

<b>For Office Use:</b>
BZA Case #:
Date:

## Town of Blacksburg, Virginia Appeal of a Decision by the Zoning Administrator

Please contact the Planning and Engineering Department at (540) 961-1114 for the application deadline. This application and accompanying information must be submitted in full before the case may be referred to the Board of Zoning Appeals for consideration.

**Name of Property Owner(s):** LLAMAS, LLC, (P.O. Box 10397, Blacksburg, VA 24062), and Diversified Investors, XIII, LLC and

**Address:** c/o James K. Cowan, Jr., Esq., LeClair Ryan, 2000 Kraft Drive, Suite 1000, Blacksburg, VA 24060

Home Phone: 540.961.2600

Work Phone: 540.443.3300

Fax # (if applicable): 540.961.2941

E-mail Address (if applicable): james.cowan@leclairryan.com

**Contract Purchaser or Agent:** Fairmount Properties LLC, and Fairmount University Realty Trust, LLC (both of 2618 Moreland Blvd., Cleveland, OH 44120), contract purchaser and developer

**Address:** c/o James K. Cowan, Jr., Esq., LeClair Ryan, 2000 Kraft Drive, Suite 1000, Blacksburg, VA 24060

Home Phone: 540.961.2600

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Fax # (if applicable): 540.961.2941

E-mail Address (if applicable): james.cowan@leclairryan.com

**Location or Address of Property in Question:** West of South Main Street, East of Kennedy Avenue, North of Hubbard Street, South of Country Club Drive.

**Tax Parcel Number(s):** 287-A-41A; 287-A-27; 287-A-27A; 287-A-28; 287-A-28A; and 317-A-7

**APPEAL OF INTERPRETATION TO SECTION(S)** See Attached Letter of the Blacksburg Zoning Ordinance.

What decision did the Administrator make of which you are aggrieved?

See Attached Letter

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What decision do you believe should have been made and why?

See Attached Letter

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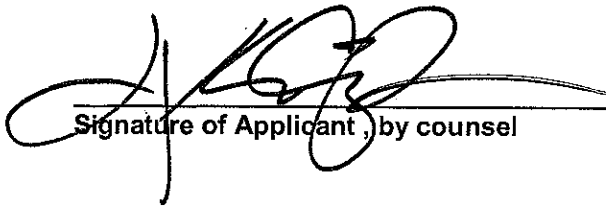


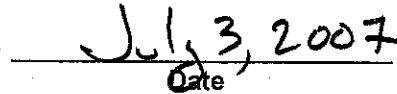
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**5. The following items must accompany this application:**

1. A copy of the section of the zoning map indicating the parcel(s) which would be affected by the decision of the Board of Zoning Appeals and any other supporting documents.
2. A vicinity map (may be combined with the other map required).
3. A list of adjacent property owners including properties across the street and their addresses, and the cost for first class postage for notifying each adjacent property owner. As of 2007, cost per notification is \$0.41 but this amount is subject to change.
4. A fee of \$100 to be applied to the cost of advertising and expense incidental to reviewing, publishing, and processing this application. Please make your check or money order payable to the **Town of Blacksburg**.
5. Any item submitted that is in excess of 11" x 17" paper size or in color requires thirty-six (36) copies.

**Please sign here after you have read and completed this application. If you have any other questions please contact the Town Planning and Engineering Department at (540) 961-1114.**

  
\_\_\_\_\_  
Signature of Applicant, by counsel

  
\_\_\_\_\_  
Date

LR  
LECLAIR RYAN

*A Professional Corporation*

2000 Kraft Drive  
Suite 1000  
Blacksburg, Virginia 24060  
Phone: 540.961.2600  
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ATTORNEYS AT LAW

JAMES K. COWAN, JR.  
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Direct Dial: 540.443.3300  
Direct Fax: 540.961.2941

July 3, 2007

Mr. Steve M. Hundley  
Zoning Administrator  
Town of Blacksburg  
P. O. Box 90003  
Blacksburg, Virginia 24062-9003

Board of Zoning Appeals  
Town of Blacksburg  
P. O. Box 90003  
Blacksburg, Virginia 24062-9003

**Re: Appeal of Vested Rights Determination**

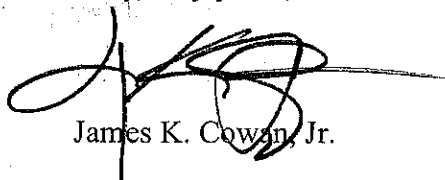
Dear Mr. Hundley and Members of the Board of Zoning Appeals:

Pursuant to Va. Code § 15.2-2311 and Blacksburg Zoning Ordinance § 1241, *et seq.*, Fairmount University Realty Trust, LLC and Fairmount Properties, LLC hereby give Notice of Appeal to the Board of Zoning Appeals of the Zoning Administrator's vested rights determination dated June 18, 2007 (the "Determination"). The grounds for the appeal are as follows:

1. The Zoning Administrator erred in his characterization of the various documents relevant to this matter, including the proffered conditions, to the extent such characterizations are inconsistent with the plain meaning of those documents.
2. The Conclusions of Law in the Determination are contrary to the law in Virginia.
3. The Zoning Administrator has no authority to make a determination of vested rights under Va. Code § 15.2-2298(B). Therefore, the Determination is invalid as to rights under § 15.2-2298(B).
4. The Zoning Administrator erred in finding that the proffered conditions do not require the dedication of real property of substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning.

5. The Zoning Administrator erred in finding that the proffered conditions do not include a requirement for substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning.
6. The Zoning Administrator erred in finding that Fairmount does not have vested rights under Va. Code § 15.2-2298(B) and § 15.2-2307, and in finding that neither Va. Code § 15.2-2298(B) nor § 15.2-2307 limit the application of Ordinance 1450 to the subject property.
7. The Zoning Administrator erred in finding no significant affirmative governmental acts allowing development of a specific project under Va. Code § 15.2-2307.
8. The Zoning Administrator erred in finding that the governing body has not accepted proffers or proffered conditions which specify use related to a zoning amendment under Va. Code § 15.2-2307.
9. The Zoning Administrator erred in finding that the proffer statement does not specify a use for which the subject property would be developed.
10. The Zoning Administrator erred in finding that the Town has not approved a preliminary site plan or plan of development for the subject property.
11. The Zoning Administrator erred in failing to find that the remaining requirements for vesting as set forth in paragraph 5 of the Conclusions of Law in the Determination were satisfied.
12. The Zoning Administrator erred in finding that the subject property is subject to the provisions of Ordinance 1450, and that a special use permit is required for the proposed retail facility with a gross floor area of 176,411 square feet depicted in the Phase II site plan submitted on May 4, 2007, as well as for any other retail facility with a gross floor area in excess of 80,000 square feet that may be proposed as part of this development.
13. The Determination is not final because it fails to comply with the provisions of Va. Code § 15.2-2311.
14. Fairmount incorporates by reference as if set forth herein the allegations and supporting documents in the Complaint filed in Montgomery County Circuit Court on May 10, 2007 in case number CL07-1697, a copy of which is attached hereto as Exhibit A; and our letter to Steve Hundley dated June 6, 2007, a copy of which is attached hereto as Exhibit B.

Very truly yours,



James K. Cowan, Jr.

Mr. Steve M. Hundley  
Board of Zoning Appeals  
July 3, 2007  
Page 3

cc: Joseph L. Anthony, Esquire  
Kevin P. Oddo, Esquire  
C. Richard Cranwell, Esquire  
Gregory J. Haley, Esquire  
Lawrence S. Spencer, Jr., Esquire

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