



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of May 17, 2008**

DATE: April 28, 2008

SUBJECT: Declaration of Blight and Plan for Repair, Demolition or Other Disposition: "C-O-1.0" Commercial Office Business and Apartment Districts, 4- story, Mixed-Use Residential Structure, premises known as 3800 Lee Highway. (RPC #06-026-052)

C.M. RECOMMENDATION:

Adopt the attached resolution (Attachment A) declaring the property at 3800 Lee Highway to be blighted as defined in Section 29-12.A of the Arlington County Code; and approving the County Manager's Plan to demolish the four-story wood framed superstructure down to the concrete first floor, to construct a weatherproof roof or cap over the first floor, with appropriate stormwater management provisions, to remove debris and miscellaneous items, and secure entry to the premises to prevent illegal dumping and storage and authorizing the County Manager to carry out the plan.

ISSUE: Should the County proceed to demolish the wooden superstructure, design a protective roof, storm water management and long-term site security features, clear the lot of any debris, and secure the lot against illegal entry, dumping and storage at County expense, and place a lien on the property for recovery of cost?

SUMMARY: The subject property is part of a site plan for a mixed-use retail, residential and townhouse development approved in July 2002. In 2003, two-thirds of the subject parcel was included in the Cherrydale National Register listing, based on the age and character of the commercial buildings then on the premises. These buildings have since been removed from the property. In 2004, a building permit was issued for demolition of the buildings and construction of a multi-level garage, retail, and residential building located at 3800 Lee Highway. During the course of construction, field inspections revealed major structural deficiencies. The County placed a Stop Work order on the construction in March of 2006. Subsequent to the Stop Work order, the County Building Official declared the property unsafe and required the owner to either demolish the said property or repair it to a safe condition. In January 2008, a preliminary blight determination was made relative to this property. A notice was issued to the owner of record, and a corrective action plan was ordered to be submitted by February 14, 2008. The owner of record through counsel submitted a corrective action plan. On March 8, 2008 staff rejected the plan for failure to cure the blight within a reasonable time. Notification has been sent to the owner of record that the property is not in compliance and that

County Manager: _____

County Attorney: _____

Staff: Shahriar Amiri, CBO, Chief Building Official, CPHD
Gary Greene, Property Maintenance Official, CPHD

the County will therefore go forward with a public hearing before the Planning Commission and the County Board on the final blight determination. Staff recommended that the Planning Commission make the findings required by the ordinance as follows:

1. Declare the property to be blighted as defined in Section 29-12.A of the Arlington County Code; and
2. Find that the owner has failed to cure the blight or present a reasonable plan to do so;
3. Find that two-thirds of the property is not within an area listed on the National Register of Historic Places and is not locally designated as an historic landmark, and after consulting with the Historic Affairs and Landmark Review Board regarding the proposed disposition as it relates to the one-third of the parcel that is on the National Register find that the proposed plan does not adversely impact the portion of the property in the register; and
4. Approve the County Manager's Plan to repair or dispose of the property as being in accordance with the County's comprehensive plan, zoning ordinance, and other applicable land use regulations.

On May 7, 2008 the Planning Commission adopted the following determinations, findings, and recommendations in the case of the property at 3800 Lee Highway:

1. The property is blighted, as defined in Sec. 29-12A of the Arlington County Code;
2. The owner has failed to cure the blight or present a reasonable plan to do so;
3. The County Manager's plan to demolish the building, remove the debris, and secure the property is in accordance with the County's comprehensive plan, zoning ordinance, and other applicable land use regulations;
4. Although part of the property is located within the Cherrydale National Register District, it has not been designated a local historic district or historic landmark and contains no historic resources; and
5. The County Board should approve implementation of the County Manager's proposed plan to repair the blight on the property.

BACKGROUND: The subject property is part of a mixed-use retail, residential and townhouse project approved by the County Board in July 2002. In May 2003, the Cherrydale National Register listing was approved and included two-thirds of the subject parcel, based on the age and character of the commercial buildings then on the premises. In August 2003, the Brompton's at Cherrydale, LLC, applied for a building permit to demolish the existing buildings and construct a multi-family/retail/garage building at 3800 Lee Highway. The building consists of approximately 10,000 square feet of concrete parking garage with retail spaces on the ground level and approximately 60,000 square feet of multi-family residential buildings above that level constructed mainly of wood construction. The permit was issued in July 2004. During the course of construction and inspection, several major structural issues were discovered. Consequently, the County issued a Stop Work Order for the project in March 2006 requiring the owner to perform a structural analysis of the subject property by a third party structural engineer. The structural analysis revealed major structural deficiencies in the parking garage and in particular in the residential units above grade. In January 2007, the Ed Peete Company informed the County of its plan to dismantle the existing work to the

foundation and re-erect the building. In February 2007, the Brompton's at Cherrydale applied for a demolition permit. However, that permit was not issued because certain required documents were not submitted. This demolition permit application expired in August of 2007 due to inactivity.

County staff met with Ed Peete in September/October of 2007 to raise concerns over the project inactivity. At that time, Ed Peete informed the staff orally, that he would either sell or demolish the building by January of 2008.

In November 2007, the County posted the building unsafe and required the owner to either demolish or repair the building within 60 days of the receipt of the notice. The owner filed an appeal before the Building Code Board of Appeals. That appeal hearing was held on March 19, 2008. The Board upheld the decision of the Building Official but with the modification to allow Ed Peete Company an additional 120 days to begin the demolition work.

Concurrent with the notice of Unsafe Building, the County invoked the blight provisions of the County Code and gave notice to the developer in January of 2008. The notice required the applicant to provide a plan for corrective measures within 30 days. The applicant submitted the plan on February 14, 2008, asking the County for an additional one-year time frame to demolish the building. Staff disapproved the plan in writing on March 8, 2008, and proceeded to bring the matter before the Planning Commission and the County Board.

The building is currently secured against entry by construction fencing on all sides. There are unused construction materials and equipment within the building and parking garage.

The following is a portion of the text of Chapter 29, Declaration of Blight that defines a blighted property:

§ 29-12. Blighted property defined.

To be blighted a property must have a building or improvement that by reason of dilapidation, overcrowding, lack of ventilation, light and sanitary facilities or any combination of these or other factors, is detrimental to the safety, health, morals or welfare of the community. In addition, any property that has been determined by the Arlington County Code Official to meet the definition of unsafe building shall also be blighted. In determining whether a property meets the definition of blighted set forth above, the county may consider any pertinent factors including by way of illustration and not limitation the following:

1. **A structure on the property has been continuously vacant for at least one year, has been condemned as unfit for human occupancy by the building official in accordance with the Virginia Uniform Statewide Building Code, but has neither been demolished nor repaired by the owner as directed by the building official [emphasis added];**
2. *There is evidence of rat or rodent infestation or harborages caused by conditions on the property;*
3. *The property has been used or maintained in a condition which has resulted in the following actions;*

- a. *The owner has been cited on a least three (3) separate occasions because activities or conditions on the property violate state or county laws or ordinances governing the use or maintenance of property, and those activities or conditions threaten the public health, safety and welfare of the community; or*
- b. *The owner has refused to abate one or more violations as ordered by the court or has repeated conduct involving the use or maintenance of property for which the owner has been convicted of violating state laws or county ordinances in the past.*
4. *The property has inadequate sewage septic, plumbing, well or heating facilities;*
5. *If the property is vacant, the owner has failed to take adequate precautions to prevent the use of or access to the property by trespassers:*
6. *A potential attractive nuisance to children exists on the property, including, but not limited to, abandoned wells, basements, excavations or broken fences:*
7. *Any condition exists on the property that has been specifically identified as a fire hazard by the fire department or the building official: and*
8. *Substantial dilapidation of buildings or structures as evidenced by either:*
 - a. *Collapse of either interior or exterior structural elements such as floors, walls, roofs, porches, decks and similar appendages which do not pose a danger to the public: or*
 - b. *Removal or rotting of exterior siding, roofing or sheathing exposing structural members to the weather.*

Under Chapter 29, the Planning Commission is charged with determining whether:

1. *The property is blighted;*
2. *The owner has failed to cure the blight or present a reasonable plan to do so;*
3. *The plan for the repair or other disposition of the property is in accordance with the county's comprehensive plan, zoning ordinance, and other applicable land use regulations;*
4. *The property is located within an area listed on the National Register of Historic Places or, pursuant to 31 A of the Arlington County Zoning Ordinance, is located in an area designated an historic district or is a designated landmark. In such instances, the Planning Commission shall consult with the Historical Affairs Landmark Review Board regarding the proposed repair or other disposition of the property; and After a public hearing, the Planning Commission shall report its findings and recommendations concerning the property to the County Board. The County Board, upon receipt of such findings and recommendations may, after an advertised public hearing, affirm, modify, or reject the Planning Commission's findings and recommendations. If the repair or other disposition of the property is approved, the county may carry out the approved plan to repair or acquire and dispose of the property in accordance with the approved plan, the provisions of this Ordinance and applicable law. The county may recover its costs of repair from the owner of record of the property when the repairs were made at such time as the property is sold or disposed of by such owner. If the property is acquired through eminent domain, the cost of repair may be recovered when the county sells or disposes of the property. In either case, the costs of repair shall be recovered from the proceeds of any such sale.*

DISCUSSION: In January of 2008, a preliminary blight determination was made by County staff. A notice was issued to the owner, and a corrective action plan was ordered to be submitted. The applicant through counsel submitted an action plan requesting an additional one-year time period to demolish the building. The plan was disapproved. The building on the property is detrimental to the health, safety, and welfare of the community because it is dilapidated, unfinished, unsafe, and lacks sanitary facilities. The structure cannot be occupied. A notice of unsafe building has been issued to the owner by the Building Official.

County Manager's Plan for the Subject Property: The County Manager's plan for the property is to demolish the four-story wood framed superstructure down to the concrete first floor. To preserve the integrity of the remaining building, a weatherproof roof or cap will be installed over the first floor, with appropriate storm water management provisions. The County will also, remove debris and miscellaneous items, and secure entry to the premises to prevent illegal dumping and storage use.

In doing so, the Department of Environmental Services (DES) will use one of its design consultants to prepare the demolition specifications, including salvage of removed materials to the extent practicable, disconnection and capping of installed utilities, and design of the protective roof, storm water management and long-term site security features. Upon completion of the specifications, a demolition contractor will be selected using the County's competitive bidding process. A firm cost cannot be provided prior to completing the demolition and site preservation specifications; DES's preliminary estimate is \$600,000 to \$900,000 for design and demolition. At least six months will be needed to complete the design, competitive bidding, demolition and site preservation processes. This can be a complex operation with multiple opportunities for delay.

In the meantime, County staff will continue to encourage the owner to demolish the building.

FISCAL IMPACT: The current preliminary estimated cost to execute the County Manager's plan to repair or dispose of the property, remove debris and miscellaneous items, and secure entry to the premises is between \$ 600,000 and \$ 900,000. Staff will continue to refine cost estimates. It is expected the plan will be funded from the County's capital contingency fund.

If approved, the County will have to finance this operation, and proceed to place a lien on the property to recover the cost for abating the blight. The lien authorized by the Code shall be filed in the Circuit Court and shall be subordinate to any prior liens of record. The County may recover its costs from the owner of record of the property at such time as the property is sold or disposed of by such owner.

CONCLUSION: The property currently is unfinished, unsafe, vacant, and in a state of severe deterioration. The property has been the subject of numerous complaints from the community. Staff recommends that the County Board make the findings required by the ordinance and authorize implementation of the County Manager's proposed plan by adopting the attached resolution (Attachment A).

ATTACHMENT A
DECLARATION OF BLIGHT
AND
PLAN FOR DEMOLITION, REPAIR OR OTHER DISPOSITION

WHEREAS, the County Board of Arlington County ("County Board") received the following determinations, findings, and recommendations from the Planning Commission at its May 7, 2008 meeting: (1)The property is blighted, as defined in Sec. 29-12A of the Arlington County Code; (2) The owner has failed to cure the blight or present a reasonable plan to do so; (3) The County Manager's plan to demolish the building, remove the debris, and secure the property is in accordance with the County's comprehensive plan, zoning ordinance, and other applicable land use regulations; (4) Although part of the property is located within the Cherrydale National Register District, it has not been designated a local historic district or historic landmark and contains no historic resources; and (5) The County Board should approve implementation of the County Manager's proposed plan to repair the blight on the property; and

WHEREAS, the Planning Commission held a public hearing and consulted with the Historic Affairs and Landmark Review Board before arriving at the above described findings; and

WHEREAS, the County Manager has recommended that the County Board affirm the findings and recommendations of the Planning Commission; and

WHEREAS, the County Board has taken testimony in a duly convened public hearing on the Planning Commission's findings and recommendations; and

WHEREAS, the County Board finds, based on the staff report, the public testimony, the report of the Planning Commission, and all other information before it, that the Planning Commission's findings and recommendations should be affirmed.

NOW, THEREFORE, BE IT RESOLVED that the County Board hereby affirms the findings and recommendations of the Planning Commission and further resolves as follows: (1) the Property is blighted as defined in Section 29-12.A of the Arlington County Code; (2) the owner has failed to cure the blight or to present a reasonable plan to do so; (3) the plan of action recommended by the County Manager and the Planning Commission is in accordance with the County's comprehensive plan, zoning ordinance, and other applicable land use regulations and; (4) two thirds of the property is not within an area listed on the National Register of Historic Places and is not locally designated as an historic landmark or place and, subject to formal ratification by the Historic Affairs and Landmarks Review Board of its conclusions concerning the plan at its May 21, 2008 meeting, the plan of action does not adversely impact the portion of the Property within the National Register of Historic Places; and

BE IT FURTHER RESOLVED that the County Manager's Plan to repair or dispose of the Property is hereby approved and the County Manager is hereby authorized to carry out the plan provided, however, that in the event a contrary recommendation is made by the Historic Affairs and Landmark Review Board at its meeting of May 21, 2008, the County Manager

shall not proceed with implementation of the plan and shall bring this matter back to the County Board for further consideration at its meeting of June 17, 2008.