PLANNING COMMISSION
AGENDA
April 15, 2014 - 3:00 PM
Council Chambers - Rouss City Hall

1. **POINTS OF ORDER**
   A. Roll Call
   B. Approval of Minutes – March 18, 2014 regular meeting
   C. Correspondence
   D. Citizen Comments
   E. Report of Frederick Co Planning Commission Liaison

2. **PUBLIC HEARINGS**

   A. **TA-14-120** AN ORDINANCE TO AMEND ARTICLES 1 AND 13 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITION OF MEDICAL CARE FACILITY AND PERMITTED USES IN THE PLANNED COMMERCIAL (PC) DISTRICT **(Mr. Grisdale)**

   B. **CU-14-143** Request of Ryan Hoover dba Vintage Bavarian LLC for a conditional use permit for auto service use at 24-26 West Hart Street *(Map Number 212-01-M-2)* zoned Central Business (B-1) District. **(Mr. Moore)**

   C. **CU-14-166** Request of Oakcrest Properties for a conditional use permit for a two family dwelling at 314 South Kent Street *(Map Number 193-01-T-3)* zoned Limited High Density Residential (HR-1) District with Historic Winchester (HW) District overlay. **(Mr. Moore)**

   D. **TA-14-118** AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 6, 7, 8, 9, 10, 13, 15.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS, PERMITTED USES, AND USES REQUIRING A CONDITIONAL USE PERMIT FOR ALTERNATIVE FINANCIAL INSTITUTIONS **(Mr. Grisdale)**

3. **OLD BUSINESS**

   A. **RZ-14-35** AN ORDINANCE TO REZONE 2.57 ACRES OF LAND AT 1570 COMMERCE STREET *(Map Number 252-01-2)* FROM COMMERCIAL INDUSTRIAL (CM-1) DISTRICT TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY. **(Mr. Youmans)**

4. **NEW BUSINESS**

   A. Resolution to initiate: **SA-14-199** AN ORDINANCE AMENDING SECTIONS 6-5 AND 6-6 OF THE WINCHESTER LAND SUBDIVISION ORDINANCE PERTAINING TO APPROVAL OF MINOR SUBDIVISIONS **(Mr. Youmans)**

   B. Administrative Approval(s) **(Mr. Moore):**
      1) **SP-14-194** 234 Weems Ln The Gas Store Greywolfe, Inc.

5. **ADJOURN**

TA-14-120 AN ORDINANCE TO AMEND ARTICLES 1 AND 13 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITION OF MEDICAL CARE FACILITY AND PERMITTED USE IN THE PLANNED COMMERCIAL (PC) DISTRICT

REQUEST DESCRIPTION
This request is a privately sponsored text amendment pertaining to the definition and proposed use of *Medical Care Facility* within Articles 1 and 13 of the Zoning Ordinance.

STAFF COMMENTS
The current Zoning Ordinance provisions for the Planned Commercial (PC) district allow for *Professional Offices,* which include doctor's offices and related accessory and incidental uses. However, moderately more involved medical uses including outpatient surgical centers were determined to not be a permitted use within the PC district. As a result the applicant desired to submit a privately sponsored zoning text amendment application to modify the Zoning Ordinance to define and allow for such uses within the PC district.

The applicant submitted a matrix detailing how several other localities in Virginia define and treat comparable outpatient surgical center uses. Many other jurisdictions have a intermediate definition that falls between professional offices/medical offices and hospital uses, which staff believes is the general area that the applicant is proposing to define and allow for use in the instant case. Presently, outpatient surgical uses are permitted by-right within the Health Services (HS) and Medical Center (MC) districts, but are not permitted in other commercial districts where *Professional Offices* are permitted (such as PC, B-2, B-1, and CM-1 districts). The proposed definition of *Medical Care Facility* closely mirrors similar definitions for Loudoun County, Fairfax County, and the City of Alexandria.

The Director of Zoning and Inspections and the Planning Director have reviewed the application and believe that the proposal presents good planning practice and could be considered a potential by-right use within the PC district. The Zoning Ordinance would be positively served by adding the proposed definition and use provisions by providing for clearer definitions pertaining to medical uses.

RECOMMENDATION
A favorable motion could read
MOVE that the Planning Commission forward **TA-14-120** as identified in "Draft 2 – 3/28/14" with a favorable recommendation because the amendment, as proposed, presents good planning practice by providing for clearer standards for potential medical uses, as well as providing for expanded opportunities for medical services within the City.
-OR-
An unfavorable motion could read
MOVE that the Planning Commission forward **TA-14-120** with a unfavorable recommendation because the amendment, as proposed, does not present good planning practice because:

1. (List reasons for unfavorable recommendation)

LITTLEJOHN ENGINEERING ASSOCIATES

February 28, 2014

Mr. Aaron Grisdale, Director of Zoning & Inspections
City of Winchester, Planning & Zoning Department
Rouss City Hall
15 North Cameron Street, Suite 318
Winchester, VA 22601

RE: Text Amendment Request

Dear Mr. Grisdale,

Please consider the attached package as a formal submittal for a Zoning Ordinance Text Amendment. From a recent zoning determination request, it is our understanding that the current zoning ordinance does not allow for outpatient surgical hospitals or ambulatory surgery centers within the Planned Commercial (PC) District.

Winchester and the immediate surrounding community have long been served by Valley Health (VH), and more specifically Winchester Medical Center (WMC). The overwhelming issue that has impacted physicians and patients alike is that the community has no alternative for medical care. Like any other business or industry, choice to consumers (or patients and physicians), or competition can and should drive a market to offer the highest quality product or service, at the lowest possible cost.

Previously, VH and WMC operated an ambulatory surgery center (WASC), which physicians utilized for appropriate outpatient surgical procedures. Even though WASC was still owned and run by VH, by running as an ASC, it offered lower cost to its patients. Furthermore, ASC's generally run more efficiently than hospitals by specializing in these certain procedures; all while still offering the same high quality outcomes. In 2013, VH and WMC elected to convert WASC to a department of the hospital, effectively wiping out choice to patients and physicians, and raising costs and inefficiencies to all those concerned.

The proposed Winchester Surgery Center addresses the needs of the community with a highly efficient, lower-cost alternative that will serve both patients and the medical community.

These market conditions and other data indicate there is a need for outpatient surgical hospitals or ambulatory surgery centers in Winchester, VA. However as previously stated, under the current zoning ordinance, in a PC zone, the use of property for outpatient surgical hospitals or ambulatory surgery centers is not addressed. The amendment will allow the operation of such businesses in the City of Winchester

Please review and let me know if you need any additional information.

Sincerely,

LITTLEJOHN ENGINEERING ASSOCIATES

Jack Parker

Jack Parker, PE

1935 21ST AVENUE SOUTH, NASHVILLE, TENNESSEE 37212
T 615.385.4144 F 615.385.4020

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Engineering
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Economic Development

	Medical Office	Outpatient	Hospital
City of Winchester	PROFESSIONAL OFFICE: The office, studio, or professional room of a doctor, architect, artist, musician, lawyer, or similar professional person, except in any funeral home, or any establishment where goods are offered for sale.	N/A	HOSPITAL, GENERAL: An institution rendering medical, surgical, obstetrical, or convalescent care, including nursing homes, homes for the aged, and sanatoriums, but in all cases excluding institutions primarily for mental or feebleminded patients, epileptics, alcoholics, or drug addicts. (Certain nursing homes and homes for the aged may be "home occupation" if they comply with the definitions herein.)
Loudoun County	Office, Medical: Any room, studio, clinic, suite or building wherein individuals licensed in the State practice medicine, osteopathy, dentistry, chiropractic, podiatry, physical therapy, psychiatry, clinical psychology, or other health-related professions on an out-patient basis. A medical office shall not be deemed to include a hospital, veterinary service or animal hospital.	Medical Care Facility, Outpatient Only: Any institution, place, building, or agency, whether or not licensed or required to be licensed by the State Board of Health or the State Hospital Board, by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more non-related mentally or physically sick or injured persons: or for the care of two or more nonrelated persons requiring or receiving medical, surgical or nursing attention or service as acute, chronic, convalescent, aged, or physically disabled, including but not limited to intermediate care facility, mental retardation facility, outpatient surgery centers, chiropractic, birthing, diagnostic imaging, radiation therapy, dialysis, medical/physical rehabilitation and trauma units, and other related institutions and facilities offering treatment on an outpatient basis, whether operated for profit or nonprofit and whether privately owned or operated by a local government unit (this term shall not include a physician's or medical office).	Hospital: Any licensed and Commonwealth of Virginia accredited health care institution with an organized medical and professional staff and with inpatient beds available around-the-clock whose primary function is to provide inpatient medical, nursing, and other health-related services to patients for both surgical and nonsurgical conditions and that usually provides some outpatient services, particularly emergency care.
Fairfax County	OFFICE: Any room, studio, clinic, suite or building wherein the primary use is the conduct of a business such as accounting, correspondence, research, editing, administration or analysis; or the conduct of a business by salesmen, sales representatives or manufacturer's representatives; or the conduct of a business by professionals such as engineers, architects, land surveyors, artists, musicians, lawyers, accountants, real estate brokers, insurance agents, certified massage therapists in accordance with Chapter 28.1 of The Code, dentists or physicians, urban planners and landscape architects.	MEDICAL CARE FACILITY: Any institution, place, building, or agency, whether or not licensed or required to be licensed by the State Board of Health or the State Hospital Board, by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two (2) or more non-related mentally or physically sick or injured persons, or for the care of two (2) or more non-related persons requiring or receiving medical, surgical or nursing attention or service as acute, chronic, convalescent, aged, physically disabled, or crippled; including but not limited to general hospitals, sanatorium, sanitarium, assisted living facility, nursing home, intermediate care facility, extended care facility, mental hospital, intellectual disability care facility, medical schools and other related institutions and facilities, whether operated for profit or nonprofit, and whether privately owned or operated by a local government unit. This term shall not include a physician's office, first aid station for emergency medical or surgical treatment, medical laboratory, CONGREGATE LIVING FACILITY, GROUP RESIDENTIAL FACILITY, or INDEPENDENT LIVING FACILITY.	HOSPITAL: Any institution receiving in-patients and rendering medical, surgical or obstetrical care, to include general hospitals and specialized institutions in which care is oriented to cardiac, eye, ear, nose, throat, pediatric, orthopedic, skin and cancer and obstetric cases.

Chesterfield County	No definition, but some office uses referred to as "offices: dental, general, medical, property management, temporary real estate." Other uses also listed include medical or dental laboratories as an accessory use and "hospitals and other medical facilities."	Clinic: An establishment where patients who are not lodged overnight are admitted for examination or treatment by physicians, dentists or veterinarians.	Hospital: An institution providing primary health services and medical or surgical care to persons, primarily in-patients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions and including, as an integral part of the institution, related facilities such as laboratories, out-patient facilities or training facilities.
Hanover County	No definition, but permitted uses include "Medical office" and "Offices, business, governmental, medical, or professional"	Clinic: An establishment where human patients who are not lodged overnight are admitted for examination or treatment by physicians or dentists.	Hospital: A building or group of buildings, having room facilities for overnight patients, used for providing services for the in-patient medical or surgical care of sick or injured humans, and which may include related facilities, central service facilities, and staff offices; provided, however, that such related facility must be incidental and subordinate to the main use and must be an integral part of the hospital operation.
City of Manassas	Professional office means any office for the practice of a profession, including, but not limited to, architecture, engineering, law, medicine, psychology, theology, real estate and accounting.	N/A	Hospital means an institution, licensed by the State of Virginia, that renders two or more of the following services: medical and surgical services with associated bed space, obstetrical or convalescent care, or urgent care services, including facilities such as, nursing homes, convalescent, rehabilitation and sanitariums.
City of Alexandria	Medical Office: The use of space by individuals licensed in the Commonwealth of Virginia to practice medicine, osteopathy, dentistry, chiropractic, podiatry, psychiatry, clinical psychology or other health-related professions on an outpatient basis. The professional services provided in the medical office space is for the occupant's own patients and not for patients of unrelated outside practitioners.	Medical Care Facility: Any installation, place, building, or agency, whether or not licensed or required to be licensed by the State Board of Health or the State Hospital Board, by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more non-related mentally or physically sick or injured persons, or for the care of two or more non-related persons requiring or receiving medical, surgical or nursing attention or service as acute, chronic, convalescent, aged, or physically disabled; including but not limited to intermediate care facility, extended care facility, mental hospital, mental retardation facility, medical school, outpatient surgery centers, birthing, diagnostic imaging, radiation therapy, dialysis, medical/physical rehabilitation and trauma units, substance abuse outpatient or day programs, and other related institutions and facilities, whether operated for profit or nonprofit, and whether privately owned or operated by a local government unit. This term shall not include a physician's or medical office, first aid station for emergency medical treatment, housing for the elderly, medical laboratory, hospital, nursing home or a facility which has as its primary purpose residential accommodation. Nothing in this definition is intended to interfere with or restrict the use of a dwelling unit by a family as that term is defined in this article, wherever such use is allowed in the zones.	Hospital: A health care institution with an organized medical and professional staff and with inpatient beds available on a 24 hour basis, which has as its primary function to provide inpatient medical, nursing, and other health-related services to patients for both surgical and nonsurgical conditions, and which usually provides some outpatient services, particularly emergency care.

AN ORDINANCE TO AMEND ARTICLES 1 AND 13 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITION OF MEDICAL CARE FACILITY AND PERMITTED USE IN THE PLANNED COMMERCIAL (PC) DISTRICT

TA-14-120

Draft 2 – 3/28/14

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 1

DEFINITIONS

SECTION 1-2 DEFINITIONS

1-2-7.2 **Medical Care Facility: A structure or building or portion thereof used to provide facilities and services, on an outpatient basis (fewer than 24 hours), for the treatment, prevention and diagnosis of human disease, pain, injury, deformity or physical condition, whether medical or surgical, including but not limited to outpatient surgery centers, chiropractic, birthing, diagnostic imaging, radiation therapy, dialysis, medical/physical rehabilitation and trauma units, and other related institutions and facilities.**

ARTICLE 13

PLANNED DEVELOPMENT

SECTION 13-2. PLANNED COMMERCIAL DISTRICT – PC

13-2-3.17 **Medical Care Facility**

Planning Commission Item 2B
April 15, 2014

CU-14-143 Request of Ryan Hoover dba Vintage Bavarian LLC for a conditional use permit for auto service use at 24-26 West Hart Street *(Map Number 212-01-M-2)* zoned Central Business (B-1) District.

REQUEST DESCRIPTION
The request is for a conditional use permit to convert 3600sf of currently vacant space in the existing building to an auto service establishment.

AREA DESCRIPTION
The subject site is zoned Central Business, B-1. Uses in the strip building include a nonconforming auto service establishment, a carpet cleaning service and storage uses. Property directly to the north and east is also zoned B-1 and consists of row houses fronting on W. Bond St. and a commercial strip fronting on S. Loudoun St. All of these properties within the subject block bound by W. Hart St, S. Braddock St, W. Bond St and S. Loudoun St are under common ownership. Properties on the opposite (west) side of S. Braddock St and the opposite (south) side of W. Hart St consist of HR-1 zoned residential uses.

STAFF COMMENTS
An automobile service establishment may be considered as a conditional use within the B-1 District provided that all service and repair is within a building enclosed on all sides. There is a history of auto service uses in the existing, strip commercial building, including an existing nonconforming use and one that received a conditional use permit to operate in 2010 that is no longer in operation. Staff finds no record of known complaints regarding these uses.

The conditional use approved in 2010 for the space at 30 W. Hart St included the following imposed conditions:
1. All service and repair of vehicles is to occur inside the building;
2. The overhead door is to remain closed during all service and repair of vehicles;
3. Hours of operation shall be no earlier than 7am and no later than 10pm.
4. No inoperable vehicles shall be stored outside unless a revised site plan showing provision of required screening per the Ordinance is approved and implemented; and,
5. Staff review and approval of the related site plan.

The applicant outlines his proposal to operate a vintage BMW parts sales and automotive repair facility in a letter received on March 4, 2014. He acknowledges within the letter that all repair will occur within the enclosed building, as required, and that there will be no outside storage of tools, equipment, chemicals/fluids, or inoperable vehicles. His intent is to initially have hours of operation from 8am-6pm

on weekends, eventually extending throughout the week and until as late as 10pm. The CUP approved in 2010, as noted above, included a similar proposal for more narrow initial hours of operation; in that case, the Commission recommended, and Council approved, a wider range of hours (7am-10pm) to accommodate possible expansion in the future.

The tenant spaces (24-26 W. Hart St) in this request are at the east end of the building and were most recently occupied by a seafood/produce market. These spaces contain overhead doors on both the east and north elevations of the building facing the adjoining parking areas. If favorable consideration is given to the request, a condition pertaining to the overhead doors remaining closed during service and repair would be appropriate to mitigate any potential impact on nearby residential uses.

The applicant does not propose any site improvements in conjunction with the use. Sufficient illumination of the off-street parking area is already provided. If favorable consideration is given to the request, staff would recommend a condition that inoperable motor vehicles not be permitted to be stored outside unless a revised site plan showing provision of required screening per the Ordinance is approved and implemented. This would allow for the applicant, should his business expand to the point where such storage is necessary, to submit and implement a revised plan providing required screening without having to reapply for a revised CUP.

RECOMMENDATION:
In order for a CUP to be issued, a finding must be made that the proposal as submitted or modified will not adversely affect the health, safety or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood.

A favorable motion could read
MOVE that the Planning Commission forward **CU-14-143** to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommendation is subject to:

1. All service and repair of vehicles is to occur inside the building;
2. Overhead doors are to remain closed during all service and repair of vehicles;
3. Hours of operation shall be no earlier than ____ and no later than ____.
4. No inoperable vehicles shall be stored outside unless a revised site plan showing provision of required screening per the Ordinance is approved and implemented; and,
5. Staff review and approval of the related site plan.

-OR-

An unfavorable motion should state the reasons for such a recommendation, such as inability to make such findings above as required by the Ordinance or other reasons, as applicable.

Letter addressing Section 18-2 Winchester City Zoning Ordinance

Vintage Bavarian LLC

24 W Hart St. Winchester VA 22601

Ryan Hoover (Member)

RECEIVED
MAR 4 2014

Scope:

Vintage Bavarian LLC is a company that was started to sell vintage BMW car parts to the growing vintage BMW enthusuiast community. I would like to eventually move my company torward automotive repair, mainly BMWs produced before 1991 as these are in my area of expertise. My proposed use of the property at 24 W. Hart St. would be a vintage BMW parts sales and automotive repair facility. I would not be engaging in any body repair, upholstery, paint or any other intensive repairs. I propose to install two vehicle lifts in the building, one in the front bay of the building and another in the rear perpendicular to the west wall. These proposed lifts would be completely screened from view as they are contained within the building. The areas where the lifts are installed would be considered the primary bays used for automotive repair. The rest of the building would be used primarily for storage of vehicles both personal and for business use, storage for vehicle parts, tools and some office space. Any vehicles parked outside of the building would be in my personal possession or customer vehicles with current tags and inspection stickers.

Equipment and supplies:

My business would utilize several pieces of equipment including a 33 gallon air compressor and air tools, a bench grinder, a metal chop saw and various battery powered hand tools. These tools generate some level of noise but not enough to penetrate the exterior walls of the building and cause a nuisance to the adjacent businesses or residences. All automotive repair will take place within the building so as to not cause any safety hazards to the immediate community. No tools or equipment will be located outside the building. No additional lighting will be installed to the exterior of the building. All new automotive chemicals and waste fluids such as oil and coolant would be stored inside the building in appropirate containers.

Hours of operation:

The hours of operation for the store front and shop will initially be Saturday and Sunday 8am- 6pm. The hours will eventually be extended into the week, Mon-Sun beginning at 8am and could conclude as late as 10pm. The owner may stay after hours on occasion for special projects etc. that will not constitute normal business activity (ie: personal automotive projects, shop maintenance and cleaning etc.)

Parties of Real interest:

Hables Real Estate

Planning Commission Item 2C
April 15, 2014

CU-14-166 Request of Oakcrest Properties for a conditional use permit for a two family dwelling at 314 South Kent Street *(Map Number 193-01-T-3)* zoned Limited High Density Residential (HR-1) District with Historic Winchester (HW) District overlay.

REQUEST DESCRIPTION
The request is for reapproval of an expired conditional use permit for a two-family dwelling on the subject property.

AREA DESCRIPTION
The subject property is located on the east side of South Kent Street, north of the intersection of East Cecil Street. The property is zoned HR-1 with HW overlay, with similarly zoned parcels surrounding it. Surrounding uses include residential dwellings, including single-family and a number of nonconforming two-family dwellings.

STAFF COMMENTS
The applicant originally applied for a conditional use permit (CUP) for a two-family dwelling to replace a vacant, deteriorated single family dwelling located on the subject property in 2009. That application was recommended for approval by the Planning Commission and subsequently approved by City Council on April 13, 2010. The existing structure was subsequently demolished; however, the applicant did not proceed with construction of the two-family dwelling. The CUP expired because the use did not commence within one year of approval.

The design elements of the proposal, including elevations, floor plans (depicting two-bedroom units) and site plan (including two off-street parking spaces) remain unchanged from the original proposal. The applicant previously applied for and received administrative modifications of two dimensional standards: lot width (37.83', where 40' is otherwise required) and side yard (5.83', where 6' is otherwise required). These modifications remain in place. The Board of Architectural Review previously granted a Certificate of Appropriateness (COA) for the design of the new structure, however, that Certificate expired one year from its issuance. The applicant will need to reapply for a COA.

The original approval included 3 conditions as follows:
1) Approval of necessary modifications or variances for lot width and side yard deficiencies;
2) The owner providing an easement at no cost, if deemed necessary and upon request by the City, across a portion of the rear of the property to facilitate the future alignment of the Green Circle Trail. This condition shall be voided if the alignment of the trail terminates to the south of the property; and,
3) Staff review and approval of the related site plan.

Conditions 1 & 2 are no longer necessary. As noted above, the necessary modifications for lot width and side yard were approved and remain valid. The alignment of the Green Circle Trail phase in this area has since been finalized and terminates south of the subject property, so an easement is no longer necessary.

The site plan depicts the provision of two required off-street parking spaces which are accessed from an unrecorded ingress/egress toward the rear of the property. The plan calls for gravel surfacing of the spaces. Staff requests input from the Commission as to whether a waiver of surfacing and curbing requirements for the spaces and travelway is supported.

RECOMMENDATION:
In order for a CUP to be issued, a finding must be made that the proposal as submitted or modified will not adversely affect the health, safety or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood.

A favorable motion could read
MOVE that the Planning Commission forward **CU-14-166** to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommendation is subject to staff review and approval of the related site plan.

-OR-

An unfavorable motion should state the reasons for such a recommendation, such as inability to make such findings above as required by the Ordinance or other reasons, as applicable.

OakCrest
COMPANIES
Where life happens

February 28, 2014

RE: Conditional Use Permit Application for:
Two Family Dwelling at 314 S. Kent St.

RECEIVED
MAR 4 2014

Tim Youmans, Planning Director
City of Winchester
Rouss City Hall
15 North Cameron St.
Winchester, VA 22601

Dear Tim,

I have enclosed a Conditional Use Application for the construction of a NEW Two Family Dwelling on the above referenced property. I am also including a copy of the Site Plan for this. As you are aware, the previous single family was demoed and we are requesting the approval of an over/under duplex in its place. We have applied previously for the CUP for this and it was approved. Due to the nature of the economic downturn, we had to place this project on hold until now. Since we did not renew the approved CUP, we are going through the process again. I would like to note that it is not uncommon in this section of the City (which existed prior to the Zoning Ordinance) for duplex units to be adjacent to single family residences. However, we have gone through measures to ensure the architectural and ascetical appearance from the street maintains that of a single family dwelling.

We will also be reapplying to the BAR for their approval of this structure since it is located within the Historic District. Since the CUP process does take an extended amount of time, we will be doing the BAR submittal process in conjunction with the CUP process.

If you have any further questions or need any additional information, please contact me.

Sincerely,

Eric Lowman
Director of Purchasing and Estimating
OakCrest Builders, Inc.

Address
126 North Kent Street
Winchester, VA 22601

Phone
540.722.4100
www.oakcrestcompanies.com
Website

CU-14-166

TA-14-118 AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 6, 7, 8, 9, 10, 13, 15.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS, PERMITTED USES, AND USES REQUIRING A CONDITIONAL USE PERMIT FOR ALTERNATIVE FINANCIAL INSTITUTIONS

REQUEST DESCRIPTION

This publicly sponsored text amendment was initiated by the Planning Commission at its March 18, 2014 meeting. The proposed amendment involves establishing definitions regarding several types of alternative financial institutions (AFI), modifying the existing provisions pertaining to short-term loan establishments and permitting AFI's with a conditional use permit in several districts provided the proposed use meets a separation requirement from similar uses and residential districts.

STAFF COMMENTS

In April 2010, City Council adopted a zoning text amendment that established provisions for *Short-Term Loan Establishments* within the Zoning Ordinance:

> 1-2-86.2 SHORT-TERM LOAN ESTABLISHMENT: a business engaged in providing short-term loans of money of an original term of less than 31 days, with or without security given by the borrower or with or without a co-maker, guarantor, endorser or surety, to members of the general public as an element of its operation and which is not a bank or a savings and loan association. Short-term loan establishments shall include businesses offering what is, or is marketed as, payday loans, signature loans, title (to vehicles, boats or other personal property, but not real estate) loans, cash advances, check-cashing loans, small loans and other similar loans; but, does not include pawnshops.

As a result of this text amendment, several commercial districts (B-2, B-1, and CM-1) permitted *Short-Term Loan Establishments* with a conditional use permit provided that no such use is located within 500-feet of a similar establishment or residentially-zoned property.

Not long after this amendment was adopted by Council, the General Assembly adopted the *Motor Vehicle Title Loan Act*, which changed some of the operational standards for some of these types of lenders. For example, the act changed the length of time for motor vehicle title loans to no less than 120 days and no more than 12 months. This time frame falls outside the 31-day period that is provided for in the current Zoning Ordinance definition (1-2-86.2), thereby making our ordinance out of date and unenforceable.

The proposed text amendment will establish several definitions for *Alternative Financial Institutions, Check Cashing Establishments, Incidental Check Cashing Establishments, Motor Vehicle Title Lender, and Payday Lender,* along with eliminating the current definition of *Short-Term Loan Establishment*. The term *Alternative Financial Institutions* will encompass each of the various types of lending establishments listed above, with the exception of *Incidental Check Cashing Establishments*. Most of these definitions are set up to reflect the definitions established in the Code of Virginia, to enable our local ordinance to be flexible and reflect any future changes to their definitions at the state level.

This text amendment will also modify the existing by-right and conditional use provisions that presently refer to *Short-term Loan Establishments* and change the language to AFI's.

RECOMMENDATION
MOVE that the Planning Commission forward **TA-14-118** as identified in "Draft 1 – 1/29/14" with a favorable recommendation because the amendment aligns our local Ordinance with revised language in the Code of Virginia.

AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 6, 7, 8, 9, 10, 13, 15.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS, PERMITTED USES, AND USES REQUIRING A CONDITIONAL USE PERMIT FOR ALTERNATIVE FINANCIAL INSTITUTIONS

TA-14-118
Draft 1 – 1/29/14

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.*

1-2-7.1 **ALTERNATIVE FINANCIAL INSTITUTION: Any check cashing establishment, motor vehicle title lender, or payday lender, as defined in this Chapter.**

1-2-18.1 **CHECK CASHING ESTABLISHMENTS: Any person or establishment engaged in the business of cashing checks, drafts or money orders for compensation, and registered with the State Corporation Commission pursuant to Code of Virginia, § 6.2-2100 et. seq. This shall not include Incidental Check Cashing Services, as defined.**

1-2-18.2 **CHECK CASHING SERVICES, INCIDENTAL*:* Cashing of checks, drafts or money orders for compensation, other than "check cashing establishments." This use shall be permitted by-right with a permitted use, provided that such use (i) is secondary and accessory to a permitted use, (ii) is located internal to the primary structure occupied by the permitted use(s), and (iii) is operated by the primary user.**

1-2-67.1 **MOTOR VEHICLE TITLE LENDER: Any establishment engaged in the business of lending money secured by a non-purchase interest in a motor vehicle, and registered with the State Corporation Commission pursuant Code of Virginia § 6.2-2200 et. seq.**

1-2-67.~~1~~**2** MUSEUM OR ART GALLERY: An organized and permanent nonprofit institution, open to the public, which is essentially educational or aesthetic in purpose, with professional staff, and which is devoted to the procurement, care, study, and display of objects of lasting interest or value. (05/12/98, TA-98-01, Ord. No. 013-98)

1-2-73.2 **PAYDAY LENDER*:* Any establishment, other than a bank, credit union, or savings and loan, engaged in the business of making short-maturity loans on the security of (i) a check, (ii) any form of assignment of an interest in the account of an individual at a depository institution, or (iii) any form of assignment of income payable to an individual, other than loans based on income tax refunds, and required to be registered with the State Corporation Commission pursuant to Code of Virginia § 6.2-1800 et seq.**

1-2-73.~~2~~**3** PET DAYCARE CENTER: An establishment that provides daily care, supervision, and grooming of up to fifty (50) animals at any one time; and, which does not provide for overnight accommodation of animals, as would otherwise be associated with a *kennel* or *animal shelter*. (8/12/08, Case TA-08-04, Ord. No. 2008-33)

~~1-2-86.2~~ ~~SHORT-TERM LOAN ESTABLISHMENT: a business engaged in providing short-term loans of money of an original term of less than 31 days, with or without security given by the borrower or with or without a co-maker, guarantor, endorser or surety, to members of the general public as an element of its operation and which is not a bank or a savings and loan association. Short-term loan establishments shall include businesses offering what is, or is marketed as, payday loans, signature loans, title (to vehicles, boats or other personal property, but not real estate) loans, cash advances, check-cashing loans, small loans and other similar loans; but, does not include pawnshops. (4/3/10, Case TA-10-21, Ord. No. 2010-06)~~

ARTICLE 6
RESIDENTIAL OFFICE DISTRICT - RO-1

SECTION 6-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

6-2-3 Banks and financial institutions, not including **alternative financial institutions** ~~short-term loan establishment~~, as defined in Article 1. (11/18/86, Ord. No. 018-86; 4/13/10, Case TA-10-21, Ord. No. 2010-06)

ARTICLE 7
RESIDENTIAL BUSINESS DISTRICT - RB-1

SECTION 7-1. USE REGULATIONS.

7-1-7 Branch Banks and financial institutions, not including **alternative financial institutions** ~~short-term loan establishment~~, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

ARTICLE 8
HIGHWAY COMMERCIAL DISTRICT - B-2

SECTION 8-1. USE REGULATIONS.

8-1-9 Banks and financial institutions, not including **alterntive financial institutions** ~~short-term loan establishment~~, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

SECTION 8-2. USES REQUIRING A CONDITIONAL USE PERMIT

8-2-22 **Alternative financial institutions** ~~Short-term loan establishment~~, provided that no such use is located within 500 feet of any other short-term loan establishment or residentially-zoned property. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

ARTICLE 9
CENTRAL BUSINESS DISTRICT - B-1

SECTION 9-1. USE REGULATIONS.

9-1-7 Banks and financial institutions, not including **alternative financial institutions** ~~short-term loan establishment~~, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

9-2-21 **Alternative financial Institutions** ~~Short-term loan establishment~~, provided that no such use is located within 500 feet of any other short-term loan establishment or residentially-zoned property. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

ARTICLE 10
COMMERCIAL INDUSTRIAL DISTRICT - CM-1

SECTION 10-1. USE REGULATIONS.

10-1-3 Banks and financial institutions, not including **alternative financial institutions** ~~short-term loan establishment~~, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

SECTION 10-2. USES REQUIRING A CONDITIONAL USE PERMIT.

10-2-13 **Alternative financial institutions** ~~Short-term loan establishment~~, provided that no such use is located within 500 feet of any other short-term loan establishment or residentially-zoned property. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

ARTICLE 13
PLANNED DEVELOPMENT

SECTION 13-2. PLANNED COMMERCIAL DISTRICT – PC

13-2-3.2 Banks and financial institutions, not including **alternative financial institutions** ~~short-term loan establishment~~, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

ARTICLE 15.1
MEDICAL CENTER DISTRICT – MC

SECTION 15.1-2. USES PERMITTED BY CONDITIONAL USE PERMIT.

15.1-2-2 Personal service and retail establishments (including banks and branch banks; but not including **alternative financial institutions** ~~short-term loan establishments~~, as defined in Article 1) serving the District when located within freestanding structures not physically connected to the main hospital structure. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

Planning Commission Item 3A
April 15, 2014

RZ-14-35 AN ORDINANCE TO REZONE 2.57 ACRES OF LAND AT 1570 COMMERCE STREET *(Map Number 252-01-2)* FROM COMMERCIAL INDUSTRIAL (CM-1) DISTRICT TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY

REQUEST DESCRIPTION
The request is to conditionally change the underlying zoning from CM-1 to MR and establish PUD overlay zoning on the entire property to support the proffered construction of a townhouse development of up to 26 units fronting along the south side of Commerce Street.

The submitted Development Plan titled "Generalized Development Plan, Commerce Street Townhomes" dated February 3, 2014 with revision dates of February 14, 2014 (Sheet 1) and February 17, 2014 (Sheet 2) depicts 3 townhouse structures and 26 driveways accessed from a one-way common drive wrapping around at the rear of the buildings leading to optional 1-car garages. The Development Plan depicts 16 on-street parallel parking spaces as well as an area for an undefined number of additional parking spaces along the south side of the rear drive aisle. The request also includes a Proffer Statement dated December 3, 2013 with a latest revision date of February 14, 2014.

AREA DESCRIPTION
The site and all other properties fronting along the east-west section of Commerce Street are zoned CM-1. Land uses include a credit union, mini- warehouse and contractor use. Property to the south of the site along Glaize Avenue is zoned MR and contains single-family dwellings. Properties further to the north along the west side of Commerce St are in single-family residential use.

STAFF COMMENTS

Comprehensive Plan Consistency

The Comprehensive Plan identifies the property as a redevelopment site and calls for adaptive reuse to be more compatible with adjacent residential areas. PUD zoning allows for consideration of up to 18 residential units per acre. At 2.57 acres in size, the property could theoretically support up to 46 units. The choice of townhouse development allows for separate ownership of the units, but reduces the physical ability to maximize the density as could be done with multifamily or apartment-styled condominium development. In general the Comprehensive Plan advocates the following:

Citywide Design Objective #1:

> "Employ New Urbanism Principles in new development and redevelopment."

Citywide Housing Objective #6:

> "Promote decent affordable housing, particularly to serve targeted populations such as young professionals and retirees."

The proposed townhouses could serve these targeted populations. The site is also situated in close proximity to a transit stop on the S. Loudoun Street bus route and not too far removed from Shenandoah University.

At 2.57 acres in size, the proposed PUD is considerably below the 5-acre minimum called out in Section 13-1-4.1 of the Zoning Ordinance. However, the Zoning Ordinance allows for the Planning Commission to recommend and City Council to approve a waiver of the 5-acre minimum when the applicant can show that strict adherence would produce unnecessary hardship and preclude development that is more compatible with the Comprehensive Plan than that which could be permitted without the PUD zoning.

Potential Impacts & Proffers

The applicant submitted voluntary proffers to mitigate potential impacts arising from the rezoning of the property from CM-1 supporting nonresidential use to MR with PUD overlay zoning to support 26 townhomes. The latest submitted Proffer Statement is dated February 14, 2014. Generally, the impacts from this rezoning would be the removal of tax-generating commercial development with residential use, which could have some impacts on public education expenditures. Depending upon the number of bedrooms and market targeted for occupancy, it is possible that the 26 units could create negative impacts in the form of school-aged children requiring public education. The applicant notes that the proposal would be for a maximum of 3 bedrooms per unit in both the 16-foot wide units as well as the 20-foot wide units. No floor plans have been submitted to date.

The applicant does proffer to contribute $300 per townhouse unit to the City to provide for improvements to either Overlook Park or the Quarles Elementary School playground in lieu of dedicating up to 10% of the site for public parkland. Staff believes that a cash proffer in lieu of parkland dedication is desirable.

At the February 18, 2014 regular meeting, the Planning Commission tabled the rezoning request in order to allow the applicant time to prepare a Fiscal Impact Analysis for this PUD rezoning application per Sections 13-4-2.2k of the Zoning Ordinance. **At the March 18, 2014 regular meeting, the Planning Commission again tabled the rezoning case at the applicant's request in order to allow the applicant further time to prepare a Fiscal Impact Analysis**. While this residential rezoning request results in a much smaller quantity of total units than the recently approved Cedar Creek Place project (132 units) and the Jubal Square project (140 units), the quantity of three-bedroom units is a concern. For Commerce St the proposal is for up to 100% of the 26 units to have 3 bedrooms. The Cedar Creek Place proposal included zero (0) three-bedroom units and the Jubal Square project included only 20 three-bedroom units and 8 two-bedroom units with a den. Collectively the 28 Jubal Square units with 3 bedrooms or 2 bedrooms + den constituted only 20% of that total project.

Staff does not believe that a Traffic Impact Analysis should be required by the Planning Commission since Commerce St has adequate capacity to handle the additional traffic.

Site Development and Buffering

Buffering has been provided to screen the townhouse building and rear parking from the existing single-family neighborhood along Glaize Avenue to the south. A detail on the Development Plan calls for an opaque board fence (6' height) and a staggered row of mixed evergreen/deciduous plantings along the rear property line adjoining the Glaize Avenue residential neighborhood. The Plan calls for 2 plants per every 15 feet with half being evergreen and the other half deciduous. The minimum height of installed evergreen plantings is specified at 4' and the minimum caliper of deciduous trees is specified at 1" caliper on the Plan. Both the Plan and the Proffer Statement note that existing "plantings and vegetation" may be used to satisfy the intent of the landscape screens shown as required. Provision 3.5 of the Proffer Statement was amended to include "Adequacy determination to be at time of planting by Zoning Administrator." Staff recommends that 'Planning Director' be substituted for 'Zoning Administrator' and that any existing "vegetation" proposed to meet this intent be clearly depicted on the plan so that it can be evaluated for suitability.

The Development Plan calls for either a double row of evergreen screening (4' min height) or an opaque fence (6' height) along the eastern boundary of the site adjoining the remaining commercially zoned development at the bend in Commerce Street. The applicant is also proffering at least a 100-square foot landscape area in the front yard of the units. (NOTE: By comparison a typical parking space is at least 162 square feet in size). Staff has encouraged the applicant to employ the New Urbanism practice of keeping the units close to the public street (and putting the parking to the rear). However, since there will be a very small quantity of green space out front, it is important that the developer demonstrate a high quality to that small amount of street-view green space.

Storm Water Management

Storm water management will need addressed. No on-site storm water management is depicted on the Plan, but can be handled during the time of site plan review. The site slopes both to the east as well as to the south. The Plan depicts a natural green area ('Recreational Space') along the southern boundary which should mitigate storm water runoff issues to the Glaize Avenue neighborhood.

Density

The applicant proposes a maximum of 26 townhouses with a maximum of 3 bedrooms per unit. PUD overlay allows for consideration of up to 18 dwelling units per acre, which in the case of 2.57 acres would translate to a maximum of 46 dwelling units. The applicant is proposing a maximum of 26 dwelling units. The actual project density comes out to 10.1 units per acre.

Project Phasing

The applicant has not indicated that there is any proposal to phase in the project as part of the PUD rezoning.

Design Quality

Despite being encouraged to do so, the applicant has not yet submitted any floor plans for this rezoning proposal, and there are few proffers addressing design quality. Proffer 3.1 states that "All buildings on the property shall be constructed using compatible architectural styles." The latest development plan includes an illustrative rendering of the front elevation of the units (Sheet 2, Revised Feb 17, 2014) and proffer 3.2 now states that "unit architecture shall generally conform to the elevation and guidelines" on that sheet of the development plan. The Development Plan depicts rear driveways suggesting access to rear-entry garages although a "Design & Development Standards" sheet notes that the garages are optional. Staff recommends that a note be added to the Development Plan that a fourth bedroom cannot be created in any unit even if the optional garage is converted to living space. The submitted Plan depicts 3 buildings with one building containing 8 townhouse units and the other two buildings containing 9 units. The Design & Development Standards sheet notes that the lots (and thus all of the interior townhouse units) would have a 20-foot minimum width, but then states that up to half of the units may have a 16-foot minimum width. In the High Density Residential (HR) District, where townhouses are allowed by right, the City requires a minimum average townhouse lot width of 22 feet. The applicant should clearly demonstrate how the proposed PUD provides exceptional design to warrant exceptions to these minimum standards that apply where townhouses are permitted without PUD overlay.

RECOMMENDATION

Generally, staff feels that the proposal is consistent with many of the broader elements of the City's long-term vision to provide housing attractive to young professionals and empty-nesters to the City. Staff feels that the use of the PUD provision for this site is acceptable even though it is considerably less than five acres in size, but that the applicant needs to provide better justification from a quality design standpoint for reducing some of the minimum development standards otherwise applicable to townhouse development in the City.

Staff supports a waiver of the 5-acre minimum per Section 13-1-4.1 of the Zoning Ordinance to allow a 2.57-acre PUD because strict adherence would produce unnecessary hardship that would preclude development that is more compatible with the Comprehensive Plan than that which could be permitted without the PUD zoning.

Additional materials requested by the Commission as part of the motion to table at the February 18th **and March 18th meetings still** have not yet been received. **Per the timeline below, the Commission can further table the request one more month since the Fiscal Impact Analysis and the floor plans were not available for review prior to the April 8th work session.**

The zoning ordinance was amended recently to better define when the Planning Commission must complete review of rezonings prior to forwarding a recommendation on to City Council. The amendment allows the Commission to table a request for rezoning for up to 100 days, before having to forward it on to City Council regardless of uncertainties with the proposal. In this rezoning case, the following timeline applies:

Application for rezoning or text amendment submitted-	**Jan 22nd**
Application Determined Complete (i.e. 'Referral by Council')-	**Jan 27th**
Nearest Planning Commission meeting to 'Referral' date-	**Feb 18th**

Public Hearing opened and tabled until March 18th meeting-	**Feb 18th**
Request table again to April 15th meeting-	**Mar 18th (28 days after Feb 18th)**
Request (tabled again) or (forwarded to Council)-	**April 15th (56 days after Feb 18th)**
If tabled again, then May 20th would be the latest to act-	**May 20th (91 days after Feb 18th)**

A motion to **table** could read:
MOVE, that the Commission further table Rezoning **RZ-14-35** until the next regular meeting **(May 20th**) to allow the applicant to submit (and for staff to adequately review) the Fiscal Impact Analysis and to prepare floor plans that would help the Commission and City Council evaluate the merits of allowing 3-bedroom units and up to half of the townhouse units to be as narrow as 16 feet wide.

-OR-

A motion for a **favorable** recommendation could read:
MOVE, that the Planning Commission forward Rezoning **RZ-14-35** to City Council recommending approval because the proposed MR (PUD) zoning, supports the expansion of housing serving targeted populations as called out in the Comprehensive Plan. The recommendation is subject to:

1. the Proffer Statement dated December 3, 2013 and revised February 14, 2014;
2. adherence with the Development Plan titled 'Generalized Development Plan, Commerce Street Townhomes', dated February 4, 2014 with revision dates of February 14, 2014 (Sheet 1) and February 17, 2014 (Sheet 2)**;**
3. the single-page document titled 'Commerce Street Townhomes, Design & Development Standards';
4. general conformity with submitted floor plans dated _____ ___, 2014

The Planning Commission recommends that City Council approve a waiver of the 5-acre minimum per Section 13-1-4.1 of the Zoning Ordinance to allow a 1.295 acre PUD because the applicant has shown that strict adherence would produce unnecessary hardship that would preclude development that is more compatible with the Comprehensive Plan than that which could be permitted without the PUD zoning.

-OR-

A motion for an **unfavorable** recommendation on the request could read:
MOVE, that the Planning Commission forward Rezoning **RZ-14-35** to City Council recommending disapproval because the application for the proposed MR (PUD) zoning as submitted: {*pick any or all of the following*}

a) is less than 5 acres in size and the applicant has not demonstrated a clear hardship for a waiver;
b) would result in residential-only development less desirable than mixed use advocated in the Comprehensive Plan or commercial-only use allowed under the existing CM-1 zoning;
c) would likely produce an unmitigated fiscal impact as a result of 3-bedroom units housing school-aged children; and,
d) lacks sufficient design detail such as floor plans to support 3-story 3-bedroom townhouse development with up to half of the units as narrow as 16 feet.

AN ORDINANCE TO REZONE 2.57 ACRES OF LAND AT 1570 COMMERCE STREET FROM COMMERCIAL INDUSTRIAL (CM-1) DISTRICT TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY

RZ-14-35

WHEREAS, the Common Council has received an application from Pennoni Associates Inc. on behalf of Evergreen Real Properties, LLC to rezone property at 1570 Commerce Street from Commercial-Industrial (CM-1) District to Medium Density Residential (MR) District with Planned Unit Development (PUD) Overlay; and,

WHEREAS, the Planning Commission forwarded the request to Council on _____ __, 2014 recommending approval of the rezoning request as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-35 Prepared by Winchester Planning Department, February 3, 2014*" because the proposed MR (PUD) zoning supports the expansion of housing serving targeted populations. The recommendation is subject to the proffers in the Proffer Statement dated December 3, 2013 and revised February 14, 2014 and to adherence with the Development Plan titled 'Generalized Development Plan, Commerce Street Townhomes', dated February 4, 2014 with revision dates of February 14, 2014 (Sheet 1) and February 17, 2014 (Sheet 2) and a single-page document titled 'Commerce Street Townhomes, Design & Development Standards'; and,

WHEREAS, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted by the Common Council of the City of Winchester, Virginia, all as required by the Code of Virginia, 1950, as amended, and the said Council has determined that the rezoning associated with this property herein designated supports the expansion of housing serving targeted populations as called out in the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester, Virginia that the following land is hereby rezoned from the existing zoning designation of Commercial- Industrial (CM-1) District to Medium Density Residential (MR) District with Planned Unit Development (PUD) Overlay: Approximately 2.57 acres of land at 1570 Commerce Street as depicted on an exhibit entitled '*Rezoning Exhibit RZ-14-35 Prepared by Winchester Planning Department, February 3, 2014*.'

BE IT FURTHER ORDAINED by the Common Council of the City of Winchester, Virginia that the rezoning is subject to the proffers in the Proffer Statement dated December 3, 2013 and revised February 14, 2014 and to adherence with the Development Plan titled 'Generalized Development Plan, Commerce Street Townhomes', dated February 4, 2014 with revision dates of February 14, 2014 (Sheet 1) and February 17, 2014 (Sheet 2) and a single-page document titled 'Commerce Street Townhomes, Design & Development Standards'.

PROFFER STATEMENT

REZONING:	RZ. #_____: CM-1 to MR (PUD)
PROPERTY:	2.5960 Acres +/-: Tax Map & Parcels 252-01-2 (the "Property")
RECORD OWNER:	Evergreen Real Properties LLC
APPLICANT:	Evergreen Real Properties, LLC
PROJECT NAME:	Commerce Street Townhomes
ORIGINAL DATE OF PROFFERS:	December 3, 2013
REVISION DATE:	February 3, 2014; Revised February 14, 2014

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The undersigned owners hereby proffer that the use and development of the subject property ("Property"), as described above, shall be in conformance with the following conditions, which shall supersede all other proffers that may have been made prior hereto. In the event that the above referenced rezoning is not granted as applied for by the Applicant ("Applicant"), these proffers shall be deemed withdrawn and shall be null and void. Further, these proffers are contingent upon final rezoning of the Property with "Final Rezoning" defined as that rezoning that is in effect on the day upon which the City of Winchester Common Council (the "Council") grants the rezoning.

The headings of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The improvements proffered herein shall be provided at the time of development of that portion of the Property adjacent to or including the improvement or other proffered requirement, unless otherwise specified herein. The term "Applicant" as referenced herein shall include within its meaning all future owners, assigns, and successors in interest. When used in these proffers, the "Generalized Development Plan" shall refer to the plan entitled "Generalized Development Plan, Commerce Street Townhomes" prepared by Pennoni Associates Inc., (the "GDP") dated February 3, 2014.

1. LAND USE:

1.1 The project shall be designed to create townhouse building lots in general conformance with the GDP, and as specifically set forth in these proffers subject to modifications as necessary upon final engineering including but not limited to intersection alignments.

1.2 All development shall be accomplished in general conformance with the "Commerce Street Townhomes, Design and Development Standards", prepared by Pennoni attached hereto and incorporated herein by reference (the "Design and Development Standards").

1.3 Residential development on the Property shall not exceed 26 dwelling units.

1.4 Surface parking shall be allowed in areas delineated. As a minimum, 2 parking spaces per unit shall be provided which may include onsite parking lots, garage and associated private drive spaces, and if provided, public spaces within 300 ft.

1.5 If provided picnic shelters shall not exceed 50 S.F.

1.6 Home occupations as approved by the HOA and allowed by ordinance.

2. CONSTRUCTION OF A UNIFIED DEVELOPMENT:

2.1 The Property shall be developed as one single and unified development in accordance with applicable ordinances and regulations, the GDP as approved by the Council, and this Proffer Statement.

3. ARCHITECTURE, SIGNAGE, AND LANDSCAPING:

3.1 All buildings on the Property shall be constructed using compatible architectural styles. The Applicant shall establish the required Property Owners' Association to enforce and administer a unified development plan in general conformity with the proffered requirements.

3.2 Unit architecture shall generally conform to the elevations and guidelines provided on Sheet 2 of the GDP.

3.3 A 100 SF landscaped area must be maintained within the front yard of each lot.

3.4 Trees meeting the City of Winchester Street Tree Standard shall be provided along the right-of-way. The total trees provided shall be at least 1 tree per 30 ft. of total road frontage.

3.5 Existing onsite plantings and vegetation may be used to satisfy the intent of the landscape screens shown as required on the Generalized Development Plan. Adequacy determination to be at time of planting by Zoning Administration.

3.6 All parking, sidewalk areas shall be of hard surface material, such as concrete, asphalt or pavers. A porous paver system shall also satisfy this requirement.

4. RECREATION AREAS:

4.1 In lieu of the up to 10% land set aside required by the City of Winchester Land Subdivision Ordinance Para. 5-40 and satisfy the recreation development required by Zoning Ordinance Para. 13-1-6, the Applicant shall contribute to the City of Winchester $300 per lot for improvements to park facilities as deemed appropriate. It is intended that these funds be

used for improvement to recreational facilities at Overlook Park or Quarles Elementary School. Payment to be made at time of occupancy permit issuance.

4.2 Common open space shall be provided by designation of an open space easement over landscaped areas of the site and shall be a minimum of 30% of the site area.

5. CREATION OF PROPERTY OWNERS' ASSOCIATION:

5.1 The residential portion of the development shall be made subject to a Property Owners' Association(s) (hereinafter "POA") that shall be responsible for the ownership, maintenance and repair of all common areas, including parking areas and driveways within appropriate easements subject to their jurisdiction, and shall be provided such other responsibilities, duties, and powers as are customary for such associations or as may be required for such POA herein.

5.2 The POA shall be so established that it possesses all necessary powers to set and revise fees and dues in sufficient sums to perform the responsibilities assigned to it hereunder and under the Declaration to be recorded creating such Association. In addition, upon any conveyance of a residential unit from the builder thereof to a home purchaser, there shall be a fee paid by the home purchaser to the POA in an amount equal to three times the then-current monthly residential dues applicable to the unit so conveyed.

5.3 The POA shall comply with Article 9-9 of the Zoning Ordinance.

5.4 The POA documents shall be generally modeled on the Rules and Regulations made a part of these proffers.

6. WATER & SEWER:

6.1 The Applicant shall be responsible for connecting all lots to the City of Winchester public water and sewer. It shall further be responsible for constructing all facilities required for such connection. All water and sewer infrastructure shall be constructed in accordance with the requirements of the City of Winchester.

7. TRANSPORTATION:

7.1 All private streets and parking areas shall be constructed in accordance with the current Virginia Department of Transportation structural standards and shall be owned and maintained by the Property Owners Association served via appropriate easement.

SIGNATURES APPEAR ON THE FOLLOWING PAGES

Evergreen Real Properties, LLC

By: _____
Michael J. Ranberger

Title: President

STATE OF VIRGINIA, AT LARGE
FREDERICK COUNTY, To-wit:

The foregoing instrument was acknowledged before me this _____day of _____, 2014, by _____ .

My commission expires _____
Notary Public _____

Commerce Street Townhomes

Design & Development Standards

In order to establish the quality appearance of the development the following standards are proposed.

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Structure

Single Family Attached, one home per lot.

Relationship of primary façade to Commerce Street.

Setbacks – Allow intimate pedestrian scale to be developed between building and street.

Parking

On-street parking provided.

Overflow parking in rear yard area. Screening to prevent light spillage to adjacent residential.

Number of Units:	26 Maximum
Bedrooms per Unit:	3 Maximum
Parking:	2 Spaces Required per Unit, can be met by public and off street spaces, optional garage units and private driveways.
Building Height:	35' maximum
Building Use:	Single Family Attached Units
Lot Width:	20' Minimum except that up to one half of the lots may have a 16' minimum width.
Front Setback:	Minimum 10'; Maximum 20'
Side Setback:	Minimum 0'; Maximum 10'
Rear Setback:	To Parking – Minimum 10'
	To Property Line – Minimum 50'
Block Length:	No More Than 10 Units
Parking Setbacks:	To Residentially Zoned Property – Minimum 35'
	To Property Not Zoned for Residential Use – Minimum 6'
	To Public Right-of-Way (exclusive of entrances on public streets) – Minimum 10'

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RULES AND REGULATIONS

FOR

COMMERCE STREET REZONING

GENERAL

1. Commerce Street Development Unit Owners Association ("Association"), acting through its Board of Directors, has adopted the following Rules and Regulations ("Regulations"). These Regulations may be amended from time to time by resolution of the Board of Directors.

2. Wherever in these Regulations reference is made to "unit owners," such term shall apply to the owner of any unit, to such owner's tenants whether or not in residence, and such Owner's (or such tenant's) household, servants, employees, agents, visitors, guests, invitees or licensees. Wherever in these Regulations reference is made to the Association, such reference shall include the Association and the managing agent when the managing agent is acting on behalf of the Association.

3. The unit owners shall comply with all the Regulations hereinafter set forth governing the buildings, patios, drives, recreational areas, grounds, parking areas and any other appurtenances.

4. The Association reserves the right to alter, amend, modify, repeal or revoke these Regulations and any consent or approval given hereunder at any time by resolution of the Association or the Board of Directors.

RESTRICTIONS ON USE

5. No part of the development shall be used for any purpose except housing and the common purposes for which the development was designed. Other than any unit designated by the Board of Directors for home occupation use, each unit shall be used as a private residence.

6. No unit owner shall obstruct any of the common elements nor shall any unit owner place or cause or permit anything to be placed on or in any of the common elements (except the areas designated for storage by the Development Instruments or the Board of Directors) without the approval of the Board. Nothing shall be altered or constructed in or removed from the common elements except with the prior written consent of the Board of Directors or the Covenants Committee, as appropriate.

7. The common elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the units. The sidewalks shall be used for no purpose other than for normal transit.

8. Nothing shall be done or kept in any the common elements which will increase the rate of insurance for the buildings or contents thereof applicable for residential use without the prior written consent of the Board of Directors. No unit owner shall permit anything to be done or kept

in the unit or on the common elements which will result in the cancellation of insurance on the buildings or contents thereof or which would be in violation of any public law, ordinance or regulation. No gasoline or other explosive or inflammable material may be kept in any unit or storage area.

9. All garbage and trash must be placed in proper receptacles designated for refuse and no garbage or trash shall be placed elsewhere on any common element.

10. Except in the recreational areas designated as such by the Board of Directors, no playing or lounging shall be permitted, nor shall baby carriages, velocipedes, bicycles, playpens, wagons, toys, benches, chairs or other articles of personal property be left unattended in parking areas, on sidewalks or lawns or elsewhere on the common elements.

11. The toilets and other water and sewer apparatus shall be used only for the purposes for which they were designed, and no sweepings, matches, rags, ashes or other improper articles shall be thrown therein. The cost of repairing any damage resulting from misuse of any such apparatus shall be borne by the unit owner causing such damage.

12. Each unit owner shall keep the unit in a good state of preservation, repair and cleanliness and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors, windows or patios thereof, any dirt or other substance.

13. Nothing shall be done in any unit or on the common elements which may impair the structural integrity of any building or which may structurally change any building nor shall anything be altered or constructed on or removed from the common elements, except upon the prior written consent of the Board of Directors.

14. No improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations or all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be complied with, by and at the sole expense of the unit owner or the Board of Directors, whichever shall have the obligation to maintain or repair such portion of the Property, and, if the latter, then the cost of such compliance shall be a common expense.

15. No unit owner shall make or permit any disturbing noises in any building or do or permit anything which will interfere with the rights, comforts or convenience of other unit owners. All units owners shall keep the volume of any radio, television, musical instrument or other sound producing device in their units sufficiently reduced at all times so as not to disturb other unit owners.

16. The right is hereby given to any owner of any unit to place for sale or for rent signs on any unit owned, but in no event will any sign be larger than one foot by two feet.

17. Draperies, curtain or venetian blinds must be installed by each unit owner on all windows of the unit and must be so maintained thereon at all times.

18. No unit owner shall cause or permit anything to be hung, displayed or exposed on the exterior of a unit, whether through or upon the windows, doors, masonry or patio of such unit that can be seen from the City public street (Commerce Street). The prohibition herein includes without limitation laundry, clothing, rugs, signs, awnings, canopies, shutters, radio or television antennas or any other items. Under no circumstances shall any exhaust fan, air conditioning apparatus, television or radio antennas or other items be installed by the unit owner beyond the boundaries of the lot. No clothesline, clothes rack or any other device may be used to hang any items on any window or patio, nor may such devices be used anywhere on the common elements except in such areas as may be specifically designated for such use by the Board of Directors. Patios shall not be used as storage areas.

PET RULES

19. No animals, livestock, poultry or reptiles of any kind, regardless or number, may be maintained, kept, boarded or raised, in any unit or upon the common elements, except that the keeping of orderly domestic pets (e.g., dogs, cats or caged birds) not to exceed one per unit without the approval of the Board of Directors, and aquarium fish and other limited species of animals which do not normally leave the unit and which do not make any unreasonable disturbance or noise is permitted, subject to the Rules and Regulations adopted by the Board of Directors, and provided that such animals are not kept for breeding purposes.

20. A pet may be maintained in a unit only for so long as it is not a nuisance. Any such pet causing or creating a nuisance or any unreasonable disturbance or noise may be permanently removed from the Development upon ten days written notice from the Board of Directors. Actions which will constitute a nuisance include but are not limited to abnormal or unreasonable crying, barking, scratching or unhygienic offensiveness.

21. Except in pet exercise areas designated by the Board of Directors, pets must be leashed or carried; leashes may not exceed a length which will permit close control of the pet.

22. Pet owners are fully responsible for personal injuries and/or property damage caused by their pets and shall indemnify and hold the Association, each unit owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Development.

23. All pets which may leave the unit must be registered and inoculated as required by law and registered with the Association office. The Board of Directors may establish reasonable fees for registration, not to exceed the additional costs incurred by the Association resulting from the presence of the pets.

24. Owners of pets walked upon the common elements must promptly clean up their pet's droppings in all areas outside any authorized pet exercise areas.

PARKING AND STORAGE

25. No personal property may be stored on the common elements except in storage areas designated as such by the Development Instruments or by the Board of Directors. All personal property placed in any portion of a building or any place appurtenant thereto, including without

limitation the storage areas, shall be at the sole risk of the unit owner and the Association shall in no event be liable for the loss, destruction, theft or damage to such property.

26. Should any employee of the Association at the request of a unit owner move, handle or store any articles or handle, move park or drive any automobile placed in the parking areas, then, and in every such case, such employee shall be deemed the agent of the unit owner. The Association shall not be liable for any loss, damage or expense that may be suffered or sustained in connection therewith.

27. Trailers, campers, recreational vehicles, boats and other large vehicles may be parked on the Property only if expressly permitted by the Rules and Regulations and only in such parking areas, if any, as may be designated for such purpose by the Board of Directors. All vehicles shall be parked wholly within parking space lines. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any of the common elements; provided, however, that such vehicles may be parked inside the garage located within a unit (if provided). Except in areas designated by the Board of Directors, vehicle repairs other than: (i) emergency maintenance, (ii) ordinary light maintenance (excluding fluid changes and other operations which might soil the common elements) and (iii) normal cleaning are not permitted on the common elements.

28. All unit owners shall observe and abide by all parking and traffic regulations posted by the Association or by municipal authorities. Vehicles parked in violation of any such regulations may be towed away at the unit owner's sole risk and expense.

29. Parking so as to block sidewalks or driveways shall not be permitted. If any vehicle owned or operated by a unit owner shall be illegally parked or abandoned on the Development, the Association shall be held harmless by such unit owner for any and all damages or losses that may ensue, and any and all rights in connection therewith that the owner or driver may have under the provisions of state or local laws and ordinances are hereby expressly waived. The unit owner shall indemnify the Association against any liability which may be imposed on the Association as a result of such illegal parking or abandonment and any consequences thereof.

RECREATIONAL AND COMMON FACILITIES

30. All persons using any of the recreational or common facilities do so at their own risk and sole responsibility. The Association does not assume responsibility for any occurrence, accident or injury in connection with such use. No unit owner shall make any claim against the Association, its servants, agents, or employees, for or on account of any loss or damage to life, limb or property sustained as a result of or in connection with any such use of any of the recreational or common facilities. Each unit owner shall hold the Association harmless from any and all liabilities and any action of whatsoever nature by any tenants, guests, invitees or licensees of such unit owner growing out of the use of the recreational or common facilities, except where such loss, injury or damage can be clearly proved to have resulted from and been proximately caused by the direct negligence of the Association or its agents, servants or employees in the operation, care or maintenance of such facilities.

31. Any damage to a building, the recreational facilities or other common elements or equipment caused by a unit owner or such unit owner's guests or pets shall be repaired at the expense of the unit owner.

ASSOCIATION

32. All charges and assessments imposed by the Association are due and payable on the _____. Payment shall be made at the managing agent's office by check or money order, payable to the Development. Cash will not be accepted.

33. Complaints regarding the management of the Development or regarding actions of other unit owners shall be made in writing to the managing agent or the Board of Directors.

34. No unit owner shall direct, supervise or in any manner attempt to assert control over or request favors of any employee of the managing agent or the Unit Owners Association.

CONSIDERATION IN USE OF UNITS

35. All persons shall be properly attired when appearing in any common area of the Property and any other public spaces of the Development.

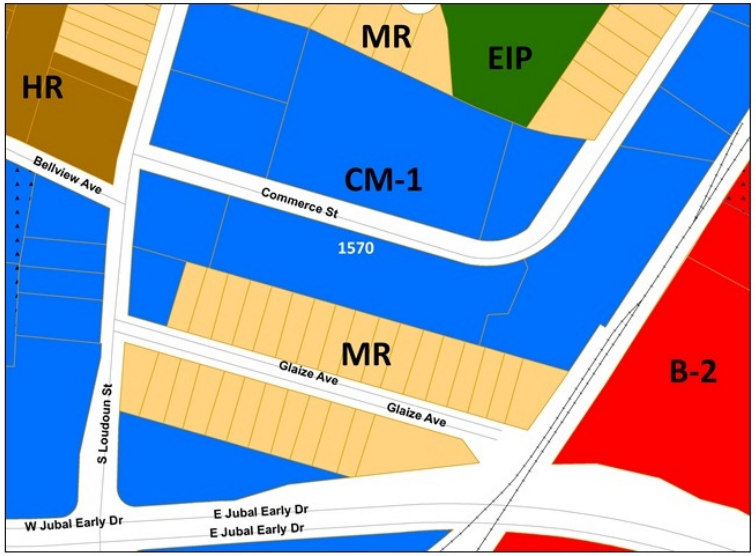
36. All radio, television or other electrical equipment of any kind or nature installed or used in each unit shall fully comply with all rules, regulations, requirements or recommendations of the Board of Fire Underwriters and the public authorities having jurisdiction, and the unit owner alone shall be liable for any damage or injury caused by any radio, television or other electrical equipment in such unit.

GENERAL

37. The planting of plants, flowers, trees, shrubbery and crops of any type is prohibited anywhere on the common elements without the prior written consent of the Board of Directors. No fences may be erected around or on the common elements.

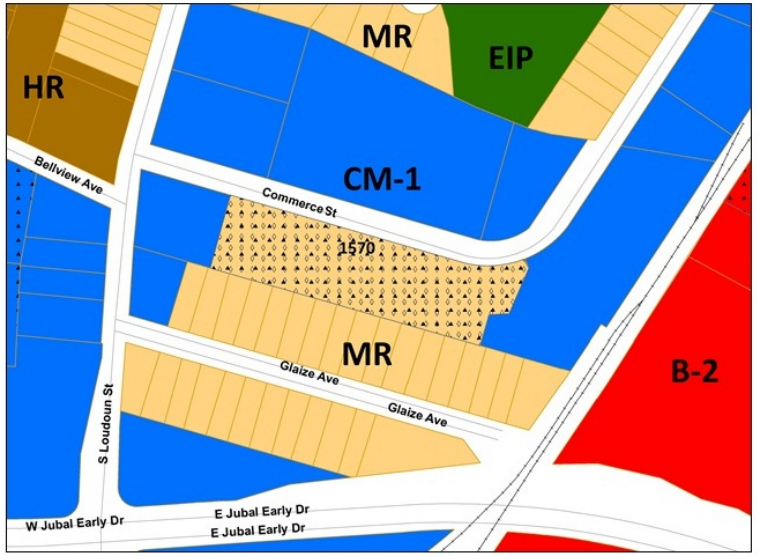
REZONING EXHIBIT
RZ-14-35

PREPARED BY WINCHESTER PLANNING DEPARTMENT
FEBRUARY 3, 2014



EXISTING

CM-1 ZONING FOR 1570 COMMERCE STREET



PROPOSED

CONDITIONAL MR (PUD) ZONING FOR 1570 COMMERCE STREET

PUD overlay
Conditional zoning

RESOLUTION INITIATING AN ORDINANCE AMENDING SECTIONS 6-5 AND 6-6 OF THE WINCHESTER LAND SUBDIVISION ORDINANCE PERTAINING TO APPROVAL OF MINOR SUBDIVISIONS

SA-14-199

WHEREAS, the Land Subdivision Ordinance allows the City Subdivision Administrator to administratively approve Minor Subdivisions which do not entail subdividing parcels into to more than 3 lots fronting upon existing public streets where no new streets or utilities are proposed and existing facilities will accommodate the modification; and,

WHEREAS, the Land Subdivision Ordinance requires that the Administrator make a written report of all minor subdivisions at each regular meeting of the Planning Commission; and,

WHEREAS, the Land Subdivision Ordinance, was amended in 1988 to prohibit the Subdivision Administrator from approving any Minor Subdivision within one year of a prior Minor Subdivision for the same parcel or portion thereof ; and,

WHEREAS; the outright prohibition on approving Minor Subdivisions within 12 months of a prior Minor Subdivision has been found to be an unnecessary impediment to development approval

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

SECTION 6-5. MINOR SUBDIVISIONS.

6-5-1 The Administrator may certify a subdivision or re-subdivision as a "minor subdivision" if he**/she** finds that:

6-5-1.1 The proposal is to divide a parcel of land into not more than three (3) lots fronting up an existing street and not involving a new street or the extension of any existing street, street facilities, or utilities; and existing facilities will adequately accommodate the modification; and

6-5-1.2 The proposal will not create a violation of any of the provisions of the Zoning Ordinance; and

6-5-2 If the Administrator finds that the proposed subdivision or re-subdivision meets all the requirements as set forth above and elsewhere in this chapter, he**/she** shall certify the proposed plat as a "minor subdivision", and by affixing a notation to that effect and his**/her** signature thereto, grant final subdivision approval. ~~At each regular Planning Commission meeting, t~~**T**he Administrator shall ~~make a written~~ **annually** report ~~of~~ all minor subdivision **activity to the Planning Commission** ~~so classified, certified, and approved for filing~~.

6-5-3 The Administrator may reject ~~No subdivision of a parcel of land may be~~ approv**al**~~ed~~ **of a subdivision** pursuant to this section within one year after the date of recordation of a minor subdivision plat for such parcel or part thereof **if he/she finds it contrary to good planning practice**. (8-9-88, Case #SA-88-0l, Ord. No. 029-88).

SECTION 6-6. RECORDATION.

~~Unless the subdivider shall record his approved final subdivision plat in the office of the Clerk of Circuit Court for the City of Winchester within ninety (90) days after final approval, said final plat approval shall be null and void. The subdivider or his agent shall, in writing, inform the Administrator of the date on which said final subdivision plat was filed and note the deed book and page number thereof.~~

Unless a plat is filed for recordation in the office of the Clerk of Circuit Court for the City of Winchester within six (6) months after final approval thereof or such longer period as may be approved by City Council, such approval shall be withdrawn and the plat marked void and returned to the approving official; however, in any case where construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by City Council or its designated administrative agency, or where the developer has furnished surety to City Council or its designated administrative agency by certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the time for plat recordation shall be extended to one (1) year after final approval or to the time limit specified in the surety agreement approved by City Council or its designated administrative agency, whichever is greater.

Ed. Note: The above text represents an excerpt of Sections 6-5 and 6-6 of the Land Subdivision 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.