



CITY OF WINCHESTER, VIRGINIA

Rouss City Hall
15 North Cameron Street
Winchester, Virginia 22601
www.winchesterva.gov

Telephone: (540) 667-1815
FAX: (540) 722-3618
TDD: (540) 722-0782

BOARD OF ZONING APPEALS
AGENDA
July 9, 2014 - 4:00 P.M.
Council Chambers - Rouss City Hall

1. **POINTS OF ORDER**

- A. Roll Call
- B. Approval of Minutes – May 14, 2014
- C. Reading of Correspondence

2. **PUBLIC HEARINGS**

BZA-14-391 Request of the City Of Winchester for a variance pertaining to maximum tower height in the B-1 District pursuant to Section 18-2-1.2 of the Winchester Zoning Ordinance, for the property located at 231 East Piccadilly Street (*Map Number 173-01-Q-1 - > <01*), zoned Central Business (B-1) District. The request involves a request to extend the maximum tower height.

3. **NEW BUSINESS**

4. **OLD BUSINESS**

5. **ADJOURN**

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held its regular meeting on Wednesday, May 14, 2014, at 4:00 p.m. in Council Chambers, Rouss City Hall, 15 N. Cameron Street, Winchester, Virginia.

POINTS OF ORDER:

PRESENT: Chairman Phillips, Mr. Pifer, Ms. Marchant, Mr. Lewis, Mr. Ridgell,
Mr. Crawford

ABSENT: None

STAFF: Aaron Grisdale, Nasser Rahimzadeh, Catherine Clayton

VISITORS: Mike Artz, Manuel Medina, Deborah Baker, James Finchem

CONSENT AGENDA:

Approval of Minutes of March 12, 2014

Chairman Phillips called for corrections or additions to the minutes. Hearing none, he called for a motion. Mr. Crawford moved to approve as submitted. Ms. Marchant seconded the motion. Voice vote was taken and the motion passed 5-0.

READING OF CORRESPONDENCE:

None.

PUBLIC HEARINGS:

BZA-14-249 Request of Marsh and Legge Land Surveyors, PLC, on behalf of Emily M. Seiler, for a variance pertaining to the 8,000sf minimum lot area and the 60' minimum lot width pursuant to Sections 4-3-1 and 4-4-1 of the Winchester Zoning Ordinance, for the properties located at 679 Berryville Avenue (Map Number 175-02-A-4 - > <01) and 683 Berryville Avenue (Map Number 175-02-A-5 - > <01), zoned Medium Density Residential (MR) District with Corridor Enhancement (CE) District overlay. The request involves a boundary line adjustment between two nonconforming lots of record.

Mr. Grisdale presented the staff report stating that this request is for two variances pertaining to the minimum lot area and minimum lot width for parcels within the Medium Density Residential (MR) District. Both lots are legal nonconforming lots of record and are under common ownership. He also stated that the property line goes through an existing garage and the property owner wishes to have this corrected to have the accessory structure entirely on the 679 Berryville Avenue property. He concluded by stating that staff is supportive of this variance request and that there have been no letters of support or opposition to the application. He is available to answer any questions.

Chairman Phillips called for questions from the Board.

Chairman Phillips Opened the Public Hearing

Mike Artz, Marsh and Legge Land Surveyors, was sworn in and addressed the Board. He reiterated the purpose of the request and stated that he was available for questions from the Board.

Chairman Phillips called for questions from the Board.

Chairman Phillips Closed the Public Hearing

Chairman Phillips called for discussion or comments from the Board. Mr. Crawford said that the Board has two (2) nonconforming properties under the current regulations and if they make a change there will still be two (2) nonconforming parcels but it will straighten out some problems. He added that he is in favor of the request.

Chairman Phillips called for any further discussion or comments. Hearing none, he called for a motion.

Mr. Crawford moved to grant a variance to BZA-14-249. This variance is only for the proposed boundary line adjustment dated April 17, 2014, or a version that is in substantial conformance with the proposal. The variance is approved because:

- a) The strict application of this Ordinance would produce a clearly demonstrable hardship,
- b) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity, and
- c) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

Mr. Pifer seconded the motion.

Roll call vote was taken and the motion passed 5-0.

BZA-14-254 Request of Manuel C. Medina for a variance pertaining to required side yard setback, off-street parking setback (side and front), required lot width, vehicular travel lane width, and required off-street parking pursuant to Sections 8-6-1d, 18-6-3.2, 8-4, 19-5-2, and 18-6-5.1 of the Winchester Zoning Ordinance, for the property at 2109 Valley Avenue (Map Number 250-02- -7 - > <01), zoned Highway Commercial (B-2) District with Corridor Enhancement (CE) District overlay. The request involves a request to modify use restrictions previously established by the Board of Zoning Appeals.

Mr. Grisdale presented the staff report stating that this request is for five (5) variances pertaining to the required side yard setback, off-street parking setback (side and front), required lot width, vehicular traffic lane width, and required off-street parking. He added that the property owner desires to allow for greater flexibility with the property by modifying the use restrictions on the property. He concluded by stating that staff is supportive of this variance request and that the applicant is trying to continue an adaptive reuse of an old nonconforming residential structure in the B-2 district. The site has already been improved with the development requirements following the 2003 BZA variance approvals and that staff has attempted to work with the applicant to only propose uses that would be of a smaller impact than some of the other uses which are typically permitted in the B-2 district. Mr. Grisdale closed by saying that there have been no letters of support or opposition to the application and that he is available to answer any questions.

Chairman Phillips called for questions from the Board.

Chairman Phillips Opened the Public Hearing

Manuel Medina, applicant, was sworn in and said that he feels he is entitled to full use of the property. He added that right now the use is limited and this would allow him to enjoy the full value of the property. Mr. Medina said that the request does not conflict with the other properties since it is a B-2 and that he has fulfilled all of the standards that were required in 2003.

Mr. Crawford then asked Mr. Medina if he understands that, if the Board agrees to what is being proposed, he would not have the option of doing anything that is within the B-2 district, that it will in fact only be the uses as set out in this request. Mr. Medina said that yes he understands.

Chairman Phillips called for questions from the Board for Mr. Medina. Hearing none, he asked if anyone else wishes to speak.

Deborah Baker, neighbor, was sworn in and said that she is concerned if it will affect her property and she wants to be sure that it does not interfere with her property. Mr. Crawford said that the Board cannot definitively say that it will not adversely affect her property but, by looking at the documents contained in the case file, there should not be any problems.

James Finchem, neighbor, was sworn in and said that the applicant asked him why he could not run a right-away through the storm area between Mr. Finchem's house and Eddie's Tire. He said that he tried to explain that it is a storm area and that if the applicant is allowed to run through the storm area, then he will have flooding in his basement again. Mr. Lewis said that the Board is only approving usage on the building not improvements or alterations to the property itself. Chairman Phillips said that something like that would have to go to the Planning Commission and that the applicant cannot just come across Mr. Finchem's property. Mr. Finchem then said that Mr. Medina had asked him about putting a driveway through the storm area but that Mr. Medina has a driveway that comes off of Hillman Drive in one way and off of Valley Avenue in the other way and he does see why the applicant would need another driveway that comes between his house.

Mr. Grisdale said that the applicant has not proposed any site improvements but if he does, they would require a site plan with Planning Department approval.

Chairman Phillips called for any additional comments or questions from the Board.

Mr. Lewis asked about equipment parking to which Mr. Grisdale said that this use does allow equipment storage on the property and if that is the case, they would have to meet the Zoning requirements in terms of storage. They would have to go through the Zoning approval process before establishing that use there.

Ms. Marchant asked about the storage containers and whether they are a problem. She then asked if they are allowed. Mr. Grisdale said that in terms of their current use, he would have to defer to the property owner but there are certain time limitations on how long a mobile storage unit such as a container can be on the property. Chairman Phillips asked the applicant to respond. Mr. Medina said that the units have been there since the beginning and they are used for the tenants to store things in and they are not permanent.

Chairman Phillips Closed the Public Hearing

Chairman Phillips called for any additional questions or comments. Hearing none, he called for a motion.

Mr. Pifer moved to grant a variance to BZA-14-254 with conditions as follows:

- a. The only permitted uses at the property will be:
 - i. 8-1-14 Contractor's establishments, offices and display rooms.
 - ii. 8-1-15 Convenience and service establishments such as, but not limited to, barber shops, beauty parlors, tailors, automatic self-service laundries.
 - iii. 8-1-27 Office, business and professional.

- iv. 8-1-30 Philanthropic or charitable institutions.
- v. 8-1-35 Repair services or businesses, including repair of bicycles, guns, radios, television sets, electrical appliances, locks and other home appliances, shoes, toys, typewriters, watches and clocks.
- vi. 8-1-37 Retail stores.
- vii. 8-1-48 Print shops.

b. The variances are for the building setbacks and site dimensions as approved in the most recent site plan.

This variance is approved because:

- a) The strict application of this Ordinance would produce a clearly demonstrable hardship,
- b) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity, and
- c) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

Ms. Marchant seconded the motion.

Roll call vote was taken and the motion passed 5-0.

NEW BUSINESS:

None.

OLD BUSINESS:

None.

ADJOURN:

Having no other business before the Board, the meeting adjourned at 4:28 p.m.



CASE #: 14-391
 FEE AM'T: -0-
 DATE PAID: N/A
 Recd. June 18, 2014
 Rouss City Hall
 15 North Cameron Street
 Winchester, VA 22601
 540-667-1815
 TDD 540-722-0782

APPLICATION FOR BOARD OF ZONING APPEALS

Please print or type all information

540-545-4721
Telephone

CITY of WINCHESTER c/o LYNN MILLER
Applicant

231 E PICCADILLY ST
Street Address

LYNN.MILLER@WINCHESTERVA.GOV
E-mail address

WINCHESTER VA 22601
City State Zip

CITY of WINCHESTER
Owner Name (as appears in Land Records)

540-667-1815
Telephone

15 NORTH CAMERON STREET
Street Address

WINCHESTER VA 22601
City State Zip

REQUEST TYPE CODE - Please mark type of request and complete information
 KEY: V = Variance; AM = Administrative Modification; I = Interpretation

REQUEST TYPE	ORDINANCE SECTION	PERTAINING TO:
<input checked="" type="checkbox"/>	<u>18-2-1.2</u>	<u>ALLOWABLE TOWER HEIGHT IN B1 DISTRICT</u>
<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	_____	_____

APPLICATION FEE: \$500 for 1st code section; \$100 for each additional code section
 Public hearing sign deposit fee: \$50

PROPERTY LOCATION
 Current Street Address(es) 231 EAST PICCADILLY STREET Zoning B1
 Tax Map Identification - (sections, blocks, lots) 173-01-Q-1

REQUIRED MATERIALS LIST

- 1 copy of application (this form completed)
- 10 copies of letter explaining request and grounds for request
- 10 Copies of plans/or drawings, and surveys
- Fee (check made payable to the Treasurer, City of Winchester)
- List of adjacent property owners (public hearing items only). List must provide name and mailing address as appears in Land Records for owners of all properties within 300 feet of any portion of the subject site. If provided by staff, there is a \$25 fee.
- Disclosure of Real Parties in Interest (list all equitable owners)
- Public Hearing Sign Deposit Fee - \$50 (refundable upon return of sign)

All public hearing materials must be submitted at one time by 5:00 PM on the deadline date for the next regular meeting in order to be placed on the agenda. Only complete applications, which include the above materials, will be accepted.

I/we hereby certify that the above information is complete and correct and that public notification will be properly posted on the site not later than 14 days before the public hearing (if applicable) and that all delinquent real estate taxes have been paid per Section 23-9.

APPLICANT'S SIGNATURE [Signature] DATE 6-18-14

Timbrook Public Safety Center
231 East Piccadilly Street
Winchester, VA 22601

Telephone: (540) 545-4721
FAX: (540) 542-1314
Website: www.winchesterva.gov

June 18, 2014

Mr. Aaron Grisdale, Zoning Administrator
City of Winchester
Rouss City Hall
15 N. Cameron Street
Winchester, VA. 22601

Re: Emergency Communications Project – Communications Tower
231 E. Piccadilly Street, Timbrook Public Safety Center

Dear Mr. Grisdale,

The City of Winchester is in the process of replacing the Public Safety Radio Communications System. The existing system is subject to failure, antiquated, inadequate, non-compliant with FCC regulations, undependable in some cases beyond repair. The infrastructure of the proposed system includes several components one of which is a 150' radio communications tower to be located as indicated above. The City embarked on the replacement of the Emergency Communications System in 2005 when an evaluation of the current system followed by a detailed study in 2007 as performed by L. R. Kimball & Associates. The findings of the original study identified the current system was beyond useful life, did not provide adequate radio coverage for public safety, had limited redundancy, did not provide interoperability and was a system of stove pipes rather than a communications system.

The 2007 study determined the most suitable radio communications for the City, provided a conceptual design and took into consideration the most cost effective design. Following much discussion and research it was determined that a Project 25, digital, trunked system operating in the 800 MHz frequency spectrum to be the best option. While engaged in the design phase of the study it was determined that regulations of the Federal Communications Commission pertaining to the VHF frequency spectrum which the City utilized was subject to Narrowbanding regulations having a compliance date of January 1, 2013. This regulatory issue further influenced the decision to convert to the 800 MHz spectrum.

L. R. Kimball & Assoc. presented several design options from which a Request for Proposal (RFP) was crafted. The design utilized an industry standard of 95% coverage, 95% of the time utilizing a portable radio with a 20dB signal loss in building. The selected vendor offered a solution utilizing a single tower site. The determined site was to be located at 700 Jefferson Street and would involve a 250' lattice tower and associated ground support equipment creating a project cost of \$3.5 million. The single site was preferred as it complied with specified

performance standards, contained long term maintenance expense and was the most cost effective solution relating to initial build out. Implementation of the Jefferson Street site was initiated through an application for a Conditional Use Permit through Zoning & Planning, licensing through the Federal Communications Commission (FCC) and the submittal of an application to the Federal Aviation Administration (FAA) to permit erection of a 250' lattice tower on the site. The FAA originally provided a favorable recommendation pertaining to the erection of the tower with provisions it would to be illuminated and painted aviation orange and white. The Planning Commission reluctantly provided a favorable recommendation relating to the erection of the tower although several citizens spoke in opposition to the tower. When the Planning Commission's recommendation was presented to City Council several citizens addressed Council opposing the erection of the tower. Council considered the comments received by the citizens and requested alternate sites for the tower be examined. Alternate sites were examined and a determination made that to meet the performance standards two locations would support the single site design. One site was on East Lane and would involve a 350' lattice tower while the second site would be on the Winchester Medical Center Campus and involve a 450' tower. Neither of these sites was determined to be feasible as the ability to obtain a favorable ruling from either the FAA or the FCC was doubtful. While the alternate sites were being examined the FAA implemented new regulations addressing the Minimum Descent Altitude (MDA) for aircraft circling in a holding pattern to land at the Winchester Regional Airport. It was determined by the FAA that the Jefferson Street tower would protrude into the MDA by 20' thus the favorable ruling previously issued by the FAA was retracted. This action resolved the issue concerning the Conditional Use Permit and the application for the 250' tower was rescinded.

The action of the FAA negated six and a half years of intense work and design and placed the project back on the drawing board. As the performance standards for operations remained a vital factor the next consideration was to examine available alternatives. Consideration was given to leasing space on existing tower sites and sharing space with entities such as cell carriers. This was examined and a determination made that compliance with the performance standards could not be obtained by a single site and based on the location and elevation of the existing towers it would most likely take multiple sites each creating a significant initial investment and long term maintenance cost.

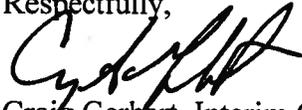
Propagation studies were performed utilizing the existing elevated water tank located at the Jefferson Street site and the replacement of the existing 85' lattice tower located at the Timbrook Public Safety Center with a 150' monopole. The propagation studies identified performance standards could be met utilizing this configuration. This design was determined as the most effective from an operational perspective, it would combine the utilization of existing and new resources, create economy of scale, reduce the impact of FAA regulations, address the concerns of citizens and have a minimum impact of the area as this is an upgraded replacement rather than an addition.

The original single site design was budgeted at \$3.5 million, the two site design as proposed has been budgeted at \$5.4 million creating a substantially greater financial impact hardship on already stressed finances. Should the appeal to permit the 150' tower at the Timbrook Public Safety Center not be granted the design will require further modifications and the need for

additional sites and towers will be necessary creating yet a greater financial hardship from the construction through the 20-25 year anticipated project life span. In addition to the financial impact associated with the implementation of the project non-compliance with FCC regulations may result in issuance of violations resulting in fines up to \$10,000 per day per frequency, a revocation of existing communications licenses and an order to take immediate corrective action. This will create yet another financial hardship on the citizens. Additionally and maybe most importantly is the hardship experienced on a daily basis by Public Safety personnel as they perform services within the community without the benefit of dependable communications. This places the personal in jeopardy and reduces their effectiveness within the community creating a hazardous environment for not only the responders but for the overall community.

On behalf of the City of Winchester I respectfully request a variance from the 100' height restriction be granted permitting the erection of a 150' monopole tower structure at the Timbrook Public Safety Center.

Respectfully,

A handwritten signature in black ink, appearing to read 'Craig Gerhart', written over the word 'Respectfully,'.

Craig Gerhart, Interim City Manager/Director of Emergency Management

**WINCHESTER BOARD OF ZONING APPEALS
REPORT AND RECOMMENDATION**



ISSUE/BACKGROUND

Case: BZA-14-391

Applicant: City of Winchester

Location: 231 East Piccadilly Street

Zoning: Central Business (B-1) District

Future Land Use: Government (Police & Fire Public Safety).

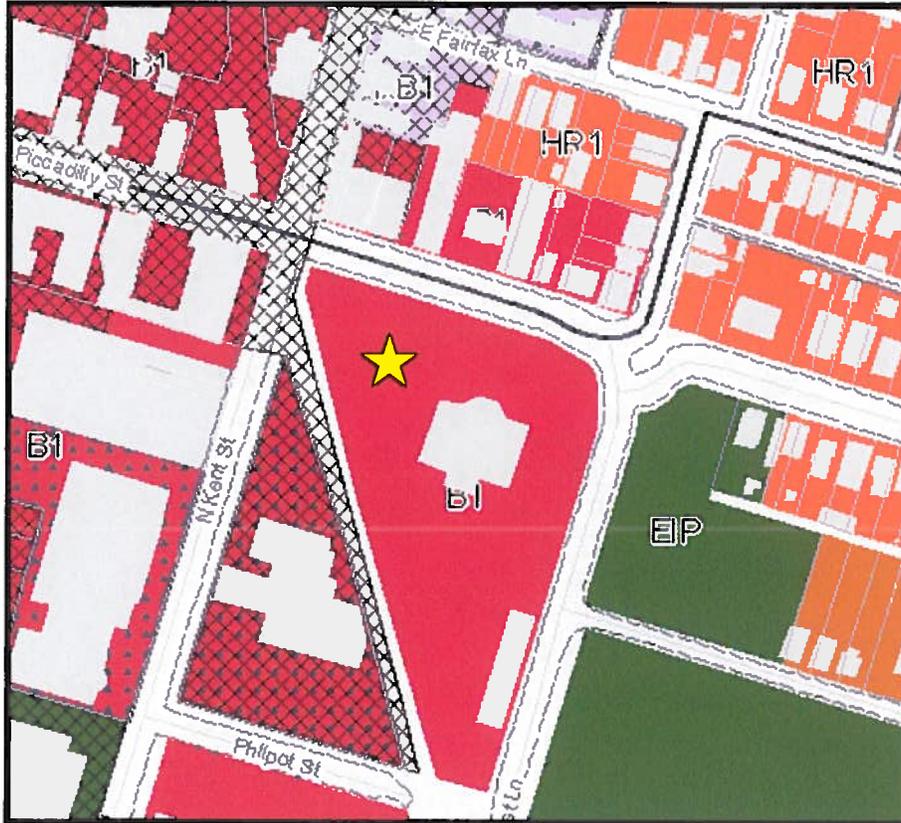
Legal Notice: The request for variance was advertised in the *Winchester Star* on June 26, 2014 and July 3, 2014. The property was required to be posted with a public hearing sign and notices were mailed to property owners within 300' of the subject property.

Applicant's Request: Request of the City of Winchester for a variance pertaining to maximum tower height in the B-1 District pursuant to Section 18-2-1.2 of the Winchester Zoning Ordinance, for the property located at 231 East Piccadilly Street (*Map Number 173-01-Q-1*), zoned Central Business (B-1) District. The request involves a request to extend the maximum tower height.

DISCUSSION/FINDINGS

The request before the Board of Zoning Appeals is for a variance to allow a height taller than prescribed within the Zoning Ordinances for a communications tower in the B-1 district.

The subject property is located on the southwest corner of the intersection of East Piccadilly Street and North East Lane and is zoned Central Business (B-1) district with no overlays. The immediately surrounding properties to the north, west and south are similarly zoned; however, most of the properties to the west are within the Historic Winchester (HW) district overlay. Properties to the northeast are zoned Limited High Density Residential (HR-1) and properties to the east and southeast are zoned Educational Institutional and Public (EIP) district.



Vicinity Zoning Map

This parcel is currently being used as the Timbrook Public Safety Center, holding offices for the Police, Fire and Rescue, and Emergency Management departments. There currently exists an existing lattice tower of 85-feet which holds some of the existing radio equipment. The proposed tower will replace this existing lattice tower. The Zoning Ordinance establishes maximum height standards for communications towers within various zoning districts in Section 18-2-1.2. Within the B-1, B-2, CM-1, PC, MC, and HE-1 districts a maximum of 100-feet is provided within the ordinance. The request involves the installation of a 150-foot monopole style tower near the site of the existing lattice tower adjacent to the public safety building.

The applicant provides a detailed background analysis of the history of the public safety communications project, which has lead the City to make this request before the BZA. In summary, this communications project has been about six and a half years in the making with numerous studies and designs conducted in order to achieve the desired level of emergency communications service throughout the entire City. The current system "is subject to failure, antiquated, inadequate, non-

compliant with FCC regulations, undependable in some cases beyond repair.” Most recently a proposal was made for a single 250-foot lattice tower/communications site at the top of Jefferson Street adjacent to the existing elevated water tank. After going through the public hearing and conditional use permit process, Council asked staff to reconsider alternate options. After additional studies, it was recommended that the City pursue a two site option, with one site being the installation of a freestanding tower at the Timbrook Public Safety center site.

STAFF ANALYSIS & CONCLUSION

According to Section 20-2 of the Ordinance, the Board of Zoning Appeals is required to make three (3) specific findings in order to approve a variance request. These findings are based on evidence, testimony, and demonstration of certain criteria, which are further defined in Section 20-2-3.1 of the Ordinance.

Section 20-2-3.1: When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance.

- 1. That the strict application of this Ordinance would produce a clearly demonstrable hardship.**
- 2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.**

3. **That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variances.**

In reference to the above three considerations, staff believes that there is an argument for a demonstrable hardship in this instance. The City has conducted extensive analysis and considerations to evaluate alternatives to the single site Jefferson Street tower option. The current option consists of the minimal request for tower height necessary to construct a monopole at the proposed site. This request serves a broad public purpose with the upgrading of the public safety communications system that benefits all citizens, business, and organizations of Winchester. This hardship is unique to the City's public safety system, and staff does not believe that there will be a substantial detriment to adjacent properties and the character of the district will not be changed.

Consideration was made to utilize existing tower site and sharing space with cell carriers; however, after studying this concept it was not demonstrated to not be the most practical solution to address the performance standards and cost thresholds. Additionally, two tower options at other locations throughout the City were evaluated, including a 350-foot lattice tower on East Lane and a 450-foot tower on the Winchester Medical Center Campus, as well as needing a favorable ruling from the FCC and FAA. This current design with a smaller tower at the public safety center site, and use of the Jefferson Street site was determined to be "the most effective from an operational perspective, it would combine the utilization of existing and new resources, create economy of scale, reduce the impact of FAA regulations, address the concerns of citizens and have a minimum impact on the area as this is an upgraded replacement rather than an addition." This variance consideration is the first step in the public process before the tower is approved and constructed. Should the BZA approve this variance, the City will go through a public hearing process for a conditional use permit with both the Planning Commission and City Council.

Note: Staff has received no letters of support or opposition to this application.

POSSIBLE MOTION(S)

1. **MOVE**, that the Board of Zoning Appeals **grant** a variance to the City of Winchester for a variance pertaining to maximum tower height in the B-1 District pursuant to Section 18-2-

1.2 of the Winchester Zoning Ordinance, for the property located at 231 East Piccadilly Street (*Map Number 173-01-Q-1*), zoned Central Business (B-1) District, with the following condition:

- a. The issuance of this variance is approved only for the proposed tower with a height of up to 150-feet.

This variance is approved because:

- a. *The strict application of this Ordinance would produce a clearly demonstrable hardship.*
- b. *That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.*
- c. *That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.*

2. **MOVE**, that the Board of Zoning Appeals **deny** a variance to the City of Winchester for a variance pertaining to maximum tower height in the B-1 District pursuant to Section 18-2-1.2 of the Winchester Zoning Ordinance, for the property located at 231 East Piccadilly Street (*Map Number 173-01-Q-1*), zoned Central Business (B-1) District, for the following reasons:

- a. (List reasons for denial).



Aaron M. Grisdale, CZA
Director of Zoning and Inspections