thomas Jefferson. Post Civil War, like so many Virginia families faced with declining land productivity and dwindling fortunes, the Cobbs were forced to sell some of their land. Bankrupt by 1877, they managed to hold onto Locust Grove until sometime around 1914 at which time they sold a final 10 acres. Locust Grove and the remaining 34 acres have been intact since the 1932 purchase by John Capron (President of Glamorgan Foundry) and his wife Marcia, who saved the neglected house. My brother and I bought the property in 1988 and immediately felt a tremendous sense of protectiveness. Just before our purchase, there were several developers looking over the property with the idea of turning it into a residential subdivision. Locust Grove has been owned by a continuum of people who have respected the house and grounds, guided by a sense of stewardship. Now my husband and I wish to continue this stewardship into the future and ensure that the land will not continue to be subdivided and forever changed.

We recognize the enduring value of green, open spaces and feel that placing a value on the past contributes to a richer existence. Recent encroachment from suburbia, even as near as the closest boundary of our property, has altered our rural, natural setting. We wish to secure a place for Locust Grove in the future free from the disruption and permanent alteration of development.

Annie Harris Massie Winstead
Alexander McIver Winstead
November 2013

INSPECTIONS DIV

DEC 26 2013

RECEIVED

**LAW OFFICE
HENRY C. DEVENING, P.C.
A PROFESSIONAL CORPORATION**

**P.O. Box 900
LYNCHBURG, VIRGINIA 24505**

**"CENTERVIEW"
1900 MEMORIAL AVENUE
LYNCHBURG, VIRGINIA 24501
hdevening@hcdlaw.com**

**TELEPHONE: (434) 847-6787
FACSIMILE: (434) 847-1292**

December 23, 2013

Mr. Tom Martin
Lynchburg City Planning Division
900 Church Street
Lynchburg, Virginia 24504

RE: 147 Marvin Place, Lynchburg, Virginia 24503
TRC/FLUM Amendment

Dear Tom:

Enclosed is a revised public hearing application which has been signed by Ms. Winstead.

I will address the notes contained in the TRC Report based on information I have to date. Regarding Steve Boyer's comments, I have spoken with Adam Bryant at Hurt & Proffitt. Ms. Winstead does not have a formal plat of her property but did have Hurt & Proffitt do a considerable amount of fieldwork in connection with a landscape plan. She is considering now ordering a final survey. Mr. Bryant will call Steve Boyer directly to discuss what the City will need.

Regarding the comments of Mr. Doorman both federal and state law have declared policy that the preservation of open space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration, helping provide or preserve necessary park, recreational, historic and scenic areas and conserving land and natural resources. The owner wishes to preserve her property in a conservation easement so that it will be available for agriculture, livestock, forest and/or open space use. The owner believes a significant public benefit exists in the preservation of open space and the easement will protect natural habitat of wildlife, plants, and other ecosystems, protect the watershed, and will protect an area which is unsuited for intensive development. The property borders Cheese Creek and is crossed by significant power and gas line easements. It is adjoined by a fifty (50) acre parcel which has been placed in a conservation easement and, combined with this parcel, will preserve approximately eighty-five (85) acres.

December 23, 2013

Page 2 of 2

This property also has a significant historic component in that a historic home, dating to the eighteenth century, is located on the property and is listed on the Virginia Landmarks Registry. The historic nature of this house contributes the owner's desire to maintain the property surrounding it in a conservation easement. A revised application is submitted and we have previously sent a photograph of the sign. Regarding other structures on the property, there is a dilapidated barn, studio, garage, and a guest house, in addition to the primary residence. The guest house is occupied by a family member. Ms. Winstead is proposing the entire property for the easement.

Ms. Winstead has spoken with several of her neighbors. All that she has spoken to are in favor of designating this property as a conservation easement. The conservation deed will deal with the sewer easement. In my experience with the Virginia Outdoors Foundation, they will respect all public easements of this type and the extension of the sewer easement would not be considered prohibited by the terms of the easement.

Please call me if you have any questions. I look forward to meeting the Planning Commission on January 8, 2014.

Very Truly Yours,



Henry C. Devening
HCD/alm

Enclos.

Cc: Ms. Annie Harris Massie Winstead

(with enclosure)

