**PLANNING COMMISSION**
**WORK SESSION AGENDA**
**October 14, 2014 - 3:00 PM**
**Fourth Floor Exhibit Hall**
**Rouss City Hall**

1. Review agenda for October 21, 2014, regular meeting

2. Committee reports

3. Status of projects pending Council approval

4. Announcements

**PLANNING COMMISSION**
**AGENDA**
**October 21, 2014 - 3:00 PM**
**Council Chambers - Rouss City Hall**

## 1. POINTS OF ORDER

A. Roll Call
B. Approval of Minutes – September 16, 2014
C. Correspondence
D. Citizen Comments
E. Report of Frederick Co Planning Commission Liaison

## 2. PUBLIC HEARINGS – New Business

A. **CU-14-558** Request of VFW Post 2123, Inc., for a Conditional Use Permit to establish a Private Club for the VFW Post for the property at 121 Bruce Drive *(Map Number 311-01-A-5)*, zoned Highway Commercial (B-2) District.

B. **TA-14-593** AN ORDINANCE TO AMEND AND REENACT SECTION 10-6 AND ENACT SECTION 10-9 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIDE AND REAR YARD SETBACK REQUIREMENTS AND SPECIAL PROVISIONS FOR REDEVELOPMENT SITES IN THE COMMERCIAL INDUSTRIAL (CM-1) DISTRICT.

## 3. PUBLIC HEARINGS – Continued

## 4. NEW BUSINESS

A. **TA-14-476** AN ORDINANCE TO AMEND AND REENACT ARTICLE 17 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO NONCONFORMING USES AND VESTED RIGHTS.

## 5. OLD BUSINESS

## 6. OTHER BUSINESS

A. **Administrative Approval(s):**

1) Site Plan Report

| | | | |
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| **(a)** | **SP-14-589** | 207 North Kent Street | Chopstick Café- Major Revision |
| **(b)** | **SP-14-611** | 1900 Valley Ave | The Lofts at Jubal Square – New |

2) Minor Subdivision Report

| | | | |
|---|---|---|---|
| **(a)** | **MS-14-560** | 548 & 600 Merrimans Lane | Boundary Adjustment & Lot Consolidation |
| **(b)** | **MS-14-590** | 207 North Kent Street | Lot Consolidation |

## 7. ADJOURN

**PLANNING COMMISSION MINUTES**

The Winchester Planning Commission held its regular meeting on Tuesday, September 16, 2014, at 3:00 p.m. in Council Chambers, Rouss City Hall, 15 N. Cameron Street, Winchester, Virginia.

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| **CALL TO ORDER:** | Vice Chairman Slaughter called the meeting to order at 3:00 p.m. |
| **PRESENT:** | Vice Chairman Slaughter, Commissioner Smith, Commissioner McKannan, Commissioner Loring, Commissioner Shickle, Chairman Wiley |
| **ABSENT:** | None |
| **EX-OFICIO:** | Councilor Tagnesi |
| **FREDERICK CO. LIAISON:** | Commissioner Kenney |
| **STAFF:** | Tim Youmans, Aaron Grisdale, Josh Crump, Catherine Clayton |
| **VISITORS:** | Tim Painter, Lawton Saunders, Lori Lievre, Dan Troup, Dale Barley |

**APPROVAL OF MINUTES:**

Vice Chairman Slaughter called for additions or corrections to the minutes of August 19, 2014. Hearing none, he called for a motion. Commissioner Smith moved to approve as submitted. Commissioner Loring seconded the motion. Voice vote was taken and the motion passed 5-0.

**CORRESPONDENCE:**

Mr. Youmans advised that Commission members have received several updated staff reports and a new agenda that has been changed to add a suggested Administrative Approval for Site Plan 14-577 for 1675 S. Pleasant Valley Road. He added that this is the revision for the reuse of the former K-Mart site. The staff reports that were revised pertain to items 2C and 2D under the Public hearing portion of the agenda.

**CITIZEN COMMENTS:**

None.

**REPORT OF THE FREDERICK COUNTY PLANNING COMMISSION LIAISON:**

Commissioner Kenney advised that they did not have a regular meeting on September 3rd but that they did have a work session with planning staff and some of the members of the Board of Supervisors concerning the Russell 150 property. The applicant wants to have it rezoned to a R4 district and it will be called Heritage Commons. It will significantly increase the number of units from approximately 300 residential up to about 1200 residential units, 700,000sf commercial space, 100,000sf retail space and 600,000sf of office space. It is a very complicated and long rezoning and at the end of the day, it went back to the developers and staff to keep working at it before it comes back before the Planning Commission again.

**PUBLIC HEARINGS – New Business:**

**A. TA-14-477** AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 18, AND 19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS OF GROUP HOME; PROVISIONS FOR TEMPORARY HEALTH CARE STRUCTURES; PERMITTING, NOTIFICATION REQUIREMENTS, AND APPEAL PROCEDURES FOR FAMILY DAY HOMES; AND SITE PLAN EXPIRATION TIMELINES. **(Mr. Grisdale)**

Mr. Grisdale presented the staff report stating that this is a publicly sponsored text amendment that will bring the City's Zoning Ordinance into conformity with State Code, following legislative updates. Following review of our Zoning Ordinance and comparing it with the enabling provisions in the Code of Virginia, several areas were identified as in need of revision. There have been several revisions to the enabling legislation passed by the General Assembly pertaining to zoning regulations over the past several years. This ordinance addresses four areas that need some minor revisions. Staff does recommend approval and he concluded by stating that he is available to answer any questions.

*Vice Chairman Slaughter called for questions from the Commission.*

Commissioner Loring asked if this will bring us completely in concert with State Code to which Mr. Grisdale said yes, specifically with these four areas.

*Hearing no other questions, Vice Chairman Slaughter called for a motion.*

*Commissioner Smith moved to forward TA-14-477 with a favorable recommendation because the amendment, as proposed, presents good planning practice by ensuring the City's Zoning Ordinance is up to date and consistent with current provisions within the Code of Virginia.*

*Commissioner Loring seconded the motion. Voice vote was taken and the motion passed 5-0.*

**B. CU-14-485** Request of EFD Investments, LLC, for a Conditional Use Permit for extended stay lodging at 132 N. Braddock Street (Map Number 173-01-F-6 - > <01) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay. **(Mr. Youmans)**

(Chairman Wiley arrived at 3:10 p.m.)

Mr. Youmans presented the staff report stating that this is a request for a Conditional Use Permit under Section 9-2-19 of the Zoning Ordinance pertaining to extended stay lodging. The ground floor vacant and retail spaces and the two second-floor apartments in the two-story structure are proposed for conversion to a four-unit extended stay lodging facility. The Tudor Revival structure has an exterior appearance that lends itself to either commercial or residential use and it already contains two apartments on the upper level of the building. The door and window openings are more typical of a multifamily structure rather than a retail storefront. The building currently has a single recessed doorway directly oriented to North Braddock Street providing access to all spaces within the building. The applicant does propose to provide weekly maid service and owner maintenance to ensure that the property is taken care of in a way consistent with the intent of an extended stay lodging facility. A similar type of extended stay lodging facility was approved by City Council for the building just to the south at 126 N. Braddock Street. He concluded by stating that he is available for questions from the Commission.

*Vice Chairman Slaughter called for questions from the Commission. Hearing none, he asked if the applicant or representative is present to speak.*

Lawton Saunders, representative for the applicant, approached and stated that Mr. Youmans presented the request quite well and that he is available for questions.

*Vice Chairman Slaughter called for questions from the Commission.*

**Vice Chairman Slaughter Opened the Public Hearing**

**Vice Chairman Slaughter Closed the Public Hearing**

*Vice Chairman Slaughter called for discussion from the Commission.*

Commissioner McKannan said that there really is not a lot to discuss if it is going to be like the last request that has already been passed.

*Hearing no other discussion, Vice Chairman Slaughter called for a motion.*

*Commissioner Loring moved to forward CU-14-485 to City Council recommending approval per Section 9-2-19 of the Zoning Ordinance because the proposal, as submitted, will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The approval is subject to the following:*

1. *Weekly maid service provided for all four (4) units to ensure consistency with definition of the units as accommodations serving business travelers, not primary residences; and,*
2. *Leasing of at least four (4) parking spaces in the Braddock Street AutoPark or other nearby parking lot to ensure compliance with the requirement for garage or parking space conveniently located to each Extended Stay Lodging unit.*

*Commissioner McKannan seconded the motion. Voice vote was taken and the motion passed 6-0.*

(Chairman Wiley resumed leadership of the meeting at 3:14 p.m.)

**C. RZ-14-490** AN ORDINANCE TO REZONE 7.7076 ACRES OF LAND AT 940 CEDAR CREEK GRADE (Map Number 249-01- -2 - > <01) FROM HIGHWAY COMMERCIAL (B-2) DISTRICT WITH PLANNED DISTRICT DEVELOPMENT (PUD) OVERLAY AND PARTIAL CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGHWAY COMMERCIAL (B-2) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY. **(Mr. Youmans)**

Mr. Youmans presented the revised staff report stating that the applicant is requesting again to change the underlying and overlay zoning of a large tract of mostly vacant land at the western limits of the City along the north side of Cedar Creek Grade. The request would change the zoning from B-2/PUD with proffers and some Corridor Overlay along Cedar Creek Grade frontage to B-2 with proffers and full CE overlay zoning restored. The prior rezoning last year (RZ-13-500) rezoned the tract from RO-1/CE to B-2/PUD (and some CE) subject to proffers. The proposal restores the Corridor Enhancement (CE) overlay zoning to the entire tract from the scaled back current extent which only applies to the first 125 feet

back into the site from Cedar Creek Grade. The request proposes to eliminate any Planned Unit Development (PUD) overlay zoning across the site. As such, no Development Plan depicting building layout, building elevations, floor plans, etc., are available for scrutiny as part of the rezoning evaluation. The revised proffers now specifically call for an assisted living and skilled nursing facility. Therefore, the Commission and Council can evaluate the request with the knowledge that no other use permitted in the B-2 District could be situated there. In a letter to the Planning Director dated September 15, 2014, Timothy Painter of Painter-Lewis, PLC, applicant for the owner (Scott Rosenfeld-Cedar Creek Place, LLC) has provided a revised proffer statement explaining the proposed rezoning, specifically the proposed commercial use as a nursing home and assisted living facility (approximately 120 beds), a trip generation report of the proposed use, and details of the entrance location of the site. Since this is a conditional rezoning request, the applicant has voluntarily submitted proffers to mitigate potential impacts arising from the rezoning of the property from B-2 (PUD/CE) to B-2 (CE). The updated trip generation study was prepared and submitted to the City on September 15, 2014, and the analysis indicates that the nursing home/assisted living facility would generate fewer trips than the current zoning for the 132 apartments as well as lower counts than what the previous RO-1 zoning would allow for office development. Generally, the average trips per weekday are estimated to be 282, with weekday peak hours having 21 trips and a weekday afternoon peak of 27 trips. For Saturdays, it is estimated to have 250 trips per day, with the peak hour of 50 trips. For Sundays, it is estimated to have 240 trips per day, with the peak day of 41 trips. The applicant has proffered access to the site from Cedar Creek Grade roadway at approximately the same location as the current private entrance of the Horton property. The existing entrance shall be removed and become a joint entrance for the Horton property and the nursing home facility. The entrance shall consist of VDOT standards for commercial entrances. Additionally, the applicant is no longer proposing a 5-foot wide walking trail with exercise stations that would have become part of the local trail system "for use by the residents." Lastly, the project phasing has changed to show that it will be constructed in one phase. Mr. Youmans concluded by stating that staff supports rezoning for the proposed use as stated in the revised proffer and we do not feel that the application needs to be tabled any longer as they have clarified the information regarding the use, that the whole project will be done in one phase, and have clarified by eliminating the proffers associated with the residential recreational amenities on the site. He said that as a single assisted living facility they would still have to meet requirements such as open space and recreational amenities but they would not be things that would be proffered for the public's use. He closed by saying that he is available for questions.

*Chairman Wiley called for questions from the Commission.*

Commissioner Smith asked where they are proposing to build the facility to which Mr. Youmans advised that without the PUD proposal, the applicant does not have to show a development plan, so at this point, we do not know where it will be. Mr. Youmans said that it is a less-specific rezoning in terms of the physical layout but it is a very specific conditional rezoning now in terms of the land use being just the one (1) facility. Commissioner Smith then stated that the cover letter mentioned that the project is to be built in one (1) phase but it did not say anything about additional buildings. Mr. Youmans said that he read somewhere that there may be subsequent buildings proposed and perhaps Mr. Painter could clarify that. Commissioner Smith then asked about the trip generation study and questioned whether it includes staff, medical and emergency services because normally there are three (3) shifts of staff coming in and out. Mr. Youmans said that he believes it does but, again, Mr. Painter could better address that. Mr. Youmans added that the standard that was used is the bed count but it is based upon total traffic coming and going regardless if they are visitors, employees or residents. Mr. Youmans said to clarify, on page 1 of the applicant's letter it reads in part, "Generally, this development shall consist of

one large nursing home building with up to three detached assisted living facilities proposed…" so they are actually making it a proffer in the general sense.

Commissioner McKannan said to clarify that it will be 120 total beds for the combined services which means all of the outlying buildings to which Mr. Youmans said that is correct.

Commissioner Loring said to clarify, they are going from eight (8) buildings to four (4) but that there might be more in the future to which Mr. Youmans responded that the information in the applicant's letter addresses it, that there would not be just one (1), there would be four (4) and based upon the statement regarding phasing, it sounds as though all four (4) buildings would be built at once. Commissioner Loring then commented that there is no site plan yet so right now the Commission is just looking at the rezoning and not necessarily the site plan. Mr. Youmans said that there is no development plan that depicts the layout because there is no PUD proposed with this rezoning.

*Chairman Wiley called for further questions for Mr. Youmans.*

**Chairman Wiley Opened the Public Hearing**

Tim Painter, Painter-Lewis, PLC, representative for the applicant, said that the main building will be nearly centered on the property and there will not be any more than a total of four (4) buildings on the property. He added that with this type of use, traffic generation is much less than originally proposed and that he is available to answer any questions.

Commissioner McKannan asked what type of feedback has been received by Mr. Painter from the Horton's and the residents to which Mr. Painter responded that the Horton's are fine and they have agreed to maintain an easement and he has not heard from anyone else. Commissioner Smith asked what Mr. Painter means when he says he has not heard from anyone else to which Mr. Painter stated that he has not contacted anyone but that the owner has reached out to some of the neighbors and he does not know the results of the discussions.

Chairman Wiley asked if the traffic study was done just through Mr. Painter's office or was it used from some other place. Mr. Painter said that it was done through his office and it was based upon the number of beds. Commissioner Smith asked about the traffic study and the impact on residents of late night emergency services. Mr. Painter stated that there will be proper means of ingress and egress with one coming off of Cedar Creek Grade and connecting with Stoneleigh.

Councilor Tagnesi asked about the green space and what the applicant meant about keeping it. Mr. Painter said that they intend to maintain the green space as proffered.

*Chairman Wiley called for other public comment.*

Lori Lievre, 2301 Stoneleigh Road, said that she believes her question has been addressed but she wants to confirm that once the rezoning occurs, the only use of the land will be this use and nothing more. Chairman Wiley stated that is correct because the applicant has given a proffer that states the nursing and assisted living facility will be the only type of use. Ms. Lievre then said that her only other question or concern was pertaining to the height of the buildings but she said that it sounds like that will be a different process. Mr. Youmans responded that there will be a site plan stage but that the indication received is that the assisted living facility will probably not be as tall as the originally proposed

structures. Mr. Youmans added that in regard to some of the other adjoining property owners, Mr. Molden, who has the Summerfield properties to the rear, was aware of the change and he indicated that he has no problem with it. Commissioner McKannan stated that it will be limited to what is allowed in the Corridor Enhancement district to which Mr. Youmans responded that is correct.

*Chairman Wiley called for any other public comment.*

**Chairman Wiley Closed the Public Hearing**

*Chairman Wiley called for discussion from the Commission.*

Commissioner McKannan said that he is more comfortable with the request now than last week especially since they are going from 132 apartments to 120 units and now being an assisted living facility instead of something that the Commission did not know what was happening. He added that he is much more inclined to support the project now versus a week ago. Commissioner Slaughter said that he agrees. Commissioner Loring said that it is helpful to him to know that the buildings will be clustered primarily in the center of the property and have managed open space around them. Commissioner Smith said that he has no problem with the rezoning but that the only concern he has is that he would have liked to have received the information sooner than what the Commission did with the proffer statement and actually know what is going there. Commissioner Shickle said that she agrees with Commissioner Smith.

*Hearing no other discussion, Chairman Wiley called for a motion.*

*Commissioner Slaughter moved to forward RZ-14-490 to City Council recommending approval of the rezoning as depicted on an exhibit entitled "Rezoning Exhibit RZ-14-490, Prepared by Winchester Planning Department, September 2, 2014" because the proposed B-2 (CE) zoning facilitates the connection of Stoneleigh Drive to Cedar Creek Grade, and provides for commercial space in support of the Commerce Revitalization/Infill character designation in the Comprehensive Plan. The recommendation is subject to adherence with the revised submitted proffers dated September 11, 2014.*

*Commissioner Loring seconded the motion. Voice vote was taken and the motion passed 6-0.*

**D. SD-14-532** Request of the City of Winchester for preliminary subdivision approval for a subdivision right-of-way dedication for Meadow Branch Avenue at 200 Merrimans Lane (Map Number 149-01-7-A), and 470 Merrimans Lane (Map Number 169-01- -5), zoned Conditional Highway Commercial (B-2) District, Education, Institution and Public Use (EIP) District, Medium Density Residential (MR) District, Low Density Residential (LR) and Residential Business (RB-1) District. **(Mr. Youmans)**

Mr. Youmans presented the revised staff report stating that this is a request of the City of Winchester for preliminary subdivision approval for a subdivision right-of-way dedication for Meadow Branch Avenue. The request is for preliminary approval of a six (6) lot subdivision and the dedication of Meadow Branch Avenue as a four (4) lane divided roadway through the current Ridgewood Orchard and Moffett Farms properties. A third property, owned by DBL Holdings, is not included in this subdivision since it is not traversed by the new public street, but will be included in a subsequent Minor Subdivision. Two other minor boundary line adjustments include one with the Lum residential property next to the

school site to account for an encroachment and a boundary line adjustment with the Sacred Heart property to eliminate a narrow strip of land between the new road and the Sacred Heart property. The land included in the subdivision entails a variety of zoning designations. The 33.4 acres of land currently owned by Ridgewood Orchard was rezoned at the September 9th City Council meeting. The driving force behind this subdivision of three privately-owned parcels is the need to create the 9.34-acre elementary school site that will front along the west side of newly constructed Meadow Branch Avenue. The plats for the initial Major Subdivision depict the Ridgewood Orchard property being subdivided into just three lots- one 12.66-acre elongated lot on the east side of the Meadow Branch Avenue right-of-way, and two lots on the west side of the roadway. The northerly lot on the west side contains 10.74 acres and includes the wedge of remaining LR land that will presumably be subdivided away from the larger portion of the site that was rezoned B-2. The southerly lot on the west side contains 6.4 acres, all of which will become part of the school site (with the exception of a small area conveyed to Lum). In addition to the 9.34-acre school site assemblage of the DBL Holdings property, the Ridgewood Orchard property is scheduled to be subdivided in to three (3) parcels. Dedication of land for Meadow Branch Avenue across the Ridgewood property has been proffered in 2005 as part of the conditional rezoning but has since been incorporated into the C&S PPEA proposal wherein the developer is contributing the right-of-way and the City and the PPEA partner are splitting the cost of building the 4-land divided public roadway. The City is utilizing Virginia Revenue-Sharing funds for the public portion of the construction costs wherein state tax monies are matched with local dollars on a 50-50 basis. The local dollars are the funds from the developer. Today's public hearing is not about whether the existing portion of Meadow Branch Avenue should be two lanes or four lanes but it is important in terms of trying to identify what is proposed within the boundaries of this subdivision. The construction details of the newly proposed stretch of Meadow Branch Avenue were presented to the public at an open house held at City Hall on Thursday, August 28, 2014. The design is still subject to Council approval following presentation by staff at a Council work session on September 23rd and action (possibly concurrent with the Subdivision review) by Council in October. The preliminary plans depict a right-in/right-out (RI/RO) driveway serving the northern portion of the 7.39-acre Moffett land on the east side of the street. This area is otherwise served by full access, 4-way intersection at the southern end of the subject parcel and the distance between this RI/RO driveway and the median crossing at the south school entrance is less than the 300-foot minimum required per the Land Subdivision Ordinance (LSO), Section 2-2-32.1 for Category III streets. Drainage and storm water management are still being designed and those details will be provided with Final Subdivision review by City staff. Topographic plans for Meadow Branch Avenue have now been submitted showing existing and proposed grading. The grade of the road fairly closely follows the grade of most of the Moffett property and the southerly and northerly ends of the Ridgewood property. In the area between Sacred Heart church and the proposed B-2 land on the Ridgewood site, there is some cut on the Sacred Heart (east) side and upwards of 6-7 feet of fill on the west side as the road curves up the hill toward the school site. Details for water, sewer, and other utilities can be reviewed by City staff. Some utilities, such as water and sewer across the Moffett property, are not scheduled to be installed with the roadway project. Staff recommends that the Commission evaluate the initial subdivision layout and identify any concerns that need to be communicated back to the engineers and surveyors. The Planning Commission should hold the required public hearing on the preliminary subdivision and then consider a motion forwarding the Final Subdivision recommendation to City Council. He concluded by stating that he is available for any questions.

*Chairman Wiley called for questions from the Commission.*

Commissioner Loring asked if there will be dedicated turn lanes for each of the access points to which Mr. Youmans said that there will be opposing left turn lanes and it will be side street conditions for future roadways or driveways that come to that, there will be no stopping for traffic on Meadow Branch Avenue.

Commissioner Smith asked about the required distance between traffic lights and what the speed limit will be. Mr. Youmans stated that the minimum distance on a Category III street is 300-feet and the speed limit will be posted at 25mph just like existing Meadow Branch Avenue. The prohibition for thru trucks will also be maintained.

Commissioner Slaughter expressed concerned about the sidewalk conditions and the Green Circle Trail being right up against the road. He said he feels it is a potential safety hazard and asked if there is any way to create a buffer between the Green Circle Trail in that area. Perry Eisenach, Director of Public Utilities, stated that the City will not be using the entire right-of-way on the side and we cannot do anything on the west side because of the retaining wall. On the east side, we are trying to work with the homeowners' association to try to get some separation there. Commissioner Loring asked about guardrails to which Mr. Eisenach responded that there has to be a guardrail on the west side because of the drop-off. Commissioner McKannan said as a follow-up, assuming you are not able to strike an agreement with the HOA, what type of distance are you looking at to where it would fall in to the bottom category. Mr. Eisenach responded that it is about 300 to 400 feet.

Chairman Wiley advised of a point of clarification for protocol stating that the public hearing is preparing to start and that City Council will hold a work session, which is not a public hearing. Mr. Youmans responded that City Council work sessions are never public hearings. Mr. Youmans further advised that with major subdivisions, state law requires that the Planning Commission hold a public hearing at the preliminary subdivision stage, which is where we are today, and then the Planning Commission will act separately on the final subdivision recommendation to City Council. When it gets to City Council, Council will review it in a non-public hearing fashion at their work session, presumably on September 23, 2014, if the Planning Commission forwards the final subdivision today. It would then go on to the October 14th meeting for a motion by City Council to either approve or disapprove the final subdivision. It is not like a Conditional Use, Rezoning, or Text Amendment where there is a public hearing at the elected body stage, it is only here today. That does not mean that City Council cannot take input from the public because at the beginning of every work session and every regular session, they do have public comments so someone could speak about the item but City Council would not be soliciting public input as part of a formal public hearing.

Commissioner Shickle said that the public hearing today is not specifically about the decision relating to the two-lanes versus four-lanes to which Mr. Youmans said that is correct. Commissioner Shickle asked if City Council would be soliciting additional citizen comments beyond what has already occurred to which Mr. Youmans responded that he does not want to speak for City Council regarding what they will or will not do regarding the debate about the existing section of Meadow Branch Avenue. Mr. Youmans also said that there was a letter to the editor in the local newspaper recently stating that the Planning Commission had recommended certain things but of course, the Planning Commission has not done that. There has not been any action by this body to advocate or recommend against two- versus four-lanes on the existing section. The decision of City Council on that separate matter is related to this one because it affects that 600-foot transition area. If City Council does recommend Option 2, which is the four-laning of existing Meadow Branch Avenue, then there is no need for the two-lane transition area in to the Moffett property where the unbuilt portion of Meadow Branch Avenue is but there are some

other things that would need to be accounted for, namely how to accommodate the Green Circle Trail and the sidewalk and a little bit of an issue with realigning the existing portion of Meadow Branch Avenue North as it approaches Buckner Drive. It is unrelated but it does have some connection with the construction.

Commissioner Smith said that in a situation such as this, where do the public hearing comments get included. Mr. Youmans said that typically during the staff presentation at the City Council work session, staff would indicate whether or not there was citizen input from the Planning Commission public hearing and what that input was. Mr. Youmans also said that Councilor Tagnesi is here and will be able to clarify to City Council what has been said. He also said that he would like to clarify why City Council does not have a public hearing on subdivisions. It is because under Virginia law, a subdivision is what is called a ministerial act, meaning if an applicant meets all of the requirements laid out in the Subdivision Ordinance, the applicant/developer should expect that approval would be given for the subdivision. In contrast, a rezoning would be a discretionary act. Even if an applicant had all of the proffers in place and a complete application, they could still get rejected by the elected body because City Council has the discretion to say that they do not want to rezone the property. They cannot do that with a subdivision. That is why public sentiment on the subdivision is not accommodated as much as it is on something like a rezoning or conditional use.

Commissioner McKannan asked Mr. Youmans to touch on the pros and cons of either moving forward or not moving forward with the final subdivision action. Mr. Youmans explained that the Planning Commission acting on both the preliminary and the final subdivision at the same time has been customary practice of the Planning Commission. It is just that we get so few major subdivisions; it has been so many years since we had one. If the Planning Commission chooses not to act on both, we are looking at being another 1 to 1 ½ months behind schedule. We think we can still make up time following this subdivision action and keep the school project on the time frame that is necessary. The site plan is the last thing that needs to happen with the school project beyond this subdivision. Mr. Youmans added that since we are behind the approved timeline, he is hesitant to have the Planning Commission table the application today. There really is nothing that would give reason to hold the application up for yet another month.

**Chairman Wiley Opened the Public Hearing**

Mr. Youmans clarified for the public that Mr. Painter was hired by the City to perform the work on the Meadow Branch Avenue roadway project and Mr. Mislowsky of Pennoni Associates is actually working with Ridgewood Orchard and with Moffett Farms.

Councilor Tagnesi asked if the road that is designated at the traffic light that will go to Sacred Heart church will be paved and who will be responsible for maintaining it. Mr. Eisenach said that is something that will have to be worked out between Sacred Heart and Ridgewood Orchard. The City will not be involved.

Dan Troup, Buckner Drive, said that he is the President of the HOA, and that he hopes that they can work something out with the City. He stated that he is supportive of City staff's recommendation of the stripping of Meadow Branch Avenue between Handley Avenue past Buckner Drive for Option 1 and the reduction of truck traffic. Dale Barley, Rodes Circle, also stated that he supports Option 1 with two lanes only because it is very important for safety purposes to keep it a two-lane road. Other public comments concerned safety and how the road would transition from the new school district to the residential area

and whether the Meadow Branch extension is going to be commercial on the east side and residential on the west side. Mr. Youmans responded that to the north and the south is existing low density residential zoning but to the northwest, City Council did approve the conditional B-2 Highway Commercial zone and there are restrictions on the uses there and it does have design standards that mimic the corridor enhancement standards for the Amherst Corridor overlay district but it is not actually in the corridor enhancement district.

**Chairman Wiley Closed the Public Hearing**

*Chairman Wiley called for discussion from the Commission.*

Commissioner McKannan asked about the Planning Commission's ability to make a recommendation regarding the portion of the street from Buckner to Handley. Mr. Youmans stated that he would suggest waiting until City Council asks for it. Planning Commission recommendation is not something that the Commission is tasked with in terms of State Code, the Zoning Ordinance, or the Subdivision Ordinance. In reality, it is more of an operational issue in terms of how they allocate the use of existing pavement than it is a long-range planning issue but there is a lot of overlap in terms of how it impacts the transition zone. Mr. Youmans said that he felt it best to let the City Council have the informative work session and perhaps some of the Commissioners could attend to see what has been identified by staff.

Commissioner Smith stated that if the City is about 1 ½ months behind the more favorable motion for the final subdivision could subsequently move it forward as opposed to the preliminary to which Mr. Youmans said yes and that if the Commission does not do both, there will be another month or so added on.

*Hearing no other comments, Chairman Wiley called for a motion.*

*Commissioner Loring moved to approve the preliminary subdivision (SD-14-532) depicting right-of-way dedication for Meadow Branch Avenue and three lots on the Ridgewood Orchard property at 200 Merrimans Lane as well as two lots on the Moffett Farms property at 470 Merrimans Lane. The recommendation is subject to approval of the construction drawings by City staff and review and approval of the deed of dedication by the City Attorney.*

*Commissioner Slaughter seconded the motion. Voice vote was taken and the motion passed 6-0.*

**PUBLIC HEARINGS – Continued**

None.

**NEW BUSINESS:**

**SD-14-532** Request of the City of Winchester for a final subdivision recommendation to City Council for a subdivision right-of-way dedication for Meadow Branch Avenue at 200 Merrimans Lane (Map Number 149-01-7-A), and 470 Merrimans Lane (Map Number 169-01- -5), zoned Conditional Highway Commercial (B-2) District, Education, Institution and Public Use (EIP) District, Medium Density

Residential (MR) District, Low Density Residential (LR) and Residential Business (RB-1) District. (Mr. Youmans)

*Chairman Wiley called for a motion.*

*Commissioner Smith moved to forward final subdivision (SD-14-532) to City Council recommending approval of the subdivision depicting right-of-way dedication for Meadow Branch Avenue and three (3) lots on the Ridgewood Orchard property at 200 Merrimans Lane as well as two (2) lots on the Moffett Farms property at 470 Merrimans Lane. The recommendation is subject to approval of the construction drawings by City staff and review and approval of the deed of dedication by the City Attorney.*

*Commissioner Loring seconded the motion. Voice vote was taken and the motion passed 6-0.*

**OLD BUSINESS:**

None.

**OTHER BUSINESS:**

**A. Administrative Approval(s):**

1. **SP-14-577** 1675 S. Pleasant Valley Road parking space modification

*Commission Shickle moved to approve. Commissioner McKannan seconded the motion. Voice vote was taken and the motion passed 6-0.*

**ADJOURN:**

With no further business before the Commission, the meeting adjourned at 4:37 p.m.

Planning Commission Item 2A
October 21, 2014

**CU-14-558** Request of VFW Post 2123, Inc. for a conditional use permit for a private club at 121 Bruce Drive *(Map Number 311-01-5)* zoned Highway Commercial (B-2) District.

---

REQUEST DESCRIPTION
The request is for a conditional use permit (CUP) to allow use of the property and proposed building as a private club pursuant to Section 8-2-7 of the Winchester Zoning Ordinance.

AREA DESCRIPTION
Located along Bruce Drive off South Pleasant Valley Road, the subject property is zoned B-2 and is bounded to west by a commercial business and to the south by a vacant lot, both also zoned B-2. To the north, on the opposite side of Bruce Drive, it is zoned Limited Industrial District (M-1) with uses including residential and repair businesses. To the east, is a City park (Weaver Park) which is zoned Education, Institution and Public Use District (EIP).

STAFF COMMENTS
Currently the site is a vacant lot. The proposed use as a private club requires a conditional use permit within the B-2 District under section 8-2-7 of the Zoning Ordinance and is defined in the Ordinance as follows:

1-2-21 CLUB, PRIVATE: Those associations and organizations of a fraternal or social character not operated or maintained for profit, but the terms shall not include night clubs or other institutions operated as a business.

Within the applicant's letter of intent dated August 29, 2014, Post Commander Rodney Cowles notes that the club wishes to establish a Post Home for VFW Post 2123. Currently the Post meets at the Elks Lodge at 466 Front Royal Pike, Winchester, VA. **The proposed hours of operation for the club are 4pm to 10pm Tuesday through Thursday, 1pm to midnight Friday and Saturday and 1pm to 8pm Sunday.**

The proposed use of this property as a private club with its defined hours of operation is likely to have a minimal impact on surrounding properties during business hours, however after business hours and on weekends is where the most impacts would occur. In their letter, the applicant noted they would seek to do live entertainment "**up to eight days per month**" generally on Friday/Saturday evenings and/or Sunday afternoons. In an email with Quartermaster Charles M. Hunter stated historically these social events (at most) have around 75 to 100 members and guests attend. With the potential number of events per month and expected attendance, this could cause potential parking issues. Currently on their proposed site plan, 34 parking spaces are called for on-site.

Staff sought comments from city agencies & outside agencies regarding this CUP request. Jennifer Jones of the Parks and Recreation has no issues with this request as long as the private club doesn't impede access to Weaver Park and their events do not disturb events occurring at the park. She did comment that when Weaver Park has events (typically on Saturdays) parking is very limited. The Chief of Police

also has no issues with this request stating, “We have no history of problems with this group so there is no reason to believe they would not be responsible in managing this (request).” Staff also contacted the Blue Ridge Youth Soccer Association (BRYSA) and Winchester Rugby who utilize Weaver Park for games and practices. The BRYSA responded that they see no conflict with the proposed use. They indicated the park is utilized as a practice field only which typically are scheduled Monday – Thursday from 5pm to dusk (depending on the time of year).

RECOMMENDATION
For a conditional use permit to be approved, a finding must be made that the proposal as submitted or modified will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood.

A favorable motion could read
**MOVE** that the Commission forward **CU-14-558** to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The recommendation is subject to:

1. The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;
2. Strict obedience with all local and state laws, especially those pertaining to ABC licensing; and,
3. Use to end no later than (__) pm Sunday through Thursday and no later than (__) pm Friday and Saturday.
4. Use allowed no more than (_) days of live entertainment per month.
5. The establishment is precluded from parking along Bruce Dr. or at Weaver Park unless permission is given to VFW Post 2123 from the City.
6. Staff review and approval of the required site plan.

-OR-

An unfavorable recommendation from the Commission to Council should cite the reasons why the proposal as submitted or modified could negatively impact the health, safety or welfare of those residing or working in the area and/or why it could be detrimental to public welfare or damaging to property or improvements in the neighborhood.

VETERANS OF FOREIGN WARS OF THE UNITED STATES
Winchester Post 2123
P. O. Box 4095
Winchester, VA 22604

August 29, 2014

Aaron Grisdale, Director of Zoning and Inspections
City of Winchester
15 North Cameron St
Winchester, VA 22601

Dear Mr. Grisdale:

This application is for a conditional use permit to establish a Post Home for VFW Post 2123 at 121 Bruce Drive, Winchester, Virginia. The property is zoned B-2, and the proposed use is allowed with a conditional use permit in accordance with paragraph 8-2-7 of the city zoning ordinance.

The property is bounded on the west by a commercial business. The adjacent property to the south is vacant, zoned B2. The eastern neighbor is a public park (Weaver Park). To the north, the properties are mixed business and residential.

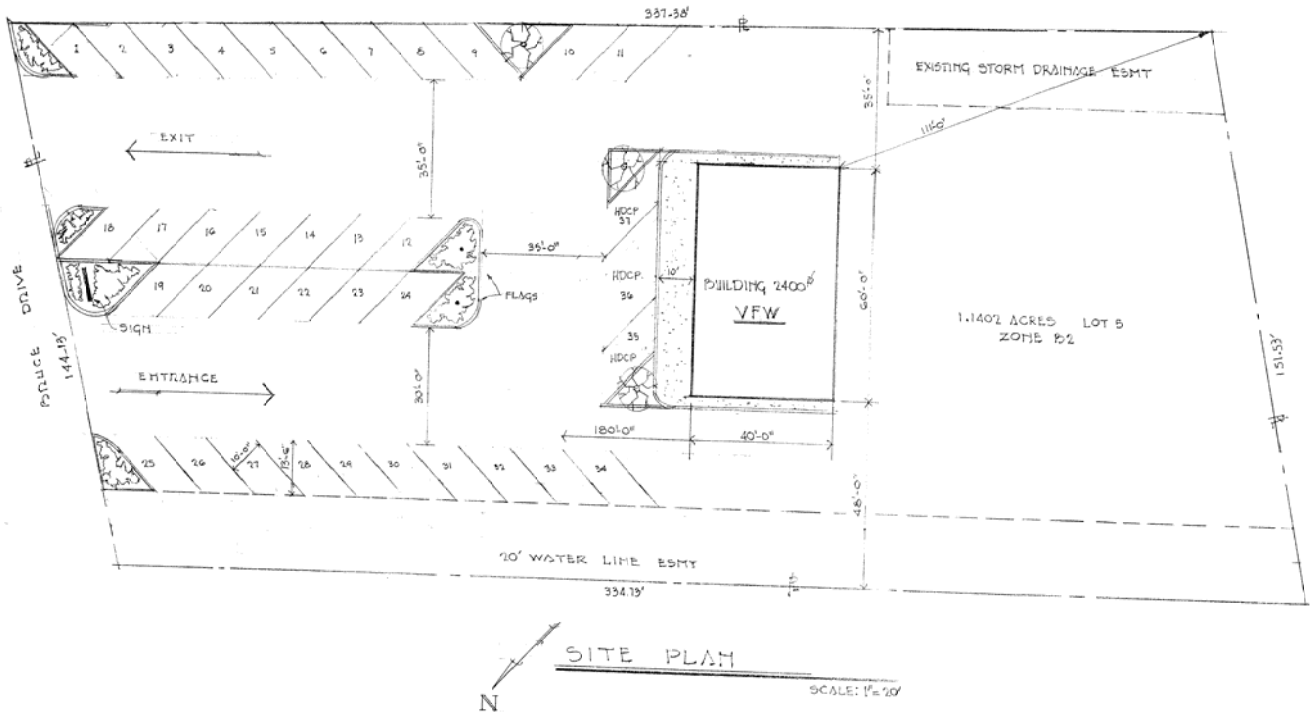
All VFW posts are incorporated nonprofit associations. However, each post must be self supporting and is responsible for its own expenses. The post's primary income would come from canteen (club) operations, including food and beverage sales, tip jars and raffles. Traffic would be minimal during the week except for monthly meeting nights. Committee meetings, which may be held more frequently, host smaller contingents and would have negligible traffic impact.

In order to generate enough revenue to pay its expenses, the post envisions hosting live entertainment up to eight days per month. These events would normally be held on Friday or Saturday evening or on Sunday afternoon, when adjacent businesses are closed. We believe the exterior noise would be minimal from these events and should not disturb our residential neighbors. The border with Weaver Park is buffered by a wood line along the existing storm drainage easement.

The proposed use does not impact the Southeast Planning Area Redevelopment Concept 2.

Sincerely,

Rodney L. Cowley
Commander




RECEIVED
SEP 8 2014

THIS SITE PLAN IS VALID FOR (5) FIVE YEARS FROM THIS DATE OF APPROVAL

CITY OF WINCHESTER APPROVAL

CITY PLANNING DIRECTOR DATE

PROPOSED SITE PLAN
V F W
121 BRUCE DRIVE WINCHESTER, VA.

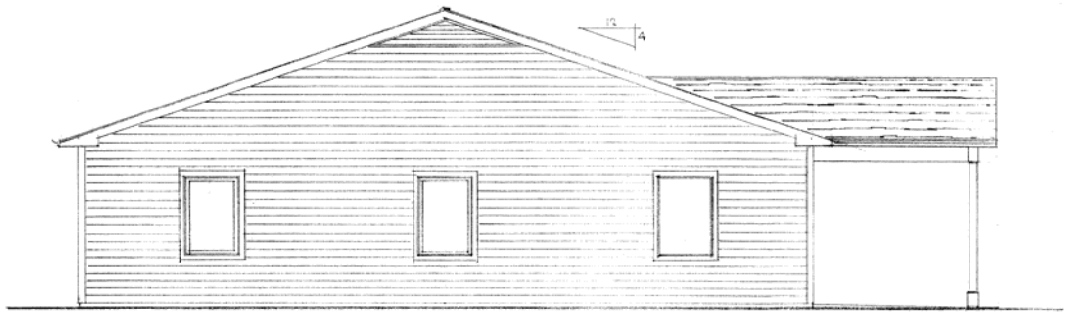
| | | |
|---|---|---|
| SCALE: 1"=20' | APPROVED BY: | DRAWN BY ADR |
| DATE: 8/21/2014 | #92137-1414 | REVISED 8/26/2014 |

-SITE PLAN-

ALFRED D ROBERTSON
PO BOX 415
GORE VA 22637-0415

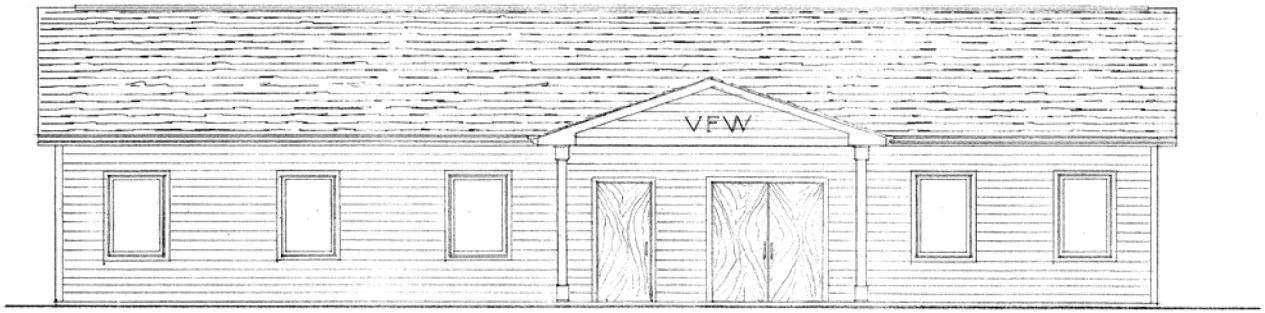
DRAWING NUMBER
S-1a

18 X 24 PRINTED ON NO. 1000H CLEARPRINT




·LEFT SIDE ELEVATION·

SCALE: 1/4"=1'-0"



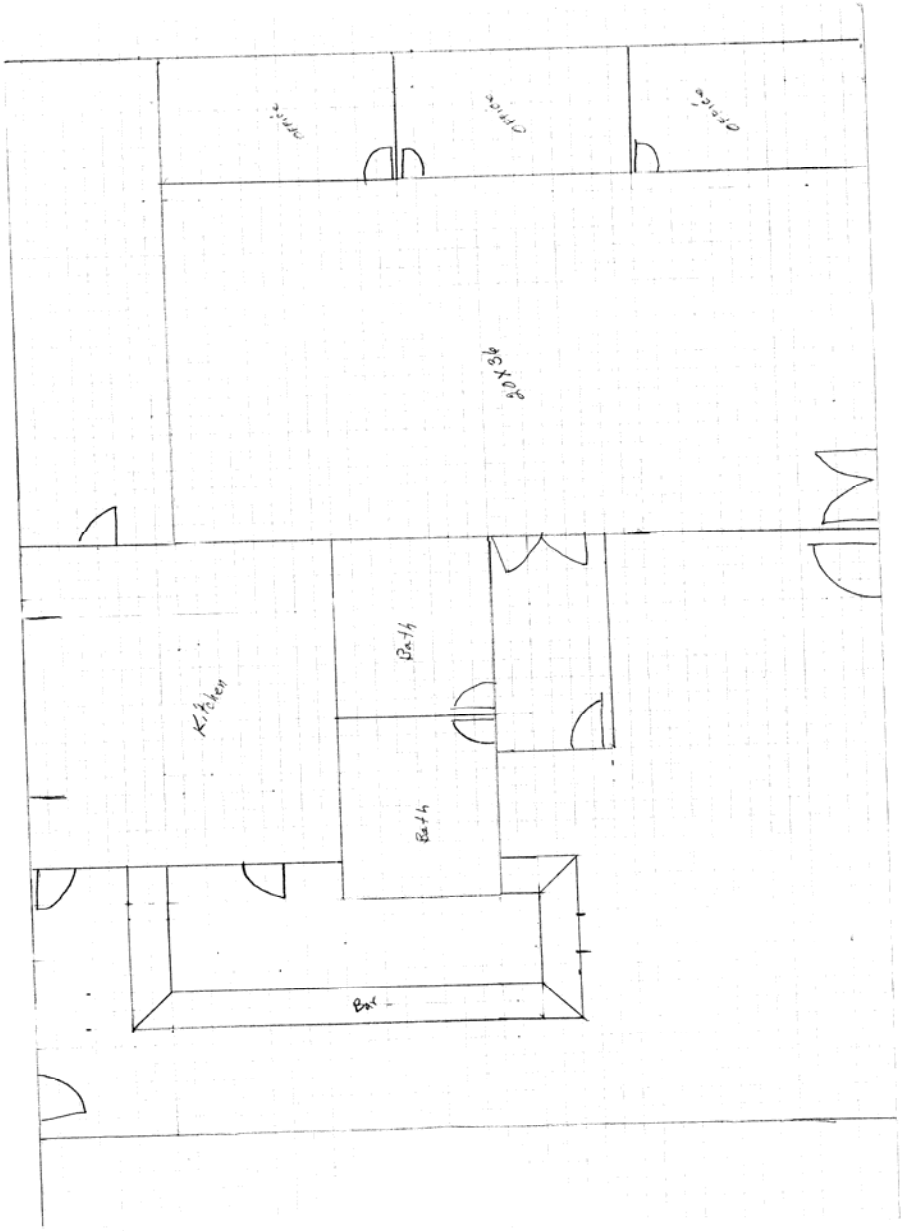

·FRONT ELEVATION·

SCALE: 1/4"=1'-0"

RECEIVED
SEP 8 2014

| | | |
|---|---|---|
| PROPOSED BUILDING CONCEPT<br>VFW WINCHESTER, VA. | | |
| SCALE: 1/4"=1'-0" | APPROVED BY: | DRAWN BY ADR |
| DATE: 8/21/2014 | #92151-1414 | REVISED |
| ·FRONT & LEFT SIDE ELEVATIONS· | | |
| ALFRED ROBERTSON | | DRAWING NUMBER P-1 |

18 X 24 PRINTED ON NO. 1000H CLEARPRINT ®


Office
Office
Office
40X80
Kitchen
Bath
Bath
Bar

**TA-14-593** AN ORDINANCE TO AMEND AND REENACT SECTION 10-6 AND ENACT SECTION 10-9 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIDE AND REAR YARD SETBACK REQUIREMENTS AND SPECIAL PROVISIONS FOR REDEVELOPMENT SITES IN THE COMMERCIAL INDUSTRIAL (CM-1) DISTRICT.

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REQUEST DESCRIPTION

This proposal is a privately sponsored text amendment pertaining to side and rear yard setback requirements and special provisions for redevelopment sites in the CM-1 district. This request will create language similar to Section 8-10 pertaining to Commercial Centers in the B-2 district.

This amendment would allow for properties which have been identified as "redevelopment sites" within the Comprehensive Plan Character Map, to be eligible for zero setbacks on the side and rear property lines. Additionally, this will open opportunities to allow for the creation of property lines along a shared common boundary between two connected buildings; current Zoning Ordinance requirements do not allow for such subdivisions when dealing with connected buildings.

This proposal is similar to a privately sponsored amendment which was submitted in 2009 for commercial centers in the B-2 district. At that time, the desire was to allow for the creation of new property lines and subdivisions for properties that qualify as a commercial center. As longs as adequate easement provisions are established to provide for inter-parcel access, utilities, storm water management, etc., staff believes the ordinance will be consistent with good planning practice.

Similar examples where a zero lot line condition exist are the Belk Store in the Apple Blossom Mall, which was created through Board of Zoning Appeals action, and the Kohl's store on South Pleasant Valley Road, which was created pursuant to the abovementioned ordinance amendment in 2009.

While this zoning amendment will allow for future property lines through connected buildings, there are also considerations regarding fire proofing and protection which will be separately considered through the application of the Uniform Statewide Building Code, due to the close proximity of building walls to the property line.

STAFF COMMENTS

Staff believes this amendment is consistent with good planning practice and may help future redevelopment by allowing for current buildings in designated redevelopment sites to be considered for subdivision while being consistent with the Zoning Ordinance's development standards.

RECOMMENDATION

Staff recommends approval of the amendment. A potential motion could read:

**MOVE** that the Planning Commission forwards **TA-14-593** with a favorable recommendation because the amendment, as proposed, presents good planning practice by providing for redevelopment opportunities in existing structures within designated redevelopment sites as identified within the Comprehensive Plan.

AN ORDINANCE TO AMEND AND REENACT SECTION 10-6 AND ENACT SECTION 10-9 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIDE AND REAR YARD SETBACK REQUIREMENTS AND SPECIAL PROVISIONS FOR REDEVELOPMENT SITES IN THE COMMERCIAL INDUSTRIAL (CM-1) DISTRICT.

**TA-14-593**

Draft 1 – 9/19/2014

Ed. Note: The following text represents excerpts of Article 10 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.

**SECTION 10-6. YARD REGULATIONS.**

10-6-1 Side. The minimum width of each side yard for a main structure shall be ten (10) feet, except that when such use abuts a residential district, there shall be a side yard of twenty-five (25) feet and except as per Section 10-8 of this Ordinance. No side yard shall be required when a building adjoins a railroad right-of-way or siding **or as permitted by Section 10-9 of this Ordinance**.

10-6-2 Rear. Each main structure shall have a rear yard of at least twenty-five (25) feet except as follows:

10-6-2.1 When a rear yard abuts a lot in a residential district the minimum rear yard shall be fifty (50) feet.

10-6-2.2 No rear yard shall be required when a building adjoins a railroad right-of-way or siding and the proposed building or structure functionally requires immediate proximity to the railroad right-of-way or siding as determined by the administrator **or as permitted by Section 10-9 of this Ordinance**. (9/11/01, TA-01-03, Ord. No. 028-2001)

**SECTION 10-9. SPECIAL PROVISIONS FOR REDEVELOPMENT SITES**

**For the purposes of this Section, the term Redevelopment Site shall mean a property or properties identified within the Comprehensive Plan Character Map as a "Redevelopment Site."**

**10-9-1** **No side or rear yard shall be required along the common shared property line of buildings within the same redevelopment site provided the following conditions are met:**

**10-9-1.1** **Any necessary cross easements are created to permit vehicular and pedestrian access to and from any proposed lot(s). Easements shall also be provided for utilities necessary to service any proposed lot(s) within the redevelopment site.**

**10-9-1.2** **The cross easements shall contain provisions for the maintenance of any common open space, private streets and parking areas within the redevelopment site.**

Planning Commission Item 4A
October 21, 2014

**TA-14-476** AN ORDINANCE TO AMEND AND REENACT ARTICLE 17 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO NONCONFORMING USES AND VESTED RIGHTS

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REQUEST DESCRIPTION

This amendment is a staff drafted amendment intended for public initiation through the Planning Commission. As part of an internal zoning ordinance review team, numerous areas were identified within Article 17 that needed to be updated to conform to the Code of Virginia, as well as modern planning practices. As a result of a several month long editing process, staff has finished a complete rewrite of Article 17.

STAFF COMMENTS

The Code of Virginia §15.2-2307 enables localities to adopt provisions pertaining to nonconformities, as well as providing for certain provisions that must be included within local Zoning Ordinances. This ordinance amendment incorporates the requirements of 15.2-2307 as well as applying more specific uniform standards for nonconforming uses, structures, and lots of record.

The revised Article has been restructured as to allow for better readability and organization among topics. The previous ordinance was not well organized and as a result the provisions were difficult for citizens, businesses and developers to read and understand. Furthermore, most of the provisions of the ordinance had not be revisited or revised since the adoption of the 1976 Zoning Ordinance.

The new Article is categorized into four parts: General Provisions, Nonconforming Structures, Nonconforming Uses, and Nonconforming Lots:

1. General Provisions –
    a. Definitions of common terms used in the Article
    b. Standards that apply in each nonconformity situation
    c. Vested rights
    d. Determination of a nonconforming status by the Zoning Administrator
2. Nonconforming Structures –
    a. General requirements that apply to all nonconforming structures
    b. Enlargement of nonconforming structures
    c. Modification/restoration/replacement of such structures
    d. Destruction of nonconforming structures
    e. Common repairs and maintenance
    f. Expiration of nonconforming status
3. Nonconforming Uses –
    a. General provisions that apply to all nonconforming uses
    b. Expiration of a Nonconforming Use
    c. Change of a Nonconforming Use
    d. Expansion of a Nonconforming Use
4. Nonconforming Lots –
    a. Development on a Nonconforming Lot
    b. Highway Realignment or Condemnation

Some of the important specific changes within the rewrite of Article 17 include:

1. Establishing clearer provisions as to how a determination of a nonconforming status occurs by the Zoning Administrator. (Section 17-1-4)

2. Codifying the existing practice of allowing for the modification of a nonconforming structure provided that the modification reduces the extent of the nonconformity. (Section 17-2-3)

3. Modifying the amount of repair/maintenance that can be conducted on a nonconforming structure. Previously, owners were limited to 10% of the replacement value of the structure per calendar year; now owners can complete repairs up to 35% of the replacement value of the structure per year. (Section 17-2-5)

4. Allows for the owner of a nonconforming use to pursue a conditional use permit (CUP) to change an existing nonconforming use to a more restricted and less intensive nonconforming use. This will allow for greater flexibility for owners to use their property, while also measuring and mitigating potential impacts from the change in use. The ordinance includes specific evaluation factors to be considered by the Planning Commission and Council for each proposal. If Council believes that the proposal is consistent with the Comprehensive Plan, the neighborhood, and will not have unmitigated impacts they can approve the new use. (Section 17-3-3)

Staff believes that this is a more readable ordinance that makes the City's standards clearer for the public to understand. The standards are also consistent with the enabling provisions of the Code of Virginia and are consistent with good planning practice.

RECOMMENDATION

Staff recommends initiation. A potential motion could read:

**MOVE** that the Planning commission initiate **TA-14-476** pursuant to the attached resolution.

RESOLUTION INITIATING TA-14-476 AN ORDINANCE TO AMEND AND REENACT ARTICLE 17 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO NONCONFORMING USES AND VESTED RIGHTS

**TA-14-476**

WHEREAS, the Zoning Ordinance has established provisions in Article 17 that regulate uses, structures, and lots that do not presently conform to the district; and,

WHEREAS, the Code of Virginia provides basic requirements pertaining to nonconforming uses and vested rights in §15.2-2307, which are incorporated into the proposed amendment; and,

WHEREAS, Article 17 establishes provisions to clarify when a nonconforming use or structure may be continued, modified, or expire; and,

WHEREAS, in accordance with §15.2-2283 of the Code of Virginia, the purpose of this ordinance is to facilitate the creation of a convenient, attractive and harmonious community, by ensuring that structures and uses are used and constructed in a manner that is consistent with a property's zoning district and the Comprehensive Plan; and,

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

AN ORDINANCE TO AMEND AND REENACT ARTICLE 17 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO NONCONFORMING USES AND VESTED RIGHTS

**TA-14-476**

Draft 1 – 10/03/14

*Ed. Note: The following text represents a complete rewrite of Article 17 of the Zoning Ordinance. The proposed amendment would completely repeal the existing provisions of Article 17 and replace with the below language.*

**ARTICLE 17**

**NONCONFORMITIES**

The purpose of this Article is to establish regulations for uses which do not presently conform to the district and general provisions established within this Ordinance in a manner consistent with sound planning and zoning principles. The general intent is that, over time, nonconforming uses will be

discontinued in favor of uses conforming to this Zoning Ordinance and the zoning map. However, it is also recognized that nonconforming uses and structures need not be entirely static and that under certain circumstances nonconforming uses and structures may change according to law and the provisions of this Article. The provisions of this Article are intended to complement the requirements of §15.2-2307 of the Code of Virginia and its subsequent amendments which are hereby adopted and incorporated mutatis mutandis as if set forth fully herein. To the extent that any provision of this article is inconsistent with or more restrictive than §15.2-2307 of the Code of Virginia or other controlling legal authority, the provisions of §15.2-2307 of the Code of Virginia or other controlling legal authority shall supersede as to that provision and the remaining provisions of this article shall continue in full force and effect.

## SECTION 17-1 GENERAL PROVISIONS

### 17-1-1 Definitions

A. This section applies to any nonconformity. There are three categories of nonconformities established within this Article, defined as the following:

1) Nonconforming use – A use that was lawfully established but no longer complies with the use regulations applicable to the use or the zoning district.

2) Nonconforming structure – A structure that was lawfully erected but no longer complies with development standards established in this Ordinance.

3) Nonconforming lot – A lot, parcel, or development site that was lawfully created but no longer complies with the dimensional standards established in this Ordinance.

### 17-1-2 Change in District Boundaries

A. Whenever the boundaries of a district are changed, any uses of land or buildings which become nonconforming as a result of such change shall become subject to the provisions of this Article.

### 17-1-3 Vested Rights

A. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner:
   (i) Obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project,
   (ii) Relies in good faith on the significant affirmative governmental act, and
   (iii) Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

B. For the purpose of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project:

(i) The City Council has accepted proffers or proffered conditions which specify use related to a zoning amendment;
(ii) The City Council has approved an application for a rezoning for a specific use or density;
(iii) The City Council or Board of Zoning Appeals has granted a special exception or conditional use permit;
(iv) The Board of Zoning Appeals has approved a variance;
(v) The City Council or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances;
(vi) The City Council or its designated agent has approved a final subdivision plat, site plan of development for the landowner's property; or
(vii) The Administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of §15.2-2311 of the Code of Virginia, as amended.

**17-1-4 Determination of Nonconforming Status**

A. The burden of establishing a nonconforming status of a use or structure shall be upon the owner of the claimed nonconformity.
B. Upon request, the Administrator shall make a written determination pertaining to the existence of a lawful nonconforming use and/or structure. In verifying the lawful status of a nonconforming use and/or structure, the Administrator shall determine whether the use and/or structure is, in fact, a lawful nonconformity as defined by this Article; and if so then:

1) The location and gross floor area (in square feet) of all buildings, if any, associated with the nonconforming use;

2) Any site improvements currently existing on the property which are also nonconforming (including accessory buildings, parking, outside storage, travel ways, green area, landscaping, etc.); and,

3) A description of the principal use(s) and all accessory uses that make up the lawful nonconforming use as a whole.

C. The decision of the Administrator shall be based upon information provided by the owner of the property on which the nonconforming use is located, on information provided by other persons with knowledge of the property and on any other non-confidential information legally available to the Administrator. Such information may include, but shall not be limited

to, permits, licenses, tax records, receipts, business records, photographs, plats, plans, bills, utility information, assessment information, and sworn affidavits from individuals with personal knowledge of the use and/or the property on which the use is located.

## SECTION 17-2 NONCONFORMING STRUCTURES

### 17-2-1 General Requirements

A. Any lawfully constructed structure which existed at the time of this Ordinance or any amendments thereto may continue in its legally nonconforming status so long as the structure does not violate other legal provisions and otherwise complies with the provisions of this Article.
B. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.
C. A nonconforming structure may be used for any use allowed in the underlying zoning district, subject to all applicable use standards.
D. If a variance is approved from otherwise applicable zoning district dimensional standards, the subject structure still shall be deemed nonconforming.

### 17-2-2 Enlargement

A. Notwithstanding Section 17-2-2B, no such nonconforming structure shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance unless said enlargement does not result in an increase in nonconformity.
B. In any district, existing nonconforming residential structures that do not meet setback, side, and/or rear yard requirements may be enlarged in line with the existing building, provided that the existing nonconforming setback, side, and rear yards are not reduced.

### 17-2-3 Modification, Restoration, or Replacement

A. The Administrator may allow for a modification or alteration of a nonconforming structure, provided that the modification does not increase the nonconformity. Modifications which cause a structure to become more conforming to the requirements of this Ordinance shall be encouraged, including, but not limited to, required setbacks, height, density, bulk/area standards, or landscaping.

B. Nonconforming structures other than buildings and signs (such as, but not limited to, underground storage tanks, private sewage disposal systems and parking lots) may be restored or replaced when such structures become unsafe or unsound. Relocation on the same lot may be approved by the Zoning Administrator, provided the new location is less

nonconforming than the original location, and further provided that the new location shall not cause a greater detrimental impact on conforming uses in the neighborhood.

**17-2-4 Destruction of Nonconforming Structure**

A. Any residential or commercial building damaged or destroyed by a natural disaster or other act of God may repair, rebuild, or replace such building to eliminate or reduce the nonconforming features to the extent possible. If such building is damaged greater than 50 percent and cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program.

B. Unless such building is repaired, rebuilt or replaced within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with the provisions of this Ordinance. However, if the nonconforming building is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then the property owner shall have an additional two years for the building to be repaired, rebuilt or replaced as otherwise provided.

C. For purposes of this section, "act of God" shall include any natural disaster or phenomena including a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire. For purposes of this section, owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God. Nothing herein shall be construed to enable the property owner to commit an arson under § 18.2-77 or 18.2-80 of the Code of Virginia, and obtain vested rights under this section.

**17-2-5 Repairs and Maintenance**

A. Nothing in this Section shall be deemed to prevent minor repair and keeping in good repair a nonconforming building or a building in which a nonconforming use is conducted, provided that such repair constitutes only routine maintenance necessary to keep the structure in the same general condition as it was when it originally became nonconforming. In no case shall any building that is declared by any authorized City official to be unsafe or unlawful by reason of physical condition be restored, repaired or rebuilt.

B. Any repair, maintenance, or renovation during a one year period that exceeds 35% of the replacement value of the structure being repaired is deemed to be a major repair and shall require approval of a conditional use permit by City Council prior to the repair.

C. For the purposes of this Section, the cost of land or any factors other than the cost of the structure are excluded in the determination of the cost of repair.

### 17-2-6 Expiration of Nonconforming Status

A. If any nonconforming structure shall cease to be used for a period of at least two (2) years, the nonconforming status of the structure shall no longer be valid. Prior to any subsequent use, the structure must be modified to conform to the regulations specified in this Ordinance for the district for which such land is located.
B. If any change in title of possession, or renewal of a lease of any such structure occurs, the existing nonconforming structure may continue.

## SECTION 17-3 NONCONFORMING USES

### 17-3-1 General Provisions

A. No nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance unless said move results in decreasing the degree of nonconformity or results in conformity with the requirements for the district.

B. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land, outside such building.

C. A nonconforming use that was recognized prior to the adoption of this Article shall continue to operate under the provision of law under which the nonconforming use was recognized so long as the nonconforming use is not in violation of such provision of law, the adoption of this Article notwithstanding.

### 17-3-2 Expiration of Nonconforming Use

A. If any nonconforming use shall cease to be operated for a period of at least two (2) years, the nonconforming use shall no longer be valid. Any subsequent use of land shall conform to the regulations specified in this Ordinance for the district for which such land is located.

B. Operation of only an accessory or incidental use to the principal nonconforming use during the two (2) year period shall not operate to continue the principal nonconforming use.

C. No use accessory to a principal nonconforming use shall be continued after nonconforming status is lost for the principal use.

D. If any change in title of possession, or renewal of a lease of any such lot or structure occurs, the existing nonconforming use may continue.

E. When any nonconforming use is superseded by a permitted use, the use shall thereafter conform to the regulations for the district, and no nonconforming use shall thereafter be resumed.

### 17-3-3 Change of Nonconforming Use

A. In any district in which a lawful nonconforming use exists, upon formal application submitted by the owner, the use may be changed to a less intensive and more restricted use upon approval from City Council of a conditional use permit per Section 18-2. Prior to the application of a conditional use permit to change a lawful nonconforming use, the current nonconforming use shall be verified by the Zoning Administrator per Section 17-4.

B. In determining whether a proposed use is a "less intensive and more restricted use" the following factors, among others, shall be considered:

1) The number and size of parking spaces serving the new use;

2) The design, mass and/or scale of the building(s) and site on which the new use is located;

3) The use, type, area, and appearance of new signs;

4) The intensity of the new nonconforming use, including the days and hours of operation, traffic, noise, odor, and similar impacts;

5) The lighting provisions on the site for the new use;

6) The landscaping provisions on the site for the new use;

7) The amount of vehicular traffic in the neighborhood;

8) The potential effect on the fair market value of neighboring properties from the new use; and,

9) The considerations of the City's Comprehensive Plan.

C. Once a nonconforming use has been changed to a less intensive and more restricted use, the legal nonconforming status shall not be subsequently reinstated.

D. Upon evaluation of a less intensive and more restricted use request, City Council may include reasonable requirements as a condition of the approval in order to mitigate potential impacts on the surrounding properties and the neighborhood, including but not limited to: parking requirements, landscaping, lighting, hours of operation, density, and signage.

### 17-3-4 Expansion of Nonconforming Use

A. No nonconforming use may be expanded on a lot which is not properly zoned to permit such nonconforming use, unless the zoning is amended to permit such use or a conditional use permit is approved by City Council, as may be applicable.

B. For the purposes of this section an expansion of use shall consist of one or more of the following:
   1) The square footage of the use is increased, regardless of whether inside or outside of a structure.
   2) The intensity or operation of a use is changed in a manner which causes a higher parking requirement, in accordance with Section 18-6.
   3) The number of dwelling units is increased.

## SECTION 17-4 NONCONFORMING LOTS

### 17-4-1 Development on a Nonconforming Lot

A. Where a lot of record at the time of the effective date of this Ordinance has less area or width than herein required in the district in which it is located, said lot may nevertheless be used for a single-family detached dwelling if that use is permitted in the district in which it is located provided that side yards of not less than ten percent (10%) of the required lot width, with a minimum width of five (5) feet, are provided; and that the setback and rear yard requirements shall be as required by the zoning district in which the lot is located. If the lot is a corner lot, a side yard facing on the side street of not less than twenty percent (20%) of the required lot width, with a minimum of ten (10) feet shall be provided.

B. In any district, existing single-family detached dwellings may be enlarged on any nonconforming lot of record, provided, however, that side yards of not less than ten percent (10%) of the lot width, with a minimum width of five (5) feet, are provided, and that the setback and rear yard requirements shall be as required by the zoning district in which the lot is located. If the lot is a corner lot, a side yard facing on the side street of not less than twenty percent (20 %) of the required lot width, with a minimum of ten (10) feet shall be provided.

C. Additions to residences permitted under Section 17-4-1A and 17-4-1B, such as decks, porches, and terraces, must fully meet the requirements of Section 18-10 of this Ordinance.

D. In any district, permitted structures, other than single-family detached dwellings, may be erected or enlarged on a nonconforming lot of record, provided that a variance of lot width, setback, and/or yard requirements is obtained through action of the Board of Zoning Appeals and that parking, green area and landscaping requirements are met.

E. Where a lot of record at the time of the effective date of this Ordinance has less area or width than herein required in the district in which it is located, said lot may nevertheless be used for a community garden, if that use is permitted in the district in which said lot is located.

### 17-4-2 Highway Realignment or Condemnation

A. Any lot, which by reason of realignment of a federal or state highway or by reason of condemnation proceedings, has been reduced in size to an area less than that required by law, shall be considered a lawful nonconforming lot of record subject to the provisions set forth in this section; and any lawful use or structure existing at the time of such highway

realignment or condemnation proceedings which would thereafter no longer be permitted under the terms of this Ordinance shall be considered a lawful nonconforming use of structure as that term is used in this Ordinance.