



WINCHESTER COMMON COUNCIL

August 25, 2015

AGENDA

6:00 P.M.

CALL TO ORDER AND ROLL CALL

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – August 11, 2015 Regular Meeting and August 11, 2015 Work Session

REPORT OF THE MAYOR

REPORT OF THE CITY MANAGER

REPORT OF THE CITY ATTORNEY

1.0 PUBLIC HEARINGS

1.1 O-2015-15: Second Reading: AN ORDINANCE AMENDING SECTION 8-2-19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO GROUND FLOOR RESIDENTIAL CONVERSION OF EXISTING STRUCTURES WITH A CONDITIONAL USE PERMIT. *(Amendment will establish provisions to allow for conversion of nonresidential ground floor space to residential use with a conditional use permit in the B-2 district)* TA-15-289 **(REQUIRES ROLL CALL VOTE)(pages 3-7)**

1.2 O-2015-16: Second Reading: AN ORDINANCE AMENDING SECTION 13-1-5 PUD OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO BONUS INCENTIVES TO INCREASE ALLOWABLE RESIDENTIAL DENSITY FOR PLANNED UNIT DEVELOPMENTS. *(Amendment will establish additional density bonuses and allow for PUD projects to be considered for up to 27 units per acre if the project meets established design criteria.)* TA-15-323 **(REQUIRES ROLL CALL VOTE)(pages 8-24)**

2.0 PUBLIC COMMENTS

3.0 CONSENT AGENDA

3.1 R-2015-29: Resolution to Authorize the Extension of the Governor's Development Opportunity Fund ("GOF") Performance Agreement Between the City of Winchester, Virginia, Rubbermaid Commercial

4.0 AGENDA

5.0 EXECUTIVE SESSION

- 5.1** MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO §2.2-3711(A)(7) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF RECEIVING LEGAL ADVICE AND STATUS UPDATE FROM THE CITY ATTORNEY AND LEGAL CONSULTATION REGARDING THE SUBJECT OF SPECIFIC LEGAL MATTERS REQUIRING THE PROVISION OF LEGAL ADVICE BY THE CITY ATTORNEY AND MATTERS OF ACTUAL OR PROBABLE LITIGATION *specifically including but not limited to* current Winchester Circuit Court cases Mathias v. City of Winchester, and Henschel et. al. v. City of Winchester, AND PURSUANT TO §2.2-3711(A)(1) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF DISCUSSION AND CONSIDERATION OF INFORMATION REGARDING THE SUBJECT OF THE EMPLOYMENT, ASSIGNMENT, APPOINTMENT, AND PERFORMANCE OF SPECIFIC PUBLIC OFFICERS APPOINTEES, AND EMPLOYEES OF THE CITY OF WINCHESTER INCLUDING THE APPOINTMENT OF OR PROSPECTIVE APPOINTMENT OF MEMBERS TO CERTAIN BOARDS AND COMMISSIONS, *specifically including but not limited to* the consideration of the possible resignation or retirement of a City employee and appointment of members to the Winchester School Board.

6.0 ADJOURNMENT

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 7/28/15 (Work Session), CUT OFF DATE: 7/22/15
8/11/15 (1st Reading) 8/25/15 (2nd Reading/Public Hearing)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

TA-15-289 AN ORDINANCE AMENDING SECTION 8-2-19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO GROUND FLOOR RESIDENTIAL CONVERSION OF EXISTING STRUCTURES (Amendment will establish provisions to allow for conversion of nonresidential ground floor space to residential use with a conditional use permit in the B-2 district).

STAFF RECOMMENDATION:

Adopt the text amendment.

PUBLIC NOTICE AND HEARING:

Public hearing required with 2nd reading on 8/25/2015.

ADVISORY BOARD RECOMMENDATION:

Planning Commission forwarded with favorable recommendation on a 5-1 vote.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

Table with 4 columns: DEPARTMENT, INITIALS FOR APPROVAL, INITIALS FOR DISAPPROVAL, DATE. Rows include Planning Director, City Attorney, City Manager, and Clerk of Council.

Initiating Department Director's Signature: (Zoning and Inspections)

Handwritten signature and date 7/22/15



APPROVED AS TO FORM:

Handwritten signature and date 7/22/2015, CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale, Director of Zoning & Inspections *AMG*
Date: July 28, 2015
Re: **TA-15-289** AN ORDINANCE AMENDING SECTION 8-2-19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO GROUND FLOOR RESIDENTIAL CONVERSION OF EXISTING STRUCTURES WITH A CONDITIONAL USE PERMIT..

THE ISSUE:

This is a publicly initiated Zoning Ordinance text amendment to allow for limited ground floor residential dwelling units in the B-2 district. Presently the B-2, Highway Commercial district, allows for the establishment of multifamily dwelling units with a conditional use permit, provided: 1) the development is part of a quality mixed use project, 2) there are no more than two (2) bedrooms, and 3) the dwelling units are not on the ground floor.

Staff has received inquiries from the development community about whether there would be City interest in modifying the Zoning Ordinance to allow for limited opportunities for establishment of multifamily dwelling units on the ground floor. These units would only be allowed with approval of a conditional use permit and if the project meets the following characteristics:

- 1) A determination is made that the proposed multifamily use is as suitable as or preferable to other permitted uses on the ground floor.
- 2) No units are situated facing a major commercial street as determined by the Planning Director.
- 3) The dwelling units are proposed as part of a redevelopment of an existing structure.

RELATIONSHIP TO STRATEGIC PLAN:

Goal #2- Promote and accelerate revitalization of catalyst and other areas throughout the City.

BACKGROUND:

See attached staff report

BUDGET IMPACT:

N/A

OPTIONS:

- 1. Adopt the Text Amendment
- 2. Adopt the Text Amendment with modifications
- 3. Decline to adopt the Text Amendment

RECOMMENDATIONS:

The Planning Commission recommended approval on a 5-1 vote.

TA-15-289 AN ORDINANCE AMENDING SECTION 8-2-19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO GROUND FLOOR RESIDENTIAL CONVERSION OF EXISTING STRUCTURES

REQUEST DESCRIPTION

This is a publicly initiated Zoning Ordinance text amendment to allow for limited ground floor residential dwelling units in the B-2 district. Presently the B-2, Highway Commercial district, allows for the establishment of multifamily dwelling units with a conditional use permit, provided: 1) the development is part of a quality mixed use project, 2) there are no more than two (2) bedrooms, and 3) the dwelling units are not on the ground floor.

Staff has received inquiries from the development community about whether there would be City interest in modifying the Zoning Ordinance to allow for limited opportunities for establishment of multifamily dwelling units on the ground floor. These units would only be allowed with approval of a conditional use permit and if the project meets the following characteristics:

- 1) A determination is made that the proposed multifamily use is as suitable as or preferable to other permitted uses on the ground floor.
- 2) No units are situated facing a major commercial street as determined by the Planning Director.
- 3) The dwelling units are proposed as part of a redevelopment of an existing structure.

As demonstrated at recent projects, such as the Coca Cola Plant rehabilitation, it is possible to establish ground floor residential by-right in the B-2 district, with a rezoning action establishing a PUD overlay. During the rezoning review there are qualitative checks on the proposal including the submittal of a development plan and building elevations. This proposal of allowing ground floor residential with a CUP in the B-2 district will still have qualitative checks on any proposal. Such applications would need to explain how any potential negative impacts are being mitigated, its conformance with the Comprehensive Plan, as well as including building elevations and floor plans of the proposal. With this additional information the Planning Commission and City Council can make more informed decisions about the quality of the proposed request and better evaluate potential impacts.

STAFF COMMENTS

Staff believes that this proposal is consistent with good planning practice and will provide opportunities of redevelopment of existing structures when the proposal is part of a quality mixed use development.

RECOMMENDATION

At their July 21, 2015 meeting, the Planning Commission forwarded TA-15-289 on a 5-1 vote with a favorable recommendation because the amendment, as proposed, represents good planning practice by providing for expanded residential opportunities consistent with Council's Strategic Plan and the City's Comprehensive Plan.

RESOLUTION INITIATING AN ORDINANCE AMENDING SECTION 8-2-19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO GROUND FLOOR RESIDENTIAL CONVERSION OF EXISTING STRUCTURES

TA-15-289

WHEREAS, the Highway Commercial district presently allows for multifamily dwelling units with a conditional use permit when the units are not located on the ground level; and,

WHEREAS, the City's Comprehensive Plan encourages quality mixed use developments, including the establishment of opportunities for new mixed-income and mixed dwelling type residential uses that incorporate the quality design principles of New Urbanism; and,

WHEREAS, it is the interest of the City to provide additional opportunities for property owners and developers to craft creative adaptive reuse scenarios of existing structures, which may include the conversion of existing ground floor spaces to residential dwelling units on a limited basis;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby initiates the following text amendment:

AN ORDINANCE AMENDING SECTION 8-2-19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO GROUND FLOOR RESIDENTIAL CONVERSION OF EXISTING STRUCTURES

TA-15-289

Draft 1 – 5/19/2015

Ed. Note: The following text represents an excerpt of Article 8 of the Zoning Ordinance that is subject to change. Words with strikethrough are proposed for repeal. Words that are boldfaced and underlined are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.

ARTICLE 8

HIGHWAY COMMERCIAL DISTRICT B-2

SECTION 8-2. USES REQUIRING A CONDITIONAL USE PERMIT

8-2-19 Multifamily and Condominium dwellings, subject to the following: (9/13/05, Case TA-05-02, Ord. No. 025-2005; 2/10/09, Case TA-08-13, Ord. No. 2009-05)

The intent of this provision is to encourage quality mixed use development, particularly in areas served by public transportation. In this case, permitted B-2 commercial uses shall be limited to the following: Banks and financial uses, convenience and services establishments, laundromats, dry cleaners where dry cleaning is done off premises, repair services or businesses excluding auto or truck repair, art galleries, retail stores, general and medical offices, physical fitness and martial arts establishments, bakeries, and restaurants, excluding nightclub use.

- a. A maximum of eight dwelling units per building, however, any two buildings may be connected by a common elevator;
- b. No dwellings shall have more than two (2) bedrooms ~~nor be situated on the ground level;~~
- c. Building entrances and off-street parking areas serving dwelling units should be oriented to the side or rear of the property;
- d. Density shall not exceed one (1) dwelling unit for each 3500 square feet of the Total Project Area, except where dwelling units are certified by the standards outlined in the United States Green Building Council LEED® for Homes program; and, with each dwelling unit having no more than two (2) bedrooms, the following Density Adjustment shall be applied: (3/11/09, Case No.TA-08-12, Ord. No. 2009-10)

<u>Level of Certification</u>	<u>Bonus Factor</u>
Certified	.05
Silver	.10
Gold	.15
Platinum	.20

- e. The absolute minimum floor area per dwelling unit in each building used for this purpose shall be as follows: seven hundred (700) square feet for efficiency & one (1) bedroom units; and nine hundred (900) square feet for two (2) or more bedrooms.
- f. **No dwelling units shall be located on the ground floor unless:**
 - 1) **City Council makes a determination that multifamily use is as suitable as or preferable to other permitted uses on the ground floor,**
 - 2) **No units are situated facing a major commercial street as determined by the Planning Director, and**
 - 3) **The dwelling units are proposed as part of a redevelopment of an existing structure. Ground floor dwelling units shall not be permitted in new structures.**

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 7/28/15 (Work Session), CUT OFF DATE: 7/22/15
8/11/15 (1st Reading) 8/25/15 (2nd Reading/Public Hearing)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

TA-15-323 AN ORDINANCE AMENDING SECTION 13-1-5 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO BONUS INCENTIVES TO INCREASE ALLOWABLE RESIDENTIAL DENSITY FOR PLANNED UNIT DEVELOPMENTS. (Amendment will establish additional density bonuses and allow for PUD projects to be considered for up to 27 units per acre if the project meets established design criteria.)

STAFF RECOMMENDATION:

Modify and adopt the text amendment incorporating staff's recommendations.

PUBLIC NOTICE AND HEARING:

Public hearing required with 2nd reading on 8/25/2015.

ADVISORY BOARD RECOMMENDATION:

Planning Commission forwarded with an unfavorable recommendation on a 5-1 vote.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

Table with 4 columns: DEPARTMENT, INITIALS FOR APPROVAL, INITIALS FOR DISAPPROVAL, DATE. Rows include Planning Director, City Attorney, City Manager, and Clerk of Council.

Initiating Department Director's Signature: (Zoning and Inspections)

Handwritten signature of the initiating department director.

7/22/15



APPROVED AS TO FORM:

CITY ATTORNEY

Handwritten signature and date 7/22/2015

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale, Director of Zoning and Inspections *Aug*
Date: July 28, 2015
Re: **TA-15-323** - AN ORDINANCE AMENDING SECTION 13-1-5 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO BONUS INCENTIVES TO INCREASE ALLOWABLE RESIDENTIAL DENSITY FOR PLANNED UNIT DEVELOPMENTS. *(Amendment will establish additional density bonuses and allow for PUD projects to be considered for up to 27 units per acre if the project meets established design criteria.)*

THE ISSUE:

Modify existing Planned Unit Development density provisions to allow for developers to apply obtaining density bonuses with a rezoning through Council for up to 27 units per acre.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 1 – Encourage Economic Growth

Goal 2 – Promote and accelerate revitalization of targeted areas throughout the city.

BACKGROUND:

This is a privately sponsored zoning ordinance text amendment to amend the Planned Unit Development provisions in Article 13 and include density bonuses if projects meet certain desired development criteria. The provisions are fashioned similar to the density bonus provisions available for multifamily development in the B-1 (Central Business) district, mainly situated in Old Town.

The amendment would allow for a developer when requesting a rezoning for Planned Unit Development Overlay to include within their proposal a request for the density bonuses. Only the highest quality and most desirable projects that are consistent with the bonus standards should be considered for density bonuses. Council would retain discretion of whether such bonuses should be granted during the rezoning process as part of the project's evaluation of potential traffic and fiscal impacts, consideration of the Comprehensive Plan, etc.

(Full staff report attached).

BUDGET IMPACT:

No funding is required.

OPTIONS:

- Adopt the text amendment
- Adopt the text amendment with modifications
- Decline to adopt the text amendment
-

RECOMMENDATIONS:

The Planning Commission recommended denial on a 5-1 vote.

AN ORDINANCE AMENDING SECTION 13-1-5 PUD OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO BONUS INCENTIVES TO INCREASE ALLOWABLE RESIDENTIAL DENSITY FOR PLANNED UNIT DEVELOPMENTS.

TA 15-323

Draft 2 – (07/20/15)

Ed. Note: The following text represents excerpts of the Zoning Ordinance that are subject to change. Words with strikethrough are proposed for repeal. Words that are boldfaced and underlined are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.

ARTICLE 13

PLANNED UNIT DEVELOPMENT

SECTION 13-1 PLANNED UNIT DEVELOPMENT DISTRICT - PUD

13-1-5 DENSITY. The density for a Planned Unit Development may be approved for up to eighteen (18) dwelling units per gross acre, except as provided for in Sections 13-1-5.1 through 13-1-5.7 below. In determining the density to be allowed, the following shall be considered: anticipated population density; amount and type of open space provided; impact of the proposed density on surrounding residential areas; and the adequacy of the public streets providing access to the proposed development. **Density bonuses may be granted by Council as part of the establishment of a PUD district when such bonuses are incorporated within a development agreement.** (3/11/09, Case TA-08-12, Ord. No. 2009-10; 5/10/11, Case TA-11-66, Ord. No. 2011-10)

13-1-5.1 DENSITY ADJUSTMENT BASED UPON LEED® **OR OTHER RECOGNIZED GREEN BUILDING PROGRAMS, INCLUDING, BUT NOT LIMITED TO, EARTHCRAFT** FOR HOMES CERTIFICATION.

Where dwelling units ~~are certified by the standards outlined in the United States Green Building Council LEED® for Homes program~~ **meet the classification of an energy-efficient building, as provided in Section 58.1-3221.2(B) or (C) of the Code of Virginia;** and, with each dwelling unit having no more than two (2) bedrooms, the following Density Adjustment may be applied: (3/11/09, Case TA-08-12, Ord. No. 2009-10)

<u>Level of Certification</u>	<u>Bonus Factor</u>
Certified	<u>Up to .15-20</u>
Silver	<u>Up to .25-30</u>
Gold	<u>Up to .35-40</u>
Platinum	<u>Up to .45-50</u>

13-1-5.2 DENSITY ADJUSTMENT BASED UPON ECONOMIC IMPACT.

The PUD district benefits from a vibrant and economically stable mix of retail, office, and residential uses. In order to achieve this, the following Density Adjustment may be applied:

<u>% of total floor area of site subject to the PUD district in nonresidential use</u>	<u>Bonus Factor</u>
<u>25%</u>	<u>Up to .15</u>
<u>50%</u>	<u>Up to .25</u>

13-1-5.3 DENSITY ADJUSTMENT BASED UPON RESIDENTIAL AMENITIES.

Where at least 5% of the resulting residential floor area in a multifamily project is committed to common amenities, as determined by the Planning Director, a Bonus Factor of up to .15 may be applied. Tenant storage space shall not constitute greater than 40% of the required 5% necessary to take advantage of the amenity bonus.

13-1-5.4 DENSITY ADJUSTMENT BASED UPON AVAILABILITY OF OFF-STREET PARKING.

Where at least 70% of provided off-street parking is offered in the form of an above ground or below ground structure, a Bonus Factor of up to .15 may be applied. Where at least 80% of provided off-street parking is offered in the form of an above or below ground structure, a Bonus Factor of up to .25 may be applied. Where at least 90% of provided off-street parking is offered in the form of an above ground or below ground structure, a Bonus Factor of up to .35 may be applied. Where 100% of provided off-street parking in the form of an above ground or below ground structure, a Bonus Factor of up to .45 may be applied.

13-1-5.5 DENSITY ADJUSTMENT BASED UPON ACCESSIBILITY.

Where all of the upper story dwelling units in a multifamily project are accessible by passenger elevator, a Bonus Factor of up to .15 may be applied.

13-1-5.6 DENSITY BASED UPON NEW URBANISM DESIGN PRINCIPLES WHICH IS NEAR AND/OR IS ORIENTED TOWARDS COLLEGE/UNIVERSITY/MEDICAL CAMPUSES.

Where a multifamily project is located within the distances provided in Section 18-6-3.1a of a HE-1 or MC zoned, a Bonus Factor of up to .20 may be applied.

13-1-5.7 DENSITY BASED UPON TRANSIT ORIENTED DEVELOPMENT.

Where a multifamily project is developed in a location that is within 300 feet of a City transit stop, within 300 feet of the Green Circle Trail, or within 300 feet of an extension provided within a MPO adopted plan a Bonus Factor of .20 may be applied.

13-1-5.8

Density Bonuses may be cumulative, however, notwithstanding what is stated in Sections 13-1-5.1 through 13-1-5.7 above, the maximum Bonus Factor which can be applied shall not exceed one hundred fifty percent (150%) of the base density allowed with a PUD overlay zoning.

City Council
July 28, 2015

TA-15-323 AN ORDINANCE AMENDING SECTION 13-1-5 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO BONUS INCENTIVES TO INCREASE ALLOWABLE RESIDENTIAL DENSITY FOR PLANNED UNIT DEVELOPMENTS. (*Amendment will establish additional density bonuses and allow for PUD projects to be considered for up to 27 units per acre.*)

REQUEST DESCRIPTION

This is a privately sponsored zoning ordinance text amendment to amend the Planned Unit Development provisions in Article 13 and include density bonuses if projects meet certain desired development criteria. The provisions are fashioned similar to the density bonus provisions available for multifamily development in the B-1 (Central Business) district, mainly situated in Old Town.

The amendment would allow for a developer when requesting a rezoning for Planned Unit Development Overlay to include within their proposal a request for the density bonuses. Only the highest quality and most desirable projects that are consistent with the bonus standards should be considered for density bonuses. Council would retain discretion of whether such bonuses should be granted during the rezoning process as part of the project's evaluation of potential traffic and fiscal impacts, consideration of the Comprehensive Plan, etc.

The proposal includes bonuses that could potential increase the density up to 150% of the maximum density of the PUD district. The existing ordinance language allows for a maximum of up to eighteen (18) dwelling units per acre, and this proposal would allow for certain projects to go up to twenty-seven (27) dwelling units per acre. The PUD density standards were amended in 2011 to change the maximum density from 10 units up to 18 units per acre and to allow up to 55% nonresidential use where it was previously capped at 5% of the development.

In the application materials, the applicant contends that these opportunities to earn additional density bonuses in the PUD district for multifamily projects will lead to an increase in student and young professionals housing for the various areas of Winchester, specifically including around Shenandoah University.

The current proposal, dated July 20, 2015, is the result of many discussions back and forth between the applicant and staff. There are several additional charts and tables at the end of this staff report to help illustrate the proposal.

- 1) Chart "A" included in your packet illustrates the standards that were originally proposed at the time of submittal compared to the standards and bonuses that are in Draft 2 for your consideration today.
- 2) Chart "B" analyzes the current updated proposal and includes staff recommendations for the standards and bonuses.
- 3) Table "C" provides an example calculation of how a developer may attempt to achieve maximum residential density.
- 4) Diagram "D" is the existing illustration in the Zoning Ordinance pertaining to off-street parking, that is referenced in the proximity threshold for developments in proximity to the HE-1 and MC zoning districts (Section 13-1-5.6)

STAFF COMMENTS

After several discussions and revisions to the proposal, the applicant has modified the bonuses from the original proposal to reflect qualities of a development that are desirable from the New Urbanism design perspective and qualities mentioned in the Comprehensive Plan. The bonuses are cumulative; however, they are capped at a maximum of 150% (.50 bonus factor) of the density of the PUD district, which amounts to a maximum of 27 dwelling units per acre.

The proposed bonuses include, green building construction (such as LEED and EarthCraft), economic impact, dedication of residential amenities, availability of off-street parking, accessibility, proximity to college/medical campus, and transit oriented development.

Overall, staff believes the ordinance amendment has come a long way from the original submittal to be in a form that is more appropriate for consideration, compared to the original submittal. If this amendment is to be adopted, the goal should be for only the highest quality and most desirable projects should be eligible for the maximum density. To achieve this any qualifying project should need to utilize at least 3-4 of the bonus factor areas in order to reach the maximum possible density. This will help incentivize developers to utilize several facets of construction and design that the City has determined as desirable, both in the Zoning Ordinance and the Comprehensive Plan.

With the latest draft of the ordinance amendment, dated July 20, 2015, there are still a few areas where staff has concerns. Most of the concerns are with the bonus factor levels being proposed; staff believes they are too high. Additionally, two of the standards themselves, we believe should be modified. The staff recommended alterations to the ordinance are included in Chart "B."

If this ordinance amendment is adopted, there will not be an immediate impact on the already approved PUD rezonings and development plans approved by Council, specifically pertaining to their allowable density on site. In order for existing projects to qualify for the proposed density bonuses, City Council would need to approve a revision to the development plan and zoning overlay and evaluate the proposal on the specific merits and evaluate potential impacts of the proposal and consistency with the Comprehensive Plan.

RECOMMENDATION

Staff does not recommend favorable action on the ordinance amendment as currently proposed. Some of the bonus category standards should be revised for additional clarity and numerous bonus factors should be lowered to better reflect the intent of this ordinance. However, if Council is comfortable with the recommendations provided by staff, we believe a revised version of this ordinance that incorporates staff's recommendations is consistent with good planning practice and the Comprehensive Plan and should be adopted.

During their discussion at the public hearing on June 21st, the Planning Commission had mixed opinions about the proposed amendment. Some members felt that it was beneficial to have specific outlined goals and standards included in the ordinance for qualifying project to aim for when attempting to achieve higher density. However, a majority of the members were not supportive of the amendment, as proposed, due to a couple factors: the proposed density bonuses were too high and should be more in line with staff's recommendations, and a couple members felt that the proposed bonuses were already implied within the ordinance and this proposal would provide additional bonuses for redundant considerations.

At their June 21st meeting, the Planning Commission forwarded **TA-15-323** on a 5-1 vote recommending denial because the amendment as proposed provides for additional residential densities that are not consistent with good planning practice, and is inconsistent with the Comprehensive Plan.

CHART A – Comparison of Original Proposed Standards/Bonuses vs. Current Proposed Standards/Bonuses

<u>Category</u>	<u>Original Standard</u>	<u>Original Bonus</u>	<u>Current Proposed Standard</u>	<u>Current Proposed Bonus</u>
LEED, EarthCraft, and other Green Building certifications as provided in the Code of Virginia.	Tiered LEED certification bonus	Certified .20 Silver .30 Gold .40 Platinum .50	Tiered bonuses based upon certification level of green building program.	Certified .15 Silver .25 Gold .35 Platinum .45
Economic Impact	25% total floor area is nonresidential	.25 bonus	25% of total floor area is nonresidential	.15 bonus
	50% of total floor area is nonresidential	.50 bonus	50% of total floor area is nonresidential	.25 bonus
	75% of total floor area is nonresidential	.75 bonus		
Residential Amenities	At least 5% of resulting residential floor area in multifamily project is committed to common amenities	.20 bonus	At least 5% of resulting residential floor area in multifamily project is committed to common amenities	.15 bonus
Off-Street Parking Structure	Where off-street parking is offered for multifamily project.	___ bonus	Where off-street parking is offered in the form of an above ground or below ground structure.	70% in structure .15 80% in structure .25 90% in structure .35 100% in structure .45
	If off-street parking is provided in above ground or below ground structure.	___ bonus	Tiered system of bonuses depending on % of off-street parking provided in structure.	
Accessibility	Where at least 70% of the upper story dwelling units are accessible by passenger elevator.	.20 bonus	Where all of the upper story dwelling units in a multifamily project are accessible by passenger elevator.	.15 bonus

CHART A – Comparison of Original Proposed Standards/Bonuses vs. Current Proposed Standards/Bonuses

<u>Category</u>	<u>Original Standard</u>	<u>Original Bonus</u>	<u>Current Proposed Standard</u>	<u>Current Proposed Bonus</u>
Use of New Urbanism and proximity to college/university/medical campus	Where a multifamily project is developed using quality design principles of New Urbanism in higher density housing areas, is oriented to students and possibly includes some mixed uses.	.50 bonus	Where a multifamily project is located within the distances provided in Section 18-6-3.1a of HE-1 or MC zoned parcel.	.20 bonus
Transit Oriented Development	<i>Not included</i>	<i>Not included</i>	Where a multifamily project is developed in a location that is within 300 feet of a City transit stop, within 300 feet of the Green Circle Trail, or within 300 feet of an extension provided within a MPO adopted plan.	.20 bonus

CHART B – Comparison of Current Proposed Standards/Bonuses vs. Staff’s Recommended Standards/Bonuses

<u>Category</u>	<u>Standard (Applicant)</u>	<u>Standard - Staff Recommendation</u>	<u>Proposed Bonus (Applicant)</u>	<u>Bonus - Staff Recommendation</u>
LEED, EarthCraft, and other Green Building certifications as provided in the Code of Virginia.	Tiered bonuses based upon certification level of green building program.	Add a catchall provision that allows certifications without tiered levels to have a set bonus factor.	Certified .15 Silver .25 Gold .35 Platinum .45	Certified .10 Silver .15 Gold .20 Platinum .25 Others .15
Economic Impact	25% of total floor area is nonresidential 50% of total floor area is nonresidential	Staff agrees with proposal.	.15 bonus .25 bonus	.15 bonus .25 bonus
Residential Amenities	At least 5% of resulting residential floor area in multifamily project is committed to common amenities	Staff agrees with proposal.	.15 bonus	.15 bonus
Off-Street Parking Structure	Where off-street parking is offered in the form of an above ground or below ground structure. Tiered system of bonuses depending on % of off-street parking provided in structure.	Staff agrees with proposal.	70% in structure .15 80% in structure .25 90% in structure .35 100% in structure .45	70% in structure .10 80% in structure .15 90% in structure .20 100% in structure .25
Accessibility	Where all of the upper story dwelling units in a multifamily project are accessible by passenger elevator.	Where all of the upper story dwelling units in a multifamily project are accessible by passenger elevator. Where 100% of ground floor dwelling units incorporate universal design.	.15 bonus	.05 bonus .05 bonus

CHART B – Comparison of Current Proposed Standards/Bonuses vs. Staff’s Recommended Standards/Bonuses

<u>Category</u>	<u>Standard (Applicant)</u>	<u>Standard - Staff Recommendation</u>	<u>Proposed Bonus (Applicant)</u>	<u>Bonus - Staff Recommendation</u>
Use of New Urbanism and proximity to college/university/medical campus	Where a multifamily project is located within the distances provided in Section 18-6-3.1a of HE-1 or MC zoned parcel.	Staff agrees with proposal.	.20 bonus	.15 bonus
Transit Oriented Development	Where a multifamily project is developed in a location that is within 300 feet of a City transit stop, within 300 feet of the Green Circle Trail, or within 300 feet of an extension provided within a MPO adopted plan.	Staff agrees with proposal.	.20 bonus	.15 bonus
<p>** Both the applicant and staff agree that proposed bonuses should be <u>up to</u> the provided level. **</p> <p>** Highlighted areas indicate recommended additions/changes by staff **</p>				

Table C – Maximum Density Calculation Examples

Using Applicant Proposed Bonuses		Using Staff’s Recommended Bonuses	
Example: 5 acres of land (PUD minimum)		Example: 5 acres of land (PUD minimum)	
5 acres x 18 (max base units / acre) = 90 residential units		5 acres x 18 (max base units / acre) = 90 residential units	
<ul style="list-style-type: none"> • Use of EarthCraft Construction (Certified Level) • 90% of parking provided in parking structure 	.15 bonus .35 bonus	<ul style="list-style-type: none"> • Use of EarthCraft Construction (Certified Level) • 90% of parking provided in parking structure • 25% of total floor area is nonresidential • 100% of upper units accessible by elevator 	.10 bonus .20 bonus .15 bonus .05 bonus
<ul style="list-style-type: none"> • Cumulative bonus 	.50 (.50 maximum bonus)	<ul style="list-style-type: none"> • Cumulative bonus 	.50 (.50 maximum bonus)
Bonus density = 90 units x .50 bonus = 45 bonus units		Bonus density = 90 units x .50 bonus = 45 bonus units	
Total density = base density + bonus density		Total density = base density + bonus density	
Total density = 90 units (base) + 45 units (bonus) = 135 total units (27 per acre)		Total density = 90 units (base) + 45 units (bonus) = 135 total units (27 per acre)	

This table illustrates staff’s recommendation that the ordinance, if approved, should be designed to incentivize the utilization of 3-4 bonus categories. By incorporating a higher number of the bonus areas, the developer can demonstrate intent to bring forward a project that is of the highest quality design and desirability and meets goals specified in the Comprehensive Plan.

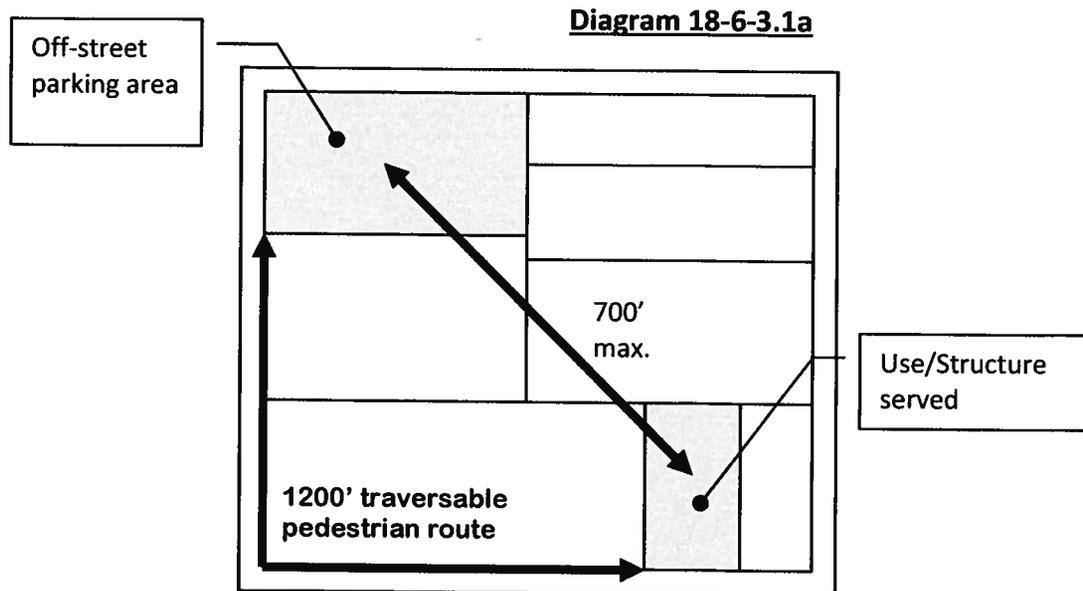
As noted in the left table, under the current proposed ordinance, it is possible to get to the maximum density bonus (.50) using only 2 categories. Staff recommendations, as illustrated in the rightmost table, would require that 3-4 categories be utilized to be eligible for the maximum density bonus.

Diagram D – Reference to Section 18-6-3.1a of the Zoning Ordinance

18-6-3.1

Location of Off-Street Parking Areas. The off-street parking areas required by this Article shall be located on the same lot or parcel of land that they are intended to serve, except as follows: (1/12/93, Case TA-92-03, Ord. No. 001-93; 10/13/09, Case TA-09-89, Ord. No. 2009-27)

- a. Off-site spaces shall be within 700 feet of the use or structure served. For the purpose of this requirement, distance from parking spaces to the use or structure served shall be measured in a straight line from the nearest parking space to the use served. However, no space shall be more than 1,200 feet away from the use or structure served as measured along a traversable pedestrian route. *See diagram 18-6-3.1a.*



LAWSON AND SILEK, P.L.C.

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THOMAS MOORE LAWSON • TLAWSON@LSPLC.COM

July 20, 2015

Timothy Youmans, Planning Director
Aaron M. Grisdale, CZA, Director of Zoning and Inspections
Josh Crump, Planner
City of Winchester
Rouss City Hall
15 North Cameron Street
Winchester, VA 22601

Re: JDC Winchester LLC -
Ordinance Amendment Application
Our File No. 835.001

VIA E-MAIL

Dear Gentlemen:

This is a follow-up to my telephone conversation of last week with Aaron regarding the text revisions that you sent to me on July 10th.

First, my general comment is that reducing the density bonuses generally is not problematic if an applicant is still able to request, giving the Council the opportunity, if they so choose to grant, a density bonus that is 150% of the existing 18 units per acre. Also in keeping in the category of general comments, however, I do think that revising the text to allow for enhanced density bonuses within the various categories is a good idea. As one Planning Commissioner put it so well, I believe that it is a good idea to incentivize a developer to give more in order for the City Council to consider, and if they so choose to grant, more in terms of density bonuses. With these general comments I provide you comments to the specific sections.

Paragraph 13-1-5.1: I believe that there ought to be enhanced bonus factors as an applicant demonstrates that it moves up (gives more) the level of certification for green building programs. It is interesting to me that both LEED and Earthcraft both use the same certification levels. If there is concern about using certain terms in this ordinance where another energy efficient group may use different terms I would simply add language to the text that confirms that the intent of this ordinance is to grant density bonuses as an applicant demonstrates that it has delivered more energy efficient improvements (certifications) to its development.

Paragraph 13-1-5.4: I would revise this section again on a graduated level to incentivize a

Timothy Youmans, Planning Director, et al.
July 20, 2015
Page 2

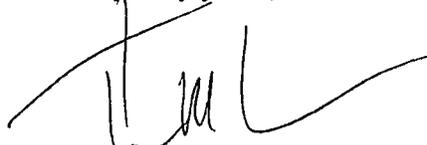
developer. This is to say that there ought to be an increase in density bonuses for every 10% increase up to a maximum of 100% of offstreet parking provided. I would suggest that a table be added to this section so that if there is 70% offstreet parking then Council could award a 0.15 density bonus. If there is an 80%, 90%, 100% offstreet parking provided then the density bonus should also be increased by a graduated amount. By way of suggestion, 0.20, 0.25 and 0.30 should be considered.

Paragraphs 13-1-5.5 and 13-1-5.6: I believe that the bonus for accessibility is for some reason low with a point 0.05. I do know that providing elevators to multi-family has been an important issue for Council, and I would therefore suggest that it ought to at least be provided with a density bonus of 0.15. Once again with Paragraph 13-1-5.6, I believe that this is for some reason very low. It would seem to me that locating multi-family within a certain acceptable distance of either a campus and/or mass transit or Green Circle is a very important factor for Council that ought to be properly incentivized. I would therefore suggest that that be at least a 0.20 density bonus.

Thank you for the opportunity to work together on this text amendment. I do believe that this revised ordinance is a valuable tool that will give future Councils the opportunity to incentivize certain desirable development. Of course, at the end of the day, all this text amendment does is provide an opportunity for Council. If they choose not to do it and not to grant the bonus then they would certainly be well within their rights. By granting this text amendment, there is no by right benefit being granted to any property owner.

I look forward to tomorrow afternoon's hearing for the Planning Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Moore Lawson', written over a horizontal line.

Thomas Moore Lawson

TML:jk
cc: JDC Winchester LLC

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: August 11, 2015 **CUT OFF DATE:** ___

RESOLUTION X **ORDINANCE** **PUBLIC HEARING**

ITEM TITLE:

A RESOLUTION TO AUTHORIZE THE EXTENSION OF THE GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND ("GOF") PERFORMANCE AGREEMENT BETWEEN THE CITY OF WINCHESTER, VIRGINIA, AND RUBBERMAID COMMERCIAL PRODUCTS LLC, AND THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER TO JUNE 30, 2016

STAFF RECOMMENDATION:

Proceed with Resolution approval.

PUBLIC NOTICE AND HEARING:

None required.

ADVISORY BOARD RECOMMENDATION:

No advisory board recommendation is required.

FUNDING DATA:

\$400,000 still required to be dispersed per GOF agreement if targets are met.

INSURANCE:

N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

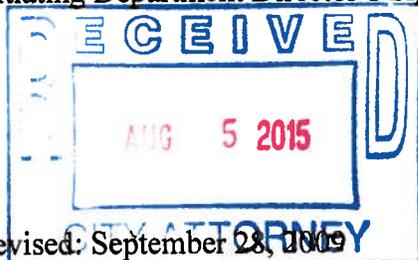
<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance _____	<i>B</i>	_____	<i>8-5-15</i>
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney _____	<i>[Signature]</i>	_____	<i>8/5/2015</i>
6. City Manager _____	<i>[Signature]</i>	_____	<i>8/6/15</i>
7. Clerk of Council _____	_____	_____	_____

Initiating Department Director's Signature: _____

[Signature]

8/5/15
Date

Economic Redevelopment Director



APPROVED AS TO FORM:

[Signature] *8/5/2015*
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Kimberly Murray, Economic Redevelopment Director
Date: August 11, 2015
Re: A Resolution to Authorize the Extension of the Governor's Development Opportunity Fund ("GOF") Performance Agreement Between the City of Winchester, Virginia, and Rubbermaid Commercial Products LLC, And the Economic Development Authority of the City of Winchester to June 30, 2016

THE ISSUE: Pursuant to the Performance Agreement attached, in exchange for the GOF Grant proceeds, Rubbermaid agreed to make a capital investment in the amount of \$58,251,104 and to create and maintain 71 new jobs paying an average annual wage of \$73,732 at its facilities within the City of Winchester by June 30, 2015. They have exceeded the capital investment amount by \$7,438,896 or 13% for a total of \$65,690,000 as of December 31, 2014, but have not created the new jobs required or met the net minimum required jobs of 15 new jobs paying an average annual wage of \$42,651. Rubbermaid reported the total capital expenditure between City and County investments to be \$90,980,680. They have asked the Virginia Economic Development Partnership (VEDP) and the Winchester City Council to grant an extension to June 30, 2016, to meet at least this minimum requirement of 15 jobs.

RELATIONSHIP TO STRATEGIC PLAN: Will assist in the City's desire to encourage sustainable economic growth and partnerships through business and workforce development.

BACKGROUND: The City Manager and Economic Redevelopment Director met with representatives from Newell Rubbermaid, including the local Director of Operations, and VEDP staff on July 9, 2015, to discuss their request, tour the facility, and understand the capital investments made to date as well as their workforce challenges including an explanation of their corporate restructure and the loss of management positions in Winchester in 2013. Attached is a letter dated July 24, 2015, from Mr. Arthur Garcia, representing Newell Rubbermaid Inc. to further explain recent restructuring efforts and growth since 2000 from 766,000 square feet supplying products to the US market to now Newell Rubbermaid has achieved a marketing and distribution center occupying 1,544,000 square feet forecasting to supply over \$1 billion in product to the global marketplace. In a letter dated July 13, 2015, from Ms. Katherine Hart, VEDP, they explain their position that with the City Council's approval, VEDP will extend the Performance Date to June 30, 2016. If Rubbermaid has failed to achieve the statutory minimum requirement for new jobs by June 30, 2016, the entire \$300,000 GOF Grant and the \$300,000 Locality Grant paid to date, must be repaid by the Company no later than September 30, 2016. If Rubbermaid has met the statutory minimum requirement for new jobs by June 30, 2016, the Company will repay only a portion of the GOF Grant allocated to new jobs based on the shortfall from 71 new jobs but the City will need to distribute the remaining Locality Grant funds (\$400,000) to Rubbermaid.

BUDGET IMPACT: The City paid \$300,000 of the \$700,000 Locality Grant plus the \$300,000 from the GOF Grant (State funds) in 2012. The GOF Agreement calls for an additional \$400,000 of the Locality Grant (City funds) due from the City to Rubbermaid Commercial

Products, LLC. totaling an investment by the City of Winchester of \$700,000 once the capital investment benchmarks are met. The City has not yet paid out the remainder of the approved City incentive. If however, the Company fails to meet the minimum number of jobs (15) by the extended date if granted, it shall constitute a breach of the Agreement and the entire amount of both Grants (the GOF and the Locality Grant) must be repaid.

OPTIONS: Council may approve the resolution to support extending the Performance Date to June 30, 2016, decline the resolution, or provide comments to the Virginia Economic Development Partnership if support is not given.

RECOMMENDATIONS: City Staff recommends the approval of the attached Resolution to support extending the Performance Date to June 30, 2016. With \$65,690,000 of capital investment made to date, as well as 214 temporary employees working full-time shifts not currently counted (60 of those positions Rubbermaid is working to transform to full-time permanent jobs this year,) it is an opportunity to continue to support the second largest employer in the City of Winchester, which currently employs 789 people.

**A RESOLUTION TO AUTHORIZE THE EXTENSION OF THE GOVERNOR'S
DEVELOPMENT OPPORTUNITY FUND ("GOF") PERFORMANCE
AGREEMENT BETWEEN THE CITY OF WINCHESTER, VIRGINIA, AND
RUBBERMAID COMMERCIAL PRODUCTS LLC, AND THE ECONOMIC
DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER TO JUNE 30,
2016**

WHEREAS, the Winchester Common Council desires to create a positive business environment and encourages sustainable economic growth and partnerships through business and workforce development;

WHEREAS, pursuant to the Governor's Development Opportunity Fund ("GOF") Performance Agreement between the City of Winchester, Virginia (the "City"), the Economic Development Authority of the City of Winchester (the "Authority"), and Rubbermaid Commercial Products LLC ("Rubbermaid" or the "Company"), dated May 9, 2012 (the "Performance Agreement"), the Commonwealth of Virginia made a \$300,000 GOF Grant to the City for the benefit of Rubbermaid;

WHEREAS, pursuant to the Performance Agreement, in exchange for the GOF Grant proceeds, Rubbermaid agreed to make Capital Investment in the amount of \$58,251,104 and to create and maintain 71 new jobs paying an average annual wage of \$73,732 at its facilities, all as of the June 30, 2015 Performance Date. The capitalized terms are defined in the Performance Agreement which is attached to this resolution signed in May 2012, titled Governor's Development Opportunity Fund - Winchester Performance Grant - Rubbermaid Performance Agreement;

WHEREAS, in the same agreement, the City of Winchester agreed to providing a Locality Grant in the amount of \$700,000 to be paid in three installments of which \$300,000 was dispersed in 2012 through the Authority as an inducement to the Company to achieve capital investment and job creation targets, and is contingent on the Company meeting capital investment expenditures of at least \$53,505,271 and meet the net minimum required jobs of 15 new jobs paying an average annual wage of \$42,651 to receive entire amount;

WHEREAS, Rubbermaid has indicated that the Company has made \$65,690,000 in capital investment within the City of Winchester, but that the Company has not created and maintained the requisite number of new jobs and Rubbermaid also has not achieved the statutory minimum requirement for a GOF Grant of 15 new jobs paying an average annual wage of \$42,651;

WHEREAS, based on the amount of capital investment and the Company's plans for continued growth, the Virginia Economic Development Partnership ("VEDP") would like to reach an accommodation with Rubbermaid that will provide the Company with more time to create and maintain new jobs and to achieve at least the statutory minimum requirement for a GOF Grant; and

WHEREAS, VEDP is willing to extend the Performance Date to June 30, 2016 and requests the Winchester Common Council's support for the extension.

NOW THEREFORE BE IT RESOLVED, that the Winchester Common Council

acknowledges the significant capital investment in the last three years and the lack of projected job growth and loss of jobs has resulted in failing to meet even the statutory minimum 15 jobs that is required of the Performance Agreement;

BE IT FURTHER RESOLVED, that the adoption of this Resolution shall allow additional time to meet the minimum 15 jobs and shall serve as approval of the City of Winchester's agreement to the extension of the Performance Date to June 30, 2016; and

BE IT FURTHER RESOLVED, that the City Manager or her designee is authorized to send written notice of support to the Authority and VEDP and provide oversight over the progress of Rubbermaid's compliance with the Performance Agreement minimum requirements over the next year.

GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND

WINCHESTER PERFORMANCE GRANT

RUBBERMAID PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this 9th day of May, 2012, by and among the **CITY OF WINCHESTER, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **RUBBERMAID COMMERCIAL PRODUCTS LLC** (the "Company"), a Delaware limited liability company authorized to transact business in the Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$300,000 from the Governor's Development Opportunity Fund (a "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to expand and improve a manufacturing facility in the Locality and to purchase and improve a logistics facility in the County of Frederick (the "County"), thereby making a significant Capital Investment, as hereinafter defined, and creating a significant number of New Jobs, as hereinafter defined;

WHEREAS, the Locality has elected to provide a grant to the Company in the amount of \$700,000 (the "Locality Grant") for the purpose of inducing the Company to expand and improve the manufacturing facility and to purchase and improve the logistics facility (together, the "Facilities"), thereby making a significant Capital Investment and creating a significant number of New Jobs;

WHEREAS, the Locality is willing to provide to the Authority the proceeds of the GOF Grant and funds necessary to make the Locality Grant (together, the "Grants"), with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company meets certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the Grants, the use of the proceeds of the Grants, the obligations of the Company regarding Capital Investment and New Job creation, and the repayment by the Company of all or part of the Grants under certain circumstances;

WHEREAS, the expansion, improvement, and operation of the manufacturing facility in the Locality and the purchase, improvement and operation of the logistics facility in the County, will entail a capital expenditure of approximately \$67,251,104, of which approximately \$53,505,271 will be invested in the Locality and \$13,745,833 will be invested in the County;

WHEREAS, the development and operation of the Facilities will further entail the creation of 71 New Jobs at the Facilities, of which approximately 66 will be created in the Locality and approximately 5 will be created in the County; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the Grants:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

“Capital Investment” means a capital expenditure by the Company on or after July 1, 2011, in taxable real property, taxable tangible personal property, or both, at the Facilities, excluding the purchase of land and existing real property improvements. The expected net capital expenditure of \$58,251,104, reflecting the aggregate expected capital expenditure of \$67,251,104 less the \$9,000,000 cost of the purchase of land and existing real property improvements, is referred to in this Agreement as the “Capital Investment.”

“Maintain” means that the New Jobs created pursuant to the Grants will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to temporary reductions in the Company’s employment levels in connection with recruitment for open positions or strikes and other work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facilities for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an average annual wage of at least \$73,732. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 1,027 full-time jobs at the manufacturing facility in the Locality as described in the letter from the Company to VEDP dated November 21, 2011.

“Performance Date” means June 30, 2015. If the Locality, in consultation with the Authority and VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Locality shall send written

notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

"Targets" means the Company's obligations to make Capital Investments at the Facilities of at least \$58,251,104 and to create and Maintain at least 71 New Jobs at the Facilities, all as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. Targets.

The Company will develop and operate the Facilities in the Locality and the County, make a Capital Investment of at least \$58,251,104, and create and Maintain at least 71 New Jobs at the Facilities, all as of the Performance Date. As noted in Section 5(c), any repayment that may be due with respect to the Locality Grant will be based upon the Company making a Capital Investment in the Locality (not including Capital Investment in the County) of at least \$53,505,271.

The average annual wage of the New Jobs of at least \$73,732 is more than the prevailing average annual wage in the Locality and the County of \$42,651 and \$38,533, respectively. The Locality is a high-unemployment locality, with an unemployment rate for 2010, which is the last year for which such data is available, of 7.2% as compared to the 2010 statewide unemployment rate of 6.9%. The Locality is a high-poverty locality, with a poverty rate for 2010, which is the last year for which such data is available, of 19.3% as compared to the 2010 statewide poverty rate of 11.1%. The County is a high-unemployment locality with an unemployment rate for 2010 of 7.0%.

Section 3. Disbursement of Grants.

(a) *GOF Grant:* The GOF Grant in the amount of \$300,000 will be paid to the Locality, upon its request. Within 30 days of its receipt of the GOF Grant proceeds, the Locality will disburse the GOF Grant proceeds to the Authority. Within 30 days of its receipt of the GOF Grant proceeds, the Authority will disburse the GOF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facilities. The Company will use the GOF Grant proceeds for construction or build-out of buildings, as permitted by Section 2.2-115(D) of the Virginia Code.

By no later than June 30, 2012, the Locality will request the disbursement to it of the GOF Grant. If not so requested by the Locality by June 30, 2012, this Agreement will terminate. The Locality and the Company will be entitled to reapply for a GOF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

(b) *Locality Grant:* The Locality Grant in the aggregate amount of \$700,000 will be paid by the Locality to the Authority in three installments. The first installment of \$300,000 will be paid at the same time as the proceeds of the GOF Grant are paid. The second installment of the

Locality Grant of \$200,000 will be paid when the Company has demonstrated to the Locality and the Authority that it has made Capital Investments of at least \$37,435,690 (which is 70% of the expected Capital Investment in the Locality of \$53,505,271). The third installment of the Locality Grant of \$200,000 will be paid when the Company has demonstrated to the Locality and the Authority that it has made Capital Investments of at least \$48,154,744 (which is 90% of the expected Capital Investment in the Locality of \$53,505,271). Within 30 days of its receipt of the Locality Grant proceeds, the Authority will disburse the Locality Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facilities. The Company may use the Locality Grant proceeds for any lawful purpose. The Locality, the Authority and the Company acknowledge and agree that the obligation to fund the Locality Grant is subject to future appropriation by the Locality’s City Council and by appropriate action by the Authority.

Section 4. Break-Even Point; State and Local Incentives.

VEDP has estimated that the Commonwealth will reach its “break-even point” by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facilities with the Commonwealth’s expenditures on incentives, including but not limited to the GOF Grant. With regard to the Facilities, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
GOF Grant	\$ 300,000
Virginia Investment Partnership (VIP) Grant	600,000
Virginia Jobs Investment Program (“VJIP”) (Estimated)	63,900
Virginia Jobs Investment Program Retraining (“VJIP”) (Estimated)	80,000
Transportation Partnership Opportunity Fund Grant (“TPOF”)	800,000

The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Locality Grant	\$ 700,000

The proceeds of the GOF Grant and the Locality Grant shall be used for the purposes described in Section 3. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The VIP Grant proceeds may be used by the Company for any lawful purpose.

Section 5. Repayment Obligation.

(a) *If Statutory Minimum Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$1,500,000 in the Facilities and create and Maintain at least 15 New Jobs at the Facilities in order to be eligible for the GOF Grant. Failure by the Company to meet either of these eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire amount of both Grants must be repaid by the Company to the Authority.

(b) *If Statutory Minimum Requirements are Met / GOF Grant:* For purposes of repayment, the GOF Grant is to be allocated as 50% (\$150,000) for the Company's Capital Investment Target and 50% (\$150,000) for its New Jobs Target. If the Company has met at least ninety percent (90%) of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the GOF Grant. If the Company has not met at least ninety percent (90%) of either or both of its Targets, the Company shall repay to the Authority that part of the GOF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, the Capital Investment is only \$46,600,883 and only 50 New Jobs have been created and Maintained, the Company shall repay to the Authority twenty percent (20%) of the moneys allocated to the Capital Investment Target (\$30,000) and thirty percent (30%) of the moneys allocated to the New Jobs Target (\$45,000).

(c) *If Statutory Minimum Requirements are Met / Locality Grant:* For purposes of repayment, the Locality Grant is to be allocated as 100% (\$700,000 for the Locality Grant -- or 100% of the installments paid, if less than \$700,000) for the Company's expected Capital Investment in the Locality of \$53,505,271. If the Company has met at least ninety percent (90%) of the expected Capital Investment in the Locality at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the Locality Grant. If the Company has not met at least ninety percent (90%) of the expected Capital Investment in the Locality, the Company shall repay to the Authority that part of the Locality Grant that is proportional to the shortfall. For example, if at the Performance Date, the Capital Investment in the Locality is only \$42,804,217, the Company shall repay to the Authority twenty percent (20%) of the Locality Grant (\$140,000 – or 20% of the installments paid, if less than \$700,000).

(d) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire amounts of the GOF Grant and the Locality Grant to the Authority. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facilities by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the Grants.

(e) *Repayment Dates:* ***Such repayment shall be due from the Company to the Authority within thirty days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality. Any such moneys related to the GOF Grant shall be repaid by the Locality promptly to VEDP for redeposit into the Governor's Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets, including a breakdown of the Capital Investments made in the Locality and in the County. Such progress reports will be provided annually, starting at September 1, 2012 and covering the period through the prior June 30, and at such other times as the Locality, the Authority or VEDP may reasonably require.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

Section 7. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

Rubbermaid Commercial Products LLC
3124 Valley Avenue
Winchester, Virginia 22610
Attention: Vice President, Finance

with a copy to:

Newell Rubbermaid Inc.
Legal Department
3 Glenlake Parkway
Atlanta, Georgia 30328
Attention: General Counsel

if to the Locality, to:

City of Winchester
Rouss City Hall
15 North Cameron St.
Winchester, Virginia 22601
Attention: City Manager

with a copy to:

City of Winchester
Rouss City Hall
15 North Cameron St.
Winchester, Virginia 22601
Attention: City Attorney

if to the Authority, to:

Economic Development Authority
of the City of Winchester
Rouss City Hall
15 North Cameron St.
Winchester, VA. 22601

with a copy to:

City of Winchester
Rouss City Hall
15 North Cameron St.
Winchester, Virginia 22601
Attention: Director of Economic

Attention: Chair

Redevelopment

if to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Attention: President and CEO

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Attention: General Counsel

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the Grants and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Winchester, and such litigation shall be brought only in such court.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

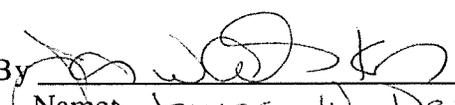
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IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

CITY OF WINCHESTER, VIRGINIA

By 
Name: Dale Iman
Title: City Manager
Date: 5-11-17

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF
WINCHESTER**

By 
Name: James W. Deskins
Title: Executive Director
Date: 5/10/12

**RUBBERMAID COMMERCIAL
PRODUCTS LLC**

By _____
Name: _____
Title: _____
Date: _____

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

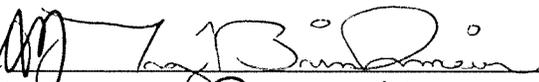
CITY OF WINCHESTER, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF
WINCHESTER**

By _____
Name: _____
Title: _____
Date: _____

**RUBBERMAID COMMERCIAL
PRODUCTS LLC**

By  _____
Name: Troy Brinkmeyer
Title: Assistant Treasurer
Date: May 14, 2012



Arthur Garcia

Newell Rubbermaid Inc.
29 East Stephenson Street
Freeport, IL 61032

July 24, 2015

VIA FEDERAL EXPRESS

Kimberly L. Murray, AICP
Economic Redevelopment Director
City of Winchester
33 East Boscawen Street, Suite 101
Winchester, Virginia 22601

Re: *Governor's Development Opportunity Fund Performance Agreement*

Dear Ms. Murray:

I write on behalf of Rubbermaid Commercial Products, LLC regarding the Governor's Development Opportunity Fund Performance Agreement dated May 9, 2012, between the City of Winchester, the Economic Development Authority of the City of Winchester and Rubbermaid (the "Performance Agreement"). I believe you received a letter dated July 13, 2015, from the Virginia Economic Development Partnership requesting the City's concurrence with extending the Performance Agreement Performance Date to June 30, 2016. Set forth below is additional and supporting information I ask that the City consider while reviewing the request for an extension.

In the year 2000, the financial performance of Newell Rubbermaid Inc. (the "Company"), the parent of Rubbermaid, was well below the Company's forecasts and expectations. The Company's stock price fell below half of its historical high, and the adverse impact of global competition in the Company's markets was becoming evident. It quickly became apparent that in order for the Company to survive, let alone prosper, a number of restructuring measures would need to be taken. The Board changed the company's senior management and embarked on a series of restructurings that would ultimately cost the Company well over a billion dollars.

The Company's early restructuring efforts focused on redeploying supply chain assets to more competitively serve the global marketplace. These efforts resulted, in part, in the downsizing of certain production in the United States. Late in the first decade, the Company began planning to expand manufacturing facilities in the United States that were seen as globally competitive producers of product. The Winchester facility met these criteria and was viewed as a strategic growth opportunity in the Company's plans. The Company targeted the Winchester plant for expansion.

In 2011, the Company approached the Commonwealth seeking opportunities to partner in developing a state of the art manufacturing hub in Winchester. The Company envisioned

making Winchester an anchor facility for Rubbermaid manufacturing and distribution. The Commonwealth and the Development Authorities in the City and County were amenable. The parties negotiated and signed the Performance Agreement in 2011 and 2012.

In the Performance Agreement, Rubbermaid pledged to increase full time permanent positions by 71 jobs. Rubbermaid reported that 1,027 positions were located in Virginia. The Company now believes there were two issues with employment numbers that were used to establish this baseline figure. First, the number contained 90 sales positions for employees that were associated with Winchester in certain employee databases but actually dispersed throughout the United States. Second, of the remaining 937 positions, 139 were temporary employees that worked full shifts. Neither of these groups should have been counted in the baseline number. Thus, the appropriate baseline employment number was 798 full time permanent employees.

The Performance Agreement also requires that the salaries for the 71 new jobs average approximately \$73,000. This amount far exceeds the average salary typically associated with a manufacturing center and requires some explanation. In the year 2000, the Company's individual businesses essentially operated as self-contained silos, with the business's management housed at the principal manufacturing site of each business. The subsequent restructurings involved aggregating management of many of the businesses in the Company's World Headquarters in Atlanta. There were also group management hubs in Charlotte, North Carolina and Oakbrook, Illinois. In 2011, when Rubbermaid was negotiating the Performance Agreement, the Company did not intend to move Rubbermaid's management from Winchester. Therefore, business management positions were included in the baseline jobs figure. This is why the average salary in the Performance Agreement is well above the average of a typical manufacturing center.

In and after the year 2011, a third senior management change was made at the Company. The new chief executive officer continued with the Company's restructuring efforts, but at a higher amplitude. One result of the CEO's renewed emphasis on structural efficiency was to shift the individual business's operating structures. The new structure focused on building and maintaining centers of manufacturing excellence separate and apart from management of the businesses. As a consequence, in December of 2013 it was announced that Rubbermaid's business management would relocate to Charlotte, North Carolina, with Winchester becoming a global center of manufacturing excellence.

In the Performance Agreement, Rubbermaid also pledged to spend capital in the amount of approximately \$67,000,000. As a manufacturing center of excellence, the Winchester facilities have been repeatedly expanded and modernized. Rubbermaid has spent over \$90,000,000 of new capital on the facilities in the past three years alone – far exceeding the capital expenditure targets set forth in the Performance Agreement. Rubbermaid has also brought an entirely new line of products into the plant with attendant expansion of the distribution facility. In 2000, Winchester was a single plant of 766,000 square feet supplying strategically targeted products predominantly to the United States market. Presently, Winchester is a manufacturing and distribution center of excellence, occupying 1,544,000 square feet and is forecast to supply over \$1 billion in product to the global marketplace.

Rubbermaid is proud of the capital investments it has made in Winchester. Nevertheless, at present the number of full time permanent positions at 789 does not comply with the requirements of the Agreement. The average salary of \$53,515 is more closely aligned with a manufacturing center, although well above the statutory requirement of \$42,051 in the City and \$38,533 in the County.

The Company is confident that with additional time, employment will reach a minimum of 813 full time permanent positions as required in the Performance Agreement. As of the date of this letter, there are 214 temporary employees that work full shifts in the facilities. There are outstanding open position requests that are set to transform 60 of these positions to full time permanent jobs. This figure is well in excess of the 24 positions needed to meet the agreement's minimum requirements. Filling Rubbermaid's open positions has taken longer than anticipated as unemployment is at a five-year low in Winchester. Rubbermaid intends to do what is required to fill at a minimum 24 of these outstanding requisitions by June 30, 2016, and strives to do so much sooner.

Rubbermaid is pleased to be a significant and growing part of the Winchester Community, and asks that you provide your agreement to the proposed extension as requested in Katharine Hart's letter dated July 13, 2015. I, along with other Company representatives, will be in attendance at the Council meeting on August 11 to answer any questions the Council may have.

I look forward to seeing you at the meeting and thank you in advance for your time and consideration.

Sincerely,



Arthur C. Garcia, Jr.

cc: Ms. Katherine Hart (*via email*)
Mr. Mark W. Johnson (*via email*)
Mr. Dale L. Matschullat (*via email*)

July 13, 2015

Kimberly L. Murray, AICP
Economic Redevelopment Director
City of Winchester
33 East Boscawen Street, Suite 101
Winchester, VA 22601

RE: Governor's Development Opportunity Fund Performance Agreement among the City of Winchester, Virginia, Rubbermaid Commercial Products LLC, and the Economic Development Authority of the City of Winchester

Dear Ms. Murray:

Pursuant to the Governor's Development Opportunity Fund ("GOF") Performance Agreement among the City of Winchester, Virginia (the "City"), the Economic Development Authority of the City of Winchester (the "Authority"), and Rubbermaid Commercial Products LLC ("Rubbermaid" or the "Company"), dated May 9, 2012 (the "Performance Agreement"), the Commonwealth of Virginia made a \$300,000 GOF Grant to the City for the benefit of Rubbermaid.

Pursuant to the Performance Agreement, in exchange for the GOF Grant proceeds, Rubbermaid agreed to make Capital Investment in the amount of \$58,251,104 and to create and Maintain 71 New Jobs paying an average annual wage of \$73,732 at its Facilities, all as of the June 30, 2015 Performance Date. The capitalized terms are defined in the Performance Agreement.

Rubbermaid has indicated that the Company has made \$90,980,680 in Capital Investment, but that the Company has not created and Maintained the requisite number of New Jobs. Rubbermaid also has not achieved the statutory minimum requirement for a GOF Grant of 15 New Jobs paying an average annual wage of \$42,651 in the City and \$38,533 in the County of Frederick, Virginia.

Based on the amount of Capital Investment and the Company's plans for continued growth, the Virginia Economic Development Partnership ("VEDP") would like to reach an accommodation with Rubbermaid that will provide the Company with more time to create and Maintain New Jobs and to achieve at least the statutory minimum requirement for a GOF Grant.

VEDP is willing to extend the Performance Date to June 30, 2016.

If Rubbermaid has failed to achieve the statutory minimum requirement for New Jobs by June 30, 2016, the entire \$300,000 GOF Grant must be repaid by the Company no later than

Kimberly L. Murray
July 15, 2015
Page 2

September 30, 2016. If Rubbermaid has met the statutory minimum requirement for New Jobs by June 30, 2016, the Company will repay a portion of the GOF Grant allocated to New Jobs based on the shortfall from 71 New Jobs. The repayment amount will be calculated in the manner described in Section 4(b) of the Performance Agreement and must be made no later than September 30, 2016.

If the City is in agreement with an extension of the Performance Date to June 30, 2016, in accordance with the Performance Agreement, please send written notice to the Authority, the Company, and VEDP.

This letter relates solely to the GOF Grant and not to any other grant made to Rubbermaid by VEDP or any other governmental entity.

Sincerely,

A handwritten signature in blue ink that reads "Katharine A. Hart". The signature is written in a cursive style.

Katharine A. Hart
Assistant General Counsel

cc: Dale L. Matschullat
Arthur C. Garcia, Jr.
Mark W. Johnson