

**PLANNING COMMISSION  
AGENDA  
September 16, 2014 - 3:00 PM  
Council Chambers - Rouss City Hall**

**1. POINTS OF ORDER**

- A. Roll Call
- B. Approval of Minutes – August 19, 2014 Meeting
- C. Correspondence
- D. Citizen Comments
- E. Report of Frederick Co Planning Commission Liaison

**2. 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)**
- 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)**
- 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)**
- 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*), 418 Merrimans Lane (*Map Number 169-01-3*), 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)**

**3. PUBLIC HEARINGS – Continued**

**4. NEW BUSINESS**

- A. **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*), 418 Merrimans Lane (*Map Number 169-01-3*), 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)**

**5. OLD BUSINESS**

**6. ADJOURN**

## PLANNING COMMISSION MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, August 19, 2014, at 3:00 p.m. in Council Chambers, Rouss City Hall, 15 N. Cameron Street, Winchester, Virginia.

**CALL TO ORDER:** Chairman Wiley called the meeting to order at 3:00 p.m.

**PRESENT:** Chairman Wiley, Vice-Chairman Slaughter, Commissioner Smith, Commissioner Loring, Commissioner McKannan, Commissioner Shickle

**ABSENT:** None

**EX-OFICIO:** Councilor Tagnesi, City Manager Freeman

**FREDERICK CO. LIAISON:** Commissioner Kenney

**STAFF:** Tim Youmans, Aaron Grisdale, Catherine Clayton, Josh Crump

**VISITORS:** Tracy Themak, Dave Massey, Eric Lowman, Lynn Miller

Chairman Wiley opened by recognizing the new City Manager, Mrs. Eden Freeman and new staff member, Josh Crump.

### APPROVAL OF MINUTES:

Chairman Wiley called for additions or corrections to the minutes of July 15, 2014. Hearing none, he called for a motion. Commissioner McKannan moved to approve as submitted. Commissioner Loring seconded the motion. Voice vote was taken and the motion passed 6-0.

### CORRESPONDENCE:

Mr. Youmans advised that CU-14-349 has been withdrawn. He also requested to add three (3) administrative approvals. He then said that the Commissioners have been given an updated Staff Report for CU-14-166 which is under OLD BUSINESS.

### CITIZEN COMMENTS:

None.

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

Commissioner Kenney stated that the Frederick County Planning Commission did not have a meeting on August 6, 2014, however, they did have a joint session with the Board of Supervisors and the Planning Commission on August 12, 2014, to discuss three (3) items that staff felt was necessary to bring them together to review. One item was the Blane property on Cedar Hill and Martinsburg Pike just north of Winchester. It is approximately 100 acres that they want to have included in the sanitation, sewer and water authority. It did receive a favorable vote to be included as it was right on the border of the existing line. The second item was for the revision for the traditional neighborhood development properties on Senseny Road. The applicant wanted to convert to a first floor commercial with the second and third levels as apartments with the option to convert the commercial from residential to commercial or vice versa. This request was denied. The last item was the southern Frederick area development plan that has been active for a few years. This is the development of the urban and

business transportation in the southern end of the County. The Board and the Planning Commission both voted yes to move it forward and to continue that plan. He concluded by stating that the Planning Commission will meet tomorrow, August 20, 2014.

#### **PUBLIC HEARINGS – New Business:**

**CU-14-331** Request of Joshua Schakola on behalf of Verizon Wireless for a conditional use permit for rooftop telecommunications facilities at 103 East Piccadilly Street (*Map Number 173-01-P-6*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay. (Mr. Youmans)

Mr. Youmans presented the staff report stating that the applicant is proposing to add 12 new frame-mounted Verizon Wireless antennas and a new 12' by 16' equipment platform with new equipment on the rooftop of the George Washington Hotel. The plan also includes removal of the abandoned Nextel facilities consisting of one (1) antenna skid supporting four (4) antennas, one (1) skid containing two (2) antennas and a cable tray. The applicant intends to install the antennas in an effort to meet demand for streaming and data usage. The antennas will range from 6'-8' tall and from 6"-14.6" wide. The applicant did receive a certificate of appropriateness from the Board of Architectural Review during the April 17, 2014, meeting. He said that condition 1 in the recommendation is no longer relevant as the applicant will not install a generator and that they will use a truck-mounted generator when the need arises. Mr. Youmans concluded by saying that staff recommends forwarding to City Council and that he is available for questions.

*Chairman Wiley called for questions from the Commission.*

Commissioner Shickle asked if they need to add anything about removal of the current equipment to which Mr. Youmans stated that the applicant has made it clear what existing equipment would be removed as part of this application.

#### **Chairman Wiley Opened the Public Hearing**

Tracy Themak, representative of the applicant, said that Mr. Youmans summoned up the application quite well and that she is available to answer any specific questions the Commission may have.

*Chairman Wiley called for questions from the Commission.*

Commissioner Loring asked when the work would begin once this gets approved to which Ms. Themak responded that once it gets approved and depending on Verizon's construction schedule, they would look to obtain the building permit and probably within six (6) to nine (9) months after that.

#### **Chairman Wiley Closed the Public Hearing**

*Chairman Wiley called for discussion from the Commission. Hearing none, he called for a motion.*

*Commissioner Loring moved to forward CU-14-331 to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommended approval is subject to the following conditions:*

1. *Submit an as-built emissions certification after the facility is in operation;*
2. *Removal of the Nextel equipment as noted on the submitted plans;*
3. *The applicant, tower owner, or property owner shall remove equipment within ninety (90) days once the equipment is no longer in active use; and,*
4. *Submit a bond guaranteeing removal of facilities should the use cease.*

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

**CU-14-388** Request of Gillian Greenfield for a conditional use permit for conversion of ground floor nonresidential use to residential use at 110 South Indian Alley (*Map Number 193-01-D-15*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay. (Mr. Youmans) - **WITHDRAWN**

**CU-14-415** Request of Dale A. Massey, dba Piccadilly's Public House and Restaurant, for a conditional use permit for entertainment establishment at 121-125 East Piccadilly Street (*Map Number 173-01-P-8*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay. (Mr. Gridale)

Mr. Gridale presented the staff report stating that this is a request for a conditional use permit for an entertainment establishment and that the business has previously been operating with a conditional use permit for a nightclub in addition to the restaurant use. He said that following the notification to the applicant that their conditional use permit expiration date was coming soon, the applicant submitted a new CUP application for an Entertainment Establishment. At City Council's October 22, 2013, meeting, a text amendment to the Zoning Ordinance was adopted that changed the provisions of regulating Nightclubs and Entertainment Establishments. In several commercial districts, buildings and related parking facilities that are located at least 200 feet away from residentially zoned parcels allow for Entertainment Establishments by-right; and such uses that are located closer than 200 feet from residentially zoned parcels must obtain a conditional use permit. Several minimal standards were included within the adopted text amendment. This property is located at least 200-feet away from the closest residentially zoned property and therefore any entertainment that occurs internal to the building is permitted by-right as long as it operates in conformance with the General Standards outlined in Section 18-24. However, the Zoning Ordinance requires that any regular entertainment that will be conducted outdoors to obtain a conditional use permit through City Council. He concluded by stating that staff recommends approval and that he is available for questions.

*Chairman Wiley called for question from the Commission.*

Commissioner Loring asked if the current conditional use permit includes the outdoor area to which Mr. Gridale responded yes it does and that they actually have two (2) separate conditional use permits, one initially for the interior and a subsequent one for the exterior; so this is to basically replace the exterior conditional use permit. Commissioner Loring then asked if the outdoor entertainment is just Fridays and Saturdays to which Mr. Gridale responded that it is not specific within the approval here, generally it is based on the operation of the business.

#### **Chairman Wiley Opened the Public Hearing**

Dale Massey, applicant, stated that he is available to answer any questions.

*Chairman Wiley called for questions from the Commission.*

#### **Chairman Wiley Closed the Public Hearing**

*Chairman Wiley called for discussion from the Commission.*

Commissioner Slaughter reiterated that the applicant is just renewing their existing conditional use permit to which Mr. Grisdale said that is correct.

*Chairman Wiley called for additional questions or discussion. Hearing none, he called for a motion.*

*Commissioner McKannan moved to forward CU-14-415 to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommended approval is subject to the following conditions:*

- 1. No more than three (3) criminal police calls, as determined by the Chief of Police, may be attributable to the establishment within a thirty day continuous period; after which private security shall be required in a manner approved by the Chief of Police;*
- 2. Hours of operation on Sundays through Thursdays shall not occur outside of 8:00 a.m. to 12:00 p.m. the following day, and Fridays and Saturdays shall not occur outside of 8:00 a.m. until 2:00 a.m. the following day; and,*
- 3. The business shall comply with applicable noise and maximum sound level regulations per Chapter 17 of the Winchester City Code, as amended.*

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

**CU-14-432** Request of Lynn Miller, on behalf of the City of Winchester, for a conditional use permit for a telecommunications tower at 231 East Piccadilly Street (*Map Number 173-01-Q-1*) zoned Central Business (B-1) District. (Mr. Grisdale)

Mr. Grisdale presented the staff report stating that this is a proposal for a new communications tower adjacent to the Timbrook Public Safety Center and that the proposed 150-foot monopole tower will replace an existing 85-foot lattice tower on-site. The present request is a follow-up to the conditional use permit that was submitted and reviewed by Planning Commission and City Council during 2013 as part of the public safety radio communications system upgrade. The City is embarking on replacement of the current communications system, which is antiquated, inadequate and non-compliant with FCC regulations. This current proposal is modified from the previous single site design, with the current proposal involving a dual-site design consisting of a 150-foot monopole tower at the Timbrook Public Safety Center and utilization of the existing infrastructure/elevated water tank on the 700 Jefferson Street site. Mr. Grisdale said that there were two (2) alternate sites that were evaluated; however, neither option was determined feasible as the ability to obtain a favorable ruling from the FAA nor the FCC was doubtful. The existing proposal of 150-foot was determined to be the minimal height necessary following propagation studies to analyze future signal performance. Prior to the consideration of this CUP proposal, the City of Winchester made a variance request with the Board of Zoning Appeals to allow for the proposed height, which exceeds that which is typically permitted within the B-1 district. The normal permitted height within the district is 100-feet and the Board found that a demonstrable hardship existed in this instance and granted the variance. With this approval, the CUP request is now able to move forward for review. He concluded by saying that staff recommends approval and that he is available for questions.

*Chairman Wiley called for questions from the Commission.*

Councilor Tagnesi asked if this requires any guide lines or guide wires for this antenna to which Mr. Gridale said that he would defer to Mr. Miller for response. Mr. Miller responded that this is a free-standing pole.

Commissioner McKannan asked if there would be any lights on the top for air traffic control to which Mr. Miller responded no because it is only a 150-foot maximum structure which is outside the parameters for having any required lighting.

Commissioner Loring then asked if this new pole would be placed next to the existing pole to which Mr. Miller said no, the old antenna will be razed and the new one put in its place. He also said that the equipment that is mounted on the existing pole will be temporarily mounted on the Timbrook Public Safety building.

### **Chairman Wiley Opened the Public Hearing**

Lynn Miller, Emergency Management Coordinator for the City of Winchester, said that Mr. Gridale presented the case very well and that he is available for any questions.

*Chairman Wiley called for questions from the Commission.*

Commissioner Slaughter said that he remembers going through this with the single site solution, there are some questions about redundancy and if that tower went down, will this help with that, having multiple towers. Mr. Miller said yes it will.

Councilor Tagnesi asked if there will be any interruption of service during the construction to which Mr. Miller said no because they will temporarily mount the existing equipment to the Timbrook Public Safety Center building.

Commissioner Loring said that the application indicates that this plan is about \$2 million more than the original plan to which Mr. Miller said that is correct. Commissioner Loring then asked if this is already in the City budget to which Mr. Miller said yes, the allocation is already in the City budget. Commissioner Loring then said that the application also indicates that the City is subject to fines up to \$10,000 per day and he asked if the City is currently being fined. Mr. Miller said no because right now the City is currently working under a waiver from the FCC which is valid until the first of January but that we will have to request an additional extension of that waiver, probably this November, and hope that they will grant the waiver to extend through October of 2015.

### **Chairman Wiley Closed the Public Hearing**

*Chairman Wiley called for discussion from the Commissioners. Hearing none, he called for a motion.*

*Commissioner Shickle moved to forward CU-14-432 to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommended approval is subject to the following conditions:*

- 1. Obtaining all required state and federal approvals and the tower design being in conformance with any additional requirements as may be required by such agencies;*

2. *Submit an as-built emissions certification after the facility is in operation; and,*
3. *The applicant, tower owner, or property owner shall remove equipment within ninety (90) days once the equipment is no longer in active use.*

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

**TA-14-354** AN ORDINANCE TO AMEND SECTION 16.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO ALLOWABLE BUILDING HEIGHT IN THE EDUCATION, INSTITUTION AND PUBLIC USE (EIP) DISTRICT. (Mr. Grisdale)

Mr. Grisdale presented the request and said that this is a privately sponsored text amendment to amend the allowable height provisions within the EIP district to allow for increased building height provided that additional setback is provided. The request provides language that is identical to height provisions for public or semi-public buildings such as a school or church in the LR, MR, HR, HR-1, and RO-1 districts. Similar to the allowable height provisions in the LR, MR, HR, HR-1, and RO-1 districts, this provision mitigates potential impacts from increased building height by requiring structures taller than 35 feet, but no more than 45 feet, to have increased setback of at least one foot per additional foot in building height. He concluded by stating that staff recommends approval and that he is available for questions.

*Chairman Wiley called for questions from the Commission.*

Commissioner Slaughter stated that this is just adding 16.1-7-3 to which Mr. Grisdale said yes, just the one line.

#### **Chairman Wiley Opened the Public Hearing**

#### **Chairman Wiley Closed the Public Hearing**

*Chairman Wiley called for discussion from the Commission. Hearing none, he called for a motion.*

*Commissioner Loring moved to forward TA-14-354 to City Council with a favorable recommendation because the amendment, as proposed, presents good planning practice by providing for additional building height for public and semi-public buildings with an increased setback.*

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

#### **PUBLIC HEARINGS – Continued**

**CU-14-349** Request of John and Christine Flood for a conditional use permit for conversion of ground floor nonresidential use to residential use at 10 East Clifford Street (*Map Number 193-01-L-15*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay. (Mr. Grisdale) -

**WITHDRAWN**

#### **NEW BUSINESS:**

**SV-14-433** AN ORDINANCE TO VACATE APPROXIMATELY 4,500 SQUARE FEET OF PUBLIC RIGHT OF WAY AT THE SOUTH END OF ROBERTS STREET AND CONVEY IT TO THE OWNER OF 1818 ROBERTS STREET TO ASSEMBLE IN WITH THAT LOT. (Mr. Youmans)

Mr. Youmans pointed out that this is not a public hearing item rather it is simply a recommendation in terms of the implications, if any, on long term planning and perhaps the Comprehensive Plan. This will get forwarded to City Council and then goes through a process that is quite lengthy where Council points viewers to go out and look at the request but at the Planning Commission level, the review is really quite limited in terms of whether or not there is any impact in terms of what is recommended in the Comprehensive Plan or in terms of any other impacts in terms of long range planning.

Mr. Youmans then presented the staff report and said that this resubmitted request would eliminate the southernmost segment of Roberts Street as a public street where the applicant owns land abutting the right-of-way on all three sides. The physical travel way would remain to serve the adjoining private property. This request had been approved by City Council on August 12, 2003, but the applicant failed to follow through on the Minor Subdivision to effectuate the conveyance within the one-year time frame spelled out in State Code. The applicant would now like to proceed with the conveyance. The applicant owns all of the private property served by this dead-end section of Roberts Street and there is no public purpose in retaining public ownership of this right-of-way and the roadway improvements within the right-of-way. The applicant had previously secured rezoning of the property fronting along the east side of the subject section of Roberts Street and a site plan for a commercial development with right-in/right-out access from/to westbound W. Jubal Early Drive is awaiting approval. The vacation should be conditioned upon the applicant assembling the vacated right-of-way in with the adjacent private property. City Council should confirm whether or not the sale price of \$2.50 per square foot will be set for this 2014 ordinance. He concluded by stating that staff recommends forwarding and that he is available for questions.

*Chairman Wiley called for questions from the Commission.*

Commissioner Loring asked if staff has received any input or feedback from adjacent property owners to which Mr. Youmans responded no and that he does not believe that we ever have because everyone knows that this extends to a non-descript point. Commissioner Loring then asked about the sale price of \$2.50 per square foot that was set 11 years ago and whether that price is still a good price. Mr. Youmans said that his only question would be whether City Council would go with a lower price rather than a higher price if it facilitates economic development in this area. He added that he does not think that they will change it.

Commissioner McKannan said to clarify, the easement stays there so that the access from Roberts Street to this site, east and west, will stay there. Mr. Youmans said that there are easements that they are establishing through the site and there are easements for the benefit of City National Bank and the utilities.

Commissioner Slaughter said that by vacating this, they would not be able to close the access to the current site to which Mr. Youmans said that although it is possible that they could do that; however, before that could happen, they would have to come back for a site plan revision and staff would not be supportive of that nor does he think the applicant would ever want to do that.

*Chairman Wiley called for additional questions or discussion. Hearing none, he called for a motion.*

*Commissioner Smith moved to forward SV-14-433 to City Council recommending approval because there is no long-term need for the public right-of-way. The approval is subject to establishing necessary*

*easements and subject to approval and recordation of a Minor Subdivision assembling the vacated right-of-way in with the adjoining property.*

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

**TA-14-477** RESOLUTION INITIATING TA-14-477, AN ORDINANCE TO AMEND AND REENCT ARTICLES 1, 18, AND 19 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 said that this is a staff request to have the Planning Commission initiate this text amendment. Basically after going through some review of State Code and our existing Ordinance, there are a few areas where either this past year in General Assembly there were some changes or whether it was some previous General Assemblies, there are some changes that require us to make those in our local Ordinance. There are four (4) areas that this Ordinance is addressing. One is a minor word clarification within the definition of group home. That was due to a recent act of the General Assembly this past session. Provisions for temporary health care structures, this is a requirement that all localities have to adopt within their Zoning Ordinance. It was adopted a few years ago and the City is playing "catch up" getting this in to our Ordinance. The third is procedures for family day homes. This was due to an act of the General Assembly from its most recent session. Basically, when someone is coming to have a family day home or a home day care center for more than five (5) children, prior to the Zoning Administrator reviewing and granting approval for that, there are notification requirements to all adjacent property owners prior to making that decision. The amendment also establishes some appeal provisions to City Council should the Zoning Administrator deny the request. Lastly, this just brings our Ordinance up to State Code for the expiration time lines for site plans to ensure that they are consistent. This will come back to the Planning Commission should they initiate it this month for the public hearing at next month's Planning Commission meeting.

*Chairman Wiley called for questions from the Commission. Hearing none, he called for a motion.*

*Commissioner Loring moved to initiate TA-14-477. Commissioner Slaughter seconded the motion. Voice vote was taken and the motion to initiate passed 6-0.*

## **OLD BUSINESS**

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

Mr. Youmans presented the updated staff report and said that this request is a re-approval of an expired conditional use permit for a two-family dwelling on the subject property. The applicant originally applied for a conditional use permit (CUP) for a two-family dwelling to replace a vacant, deteriorated single family dwelling located on the subject property in 2009. That application was recommended for approval by the Planning Commission and subsequently approved by City Council on April 13, 2010. The existing structure was subsequently demolished; however, the applicant did not proceed with construction. The CUP expired because the use did not commence within one (1) year of approval. The design elements of the proposal remain unchanged from the original proposal and the applicant previously applied for and received administrative modifications of two dimensional standards: lot width

and side yard. These modifications remain in place. The Board of Architectural Review previously granted a Certificate of Appropriateness (COA) for the design of the new structure; however, that COA expired one (1) year from its issuance. The applicant will need to reapply for a new COA. The original approval includes three (3) conditions; however, the first two conditions are no longer necessary. Additionally, the alignment of the Green Circle Trail phase in this area has since been finalized and terminates south of the subject property, so an easement is no longer necessary. The site plan depicts the provision of two (2) required off-street parking spaces accessed from an unrecorded ingress/egress toward the rear of the property. The plan calls for gravel surfacing of the spaces. Staff requests input from the Commission as to whether a waiver of surfacing and curbing requirements (as depicted) for the spaces and travel way is supported. The Commission also indicated a desire to include a walkway connecting from the front of the property to the rear unit access. The applicant is agreeable to this and staff would look for this to be included in the related site plan.

A question arose in the April Planning Commission work session as to whether access could be guaranteed if the ingress/egress is unrecorded. The applicant consulted with an attorney, doing further property research, and, most recently, had been in negotiations with an adjoining owner to obtain a recorded easement. The Commission tabled the application at its April 15, May 20, June 17, and July 15 meetings at the applicant's request. The applicant advised the City that the negotiations to secure the easement were unsuccessful. The CUP action was further tabled awaiting approval of a variance from the BZA.

Staff met with the applicant recently and determined that the project could move forward without BZA approval of a variance for off-street parking if the owner could secure an agreement for off-site parking within the 700-foot maximum distance established in the Zoning Ordinance. The owner has an existing parking lot behind townhouse units located approximately 300 feet to the north on the same (east) side of S. Kent Street which serves residences located in the 100% parking exempt district. Based upon the owner's willingness to encumber two (2) of those spaces to serve the required parking for the two-family unit at 314 S. Kent Street, the CUP can now move forward without need for a variance. The BZA request was thus withdrawn and the applicant would like to have a recommendation from the Planning Commission.

*Chairman Wiley called for questions from the Commission.*

Commissioner McKannan reiterated that the adjacent property owner would not enter into any type of agreement to which Mr. Youmans responded that the applicant tried for quite a few months to secure one but was unsuccessful. Commissioner McKannan then asked if there is confidence that the adjoining property owner is not going to obstruct the access to which Mr. Youmans said he would defer to Mr. Lowman, applicant, for comment.

Commissioner Shickle said that she recalls that there was discussion regarding some type of access from the street along the side of the property to which Mr. Youmans said that the comment was to ensure that there would be a sidewalk leading from the back door out to South Kent Street. Commissioner Shickle then asked for some history on the distances and where they come from. Mr. Youmans said that are in Article 18-6, specifically 18-6-3.1, of the Zoning Ordinance, that was amended to actually become more lenient in terms of these off-street parking agreements wherein if someone has a surplus of parking, they can make that available to someone else who cannot provide the sufficient quantity of off-street parking spaces. It has to be an agreement and specifically it has to be ensured either through a deed that is recorded or an easement or a lease that is in place for at least 25 years. As long as they do

that, it is acceptable in lieu of providing the off-street parking. He added that there are a number of developments in the City that made use of the more stringent language that said that it had to be within 300-feet but it is now established at a 700 foot maximum or 1,200 linear foot distance. Commissioner Shickle then asked if Mr. Youmans had a sense of those that are approved and actually use that parking as she has a lot of concerns about it because she said that she is not sure that the tenants will use those two (2) spots. Mr. Youmans said that this is a debate that was had back when the provision was first built in to the Ordinance and then there was a certain amount of debate when the City went to the 1,200 linear feet. This does reflect Council's interest in trying to encourage more residential development downtown without too many impediments.

Chairman Wiley said that in terms of where the Commission was the last time, he said that they were in public hearing and asked if the public hearing was opened while the case was tabled to which Mr. Youmans said that it was his understanding that the public hearing was closed. He asked Ms. Clayton if she recalled and she responded that there was no direct verbiage in the last motion. Mr. Youmans then said that he was thinking that the Commission had closed the public hearing and were awaiting the outcome of the BZA before the Commission made their recommendation.

Commissioner Loring reiterated that the applicant still intends to build the two (2) spaces behind the unit so they could still be able to access it to which Mr. Youmans said yes, that is what he understands. Mr. Youmans also said that in order for the City to approve this duplex, we have to have evidence that there will be two (2) parking spaces and physically they have them there and there is no reason to believe that it will be physically barricaded.

Commissioner Slaughter then asked if there is a better way to put in the conditions that they will build off-street parking and the egress around the building or does the site plan process offer enough to ensure that this will be done. Mr. Youmans said that this is something that staff would insist upon with the site plan. This is the official exhibit that they provided with the conditional use permit and so the draft motion does say to approve the use as proposed, so if they do not follow this proposal, then it would not be consistent with the recommendation that Commission is forwarding to City Council. Commissioner Shickle said if the applicant installs the two (2) parking spaces as proposed but the adjacent property owner bars access that does not mean that the applicant is in violation of what they have submitted. Commissioner Loring then reiterated that the applicant is going to provide the two (2) spaces behind the unit and the spaces in the other parking area. Mr. Youmans responded that legally they meet the requirements of the spaces in the parking lot at the townhouses just to the north. Mr. Youmans further advised that concerned residents will have an opportunity for public comment at the City Council level and that adjoining property owners will receive a letter indicating such. Mr. Grisdale said that he reached out to the individuals who live on Cecil Street and left a voice mail indicating that this case was coming back before the Planning Commission today and that Oakcrest had an alternate proposal for their off-street parking issues. He added that the resident in turn left a voice mail for Mr. Grisdale thanking him for the call and to advise that his issues were addressed. Mr. Youmans then stated that it is a by-right provision, it is not discretionary in terms of the City may permit it. If the person meets the requirements, they are allowed by Code to do it.

*Chairman Wiley called for additional questions or discussion from the Commission. He then asked if Mr. Lowman, Oakcrest Properties, wished to speak.*

Mr. Lowman stated that the easement has been in place for decades and that the adjacent property owner has given no indication that he would sell the property or no indication that he would vacate the

easement that is there right now. He said that the primary concern for the adjacent property owner not giving a recorded easement is that he is concerned that it will generate other aspects going north and he does not wish to have to go through that whole process. He said that they anticipate being able to use it as long as they can.

*Chairman Wiley thanked Mr. Lowman for the clarification. He then called for additional questions or discussion from the Commission. Hearing none, he called for a motion.*

Commissioner Slaughter asked if there are any other solutions that would work. Commissioner Shickle then said that they applicant has done everything that they possibly can in that the City has provisions in place and they have met them, she said that she just wants the Commission to be conscious. Mr. Youmans said that he can report back to the Planning Commission after this gets to City Council at work session if they express similar positions.

*Chairman Wiley called for a motion.*

*Commissioner Shickle moved to forward CU-14-166 to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommended approval is subject to the following conditions:*

- 1. Approval of necessary lease or easement obligating the two (2) parking spaces in the off-street parking lot behind 208-220 S. Kent Street to serve the two-family use at 314 S. Kent Street; and,*
- 2. Staff review and approval of the related site plan.*

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

## **OTHER BUSINESS**

### **Administrative Approval(s) (Mr. Youmans)**

- a. SP-14-480**      1359 & 1365 Berryville Avenue      boundary line adjustment  
*Commissioner Loring moved to approve. Commissioner McKannan seconded the motion. Voice vote was taken and the motion passed 6-0.*
  
- b. SP-14-494**      621 Atwell Avenue      convert parking spaces  
*Commissioner Loring moved to approve. Commissioner Slaughter seconded the motion. Voice vote was taken and the motion passed 6-0.*
  
- c. SP-14-441**      400 Campus Boulevard      new cancer center  
*Commissioner Loring moved to approve. Commission Shickle seconded the motion. Voice vote was taken and the motion passed 6-0.*

## **AJOURN**

With no further business before the Commission, the meeting adjourned at 4:25 p.m.

**TA-14-477** AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 18, AND 19 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

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#### REQUEST DESCRIPTION

This request is a publicly sponsored zoning text amendment that will bring the City's Zoning Ordinance into conformity with State Code, following legislative updates.

#### STAFF COMMENTS

Following a 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:

1. **Definition of Group Home** – This is a minor adjustment of the definition of Group Home following legislation adopted in the 2014 session of the General Assembly.
2. **Temporary Health Care Structures** – Provides permitting and regulating standards for temporary health care structures on residential properties. Legislation adopted by the General Assembly requires that localities include such provisions within their ordinances.
3. **Family Day Homes** – Updates our local ordinance to be in compliance with notification, review and appeal procedures for a person seeking to have a family day home (daycare) in their home. With the new standards all adjacent property owners must be identified prior to the issuance of a zoning permit by the Zoning Administrator. Denials of a permit may be appealed to City Council.
4. **Site Plan Expiration** - Updates our local ordinance to be in compliance with the period of validity and expiration timeframes for approved site plans.

#### RECOMMENDATION

Staff recommends approval. A potential motion could read:

**MOVE** that the Planning commission forwards **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.

AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 18, AND 19 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

14-477

Draft 1 – 7/29/14

Ed. Note: The following text represents an excerpt of Articles 1, 18, and 19 of the Zoning Ordinance that are subject to change. Words with strikethrough are proposed for repeal. Words that are boldfaced and underlined are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.

**ARTICLE 1**

**DEFINITIONS**

1-2-46           GROUP HOME: As defined within §15.2-2291, Code of Virginia (as amended), a residential facility for which the Department of Mental Health, Mental Retardation, and Substance Abuse services of the Commonwealth is the licensing authority; and, in which no more than eight (8) mentally ill, mentally retarded or developmentally disabled persons reside, with one or more resident ~~counselors~~ or ~~other~~ **nonresident** staff persons, as residential occupancy by a single family. Mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined within §54.1-3401, Code of Virginia (as amended).

**ARTICLE 18**

**GENERAL PROVISIONS**

**SECTION 18-10. ACCESSORY USES AND STRUCTURES.**

**18-10-10           Temporary Family Health Care Structures**

**A. For the purposes of this Section:**

- 1. "Caregiver" means an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom he is caring.**
  
- 2. "Mentally or physically impaired person" means a person who is a resident of Virginia and who requires assistance with two or more**

activities of daily living, as defined in § 63.2-2200, Code of Virginia, as certified in a writing provided by a physician licensed by the Commonwealth.

3. "Temporary family health care structure" means a transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation; (ii) is limited to one occupant who shall be the mentally or physically impaired person or, in the case of a married couple, two occupants, one of whom is a mentally or physically impaired person, and the other requires assistance with one or more activities of daily living as defined in § 63.2-2200, Code of Virginia, as certified in writing by a physician licensed in the Commonwealth; (iii) has no more than 300 gross square feet; and (iv) complies with applicable provisions of the Industrialized Building Safety Law and the Uniform Statewide Building Code. Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

B. Temporary family health care structures shall be permitted as an accessory use in LR, MR, HR, HR-1, RB-1, RO-1, B-1, and PUD districts as a permitted accessory use to an existing single family residential use. Such structures shall be (i) for use by a caregiver in providing care for a mentally or physically impaired person and (ii) on property owned or occupied by the caregiver as his residence.

C. Only one family health care structure shall be allowed on a lot or parcel of land.

D. Any person proposing to install a temporary family health care structure shall first obtain a permit from the Administrator.

E. The Administrator may require that the applicant provide evidence of compliance with this section on an annual basis as long as the temporary family health care structure remains on the property. Such evidence may involve the inspection by the Administrator of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation.

F. Any temporary family health care structure installed pursuant to this Section may be required to connect to any water, sewer, and electric utilities that are serving the primary residence on the property and shall comply with all applicable requirements of the Virginia Department of Health.

- G. No signage advertising or otherwise promoting the existence of the structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.**
- H. Any temporary family health care structure installed pursuant to this Section shall be removed within 60 days of the date on which the temporary family health care structure was last occupied by a mentally or physically impaired person receiving services or in need of the assistance provided for in this section.**
- I. The Administrator may revoke the permit granted pursuant to subsection D if the permit holder violates any provision of this section. Additionally, the Administrator may seek injunctive relief or other appropriate actions or proceedings in the circuit court of that locality to ensure compliance with this section.**
- J. Any proposed temporary health care structure must meet the same location, setback, lot coverage requirements and limitations set forth in this Article for other accessory structures.**

#### **SECTION 18-19. HOME OCCUPATIONS.**

18-19-3

The operation of a family day home **may occur as an accessory and subordinate use to a residence provided the following:** for not more than five (5) children shall be considered as residential occupancy by a single family; and, therefore does not require a Certificate of Home Occupation. Family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall obtain a Certificate of Home Occupation and shall be licensed by the Virginia Department of Social Services. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. A family day home where the children in care are all grandchildren of the provider shall not be required to be licensed or obligated to obtain a Certificate of Home Occupation.

- A. A family day home for not more than five (5) children shall be considered as residential occupancy by a single family; and, therefore does not require a Certificate of Home Occupation.**
- B. A family day home serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall obtain a Certificate of Home Occupation and shall be licensed by the Virginia Department of Social Services, provided the following:**

1. Prior to the issuance of a Certificate of Home Occupation for a family day home serving six through twelve children, the applicant shall send a notice developed by the Administrator to each adjacent property owner by registered or certified mail, and shall provide proof to the Administrator of the completion of such mailings.
  2. If the Administrator receives no written objection from a person so notified within thirty (30) days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of this Ordinance, the Administrator may issue the permit sought.
  3. Any applicant denied a permit through this administrative process may request that the application be considered by City Council after a hearing following public notice per Section 23-7-1 of this Ordinance.
  4. Upon such hearing, City Council may, in its discretion, approve the permit, subject to such conditions as agreed upon by the applicant and the locality, or deny the permit.
- C. No family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered.
- D. A family day home where the children in care are all grandchildren of the provider shall not be required to be licensed or obligated to obtain a Certificate of Home Occupation.

## ARTICLE 19

### SITE PLAN REQUIREMENTS

#### SECTION 19-7. SITE PLAN TERMINATION OR EXTENSION.

- 19-7-1 An approved site plan shall expire and become null and void if no building permit has been obtained for the site in ~~twelve (12) months~~ **five (5) years** after the final approval unless otherwise provided for in the Code of Virginia.

RESOLUTION INITIATING TA-14-477 AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 18, AND 19  
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

**TA - 14-477**

WHEREAS, during recent General Assembly sessions several modifications have occurred to enabling legislation pertaining to Zoning Ordinances; and,

WHEREAS, the Code of Virginia establishes a specific definition for Group Homes; and,

WHEREAS, the Code of Virginia establishes a requirements for local governments to include provisions pertaining to temporary health care structures; and,

WHEREAS, the Code of Virginia establishes public notification requirements prior to the approval of a family day home; and,

WHEREAS, the Code of Virginia establishes mandatory time frames for how long an approved site plan is valid; and,

WHEREAS, it is the interest of the City to incorporate such requirements from the Code of Virginia into its Zoning Ordinance; and,

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

AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 18, AND 19 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

**14-477**

Draft 1 – 7/29/14

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## ARTICLE 1

### DEFINITIONS

1-2-46 GROUP HOME: As defined within §15.2-2291, Code of Virginia (as amended), a residential facility for which the Department of Mental Health, Mental Retardation, and Substance Abuse services of the Commonwealth is the licensing authority; and, in which no more than eight (8) mentally ill, mentally retarded or developmentally disabled persons reside, with one or more resident counselors or other ~~other~~ **nonresident** staff persons, as residential occupancy by a single family. Mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined within §54.1-3401, Code of Virginia (as amended).

## ARTICLE 18

### GENERAL PROVISIONS

#### SECTION 18-10. ACCESSORY USES AND STRUCTURES.

##### 18-10-10 Temporary Family Health Care Structures

###### K. For the purposes of this Section:

1. "Caregiver" means an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom he is caring.
2. "Mentally or physically impaired person" means a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in § 63.2-2200, Code of Virginia, as certified in a writing provided by a physician licensed by the Commonwealth.
3. "Temporary family health care structure" means a transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation; (ii) is limited to one occupant who shall be the mentally or physically impaired person or, in the case of a married couple, two occupants, one of whom is a mentally or physically impaired person, and the other requires assistance with one or more activities of daily living as defined in § 63.2-2200, Code of Virginia, as certified in writing by a physician licensed in the Commonwealth; (iii) has no more than 300 gross square feet; and (iv)

complies with applicable provisions of the Industrialized Building Safety Law and the Uniform Statewide Building Code. Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

- L. Temporary family health care structures shall be permitted as an accessory use in LR, MR, HR, HR-1, RB-1, RO-1, B-1, and PUD districts as a permitted accessory use to an existing single family residential use. Such structures shall be (i) for use by a caregiver in providing care for a mentally or physically impaired person and (ii) on property owned or occupied by the caregiver as his residence.
- M. Only one family health care structure shall be allowed on a lot or parcel of land.
- N. Any person proposing to install a temporary family health care structure shall first obtain a permit from the Administrator.
- O. The Administrator may require that the applicant provide evidence of compliance with this section on an annual basis as long as the temporary family health care structure remains on the property. Such evidence may involve the inspection by the Administrator of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation.
- P. Any temporary family health care structure installed pursuant to this Section may be required to connect to any water, sewer, and electric utilities that are serving the primary residence on the property and shall comply with all applicable requirements of the Virginia Department of Health.
- Q. No signage advertising or otherwise promoting the existence of the structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.
- R. Any temporary family health care structure installed pursuant to this Section shall be removed within 60 days of the date on which the temporary family health care structure was last occupied by a mentally or physically impaired person receiving services or in need of the assistance provided for in this section.
- S. The Administrator may revoke the permit granted pursuant to subsection D if the permit holder violates any provision of this section. Additionally, the Administrator may seek injunctive relief or other appropriate actions or proceedings in the circuit court of that locality to ensure compliance with this section.

**T. Any proposed temporary health care structure must meet the same location, setback, lot coverage requirements and limitations set forth in this Article for other accessory structures.**

**SECTION 18-19. HOME OCCUPATIONS.**

18-19-3 The operation of a family day home **may occur as an accessory and subordinate use to a residence provided the following:** for not more than five (5) children shall be considered as residential occupancy by a single family; and, therefore does not require a Certificate of Home Occupation. Family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall obtain a Certificate of Home Occupation and shall be licensed by the Virginia Department of Social Services. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. A family day home where the children in care are all grandchildren of the provider shall not be required to be licensed or obligated to obtain a Certificate of Home Occupation.

**E. A family day home for not more than five (5) children shall be considered as residential occupancy by a single family; and, therefore does not require a Certificate of Home Occupation.**

**F. A family day home serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall obtain a Certificate of Home Occupation and shall be licensed by the Virginia Department of Social Services, provided the following:**

**1. Prior to the issuance of a Certificate of Home Occupation for a family day home serving six through twelve children, the applicant shall send a notice developed by the Administrator to each adjacent property owner by registered or certified mail, and shall provide proof to the Administrator of the completion of such mailings.**

**2. If the Administrator receives no written objection from a person so notified within thirty (30) days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of this Ordinance, the Administrator may issue the permit sought.**

**3. Any applicant denied a permit through this administrative process may request that the application be considered by City Council after a hearing following public notice per Section 23-7-1 of this Ordinance.**

**4. Upon such hearing, City Council may, in its discretion, approve the permit, subject to such conditions as agreed upon by the applicant and the locality, or deny the permit.**

**G. No family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered.**

**H. A family day home where the children in care are all grandchildren of the provider shall not be required to be licensed or obligated to obtain a Certificate of Home Occupation.**

## ARTICLE 19

### SITE PLAN REQUIREMENTS

#### SECTION 19-7. SITE PLAN TERMINATION OR EXTENSION.

19-7-1 An approved site plan shall expire and become null and void if no building permit has been obtained for the site in ~~twelve (12) months~~ **five (5) years** after the final approval **unless otherwise provided for in the Code of Virginia.**

**CU-14-485** Request of EFD Investments, LLC, for a Conditional Use Permit for extended stay lodging at 132 N. Braddock Street zoned Central Business (B-1) District with Historic Winchester (HW) District overlay

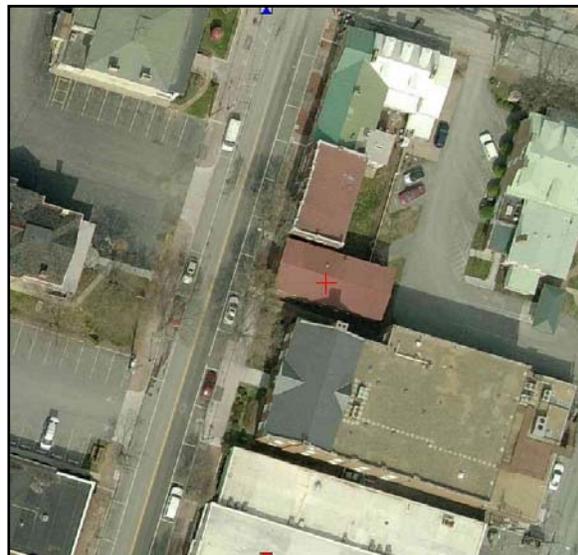
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#### REQUEST DESCRIPTION

The request is for Conditional Use Permit (CUP) approval 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 extended stay lodging.

#### AREA DESCRIPTION

The property and all adjoining properties along both sides of N. Braddock Street are zoned B-1 with Historic Winchester (HW) overlay District. The site is also located in the Winchester National Historic District and restoration of the circa 1945 Jacobean Tudor Revival structure would likely be eligible for State and Federal Tax Credits. The subject stretch of N. Braddock Street has structures primarily associated with commercial use, including numerous offices and some retail. The site immediately to the south was recently approved for a 4-unit Extended Stay Lodging facility. The site falls within the 100% parking exempt district, although the applicant proposes to lease spaces in the Braddock Street Auto Park or in a private surface lot across the street.



#### STAFF COMMENTS

The CUP request for conversion of the ground-floor nonresidential space and upper level apartments to extended stay lodging use is outlined in a letter from Mr. Dearing of EFD Investments, LLC to the City dated July 29, 2014 (see attached). The Tudor Revival structure has an exterior appearance that lends itself to either commercial or residential use. 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 N. Braddock Street providing access to all spaces within the building.

There is very little distance between the front of the structure and the public street. The applicant should consider some planter boxes to place out along the front of the building to create some separation between the windows of the front living room space and the public sidewalk. Two 2-bedroom units are proposed on the first floor. They do not have any bedrooms facing toward the street. All four units would have access to a hallway connecting to the front door of the building. No rear access

from the ground floor units is proposed since the building effectively takes up the entire lot area except for a narrow strip along the south side of the building. There is green area behind the building, but it is owned by a separate property owner.

In his letter, the applicant notes the commitment 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. Because this is an Extended Stay Lodging proposal (as opposed to a ground-floor residential conversion), there is no provision for the Planning Director to make a determination whether or not the segment of N. Braddock Street represents a major commercial street, thus potentially restricting the ground-floor residential conversion. If proposed as multifamily instead of Extended Stay Lodging, the four units probably would not meet the average minimum floor area requirements for two-bedroom units.

Section 1-2-35.1 of the Zoning Ordinance defines 'EXTENDED STAY LODGING' as: *One (1) or more buildings containing individual sleeping rooms, designed for and used primarily by business travelers for more than thirty (30) consecutive days, with garage or parking space conveniently located to each unit. Cooking facilities are provided for each unit. Units are not intended to be primary residences.*

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. At its June 10, 2014 meeting, Council approved that Conditional Use Permit (CU-14-267) subject to:

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 **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.

#### RECOMMENDATION

For a conditional use permit to be approved, a finding must be made that the proposal 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.

To be consistent with the approval next door, a favorable motion could read:

**MOVE**, that the Commission forward **CU-14-485** to Council recommending approval per Sections 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:

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 **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.

July 29, 2014

City of Winchester  
Planning Commission

Planning Commission Members:

EFD Investments, LLC has a contract to purchase 132 North Braddock Street. The building currently has two apartments upstairs. The North side of the downstairs is vacant and the South side is leased for retail use. The site is zoned B-1.

EFD Investments, LLC previously purchased 126 North Braddock Street, the next building to the South, and was granted a conditional use permit to convert the entire building to extended stay lodging.

This request is for consideration of converting 132 North Braddock to extended stay lodging, as defined by 1-2-35.1 of the City of Winchester Zoning Ordinance. The two apartments would remain upstairs and the ground floor would be converted to two apartments. As defined these units will be fully furnished units which will be primarily rented to business travelers who are relocating to the area or are in the area for short term assignments.

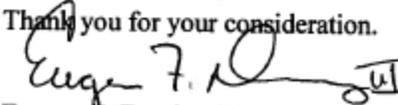
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This use is listed as a conditional use in the B-1 District. No additional variances are being requested. Although this location is parking exempt, we propose to lease space in the Braddock Street Parking Garage for use of the tenants to satisfy the requirement that extended stay units have nearby parking available.

The building is in the Historic District and no changes are proposed to the building footprint or exterior. Since this project is eligible for Federal and State Tax Credits, the final design will have to be approved by these agencies. The façade of this building, as the 126 North Braddock Street building, has a residential appearance with no display type windows that would be covered or altered.

We believe that this is an appropriate use for the building. Business travelers typically like the fact that they can walk to the Loudoun Mall area to take advantage of the many restaurants and shops. We believe that this project furthers the goal of having people live and shop in the downtown area. We see no negative impact. These units are designed for single adults. Traffic impact will be minimal since in most cases there would be only one or two trips a day resulting from each unit. These units provide for weekly maid service and owner property maintenance which will insure that the property is well taken care of. The completed project will result in an increased real estate tax base as well as generate revenue through the patronization of local shops and restaurants.

Thank you for your consideration.

  
Eugene F. Dearing III  
EFD Investments, LLC

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**RZ-14-490** AN ORDINANCE TO REZONE 7.7076 ACRES OF LAND AT 940 CEDAR CREEK GRADE 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

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#### REQUEST DESCRIPTION

The applicant is requesting to again 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. This 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. Therefore, no Development Plan depicting building layout, building elevations, floor plans, etc. are available for scrutiny as part of the rezoning evaluation. There is informal discussion about an assisted living and skilled nursing facility, but the rezoning proposal is not conditioned upon that or any other limited array of uses. Therefore, the Commission and Council must evaluate the request with the knowledge that any use permitted in the B-2 District could be situated there by right.

If the rezoning request included PUD overlay, it would permit the construction of up to 139 apartment units, assuming that the overlay Planned Unit Development (PUD) provisions and Corridor Enhancement (CE) provisions are met. The current conditional B-2/PUD zoning was conditioned upon a Conceptual Site Layout Plan depicting 132 apartment units in 5 three-story buildings and 2 four-story buildings. A separate two-story mixed use with offices on the ground floor and 1-bedroom apartments on the second floor was approved near the Cedar Creek Grade frontage of the site. Recreational amenities included 2 proposed bocce ball courts out close to Cedar Creek Grade available for use by the occupants only and a perimeter walking trail with exercise stations that would be available to the public for at least 2 years. There were also some exercise stations toward the interior of the site.

#### AREA DESCRIPTION

The subject parcel contains a vacant single-family residence and some agricultural structures. The one residentially used property immediately to the east is zoned RO-1 district. Along with numerous other properties throughout the City, that property was rezoned by the City (i.e. not at property owner request) in the 1990's in an effort to stem what was then viewed as undesirable multifamily rental housing. Land to the north and further to the east is zoned HR and contains multifamily development as



well as townhouse development. Land to the south fronting along Cedar Creek Grade is also zoned HR and contains single-family residences.

Land to the west is situated in Frederick County. The adjoining Frederick County parcel owned by Greystone Properties, LLC was conditionally rezoned from Rural Areas (RA) to Residential Planned Community (R4) by Frederick County along with other properties including a larger tract owned by Miller & Smith about five years ago. The 360-acre Willow Run project is slated for 1,390 residential units as well as 36 acres of commercial uses. The Greystone Properties portion of the larger Willow Run project is primarily single-family attached (i.e. townhouse) residential and age-restricted housing. It includes a spine road (Birchmont Dr) that connects Cedar Creek Grade with the extension of Jubal Early Drive to the north. That connection is required to be built prior to the 200th residential permit being issued. A public street connection to Cidermill Lane from the County spine road is also part of the approved Willow Run project. Cidermill Lane is currently being extended to the County line as part of the last phase of the Orchard Hill townhouse development.

#### COMMENTS FROM STAFF

In a letter (see attached) to the Planning Director dated August 4, 2014, Mr. Timothy Painter of Painter-Lewis PLC, applicant for the owner (Mr. Scott Rosenfeld-Cedar Creek Place LLC), explains the proposed rezoning and the proposed "varied" commercial use. The applicant also provided an original Proffer Statement dated August, 2014. The Proffer Statement is addressed further below in the comments from staff.

#### Comprehensive Plan Consistency

The Character Map contained in the adopted Comprehensive Plan calls for a Commerce Revitalization/Infill in this area and for the connection of Stoneleigh Drive to Cedar Creek Grade. The applicant has not stated what specific commercial use he is proposing. Therefore, gas filling stations, convenience stores, auto/truck sales and/or service establishments, car washes, contractor establishments, restaurants, bowling alleys, and many other uses would all be allowed by right.

The Cedar Creek Grade corridor has undergone considerable change over the past 25 years from being primarily single-family development along a two-lane roadway to becoming a mixed use corridor served by a four-lane arterial. A number of sites that were rezoned to RO-1 by the City in the 1990's were subsequently rezoned on a conditional basis to Highway Commercial (B-2) by private developers. These conditional B-2 rezonings often included restrictions on commercial uses. This effort includes the two lots along the south side of Cedar Creek Grade across from the east end of the subject property where two large office buildings are situated today. Corridor Enhancement (CE) overlay zoning was established along Cedar Creek Grade in 2006.

#### Potential Impacts & Proffers

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 August 4, 2014 Proffer Statement and the September 30<sup>th</sup> revision to it is structured to address six areas under the heading of Site Planning Improvements. These are: Street and Access Improvements; Interior Site Circulation; Site Development; Landscaping and Design; Recreation; and, Storm water Management. Unlike the current B-2(PUD) zoning, there is no paragraph of the Proffer Statement that binds the developer to develop the site in accordance with a particular conceptual site layout plan exhibit.

The applicant has not conducted an updated Fiscal Impact Analysis and a Traffic Impact Analysis. These are two studies that can be required by the Planning Commission for a PUD rezoning application per Sections 13-4-2.2k and l of the Zoning Ordinance, but not when a non-PUD rezoning is submitted.

#### Fiscal Impacts

Since the proposed B-2 zoning without PUD overlay does not permit residential use, it is unlikely that the commercial development would have a negative fiscal impact on the City. The applicant notes in his letter that :This development of this site, as a result of this rezoning, will have a positive impact on the City of Winchester and it generally conforms to the Comprehensive Plan for this area.” Staff does not believe that an updated Fiscal Impact Analysis is needed since no by-right uses in the B-2 district would generate school-aged population.

#### Traffic Impact Analysis

A Traffic Signal Warrant Study was submitted with the prior rezoning request on 9/9/13 to the Planning Director and to the Public Services Director, Perry Eisenach. The Warrant Study concluded that a traffic signal would not be warranted at the proposed intersection of Cedar Creek Grade and the extension of Stoneleigh Drive, even if situated opposite of the existing Cedar Creek Grade/Stone Ridge Rd intersection. The Public Services Director reviewed the study and agreed with the findings.

The Traffic Signal Warrant Study included an analysis of Trip Generation based upon four different Development Scenarios. If the 7.7076 acres were developed with by-right office development consisting of upwards of 120,000 square feet of medical-dental office development, then it would generate 424 trips in the PM Peak Hour and an ADT volume of 4,692 trips (over 3 times the amount of traffic generated by the development proposed with the current rezoning that was approved for the 132 apartment units). Without any proffer on the actual use of the property, it is difficult for staff to fully evaluate the potential traffic impacts. Staff would recommend that an updated ‘worse-case’ scenario traffic study be done, assuming that the applicant is unwilling to proffer a narrower list of proposed use.

Proffer #1 proposes to include a private extension of Stoneleigh Drive connecting to Cedar Creek Grade at an unsignalized intersection located approximately 240 feet west of the Harvest Drive intersection. This new location is where the existing driveway into the adjoining Horton property is currently located. That driveway would be eliminated under the proposal and a connection to the Horton property would be provided from a point internal to the subject development site north of the existing Horton residence closest to Cedar Creek Grade.

The proposed street location minimizes impacts on the Harvest Drive neighborhood and provides for an indirect connection to the public portion of Stoneleigh Drive in the Orchard Hill neighborhood. It also provides for good sight distance to the west. It will, however, require the granting of an exception by City Council to allow for the new private street to be situated within 300 feet of the existing Harvest Drive intersection.

Alterations were made to traffic flow on Cedar Creek Grade at Stoneridge Rd intersection after VDOT had widened the road from two lanes to four lanes in 1993. The alteration decreased the capacity of Cedar Creek Grade by converting one of the two eastbound lanes and one of the two westbound lanes approaching Stoneridge Rd into right-turn and left-turn lanes respectively. That change essentially reduced Cedar Creek Grade down to a single through lane eastbound and westbound at that one location.

Stoneleigh Drive would connect to the privately-owned portion of Stoneleigh Drive serving the existing Summerfield Apartment development. Summerfield Apartments were approved with improved access only to the north connecting with the public portion of Stoneleigh Dr in the Orchard Hill townhouse development. The developer of the Summerfield Apartment development offered to extend Stoneleigh Drive as a public street southward to allow for an orderly extension of that street ultimately to Cedar Creek Grade once the former Racey property was developed. Due to strong opposition from adjoining Orchard Hill residents, City Council turned down a subdivision proposal in 1997 that would have extended the public street, but the apartment development site plan was nonetheless approved relying solely upon access to Harvest Drive, a Category II Collector Street via local (Category I) streets within the Orchard Hill development.

As noted above, the Comprehensive Plan calls for the orderly extension of roadway connecting the Summerfield and Orchard Hill neighborhoods to Cedar Creek Grade. This allows for improved traffic flow and improved service delivery for City services such as fire and rescue, police, school buses, and refuse, yard waste, and recycling pickup. It also implements the New Urbanism principle of an interconnected grid street network advocated in the Comprehensive Plan and avoids undesirably long an inefficient single-access point development typical of 1960's – 1990's suburban sprawl. Total traffic on any one street is reduced since residents do not have to drive through other neighborhoods to get to the major streets in the City. The applicant is also proffering traffic calming measures along the proposed private roadway.

#### Site Development and Buffering

In Proffer #3, the applicant has proffered minimum separations between buildings and off-street parking areas. Proffer#3 also notes that the project will generally conform to the Corridor Enhancement (CE) District criteria and provides descriptions of the exterior building materials and roofing material to be used. Proffer #4 provides information about the landscaped buffers, including evergreen trees required. Upright evergreen screening consisting of a hedgerow or staggered double row of evergreens is proffered along the west, north and east perimeter of the site including the boundary adjoining the Horton property to the east.

#### Recreation and Open Space

Proffer #5 addresses “an active recreation and landscape buffer” along Cedar Creek Grade in “the areas not included as part of the commercial portion of this development.” It does not, however, provide any minimum width for this area. Generally, an active recreation area and a landscape buffer area are two separate things. The applicant is proposing a 5-foot wide walking trail with exercise stations that will become part of the local trail system “for use by the residents.” It is unclear who the “residents” would be since the B-2 zoning does not allow residential use by right. Use of the trails for public use would be for at least a 2-year period, but then evaluated such that it may become restricted from use by the public.

#### Storm Water Management

Proffer #6 addresses the impacts of storm water management and the applicant's measures to mitigate the potential impacts. A detailed storm water analysis would be generated by the applicant and reviewed by the City at the time of site plan. On sheet RZ2 of the applicant's proposed Development Plan layout, two large underground storm water management systems are depicted.

### Project Phasing

No phasing of commercial development is proposed with this rezoning, so it is assumed that any improvements would be in place before the first occupancy permit is requested.

#### RECOMMENDATION

Staff is generally supportive of the proposed rezoning. Without any proffer on the actual use of the property, however, it is difficult for staff to fully evaluate the potential traffic impacts. As noted in the report, staff would recommend that an updated 'worse-case' commercial scenario traffic study be done, assuming that the applicant is unwilling to proffer a narrower list of proposed use. Staff would also recommend that the applicant consider reworking Proffer # 5 pertaining to Recreation to clarify how large the proffered active recreation area and the separate landscape buffer area would be along Cedar Creek Grade and the perimeter of this commercial site, especially where it abuts residential zoning. The applicant should also clarify who the "residents" of the proposed commercial development would be with regard to usage of the 5-foot wide walking trail.

The applicant should confirm that the easement for access across the Horton property is still available under the proposed rezoning scenario and that the development will all be done in a single phase on the 7.7-acre site.

Three possible motions are offered below for the Planning Commission to consider.

A motion to table the request is recommended by staff at this point. It could read:

**MOVE**, that the Planning Commission table **RZ-14-490** to allow the applicant time to respond to questions from staff regarding traffic impacts, use restrictions, project recreational amenities, and project phasing.

**OR,**

A favorable motion to forward to City Council could read:

**MOVE**, that the Planning Commission 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 submitted proffers dated August 4, 2014.

**OR,**

An unfavorable motion to forward to City Council could read:

**MOVE**, that the Planning Commission forward **RZ-14-490** to City Council recommending disapproval of the rezoning because the request, as submitted, does not adequately address potential traffic impacts arising from rezoning 7.7 acres of land to unrestricted commercial use.

AN ORDINANCE TO REZONE 7.7076 ACRES OF LAND AT 940 CEDAR CREEK GRADE 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

**RZ-14-490**

**WHEREAS**, the Common Council has received an application from Painter-Lewis, PLC on behalf of Cedar Creek Place, LLC to rezone property at 940 Cedar Creek Grade from conditional Highway Commercial District with Planned Unit Development District overlay and some Corridor Enhancement District overlay to conditional Highway Commercial District with Corridor Enhancement District overlay; and,

**WHEREAS**, the Planning Commission forwarded the request to Council on September 16, 2014 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 submitted proffers dated August 4, 2014; and,

**WHEREAS**, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted by the Common Council of the City of Winchester, Virginia, all as required by the Code of Virginia, 1950, as amended, and the said Council has determined that the rezoning associated with this property herein 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.

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Winchester, Virginia that the following land is hereby rezoned from the existing zoning designation of conditional Highway Commercial District with Planned Unit Development District overlay and some Corridor Enhancement District overlay to conditional Highway Commercial District with Corridor Enhancement District overlay:

7.7076 acres of land at 940 Cedar Creek Grade as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-490 Prepared by Winchester Planning Department, September 2, 2014*".

**BE IT FURTHER ORDAINED** by the Common Council of the City of Winchester, Virginia that the rezoning is subject to adherence with the submitted proffers dated August 4, 2014.

**CEDAR CREEK PLACE  
COMMERCIAL COMPLEX  
REZONING REQUEST PROFFER  
(Conditions for this Rezoning Request)**

**Tax Map Number: 249-01-2  
Owner: Cedar Creek Place, L.L.C.  
Applicant: Painter-Lewis, P.L.C.**

**August 4, 2014**

**Property Information**

The undersigned applicant hereby proffers that in the event the Council of the City of Winchester (Council) shall approve the rezoning of 7.7076 acres from Highway Commercial District (B-2) with a Planned Unit Development District (PUD) overlay and maintaining the Corridor Enhancement District (CE) along Cedar Creek Grade for 125' from the right-of-way line into the parcel to Highway Commercial District (B-2) with full Corridor Enhancement District, then development of the subject property shall be done in conformity with the terms and conditions as set forth herein, except to the extent that such terms and conditions may be subsequently amended or revised by the applicant and such be approved by the Council in accordance with Virginia law. In the event that such rezoning is not granted, then these proffers shall be deemed withdrawn and have no effect whatsoever. These proffers shall be binding upon the applicant and their legal successor or assigns.

Any and all proffers and conditions, accepted or binding upon the aforementioned property, as a condition of accepting these proffers, shall become void and have no subsequent affect.

**Site Planning Improvements**

The undersigned applicant, who is acting on behalf of the owners of the above described property, hereby voluntarily proffers that, if the Council of the City of Winchester approves the rezoning, the undersigned will provide:

**1. Street and Access Improvements**

- ❖ Design and construction of approximately 1120 feet of Private Street from the existing Cedar Creek Grade Right-of-Way to the private street section of Stoneleigh Drive in the Summerfield Luxury Apartment Complex to the north of this property.
- ❖ Traffic calming measures shall be installed along this private street section to lessen the adverse effects of traffic in this apartment complex development.

**2. Interior Site Circulation**

- ❖ Access shall be provided via interior driveways and drive aisles which connect to the proposed private street section to provide the needed access to Cedar Creek Grade Roadway.

**CEDAR CREEK PLACE COMMERCIAL COMPLEX**  
**Rezoning Request Proffer**

**3. Site Development:**

- ❖ A minimum separation distance of twenty feet (20') shall be maintained between the building lines of the buildings and the face of curb of the adjacent parking areas.
- ❖ The architectural building layouts and characteristics shall generally conform to the criteria as set forth with the Corridor Enhancement portion of the zoning ordinance. The exterior building materials shall be as follows:
  - The exterior siding finishes shall be stone or masonry or a combination thereof on all buildings for the main floor level.
  - The upper level exterior finishes shall be a combination of stone, masonry, or vinyl siding.
  - The roofing materials shall be Architectural grade asphalt shingles that will accent the color scheme of the buildings.

The final combinations and color selections shall be determined at the time of the site plan submittal for final review and approval.

**4. Landscaping and Design:**

- ❖ In the perimeter areas of the site where existing residential developments have been constructed, specifically along the eastern, western, and northern boundary lines, an opaque screen consisting of an evergreen hedgerow or double row of evergreens shall be constructed.

**5. Recreation:**

- ❖ An active recreation and landscaping buffer shall be provided along the Cedar Creek Grade Right-of-Way in the areas not included as part of the commercial portion of this development. This area shall be dedicated to active recreation for use by the residents of this development. The active recreation element shall include a minimum five foot (5') wide walking trail with exercise stations that will become part of the local trail system for use by the residents and local public for a period of two (2) years after completion of the trail network. The permitted use by the local public shall be evaluated by the current ownership on an annual basis thereafter and may be restricted dependent upon the future changes in the development.

**6. Storm Water Management:**

- ❖ All storm water management and storm water quality facilities shall be installed underground in accordance with the standards and specifications of the Winchester Public Works Department. These facilities shall be maintained by the owner of the development and be constructed so as to secure the safety of the public at all times.

**CEDAR CREEK PLACE COMMERCIAL COMPLEX  
Rezoning Request Proffer**

The conditions proffered above shall be binding upon the heirs, executors, administrators, assigns and successors in interest of the Applicant and Owner. In the event the Council grants said rezoning and accepts these conditions, the proffered conditions shall apply to the land rezoned in addition to other requirements set forth in the City of Winchester Code.

Respectfully submitted,

PROPERTY OWNER

By: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF VIRGINIA, AT LARGE  
COUNTY OF \_\_\_\_\_, To Wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014,  
by \_\_\_\_\_.

My Commission expires \_\_\_\_\_

Notary Public \_\_\_\_\_

**PAINTER-LEWIS, P.L.C.**

CONSULTING ENGINEERS

817 Cedar Creek Grade, Suite 120  
Winchester, Virginia 22601

Tel.: (540) 662-5792  
Fax.: (540) 662-5793

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August 4, 2014

Mr. Timothy P. Youmans, Director of Planning  
City of Winchester, Virginia  
15 N. Cameron Street  
Rouss City Hall  
Winchester, Virginia 22601

Re: Cedar Creek Place Commercial Development  
940 Cedar Creek Grade  
Winchester, Virginia  
Tax Map: 249-01-2  
Rezoning Application

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Dear Sir:

The previous rezoning allowed this parcel to be rezoned from Residential Office District (RO-1) to B-2 Highway Commercial District (B-2) with a Planned Unit Development District (PUD) overlay and a partial Corridor Enhancement (CE) overlay. This proposal corresponds to the Comprehensive Plan of the City of Winchester which recommends that the area, in and around this site, have an Residential Office District (RO-1) zoning. This district permits a combination of residential and light commercial uses.

This previous rezoning provided a commercial element in combination with a high-density multifamily development. This proposal was consistent with the Comprehensive Plan because it provided a mixture of commercial and multifamily residential uses on this site.

The current rezoning proposal is requesting that this parcel will retain the B-2 Highway Commercial District; remove the Planned Urban Development (PUD) overlay; and overlay the entire site with the Corridor Enhance element. This proposal is, again, consistent with the Comprehensive Plan because it maintains and promotes the commercial development of the site and enhances the architecture of the development, along this corridor, by overlaying the site with Corridor Enhancement (CE) features.

The B-2 zoning continues to maintain the diversity in the commercial element and CE will ensure that the proposed development with enhance the Cedar Creek Grade corridor into the city, as well.

Mr. Timothy P. Youmans, Director of Planning  
City of Winchester, Virginia

August 4, 2014  
Cedar Creek Place

This proposal conforms to the Comprehensive Plan of the City of Winchester by allowing a varied commercial use to serve the general area. This development of this site, as a result of this rezoning, will have a positive impact for the City of Winchester; and it generally conforms to the Comprehensive Plan for this area.

Thank you for your attention to this matter. If you would have any questions or would require further information please do not hesitate to contact me.

Sincerely,



Timothy G. Painter, P. E.

c. Mr. Scott Rosenfeld  
Cedar Creek Place, LLC  
821 Apple Pie Ridge Road  
Winchester, Virginia 22603

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**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*), 418 Merrimans Lane (*Map Number 169-01-3*), 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.

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#### REQUEST DESCRIPTION

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 existing property, owned by DBL Holdings, is included in the subdivision, but is not traversed by the new public street. Instead, it is mostly absorbed into the proposed John Kerr Elementary School site and partially absorbed into a commercially zoned property owned by Ridgewood Orchard. A small boundary line adjustment with the Lum residential property next to the school site to account for an encroachment will likely be handled as a separate Minor Subdivision. Likewise, a boundary line adjustment with the Sacred Heart property will occur as a separate action.

#### AREA DESCRIPTION

The land included within the subdivision entails a variety of zoning designations. The 33.4 acres of land currently owned by Ridgewood Orchard and the 3.37 acres of land owned by DBL Holdings are scheduled for a rezoning public hearing at the September 9<sup>th</sup> Council meeting. That rezoning would change most of the conditionally zoned Residential-Business (RB-1) zoning to Highway Commercial (B-2) and remove the Amherst Street Corridor Enhancement (CE) overlay District. It would change the conditionally zoned Medium Density (MR) land to eliminate proffers associated with the 2005 rezoning from LR to MR. Most of the Low Density (LR) zoned DBL Holdings property would be rezoned to Education, Institution, & Public (EIP) with some of it going to B-2 zoning (in line with the proposed subdivision lot lines). Some existing LR zoning on the Ridgewood Orchard property closest to Merrimans Lane would remain LR and is not proposed to be subdivided off from the 9.62-acre site that is mostly proposed for rezoning to B-2.



Zoning on properties surrounding the subdivision include:

- Conditional B-2 with CE overlay on the 2 vacant parcels and the CVS parcel fronting along Amherst St to the north
- LR with some CE overlay on the Sacred Heart School and Church property to the northeast
- LR on the rear of the Frederick County School Board property to the northeast
- LR on the adjoining vacant portion of the Glass-Glen Burnie Foundation property to the east
- LR (PUD) on the Downs, Section IV and Estate Residential areas of Meadow Branch North subdivision property to the south (lots fronting along Buckner Drive and Heth Place)
- LR on the adjoining Moffett Farms LLC land that is not part of this subdivision to the southwest
- LR on the Lum property that is effectively a “donut-hole” surrounded by land in this subdivision
- LR on all of the remaining properties to the west fronting along the east side of Merrimans Lane

## STAFF COMMENTS

### Catalyst for the Subdivision

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. City Council and the Winchester School Board selected the site in late 2013 and early 2014. The new roadway provides the only public street frontage to this site and needs to be in place or bonded before the subdivision can be recorded. The roadway and other public improvements must be completed before a building permit can be issued to C&S (the PPEA entity) for the new school unless City Council grants an exception to allow certain site development activities to occur before the improvements are in place. Fire hydrants would need to be operational and the Fire & Rescue Department would need to approve an alternative access plan for emergency response if Meadow Branch Avenue is not completed prior to the building permit be requested for the school. The school site absorbs most of the currently landlocked DBL Holdings property which relied upon an access easement for vehicular access to Merrimans Lane. That driveway would be eliminated as part of this subdivision. Another driveway that would be eliminated is the paved entrance across the Ridgewood Orchard property that was built to provide alternate access to Sacred Heart Church soon after it was constructed in 1988.

### Overall Lot Layout

In addition to the 9.34-acre school site, the Ridgewood Orchard property is subdivided such that a 2+/- acre site will be situated immediately south of (behind) the CVS store along the east side of Meadow Branch Avenue. Another 9.6+/- acre site will be situated along the west side of the street between the intersection of Meadow Branch/Merrimans Lane and the school site. A third Ridgewood Orchard parcel will comprise all of the remaining Ridgewood acreage (approx. 10.6 acres) situated along the east side of Meadow Branch Avenue (across from the school site). This includes a narrow strip of land approximately 0.8 acres in area that is still zoned RB-1 that should be rezoned to LR and conveyed off to the Roman Catholic Diocese of Arlington to assemble in with the adjoining Sacred Heart Church property. The dedication of Meadow Branch Avenue through the 22.88-acre Moffett property creates one new 7.39-acre parcel along the east side of the street separate from the remaining 13.65 acres of Moffett property situated along the west side of the new street. (Note: There is other Moffett land that is not part of this subdivision.) While the presently landlocked Lum single-family residential lot is not part of the subdivision, it will become a conforming lot of record due to Meadow Branch Avenue being platted

adjacent to the rear (east) boundary of the site that otherwise has driveway access to Merrimans Lane over the Moffett property. No driveway access on Meadow Branch Avenue is proposed to serve this lot.

#### Meadow Branch Avenue Right-of-Way

Meadow Branch Avenue is generally shown as an 86-foot wide right-of-way consistent with the Category III Street standards in the Land Subdivision Ordinance. At the southern end, where it transitions into existing Meadow Branch Avenue at Buckner Drive, it tapers down to a 70-foot wide right of way. However, in this area there are easements for public access along both sides of the dedicated right-of-way. The 1.79 acres of Meadow Branch Ave right-of-way being dedicated by Moffett Farms LLC is consistent with a rezoning proffer from 2008 when the portion of the Moffett land situated to the east of the proposed roadway was conditionally rezoned from LR to MR residential. Dedication of land for Meadow Branch Avenue across the Ridgewood property had been proffered in 2005 as part of that 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-lane 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.

#### Meadow Branch Avenue Design

The construction details of the newly proposed stretch of Meadow Branch Ave were presented to the public at an open house held at City Hall on Thursday, August 28<sup>th</sup>. The typical section calls for a 4-lane divided minor arterial roadway that transitions to a 2-lane divided roadway a couple of hundred feet north of the current intersection of existing Meadow Branch Avenue and Buckner Drive in the Meadow Branch North Subdivision. The width of the two-lane travel way in each direction is proposed at 22 feet (11 feet per lane) in addition to a 2-foot wide gutter pan on both side of the asphalt travel way. This design is still subject to Council approval following presentation by staff at a Council work session in September and action (possibly concurrent with the Subdivision review) by Council in October. The roadway extends southward beyond the Moffett property within existing public right-of-way that was set aside for the street extension, but never actually constructed when the Downs, Section 4 and the Estate Residential portions of Meadow Branch North subdivision were built in the 1990's. In hindsight, the developer of those areas should have been required to at least undertake the rough grading and drainage design for that roadway extension since the construction is now going to be more expensive due to retaining walls that must be constructed in order to keep runoff from negatively impacting the landscaped yards associated with the single-family homes constructed along Heth Place.

Multiple intersections with median crossings are proposed along the new roadway. A fully signalized intersection is proposed at the northerly elementary school site entrance. The north school entrance is where school employee parking and parent pick-up/drop-off would be located. This intersection would also provide access to the 10+/- acre site on the east side of the roadway. It would provide access for Sacred Heart Church and School via an ingress/egress easement that was envisioned back in the late 1980's when the Diocese owned all of the land that is now Ridgewood Orchard. The southerly school entrance (which is not connected to the north entrance internally on the school site) would be for bus staging/parking and for truck deliveries. That 3-way intersection would have a stop condition for the buses and trucks exiting the school and may require use of school employees or resource officers to stop traffic on Meadow Branch Avenue in order to allow the buses to exit the site during afternoon dismissal.

The preliminary roadway plans depict one other 4-way intersection which provides access to the Moffett Farms property on both east and west sides of the street. An additional 3-way intersection is

included to serve the larger Ridgewood Orchard commercial site along the west side of the street north of the school site. These intersections would have stop conditions for the side streets (or private driveways, depending upon future development plans). The existing private driveway providing access into the rear of the CVS (opposite of the Merrimans Lane intersection with Meadow Branch Ave) is physically located on the 2-acre commercial site and would provide the sole means of access into and out of that site. This 4-way intersection would remain as it is today with stop conditions for the side streets/driveways, but no stop condition on Meadow Branch Avenue. The 4-way intersection at Buckner and Meadow Branch Avenue is proposed to be a 4-way stop condition. Finally, 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. Planning staff does not recommend this access and it would require Planning Commission recommendation and Council approval of an exception per Section 8-1 of the LSO in order to be approved.

#### Green Circle Trail & Sidewalks

The preliminary plans calls for the Green Circle Trail (GCT) to be a 10-foot wide asphalt trail separated from the eastern curb line by a 5-foot wide green strip where trees would be installed. In the transition area down closer to Buckner Drive, the green strip disappears and the trail is right up along the curb line. It is situated along the east side of Meadow Branch Avenue for the full length from Merrimans Lane intersection all the way south to Buckner Drive. This conflicts with the location shown in the Comprehensive Plan amendment adopted by City Council earlier in 2014 which calls for the trail to extend up Meadow Branch Avenue along the east side from Amherst Street to the signalized intersection at the north entrance to the school where pedestrian crossing signals would be installed to allow safe crossing to the school and for bikers crossing over to the west side. From here, the trail was to extend along the west side south to where existing sidewalk along the west side of existing Meadow Branch Avenue is situated. From there, the existing Green Circle Trail can then be accessed down at the Abrams Creek Wetland Preserve. The proposed change in alignment of the GCT is based upon civil engineering recommendations that indicate that it would be more challenging to install the trail along the west side of the roadway down near where the Heth Place house lots abut the Meadow Branch Avenue right-of-way.

The easterly alignment of the GCT would mean that children in the current estate homes along Heth and Buckner as well as any school-aged children in future homes developed on the Moffett property wishing to ride their bike to the John Kerr School would need to cross the divided roadway to access the GCT on the east side of the roadway and then cross back over the 4-lane divided roadway at the signalized intersection rather than just taking the trail along the west side of the street. Homes on the east side would benefit from the trail on that side, however, most of the occupants of the current homes in Downs Section IV as well as in Early's Green and the Mews are empty-nesters. Likewise, the vacant Moffett and Ridgewood Orchard sites along the east side of the road are likely to be market for retirement housing or assisted living facility use where few, if any, school children would reside.

A spur of the Green Circle Trail is also called for within an easement across the Ridgewood property to the east of the school site. This would allow for a private trail spur connecting to trails on the Glen Burnie/MSV property consistent with the recently adopted Comprehensive Plan and the pending rezoning proffer.

A standard 5-foot wide concrete sidewalk would be constructed along the west side of the street, including front of the elementary school site (assuming that the GCT is approved along the east side). The plans call for a 5-foot wide green strip between the sidewalk and the curb line where trees would be installed. As with the GCT on the opposite side of the street, the green strip disappears in the transition area down near Buckner Dr and the sidewalk is right up against the back of curb.

#### Street Lighting

Lighting is not proposed along the GCT on the east side nor is lighting proposed along the sidewalk on the west side. Instead, double-armed street lights are proposed in the landscape median which, in most areas is 12 feet wide. However, in areas where left-turn lanes are proposed, the landscaped median becomes a 2-6 foot wide concrete median. It is unclear where street lights are proposed in the numerous areas where the narrow concrete medians are proposed.

#### Drainage/Storm Water Management

Drainage and Storm Water management are still being designed. Numerous easements will be needed to accept runoff which generally flows down toward Amherst St before being carried through the City's storm water system. It is unclear at this stage if storm water ponds are being proposed as part of the subdivision. Those details will be provided with Final Subdivision review.

#### Grading Plans

No topographic plans have been submitted yet showing existing and proposed grading.

#### Water & Sewer and other Utilities

No plan and profile drawings depicting underground water and sewer lines and locations of fire hydrants have been made available for review with the subdivision application yet. No plans depicting underground utilities such as electric, telephone, CATV, and gas have been submitted yet.

#### Plats, Deeds of Dedication, and Restrictive Covenant Documents

No plat sets or required deeds and documents have been submitted for City Attorney review at this point.

#### Subdivision Surety

No bond estimates or draft letters of credit providing for required surety of public improvements have been submitted yet. The PPEA approach to construction of the public improvements may entail some other form of assurance that the improvements are completed properly.

#### RECOMMENDATION

Staff recommends that the Commission evaluate the subdivision layout and identify any concerns that need to be communicated back to the engineers and surveyors. Among the potential issues are:

1. Green Circle Trail alignment in conflict with the alignment called for in the Comprehensive Plan
2. A right-in/right-out driveway accessing the Moffett property on the east side of Meadow Branch Avenue that does not meet the 300-foot spacing standards of the Land Subdivision Ordinance.
3. Incomplete engineering plans showing topography and all subdivision improvements such as water, sanitary sewer, storm water sewers, gas, electric, telephone, CATV, fire hydrants, lighting, traffic signal design, street addressing, signage, landscaping, etc.
4. Incomplete platting showing monumentation, easements, proposed boundary lines, lot acreages, lot addresses, right-of-way acreages, etc.

The Commission can hold the required public hearing on the preliminary subdivision and then hold off on Final Subdivision recommendation to City Council until such time that complete subdivision plans and plats are prepared as well as required estimates of subdivision surety for public improvements, deeds of dedication, and restrictive covenant documents.