The ***DEPARTMENT*** *of* ***COMMUNITY PLANNING & DEVELOPMENT***
City Hall, Lynchburg, VA 24504 **434.455.3902**

To: City Council
From: Rachel Flynn, Director
Tom Martin, City Planner
Cc: Kimball Payne, City Manager
Date: September 9, 2004
re: Walgreens proposal

At the August 10, 2004 City Council public hearing, the Walgreens rezoning petition and Future Land Use Map (FLUM) amendment were discussed. You received a Planning Report in preparation for these items. In addition, portions of the Comprehensive Plan were distributed and reviewed at the public hearing for further explanation of staff's report.

In addition, Laird Development sent Council a letter on August 6, 2004, which was also discussed at the public hearing. Staff did not receive a copy of this letter until one hour before the public hearing on August 10, 2004. Since then, we have had time to respond to their statements and have provided these responses for your review.

Attached please find:

1. Staff responses to Laird's letter of August 6, 2004.
2. Site plan with tree analysis by Urban Forester, Klaus Schreiber.
3. Area plan showing vacant and available properties (from Memorial to Hill Street).
4. Redevelopment Plan in Traditional Neighborhood Development (TND) style, which would comply with the Comprehensive Plan principles (on site currently occupied by Village Oaks).
5. Photo of Walgreens prototype.
6. Photos of Wyndhurst TND storefronts/offices.
7. Laird site plan sketch submitted to City on September 9, 2004.
8. Laird site plan submitted to City on August 26, 2004.

September 9, 2004: Staff comments are italicized below.

August 6, 2004

Mayor and Council Members
Lynchburg City Council
City Hall
Lynchburg, Virginia 24504

RE: **Rezoning Application – Langhorne at Murrell/Carrington ("Village Oaks")**

Dear Mr. Mayor and Members of Council:

The purpose of this letter is to provide you with some additional information on the rezoning request submitted by Laird Lynchburg, LLC, for the intersection of Langhorne at Murrell, which was denied by the Planning Commission at its July 28, 2004 meeting. City Council is scheduled to hear this matter at its August 10, 2004 meeting. This letter will set forth a chronology of events, as we understand them to have occurred, and provide Laird's responses to some of the objections raised by the Planning Staff. The chronology and responses are as follows:

1. On April 30, 2004, ASG, Inc. submitted, on behalf of Laird Development, LLC, preliminary plans for the redevelopment of the portion (2.2 acres) of Village Oaks which fronts on Langhorne Road.

   Our dealings with Laird's representatives date over a year and a half ago to January 2003. Chris Gentry of Milton Realty, representing Laird Development, contacted the Planning Division to discuss the possibility of constructing a Walgreens at Langhorne & Murrell. We met on January 27, 2003. Mr. Gentry said that Walgreens was looking for a second location in Lynchburg and wanted to be at this signalized intersection.
   Staff made it very clear to Mr. Gentry that we were disappointed this site was chosen over vacant or blighted sites. We were not comfortable with the demolition of existing housing stock or significant tree clearance. We discussed the attractiveness of the Village Oaks townhome complex in design, layout and landscaping – and that they were in no way a blighting influence on the area and therefore not a good redevelopment location. We said that we would most likely recommend denial of a rezoning unless it was done in the Traditional Neighborhood Development (TND) style like Wyndhurst. By this we meant that the site would be designed with the building close to Langhorne Road and the parking and drive-thru in the back or sides. The focus would be on pedestrians and connections to the adjoining residents not on vehicular traffic. We also discussed options for Walgreens at other nearby sites. One Centra Health site that we suggested was a vacant parcel between the Bank of America building and the former Human Services Building. This was later offered to and rejected by Walgreens because it was not at a signalized intersection. We have been told by Laird that Walgreens has certain criteria that they must follow regardless of community concerns. The criteria are: corner sites with signalization, close proximity to CVS (or other competing pharmacies like Kroger) and standard store and parking lot sizes regardless of site location.

2. On May 12, 2004, Chris Gentry, of Milton Realty Service, and Robyn Askew, a principal in Laird Development, LLC, met with Mr. Tom Martin, City Planner, to preliminarily discuss issues that would be presented by TRC to Laird at TRC's May 18, 2004 meeting.

   At this meeting, Tom Martin made it very clear that Planning would not support a Walgreens as designed on Wards Road with parking in the front, excessive parking spaces, and no connection to the adjoining residences. He explained the TND planning principles and encouraged their use. Tom also explained that the Comprehensive Plan would have to be amended before a rezoning could occur.
   Tom then met separately with Schaeffer Oglesby, owner of Village Oaks. Tom explained his concerns and emphasized the need for a master plan of the entire apartment complex – if any redevelopment was to be supported by Planning – to ensure a true "mixed-use" TND style development. Like Wyndhurst, this would have retail and offices on the ground floors, offices or residential on upper floors and parking behind the buildings. Mr. Oglesby said that he was interested in constructing new units to offset the loss of the demolished townhomes. Tom said that this would have to be shown in a master plan as well and proffered with the rezoning request if Planning staff was to support a rezoning for any type of commercial use in this block. To date we have not received a master plan or proffers for new residential units.

3. On May 18, 2004, Philip Royer, President of ASG, Inc., Laird's architectural and engineering firm, Chris Gentry, and Robyn Askew, met with TRC to review their comments. At this meeting, Tom Martin indicated that rezoning the portion of Village Oaks which Laird has under contract would, in effect, be an amendment to the Comprehensive Land Use Plan (the "Comprehensive Plan"). Laird was not given additional applications, nor was Laird directed to any office for further procedural items on amending the Comprehensive Plan. Laird was told that its modifications to the submittal site plan, based upon TRC comments, had to be back to the Planning Department by May 25, 2004, in order to be considered at the meeting on June 9, 2004.

   Again, Tom explained at the meeting on May 12, 2004 that a Comprehensive Plan amendment would be required prior to any rezoning consideration. This was also explained at the TRC meeting on May 18, 2004. There is no "application" for an amendment. This is done in letter format (as explained in writing to Laird) from the developer to the City. This has always has been our procedure, i.e., the Truck Enterprises parcel in Tyreeanna and the former Ericsson facility for Liberty University. There were no complaints and no confusion expressed from either of these property owners regarding the City's amendment process.

4. Laird received TRC's draft comments on May 22, 2004. In those comments, Tom Martin, in his Item 5, requested that we submit a letter requesting an amendment to the land use map. There was no deadline set for that letter, and Laird assumed that that would have to be done prior to the rezoning being approved and becoming effective, but that it was not a prerequisite to the Planning Commission's vote on the rezoning request. In searching the City's web page for the requirements for a rezoning application, a reference to an amendment to the Comprehensive Plan application was not found. Chris Gentry was informed on June 10, by the Planning Department, that in order for the request for the amendment of the Comprehensive Plan to have been properly published, Laird would have had to have had the notice in by May 20, 2004. That is two days before Laird received the draft comments by TRC. Obviously, if this had been a requirement of Laird getting to the Planning Commission on its rezoning request, Laird should have been told not to appear at the June 9 Planning Commission meeting, or they should have been told to deliver the letter when they were there on May 18 for the TRC meeting.

Again, Tom made it clear on May 12, 2004 and then May 18, 2004 that a Comprehensive Plan amendment would be required prior to any rezoning consideration. His TRC written statement was, "A Future Land Use Map (FLUM) amendment will be required in order for the rezoning to occur. Submit a letter requesting an amendment to the Land Use Map from Medium Density Residential to Community Commercial." Walgreens has been considering this site for nearly two years and never informed planning staff of any fast track requirements. The amendment vote by Planning Commission on July 28, 2004 did not delay Laird in their rezoning petition process – so we find it curious that Laird continues to dwell on this issue instead of the significant issues that the City and Planning Commission have raised.

5. Enclosed is a copy of the TRC's final comments which were received on May 24, 2004. ASG has marked the modifications which were made to the site plan by each requested item, and those are so noted. The revised plans were filed with the Planning Department on May 24, 2004. As you can see, the majority of the TRC's comments were properly, and timely, addressed. Some of the items were not addressed as they are not time sensitive items, or are informational items to the petitioner. Other items have not been addressed because of the site specific issues related to this property, such as topography.

   Laird understood from comments at the TRC meeting that if Laird would consider saving the large trees along Langhorne, it would go "a long way" toward mitigating some of the issues which were raised at TRC. Not only has Laird been able to save many of the large trees, Laird has been able to comply with the vast majority of comments made by the TRC. It is our position that Laird has not received any credit for attempting to save these trees.

   Nearly all of the TRC comments that Laird complied with were technical in nature (i.e., "Indicate on the site plan where the fire department connection will be located") and were not planning related. In fact, most of the planning suggestions were ignored by Laird (i.e., residential-scale lighting, relocation of the building closer to the road, and landscaped berms along City streets). Regarding the large trees, we are not clear what Laird means by "credit" as rezoning recommendations for approval or denial by Planning staff are not based on any type of credit system. In the Planning Report, Tom Martin commends Laird for saving 7 trees out of 22. However, Council needs to know that the Urban Forester, Klaus Schreiber, does not believe that half of those remaining trees will survive beyond a year because of the construction disturbance so close to the root system. The largest and healthiest trees on the site are being cleared to make way for the parking lot. See attached drawing for details.

6. In an effort to try to mediate the items listed by Mr. Harter on the TRC comments, Laird asked ASG to consult with Hurt & Proffitt of Lynchburg on traffic issues. Patrick Proffitt met with Mr. Harter and went over his concerns. ASG was able to make some of the changes requested by Mr. Harter, and those items were reflected in a site plan submitted by ASG on behalf of Laird prior to the June 28, 2004, Planning Commission meeting. These include moving the entrance on Murrell Road so that it is now proposed to be located 185 feet from the center line of Langhorne Road in an attempt to address traffic concerns.

   According to the drawing the Planning Division received from Laird on August 26, 2004 – the entrance has not moved at all. It remains @ 120' from centerline of Langhorne Road to centerline of entrance. The Traffic Engineer's recommendation was for it be 300' from centerline to centerline – the back corner of

the site. [Today, on September 9, 2004, Laird met with Gerry Harter and showed him an 8.5 x 11 hand drawn sketch of a revised layout. One entrance remains near Langhorne and another has been added at the back corner of the site. Gerry will have to discuss this recent revision at Council's work session on September 14, 2004 as he has not "approved" this sketch.]

7. In reviewing the sections of the Comprehensive Plan that are most relevant to the Subject Property, it appears to the undersigned that the goals for "Plaza/Midtown Revitalization Area" described in Sections 4.7 and 4.8 of the Comprehensive Plan would be furthered by the granting of Laird's rezoning request. We do not find an interpretation in the Comprehensive Plan that states that rezoning in an area cannot occur. In fact, on the maps that are with the Comprehensive Plan, it shows the area as a "mixed use" area and earmarks that area for "Revitalization." In contrast to statements made by some of the Planning Commissioners at the June 28 meeting, it is clearly contemplated that there will be instances wherein the Comprehensive Plan may be modified and is to be used as a guideline. Please see Section 17.4 of the Comprehensive Plan, "How to Amend the Plan." We do not believe that Section 17.4 has been properly applied to this rezoning request.

   Staff disagrees with Laird's interpretation of the Comprehensive Plan and with their apparent view of land use law on the following points. 1.) It is stated in the Comprehensive Plan on pages 5.2 and 17.4 that rezoning in an area cannot occur if it does not concur with the Future Land Use Map (FLUM). 2.) It is true that the site in question is labeled as mixed-use revitalization. However, we do not believe that Laird is proposing a "mixed-use" development – as this is a single-use proposal. We also do not believe that Laird is proposing a "revitalization" project. This site as it currently exists is not a) vacant or b) blighted. Also, the proposed Walgreens does not involve a) existing building re-use, b) historic preservation, or c) an improvement to the City's image. All of these items are stated in the Comprehensive Plan as adhering to the principles of redevelopment. 3.) It is true that the Comprehensive Plan may be modified and we believe that this building is not grounds for modification. Our argument for this is on page 17.4, "Expedient spot amendments that do not support the vision, plan framework policies, and goals and objectives of the Comprehensive Plan, that are not in the best interests of the City, and that serve only the investor of the property will not be considered." 4.) Section 17.4 of the Comprehensive Plan "How to Amend the Plan" has been properly applied by Planning staff. It states, "There are several circumstances when an amendment to the Comprehensive Plan may be needed prior to a five-year review: A private sector proposal for development or redevelopment is not in conformance with the plan and requires a rezoning or conditional use permit as well. The applicant will need to petition for a plan amendment and the rezoning or conditional use permit. These applications can be handled concurrently."

   Revitalization is defined as "Encouraging reinvestment and sensitive redevelopment in older commercial districts." We believe that the plan which was presented by Laird to the Planning Commission does exactly that. Given that the area is in a "Mixed Use" overlay, we question the determination by Planning Staff and Planning Commission that an amendment to the Comprehensive Plan is required. As provided by Virginia case law, the Comprehensive Plan is a guide, not the official zoning map. At present, there are numerous mixed uses in the area which do not conform to retail use, such as the church in The Plaza, the call center now being located in The Plaza, and the job learning center in The Plaza, among others. If a change to the Comprehensive Plan is necessary, then we believe it is warranted here.

Laird is confusing the term "mixed-use" with the term "multiple uses." Multiple uses is just one facet of a true mixed-use development. The Langhorne corridor has multiple uses (offices, housing, retail, and institutional uses) but does not reflect traditional mixed-use design. Other facets of a mixed-used community such as downtown or Wyndhurst include multiple uses within one building, i.e., retail, office and residential within one structure. It also focuses on the pedestrian, not motorized vehicles, placing buildings along the street edge (with parallel parking along the street), placing parking lots behind the building(s) or in parking garages, and creating green spaces/courtyards within the planned area. All of this is mentioned in the Comprehensive Plan in several chapters and in great detail. See pages 4.7, 4.8, 4.9, 5.6, 5.7, 6.8, 6.19, and 10.8 for examples of this. Attached is a drawing of what Planning staff envisions for this site, if it were to be redeveloped in the TND model.

8. We would like to draw your attention to the fact that a number of statements have been made by Planning Staff and the Planning Commission that indicate that The Plaza, owned by a private entity, is being promoted and favored over revitalization of other areas on Langhorne Road, and Village Oaks, in particular.

   Staff has correctly emphasized the Plaza and its immediate environs as the commercial core of the entire mid-town area as stated in the Comprehensive Plan. It is staff's goal to see the Plaza significantly redesigned and redeveloped as a mixed-use community and one that takes advantage of the Blue Ridge Mountain views beyond. It is also staff's goal to see Memorial Avenue and Langhorne Road (between Atherholt and Tate Springs) redesigned and redeveloped. This would happen over time as businesses change to better accommodate pedestrians, particularly youth and elderly, in the adjoining neighborhoods, who cannot drive to shopping and entertainment uses. Older commercial strip developments throughout the Commonwealth are being redeveloped in the TND style. Examples include sections of Arlington (Balston and Clarendon), Norfolk, and Virginia Beach. This proposed Walgreens is taking the City in the exact opposite direction that the Comprehensive Plan indicates – standard single use development with lots of parking and focus on cars and traffic. Economics Research Associates emphasized throughout the Comprehensive Plan process that "retail follows rooftops" – meaning that you need add housing to support more retail. This proposal violates that advice by decreasing housing and adding more retail.

9. Mr. Oglesby and Mr. Gentry presented information to the Planning Commission that overall Lynchburg has a stock of vacant apartment units.

   We are not clear what Laird means by "stock" here. However, all cities have vacant apartment units. Staff has no documentation of vacancy rates in Lynchburg and without significant City financial investment to research this, we will never have exact figures. Different property managers provide different statistics depending on their agenda. We hear vacancy estimates ranging from 5% to 15%. In addition, staff has no documentation of Village Oaks vacancies over the past two years. Given the length of time that Walgreens has been trying to obtain this site, it makes sense that as tenants move out of units fronting Langhorne, the units would not be filled until the rezoning process is finished.

   Mr. Oglesby has stated that there are at least twenty (20) vacancies in Village Oaks. All of the residents who would be displaced by Lairds' redevelopment would be relocated, at Mr. Oglesby's expense, to existing vacant apartments in the Village Oaks. This hardly seems to diminish the existing housing stock in the neighborhood. This is especially true when Mr. Oglesby has stated he will build additional apartments on the remainder of the Village Oaks apartments, and will provide a much needed upgrade to the remaining apartments. The Village Oaks complex has not had a significant renovation since the 1980's, and Mr.

Oglesby consistently has trouble leasing the units which face and are near Langhorne Road.

Mr. Oglesby has not provided a written proffer to relocate displaced residents "to existing vacant apartments in the Village Oaks." He has only given a verbal promise to relocate them somewhere. Mr. Oglesby has rental units throughout the City and throughout the Commonwealth. Without written confirmation to City Council, his promise cannot be enforced. Furthermore, he has not provided a written proffer to build new units or upgrade existing units. Again, without written proffers the City cannot enforce new construction or rehabilitation. He has also not defined what upgrade means. This could range from new paint to a gut rehab. There is no telling the future of the displaced residents or the Village Oak townhomes without clearly written proffers. These units have never had property maintenance violation citations by the City. This indicates to us that they are kept in acceptable condition and do not require "a much needed upgrade." The units at Village Oaks range from $315 for one-bedroom to $380 for two-bedrooms. Lynchburg's citizens earning $8 - $10/hour (i.e., at Star-Tech or Walgreens) would find Village Oaks an affordable place. HUD defines affordable housing as spending no more than 30% of one's income.

10. With respect to traffic concerns, please note that Walgreens Pharmacy is a neighborhood store, and that Walgreens chooses locations which already have high traffic counts in order to capture the existing traffic on the established routes. Walgreens does not expect traffic to increase because of its new store. The plan presented by Laird removes the dangerous on-street parking, and adds a safe bus stop on Langhorne Road in a dedicated bus lane.

    Walgreens is much more than a neighborhood store. If it wasn't, it would not be going at this location. Customers sometimes stop at a drug store because it is on a customer's established route, but more often than not, drug stores are destination places. Otherwise, why would it be 24-hour? There is very little routine traffic at 2:00 a.m. Of course Walgreens expects traffic to increase. That's the point. The number of parking spaces they require on this site (65), which exceeds the City's zoning ordinance requirement by 14 spaces, indicates that traffic will be increased.
    Staff disagrees that the designated on-street parking is dangerous. It is convenient and needed by residents and slows the through traffic. The designated bus lane is no safer than the existing designated parking lane. [Today, it appears that they are proposing a new right turn lane on Langhorne, adding more traffic and making it even less pedestrian-friendly and attractive.] There will be very little or no green space between the sidewalk and the right turn lane.

11. Finally, this rezoning request represents an opportunity for a WIN-WIN situation. A new pharmacy to serve the neighborhood which fits the mixed use on Langhorne Road from Memorial Avenue to Tate Springs Road. Village Oaks is an aging, under-utilized, apartment complex which is in need of a face-lift. Walgreens would service the residential and office population in the immediate area, and provide essentials of food and health-related items. With the proposed Lynchburg General Hospital expansion, the addition of this pharmacy will enhance the services offered in the area. Despite comments made by Planning Staff, both pedestrian and bicycle customers have been taken into consideration in the proposed plan and have been provided foot access and bicycle parking.

    Staff doesn't completely agree with Laird's assessment. While we believe that this would be a win for Walgreen's corporate agenda, it would not be a win for the Lynchburg community. For the Walgreens Corporation, the wins would include, 1) adding one more store to meet their corporate goal of 7,000 stores

by the year 2010, 2) direct competition with existing Lynchburg businesses, i.e., CVS and Kroger stores, 3) strict adherence to corporate development standards (neighborhood location, building size, parking spaces, etc.) regardless of community concerns and standards. Lynchburg would lose because, 1) no new market demand or products will be added to the community – only market competition, 2) poor aesthetics that follow dated planning models and ignore Lynchburg's Comprehensive Plan guidelines, 3) no connection between the remaining residences and the proposed store (given the 15' high slope between the two uses and along a portion of the Murrell Road sidewalk, 4) loss of attractive townhomes, 5) displacement of residents who could have added to the retail, and 6) no in-fill of a vacant lot or revitalization of a blighted property. The area is already served by a pharmacy that is centrally located on the Langhorne corridor between Memorial and Tate Springs. Rarely is the parking lot more than 50% occupied without a nearby competitor. Rite-Aid was three blocks from this proposed site and closed within four years (1997 – 2001). This despite the fact that Rite-Aid still has 3,400 stores open nationwide in 2004.

Staff disagrees that pedestrians and bicycle customers have been taken into consideration. To the contrary – pedestrian and bike access is through a 65-car parking lot, which is dangerous and depressing. The sidewalks on Langhorne, Murrell and Carrington are not directly linked to the store entrance. Pedestrians will be forced to walk through the parking lot on all sides. In addition, the adjoining residents (who are potential pedestrian) are blocked from the back of the site with a 15' high slope and shrubs. This slope extends along Murrell Road as well and will appear fortress like for the pedestrians. [Today, their new sketch indicates an 8' tall retaining wall and driveway abutting the residences.] Either way, these elements are not very friendly. There are no designated bike paths anywhere on site and a bike rack is not considered adequate consideration for bicycle customers.

Thank you for considering the lengthy comments in this letter.

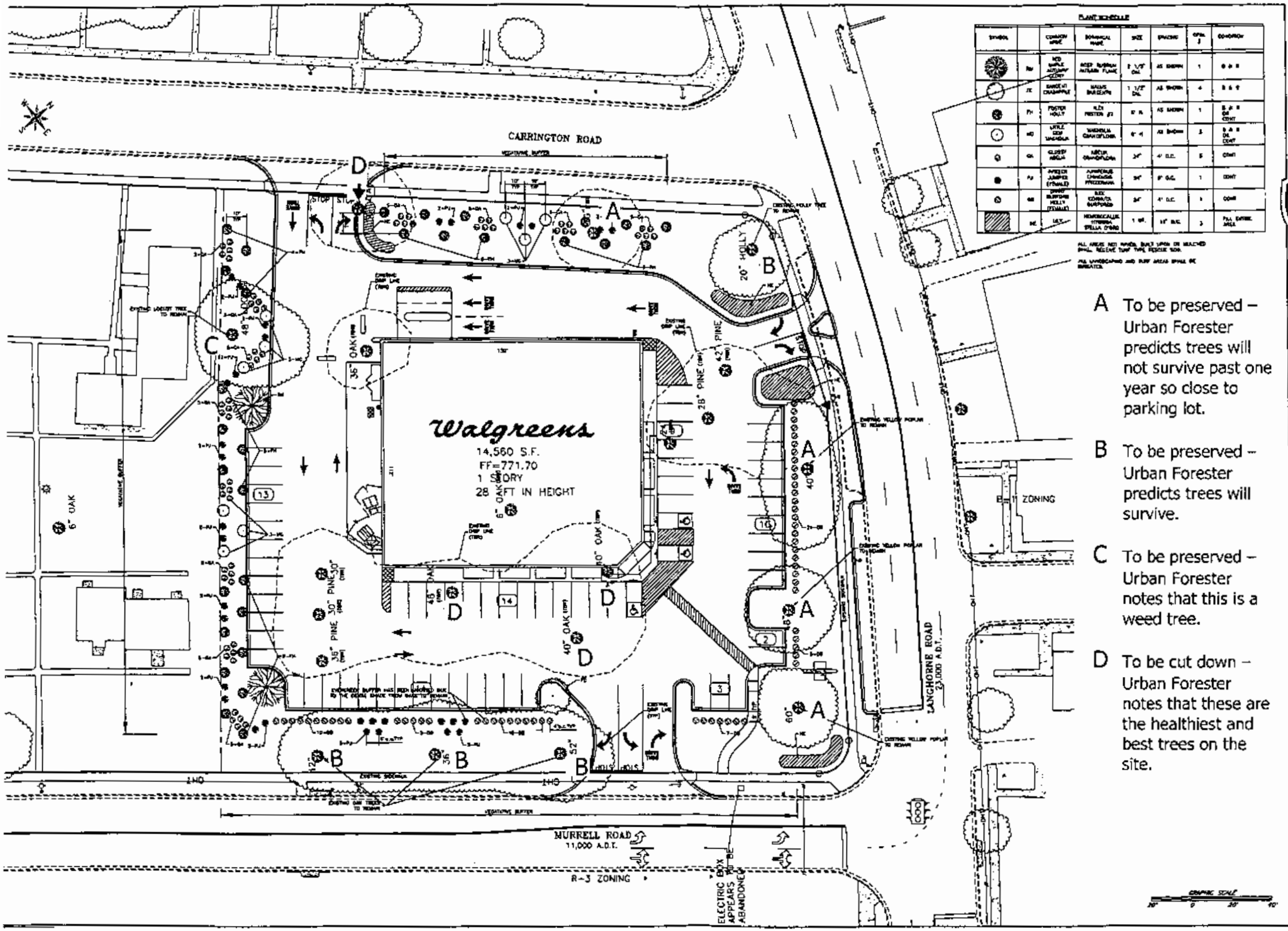
You're welcome!

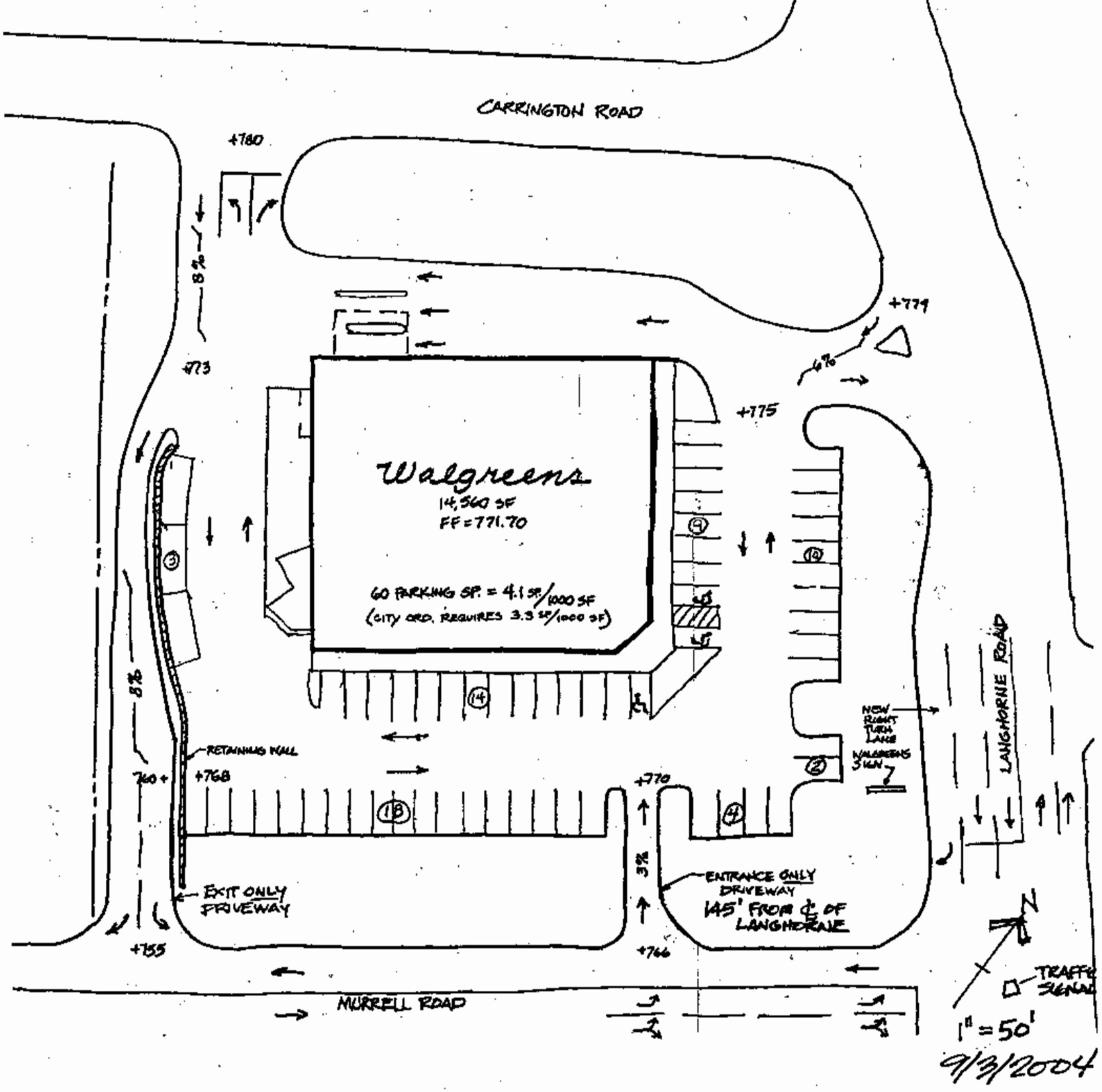
Very truly yours,

CASKIE & FROST

By _____

Theodore J. Craddock


CARRINGTON ROAD
Walgreens
14,560 S.F.
FF=771.70
1 STORY
28 FT IN HEIGHT
MURRELL ROAD
11,000 A.D.T.
LANGHORNE ROAD
23,000 A.D.T.
R-3 ZONING
B-1 ZONING
ELECTRIC BOX APPEARS TO BE ABANDONED
A To be preserved – Urban Forester predicts trees will not survive past one year so close to parking lot.
B To be preserved – Urban Forester predicts trees will survive.
C To be preserved – Urban Forester notes that this is a weed tree.
D To be cut down – Urban Forester notes that these are the healthiest and best trees on the site.
Walgreens
N.W.C. of Langhorne Rd. and Murrell Rd.
LYNCHBURG, VIRGINIA
Laird Lynchburg, LLC
Site Landscaping Plan
C-6.0



ASG INCORPORATED

ARCHITECTURAL SERVICES GROUP, INCORPORATED
"A Tennessee Architectural & Engineering Corporation"
PINNACLE SUITE 465 - 412 NORTH CEDAR BLUFF ROAD
KNOXVILLE, TENNESSEE 37923
E-MAIL: design@asgina-aa.com
PHONE: (865) 470-9449
FAX: (865) 470-9428

A NEW RETAIL STORE FOR
Walgreens
STORE #
N.W.C. of Langhorne Rd. and Murrell Rd.
LYNCHBURG, VIRGINIA
DEVELOPER/OWNER
Laird Lynchburg, LLC