



WINCHESTER COMMON COUNCIL
NOVEMBER 11, 2014
AGENDA
7:00 P.M.

CALL TO ORDER AND ROLL CALL

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – August 26, 2014 Special Meeting, October 14, 2014 Regular Meeting, October 28, 2014 Work Session, and October 28, 2014 Special Meeting

REPORT OF THE MAYOR

REPORT OF THE CITY MANAGER

REPORT OF THE CITY ATTORNEY

PUBLIC HEARINGS

- 1.1 O-2014-39:** Second Reading – 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. **TA-14-477** (Amendment modifies several sections of the Zoning Ordinance to reflect changes made to the Code of Virginia in recent General Assembly sessions) **(REQUIRES ROLL-CALL VOTE)(pages 4-11)**

- 1.2 O-2014-40:** Second Reading – 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. **RZ-14-490 (REQUIRES ROLL-CALL VOTE)(pages 12-26)**

- 1.3 O-2014-36:** Second Reading – AN ORDINANCE TO GRANT A PERMANENT EASEMENT TO TAYLOR PAVILION, LLC WITHIN THE PUBLIC RIGHT-OF-WAY IN FRONT OF 121-129 NORTH LOUDOUN STREET **(REQUIRES ROLL-CALL VOTE)(pages 27-30)**

1.4 CU-14-558: Conditional Use Permit – Request of VFW Post 2123, Inc. for a private club at 121 Bruce Drive (*Map Number 311-01-5*) zoned Highway Commercial (B-2) District (pages 31-36)

1.5 Public Hearing: Appeal of the decision by the Board of Architectural Review (BAR-14-543) regarding the replacement of deteriorating windows for the property located at 500 North Braddock Street (pages 37-40)

2.0 PUBLIC COMMENTS

3.0 CONSENT AGENDA

3.1 O-2014-42: First Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 2-24 OF THE WINCHESTER CITY CODE TO REVISE THE MEETING SCHEDULE OF COMMON COUNCIL AND ALLOW FOR AN ADDITIONAL REGULAR MONTHLY MEETING OF COMMON COUNCIL (pages 41-45)

3.2 R-2014-46: Resolution – Approval for the issuance of up to \$55,000,000 of Revenue Bonds by the Economic Development Authority of the City of Winchester, Virginia for the benefit of Westminster-Canterbury of Winchester, Inc. (pages 46-63)

4.0 AGENDA

4.1 Motion to accept the report of the in-house viewers for: 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 **SV-14-433**

4.2 O-2014-37: Second Reading – 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 **SV-14-433 (REQUIRED ROLL-CALL VOTE)(pages 64-69)**

4.3 O-2014-43: First Reading – AN ORDINANCE TO AMEND AND REENACT SECTION 10-6 AND ENACT SECTION 10-9 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIDE AND REAR YARD SETBACK REQUIREMENTS AND SPECIAL PROVISIONS FOR REDEVELOPMENT SITES IN THE COMMERCIAL INDUSTRIAL (CM-1) DISTRICT **TA-14-593** (*Amendment establishes zero side and rear yard setback conditions in limited situations for properties in the CM-1 district identified as redevelopment sites within the Comprehensive Plan's Character Map*) (pages 70-74)

4.4 Motion to re-appoint Jules Bacha as a member of the Parks and Recreation Board for a three year term expiring April 30, 2017

5.0 EXECUTIVE SESSION

- 5.1** MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO §2.2-3711(A)(7) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF RECEIVING LEGAL ADVICE AND STATUS UPDATE FROM THE CITY ATTORNEY AND LEGAL CONSULTATION REGARDING THE SUBJECT OF SPECIFIC LEGAL MATTERS REQUIRING THE PROVISION OF LEGAL ADVICE BY THE CITY ATTORNEY AND MATTERS OF ACTUAL OR PROBABLE LITIGATION AND PURSUANT TO §2.2-3711(A)(3) AND (6) FOR THE PURPOSE OF DISCUSSION OR CONSIDERATION OF THE SUBJECT OF THE ACQUISITION AND DISPOSITION OF AN INTEREST IN REAL PROPERTY FOR A PUBLIC PURPOSE WHERE IF MADE PUBLIC, THE BARGAINING POSITION OR FINANCIAL INTEREST OF THE CITY WOULD BE ADVERSELY AFFECTED.

6.0 ADJOURNMENT

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 9/23/14 (work session), **CUT OFF DATE:** 9/16/14
10/14/14 (1st Reading) 11/11/14 (2nd Reading/Public Hearing)

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

ITEM TITLE:

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
Amendment modifies several sections of the Zoning Ordinance to reflect changes made to the Code of Virginia in recent General Assembly sessions.

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 11/11/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval.

FUNDING DATA: N/A

INSURANCE: N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Planning Director			9/16/14
2. City Attorney			9/16/2014
3. City Manager			18 Sept 14
4. Clerk of Council			

Initiating Department Director's Signature:  9/16/2014
(Zoning and Inspections)



APPROVED AS TO FORM:

 9/16/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale, Director of Zoning and Inspections *AMG*
Date: September 23, 2014
Re: 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

THE ISSUE:

This zoning ordinance text amendment was sponsored by Planning Commission to address several areas of the ordinance that have had recent changes to the enabling provisions in the Code of Virginia.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4 – Create a More Livable City for All, Objective 3 – Manage future growth, development and redevelopment consistent with City’s vision, comprehensive plan and development standards and policies

BACKGROUND:

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.

(Full staff report attached).

BUDGET IMPACT:

No funding is required.

OPTIONS:

- Approve the text amendment
- Approve the text amendment permit with modifications
- Decline to adopt the text amendment

RECOMMENDATIONS:

The Planning Commission unanimously recommended approval.

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

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

At their September 16, 2014 meeting, the Planning commission forwarded **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.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 09/23/14 (work session) CUT OFF DATE: 9/17/14
10/14/14 (1st reading) 11/11/14 (2nd reading/Public Hearing)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

RZ-14-490 AN ORDINANCE TO REZONE 7.7076 ACRES OF LAND AT 940 CEDAR CREEK FROM HIGHWAY COMMERCIAL (B-2) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY AND PARTIAL CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGHWAY COMMERCIAL (B-2) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY.

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 11/11/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval subject to proffers.

FUNDING DATA: N/A

INSURANCE: N/A

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

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

Initiating Department Director's Signature: (Planning Dept)

Handwritten signature and date 9/17/14



APPROVED AS TO FORM:

Handwritten signature and date 9/17/2014 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Mayor and Members of City Council
From: Tim Youmans, Planning Director
Date: September 17, 2014
Re: RZ-14-490

THE ISSUE:

Rezoning a 7.7076-acre tract from Highway Commercial (B-2) District with Planned Unit Development (PUD) District overlay and partial Corridor Enhancement (CE) district to Highway Commercial (B-2) District with Corridor Enhancement District Overlay. The PUD overlay would no longer exist and the existing CE overlay would be restored to the entire property. The revised proffers now specifically call for an assisted living and skilled nursing facility at this site.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 2: Create a more livable city for all.

Vision 2028 (Principle 5) - Great neighborhoods with a range of housing choices.

BACKGROUND:

See attached staff report.

BUDGET IMPACT:

N/A

OPTIONS:

- Approve subject to latest version of proffers.
- Deny (must state reasons for denial in the motion- e.g. "inconsistent with Comp Plan").

RECOMMENDATIONS:

Planning Commission recommended approval subject to the 09-11-14 version of proffers.

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

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. The revised proffers now specifically call for an assisted living and skilled nursing facility. Therefore, the Commission and Council can evaluate the request with the knowledge that no other use permitted in the B-2 District could be situated there.

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 September 15, 2014, Mr. Timothy Painter of Painter-Lewis PLC, applicant for the owner (Mr. Scott Rosenfeld-Cedar Creek Place LLC), has provided a revised proffer statement explaining the proposed rezoning, specifying the proposed commercial use as a nursing home and assisted living facility (approx. 120 beds), a trip generation report of the proposed use, and details of the entrance location for the site. The applicant also provided an original Proffer Statement dated August 4, 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 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 11, 2014 revision to it is structured to address six areas under the heading of Site Planning Improvements. These are: Proposed Use; Street Improvements; Street Access and Interior Site Circulation; Site Development; Landscaping and Design; 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, but an updated trip generation study was prepared and submitted to the City on September 15, 2014. 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 August 4, 2014 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 the proposed nursing home/assisted living use in the B-2 district would not 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 previous 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).

The updated trip generation analysis indicates that the nursing home/assisted living facility would generate fewer trips than the current zoning for the 132 apartments as well as lower counts than what the previous RO-1 zoning would allow for office development. Generally the average trips per weekday is estimated to be a 282 trips, with weekday morning peak hours having 21 trips and a weekday afternoon peak of 27 trips. For Saturdays, it is estimated to have 250 trips per day, with the peak hour of 50 trips. For Sundays, it is estimated to have 240 trips per day, with the peak hour of 41 trips.

Proffer #2 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.

In Proffer #3, the applicant has proffered access to the site from Cedar Creek Grade roadway at approximately the same location as the current private entrance of the Horton property. The existing entrance shall be removed and become a joint entrance for Horton property and the nursing home facility. The entrance shall consist of VDOT standards for commercial entrances.

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. In Proffer #2, the applicant is also proffering traffic calming measures along the proposed private roadway.

Site Development and Buffering

In Proffer #4, the applicant has proffered minimum separations between buildings and off-street parking areas. Proffer#4 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 #5 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. Proffer#5 also notes that green space and landscape buffering shall be enhanced and defined more in future conceptual documents as part of the conditional use permit process. The applicant is no longer proposing a 5-foot wide walking trail with exercise stations that would have become part of the local trail system "for use by the residents." The trails had been proposed for public use for at least a 2-year period, but then evaluated such that they may have 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

Proffer #4 addresses the project phasing which will be constructed in one phase.

RECOMMENDATION

At their September 16, 2014 meeting, the Planning Commission forwarded **RZ-14-490** to City Council recommending approval of the rezoning as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-490, Prepared by Winchester Planning Department, September 2, 2014*" because the proposed B-2 (CE) zoning facilitates the connection of Stoneleigh Drive to Cedar Creek Grade, and provides for commercial space in support of the Commerce Revitalization/Infill character designation in the Comprehensive Plan. The recommendation is subject to adherence with the revised submitted proffers dated September 11, 2014.

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 revised September 11, 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, and revised September 11, 2014.

PAINTER-LEWIS, P.L.C.

CONSULTING ENGINEERS

817 Cedar Creek Grade, Suite 120
Winchester, Virginia 22601

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

September 15, 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

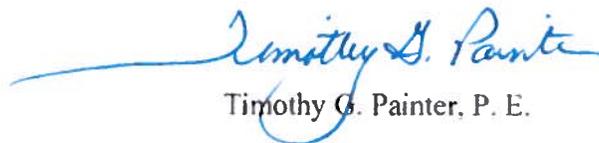
Dear Sir:

Pursuant to the concerns raised during the Planning Commission work session, the project has been reviewed with the owner and developer; and subsequently, the proffer statement has been revised to address these concerns. Accordingly, the proposed use has been specified and the accompanying trip generation has been provided. The entrance location has been included as part of the revised proffer statement, as well. The project shall be built as one phase and the green space and landscape buffering shall be defined with future submittals.

We request that you and the Planning Commission consider these revisions with the current rezoning request and act accordingly at the Planning Commission meeting on Tuesday, September 16, 2014.

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.

**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
(Revised: September 11, 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. Proposed Use:

- ❖ If this rezoning is accepted, the proposed use shall be limited to a fully staffed Nursing Home and Assisted Living Facility with approximately 120 total beds for these combined services. Generally, this development shall consist of one large nursing home building with up to three detached assisted living facilities proposed along the periphery of the site around the main building. This main building will be centrally located on the site.

CEDAR CREEK PLACE COMMERCIAL COMPLEX
Rezoning Request Proffer

2. Street 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 the proposed development.

3. Street Access and Interior Site Circulation:

- ❖ Access to the site shall be provided from the Cedar Creek Grade roadway. The entrance shall consist of a standard Virginia Department of Transportation commercial entrance that shall be installed in approximately the same location as the current private entrance which accesses the adjacent Horton parcel. The existing entrance shall be removed and the joint entrance shall be constructed in its place. The Horton parcel shall access Cedar Creek Grade through a driveway and drive aisles via the nursing home facility that will be constructed as part of the nursing home site development.
- ❖ Access for this site 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.

4. Site Development:

- ❖ This development shall be constructed in one phase. The street connections, drive aisles, parking, utilities, related service utilities, etc. shall all be done as part of the initial construction process.
- ❖ 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 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, masonry, stucco, EFIS, Hardi-plank siding or a combination thereof on all buildings for the main floor level.
 - The upper level exterior finishes shall be a combination of stone, masonry, stucco, EFIS, Hardi-plank, 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.

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

5. 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.
- ❖ Green space and landscape buffering shall be enhanced to the greatest extent possible and shall be indicated on the conceptual documents that are required on the Conditional Use documents.

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.

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 _____

PROJECTED TRAFFIC VOLUME ESTIMATE

Project: Rezoning for Cedar Creek Place
Tax Map: 249-01-2
Cedar Creek Grade
City of Winchester, Virginia

**Developer/
Owner:** Cedar Creek Place, LLC
Mr. Scott Rosenfeld
821 Apple Pie Ridge Road
Winchester, Virginia 22603

Engineer: Painter-Lewis, P.L.C.
817 Cedar Creek Grade
Suite 120
Winchester, Virginia 22601

Timothy G. Painter, P. E.
Project Engineer

The following is a projection of the estimated trip generation for the proposed Nursing Home use, as indicated in the proffer statement, for the above-referenced project. This estimate has been prepared by Timothy G. Painter, P. E. to serve as a reference for the estimated traffic volumes produced with the full development of this site.

I. TRIP GENERATION:

- a. Use: Nursing Home & Assisted Living Care Facility
Category: Beds
Period: Weekday

$$T = 2.3(X) + 6.07$$

$$X = 120 \text{ Beds}$$

$$T = \text{Average Trip Ends}$$

$$T = 2.3(120) + 6.07$$

$$T = 282.07$$

=> 282 Average Trips
per Weekday

- b. Use: Nursing Home & Assisted Living Care Facility
Category: Beds
Period: Weekday - Morning Peak Hours

Graph:

$$T = 20.4 \text{ Trips for 120 Beds} \Rightarrow 21$$

- c. Use: Nursing Home & Assisted Living Care Facility
 Category: Beds
 Period: Weekday - Afternoon Peak Hours

Graph:

T = 26.4 Trips for 120 Beds => 27

II. TRIP GENERATION:

- a. Use: Nursing Home & Assisted Living Care Facility
 Category: Beds
 Period: Saturday

Graph: Results were off the graph (Projection)

T = 250 Trips for 120 Beds => 250

- b. Use: Nursing Home & Assisted Living Care Facility
 Category: Beds
 Period: Saturday - Peak Hour of Generation

Graph:

T = 50 Trips for 120 Beds => 50

III. TRIP GENERATION:

- a. Use: Nursing Home & Assisted Living Care Facility
 Category: Beds
 Period: Sunday

Graph: Results were off the graph (Projection)

T = 240 Trips for 120 Beds => 240

- b. Use: Nursing Home & Assisted Living Care Facility
 Category: Beds
 Period: Sunday - Peak Hour of Generation

$$T = 0.22(X) + 14.27$$

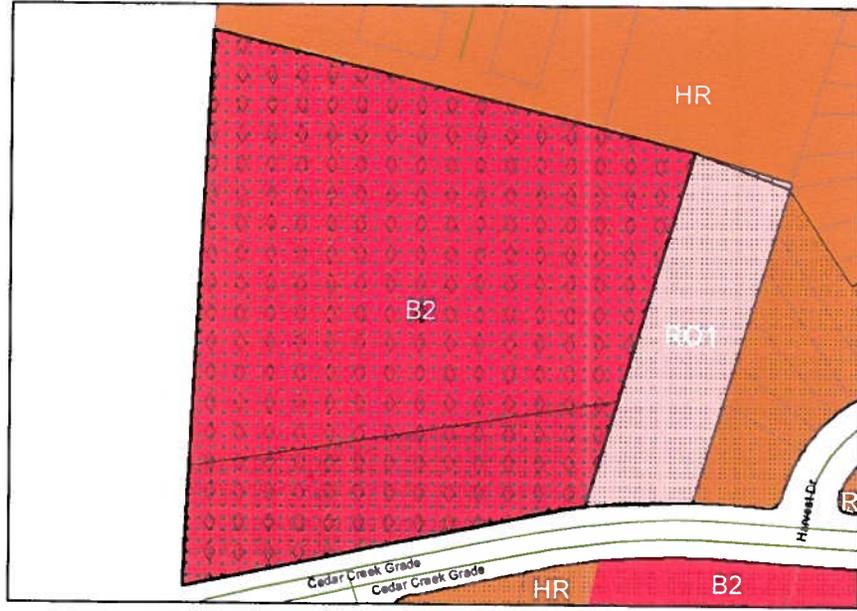
$$X = 120 \text{ Beds}$$

T = Average Trip Ends

$$T = 0.22(120) + 14.27$$

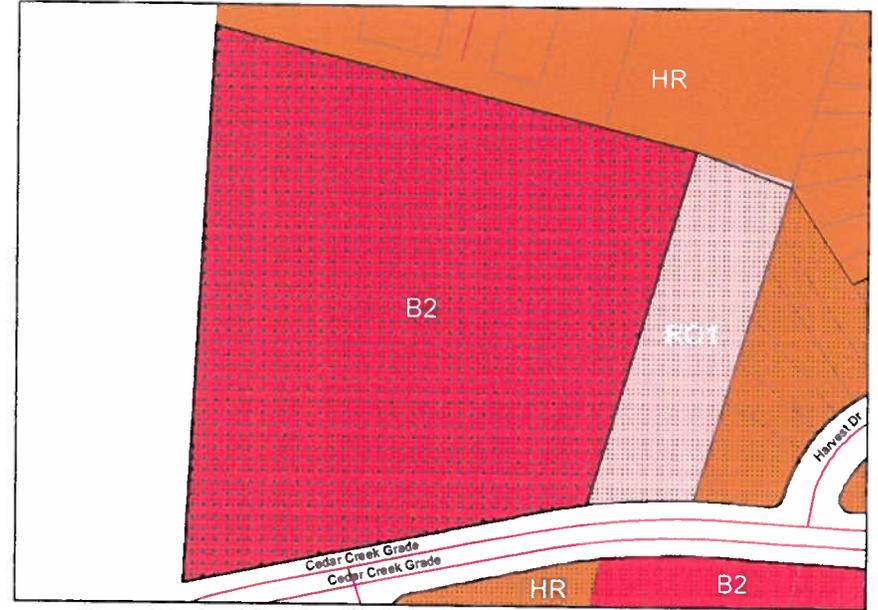
$$T = 40.67 \quad \Rightarrow \quad 41 \text{ Trips per Peak Hour}$$

REZONING EXHIBIT
RZ-14-490
 PREPARED BY WINCHESTER PLANNING DEPARTMENT
 09-02-2014



EXISTING

CONDITIONAL HIGHWAY COMMERCIAL (B-2) ZONING
 WITH PLANNED UNIT DEVELOPMENT (PUD) OVERLAY
 AND SOME CORRIDOR ENHANCEMENT (CE) OVERLAY
 FOR 940 CEDAR CREEK GRADE



PROPOSED

CONDITIONAL HIGHWAY COMMERCIAL (B-2) ZONING
 WITH CORRIDOR ENHANCEMENT (CE) OVERLAY
 FOR 940 CEDAR CREEK GRADE



Zoning Overlay

Overlay

-  CE- Cedar Creek
-  Conditional
-  PUD

Zoning

MZONE

-  B2 Highway Commercial District
-  HR High Density Residential District
-  RO1 Residential-Office District

0-2014-36

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: August 19, 2014 **CUT OFF DATE:** __

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

ITEM TITLE: Ordinance to Grant a Permanent Easement to Taylor Pavilion, LLC within the Public Right-of-way in Front of 121 N. Loudoun Street

STAFF RECOMMENDATION: Approval

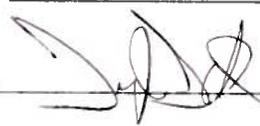
PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: The Economic Development Authority recommends the City's approval of this Ordinance

FUNDING DATA: N/A

INSURANCE: N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Planning			7/28/14
2. _____			
3. _____			
4. City Attorney			8/4/2014
5. City Manager			5 Aug 2014
6. Clerk of Council			
Initiating Department Director's Signature: 			7/28/14 Date
	Economic Development Coordinator		



APPROVED AS TO FORM:


CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Tyler Schenck, Economic Development Coordinator
Date: 8/19/2014
Re: Ordinance to Grant a Permanent Easement to Taylor Pavilion, LLC within the Public Right-of-way in Front of 121 N. Loudoun Street

THE ISSUE: Seeking a permanent easement from the City to Taylor Pavilion, LLC for the columns and stairways exiting the front of the Taylor Hotel porch that encroach on the public right-of-way.

RELATIONSHIP TO STRATEGIC PLAN: Will assist in the Common Council's desire to continue the revitalization of Old Town.

BACKGROUND: Granting this easement to Taylor Pavilion, LLC will halt their current encroachment on City land and prevent potential property right dispute.

BUDGET IMPACT: N/A

OPTIONS: Council may approve or disapprove this Ordinance

RECOMMENDATIONS: City Staff recommends that the Common Council approve this Ordinance.

AN ORDINANCE TO GRANT A PERMANENT EASEMENT TO TAYLOR PAVILION, LLC WITHIN THE PUBLIC RIGHT-OF-WAY IN FRONT OF 121-129 NORTH LOUDOUN STREET

WHEREAS, the rehabilitation of the Taylor Hotel is complete; and

WHEREAS, the Taylor Hotel has columns and stairways on the front of the property that encroach on the public right-of-way.

NOW THEREFORE BE IT ORDAINED, that a permanent easement is hereby conveyed to Taylor Pavilion, LLC in and over the public right-of-way on the Loudoun Street Pedestrian Mall adjacent to 121-129 North Loudoun Street in the areas shown on the attached drawing. The easement will permit the placement of columns and stairs that extend on both sides and underneath of the porch on the first floor at the Taylor Hotel; and

BE IT FURTHER ORDAINED that the easement shall be for the sole purpose of the placement of columns and entrance steps to the Taylor Hotel. No other improvement may be placed in such easement.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 10/28/14 (work session)
11/11/14 (regular mtg)

CUT OFF DATE: 10/22/14

RESOLUTION ___ ORDINANCE ___ PUBLIC HEARING X

ITEM TITLE:

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

STAFF RECOMMENDATION:

Approval with conditions.

PUBLIC NOTICE AND HEARING:

Public hearing for 11/11/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval with conditions

FUNDING DATA: N/A

INSURANCE: N/A

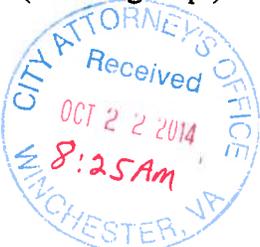
The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

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

Initiating Department Director's Signature: (Planning Dept)

Handwritten signature of the initiating department director.

10/21/14



APPROVED AS TO FORM:

Handwritten signature and date 10/22/14 above the text CITY ATTORNEY.

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Tim Youmans, Planning Director
Date: October 21, 2014
Re: **CU-14-558** Request of VFW Post 2123, Inc. for a conditional use permit for a private club at 121 Bruce Drive (*Map Number 311-01-5*) zoned Highway Commercial (B-2) District.

THE ISSUE:
Establishing a private lodge for VFW Post 2123 Inc. on a vacant lot on Bruce Drive.

RELATIONSHIP TO STRATEGIC PLAN:
None

BACKGROUND:
See attached staff report

BUDGET IMPACT:
Property and improvements will likely become tax exempt.

- OPTIONS:**
1. Approve with conditions as recommended by Planning Commission
 2. Table request
 3. Deny due to potential parking impacts on neighborhood and City Park

RECOMMENDATIONS:
Recommend Option 1

Council Work Session
October 28, 2014

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

REQUEST DESCRIPTION

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

AREA DESCRIPTION

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



STAFF COMMENTS

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

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

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

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

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

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

RECOMMENDATION

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

One property owner, Norma Tindle, residing at 136 Bruce Drive across from the proposed lodge site expressed concerns about the narrowness of the street and the problems with parking associated with the Rugby Club's use of Weaver Park. She noted that participants park on the subject site and have parked in her front yard in the past.

At the October 21, 2014 meeting, the Planning Commission forwarded **CU-14-558** to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The recommendation is subject to:

1. The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;
2. Strict obedience with all local and state laws, especially those pertaining to ABC licensing; and,
3. Use to end no later than **8 pm** Sunday through Thursday and no later than **12 am** Friday and Saturday.
4. Use allowed no more than **8** days of live entertainment per month.
5. The establishment is precluded from parking along Bruce Dr. or at Weaver Park unless permission is given to VFW Post 2123 from the City.
6. Staff review and approval of the required site plan.

If Council does not agree with the Commission recommendation, then an unfavorable motion by Council should cite the reasons why the proposal as submitted or modified could negatively impact the health, safety or welfare of those residing or working in the area and/or why it could be detrimental to public welfare or damaging to property or improvements in the neighborhood such as the concern raised at the October 21st Planning Commission public hearing pertaining to the issue of parking impacts during large events.



VETERANS OF FOREIGN WARS OF THE UNITED STATES

Winchester Post 2123

P. O. Box 4095

Winchester, VA 22604

August 29, 2014

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

Dear Mr. Grisdale:

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

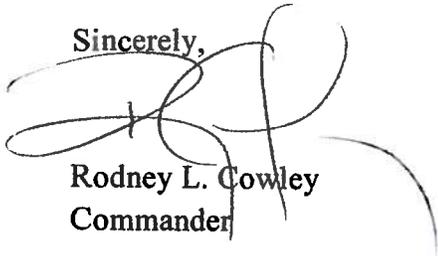
The property is bounded on the west by a commercial business. The adjacent property to the south is vacant, zoned B2. The eastern neighbor is a public park (Weaver Park). To the north, the properties are mixed business and residential.

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

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

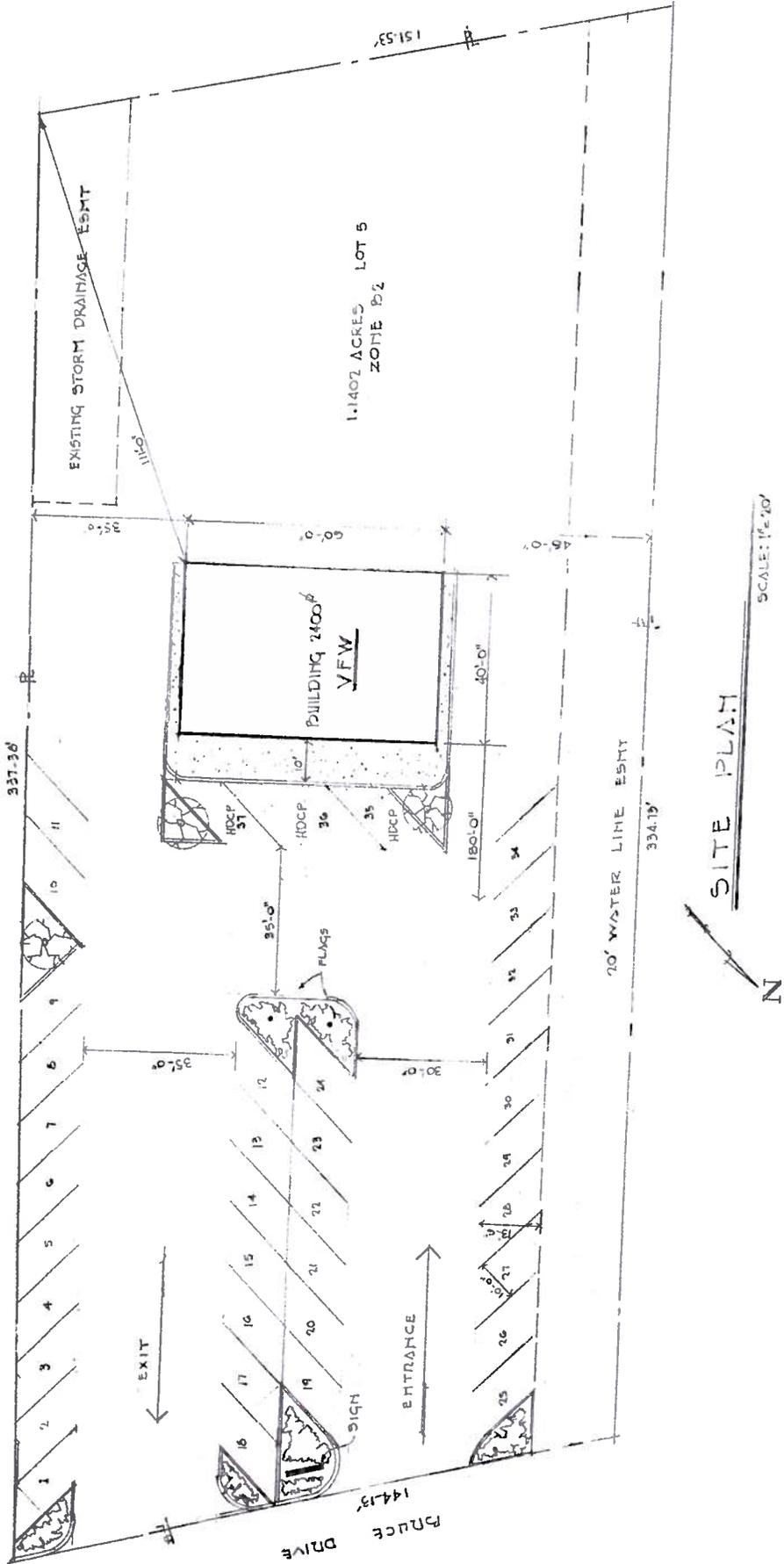
The proposed use does not impact the Southeast Planning Area Redevelopment Concept 2.

Sincerely,



Rodney L. Cowley
Commander

7



CU-14-558

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 10/28/14 (work session)
11/11/14 (regular mtg)

CUT OFF DATE: 11/5/14

RESOLUTION ___ ORDINANCE ___ PUBLIC HEARING X

ITEM TITLE:

Appeal of BAR Decision regarding window replacement for Hanke at 500 N. Braddock St (BAR-14-543)

STAFF RECOMMENDATION:

Modify decision as contained in attached resolution.

PUBLIC NOTICE AND HEARING:

Public hearing for 11/11/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

This is an appeal of a decision by BAR to deny request to replace windows

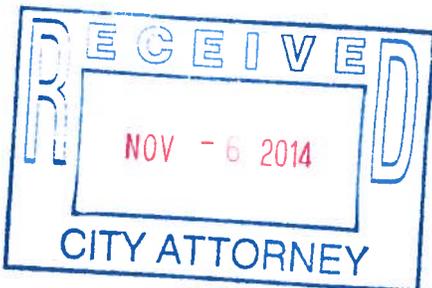
FUNDING DATA: N/A

INSURANCE: N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Zoning & Inspections	AMG		11/6/14
2. City Attorney	[Signature]		11/6/14
3. City Manager	[Signature]		6 NOV 2014
4. Clerk of Council			

Initiating Department Director's Signature: [Signature] 11/6/14
(Planning Dept)



APPROVED AS TO FORM:

[Signature] 11/6/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Timothy Youmans, Planning Director
Date: November 5, 2014
Re: Appeal of BAR Decision (BAR-14-543) to City Council

THE ISSUE:

An appeal of a BAR decision pertaining to window replacement at 500 N. Braddock Street. City Council must hold a public hearing within 60 days of the date of appeal filed on October 16, 2014.

RELATIONSHIP TO STRATEGIC PLAN:

Vision 2028- Winchester is a beautiful Historic City.

Principle #1: Beautiful and Historic City- Preservation and restoration of historic buildings and sites.

Principle #5: Great Neighborhoods with a Range of Housing Choices- Well maintained homes meeting City standards and codes.

BACKGROUND:

See attached letters from Jay and Harriet Hanke- one dated August 29, 2014 which was addressed to the BAR with the application for a Certificate of Appropriateness, and one dated October 16, 2014 which was addressed to the City Manager as part of the request to appeal the decision of the BAR. The only inaccuracy in the letters noted by staff is the last statement in the last full paragraph of the Aug 29th letter which reads; "*Since our purchase, the City of Winchester has made the decision to include this house in the historic district...*" The subject property has, in fact, been within both the local Historic Winchester (HW) District as well as the Winchester National District since the districts were first established back in the late 1970's, more than 20 years earlier than the applicant's purchase of the property in 1998.

During a scheduled city inspection at a nearby home in the neighborhood in August 2014, replacement of wooden windows (including aluminum storm windows) with new vinyl windows were observed. At that point, seven of the eleven windows were already replaced or in the process of being replaced.

The Board of Architectural Review heard the matter at its September 18, 2014 meeting. Minutes of the meeting are attached. At the BAR meeting, the request was denied on a 6-0 vote with the Board noting that the vinyl windows are inappropriate replacement windows in the historic district. The September 19th action letter from staff noted the options to either appeal the decision within 30 days or seek a rezoning to remove the property from the local HW District since the 1890 house it is at the edge of the district.

Chapter 3, page 5 of the Winchester Historic District Design Guidelines, discusses windows as part of Residential Rehabilitation. Portions of the guidelines read: "1. Retain existing windows if possible." "2. Repair existing windows..." "4. Replace existing windows only when they are missing or beyond repair." "5. Do not use materials or finishes that radically change the sash, depth of reveal, muntin configuration, the reflective quality of color of the glazing, or the appearance of the frame." "6. Use true divided lights to replace similar examples and do not false muntins in the replacement." (See attached page 5)

The Board did not distinguish between the 7 windows that were already replaced without approval and the 4 windows that have not yet been replaced, but much of the discussion was focused on the precedent that would be set if the Board allowed this property owner to secure approval because so much of the work had been done without approval. The concern was that it would encourage other historic district property owners to undertake alterations without approval and then ask for forgiveness.

On October 16, 2014, an appeal of the BAR decision and required fee were submitted to the Clerk of Council, in accordance with Section 14-9-1 of the Winchester Zoning Ordinance. The Clerk has sixty (60) days to schedule a public hearing with City Council from the date of the appeal. The Zoning Ordinance states that during this review of the appeal, "[t]he same standards shall be applied by Council as are established for the Board of Architectural Review. The Council may affirm, reverse or modify the decision of the Board, in whole or in part."

One aspect of this request that is noteworthy is that there were already aluminum storm windows in place (presumably prior to 1976) on each of the windows on this circa 1890 dwelling. In addition to removing the inappropriate aluminum storm windows, the applicant is requesting approval for the removal of the period wooden windows behind the non-period aluminum storm windows. The BAR has jurisdiction over alterations on the exterior of a structure. Section 14-2-1 of the Zoning Ordinances defines 'Exterior Architectural Appearance' to include "*architectural character; general arrangement of the exterior of a structure; general composition, including the kind, color, and texture of building material; and **type and character of all windows, doors, light fixtures, signs, and appurtenant elements, subject to public view from a public street, public way, or other public places.***"

Since much of the period wooden windows are/were not on the exterior of the structure, due to the presence of the aluminum storm windows, there is some latitude for City Council to find that they are not entirely subject to public view. The fact that the windows are in a dwelling on a corner lot with direct views close to the public sidewalks would argue that the interior wooden windows are an element that should be preserved. A possible middle ground ruling by Council would be to allow for the already-replaced vinyl clad windows to be approved (perhaps with a wider wooden muntin matching size and composition of the original vertical dividers) and then require that the applicant either: a. preserve some or all of the four windows that have not been replaced; or, b. secure BAR approval of a more suitable wooden replacement window. Leaving one period window intact would allow future stewards of the historic resource (who may or may not want to utilize state and/or federal tax credits for rehabilitation) to match replacement windows to the original windows in the future.

The appeal was presented by staff and discussed at the October 28th Council work session.

BUDGET IMPACT:

None

OPTIONS:

1. Uphold the decision of the Board of Architectural Review to deny the request, in full based upon a finding that the Board properly applied the standards for window replacement;
2. Modify the decision of the Board of Architectural Review as outlined in the attached Resolution; or,
3. Reverse the decision of the Board of Architectural Review, in full based upon a finding that the BAR erred in applying the standards established for the BAR.

RECOMMENDATIONS:

Staff recommends that Council consider Option #2 which acknowledges that a finding of outright reversal of the Board's decision to deny the request cannot easily be arrived at based upon the same standards that the Board was required to follow. It does, however, acknowledge that granting a modified Certificate of Appropriateness to allow for removal of the non-period aluminum storm windows is consistent with some of the design guidelines.

RESOLUTION

WHEREAS the Board of Architectural Review (BAR) previously considered an application for a Certificate of Appropriateness (BAR-14-543) involving the replacement of eleven (11) windows in residential the property located at 500 N. Braddock Street, which property is located in the Winchester Historic District and subject to Historic District Guidelines; and

WHEREAS it was discovered that seven (7) of the eleven (11) windows had already been replaced by the applicant with noncompliant vinyl windows prior to the BAR considering the Certificate of Appropriateness; and

WHEREAS, the BAR issued a unanimous determination on September 18, 2014 ruling that the application for a Certificate of Appropriateness was denied, effectively meaning that the noncompliant windows would either need to be removed or that the applicant could return to the BAR with a proposal meeting the historic district guideline requirements; and

WHEREAS, the owner timely appealed the decision of the BAR to Common Council in accordance with Section 14-9-1.1 of the Winchester Zoning Ordinance; and

WHEREAS, Common Council has received a presentation and written documentation and had oral presentation and discussion from the owner and City Staff; and

WHEREAS, it is the belief of Common Council that the BAR has properly applied the historic guideline requirements as it is charged to do under the currently existing provisions of the Code by denial of the Certificate of Appropriateness; and

WHEREAS, Council further believes that there are mitigating factors as recited *infra.*, that may warrant modification of the BAR decision in order to encourage the elimination of non-period materials, improve the condition and preserve the longevity of existing historic properties, and avoid the undue hardships that strict enforcement may otherwise cause; and

WHEREAS, Common Council has learned that in the process of installing the vinyl replacement windows, the owner has mitigated a pre-existing noncompliance upon the property (removed non-period aluminum storm windows); improved the overall appearance of the structure causing it to appear more closely aligned with the applicable historic period; and increased the longevity, marketability, and energy efficiency of the structure; and

WHEREAS, it is the belief of Common Council that these mitigating factors warrant a modification of the decision of the BAR in this matter.

NOW THEREFORE BE IT RESOLVED that Common Council does hereby MODIFY the decision of the BAR concerning this matter and does authorize the issuance of a Certificate of Appropriateness for the subject property upon the following conditions:

1. The owner may leave the seven (7) previously installed vinyl replacement windows so long as they are modified to match the pre-existing period windows by installing muntins that match in width the muntins for the period windows, and
2. The owner does not re-install the non-period aluminum storm windows, and
3. The owner may install two additional vinyl replacement windows meeting the criteria defined in paragraph (1) above, and
4. The owner must leave two windows meeting all period historic district specifications in tact.

D-2014-42
B-2014-47

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: _____ **CUT OFF DATE:** _____

RESOLUTION x **ORDINANCE** x **PUBLIC HEARING** x

ITEM TITLE: AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 2-24 OF THE WINCHESTER CITY CODE TO REVISE THE MEETING SCHEDULE OF COMMON COUNCIL AND ALLOW FOR AN ADDITIONAL REGULAR MONTHLY MEETING OF COMMON COUNCIL and A RESOLUTION TO ADOPT A SCHEDULE OF WORK SESSIONS AND REGULAR MEETINGS FOR 2015

STAFF RECOMMENDATION: N/A

PUBLIC NOTICE AND HEARING: Required

ADVISORY BOARD RECOMMENDATION: N/A

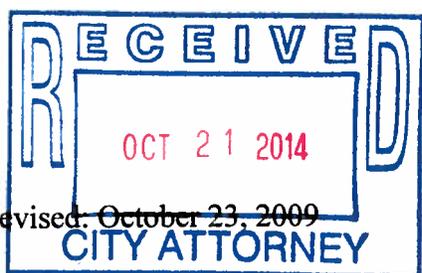
FUNDING DATA: N/A

INSURANCE:

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>AW</i>	_____	<i>10/21/2014</i>
6. City Manager	<i>MS</i>	_____	<i>21 Oct 2014</i>
7. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: _____ [COUNCIL REQUEST] _____ *10/21/2014*
Date



Revised: October 23, 2009



APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Members of Common Council

From: Anthony C. Williams, City Attorney

Date: October 21, 2014

RE: AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 2-24 OF THE WINCHESTER CITY CODE TO REVISE THE MEETING SCHEDULE OF COMMON COUNCIL AND ALLOW FOR AN ADDITIONAL REGULAR MONTHLY MEETING OF COMMON COUNCIL and A RESOLUTION TO ADOPT A SCHEDULE OF WORK SESSIONS AND REGULAR MEETINGS FOR YEAR 2015

THE ISSUE: Council wishes to consider revising its meeting schedule to allow for a Work Session on each second and fourth Tuesday of the month followed immediately by a Regular Meeting on each Work Session date. Also, Council would like to clarify the authority of the President to cancel or re-schedule meetings upon specified circumstances.

RELATIONSHIP TO STRATEGIC PLAN: Council Request

BACKGROUND: Common Council has expressed an interest in revising its schedule of Meetings and Work Sessions. Also, Council would like to clarify the authority of the President to cancel or re-schedule meetings upon specified circumstances.

BUDGET IMPACT: N/A

OPTIONS: Adopt, reject, or modify Ordinance.

RECOMMENDATIONS: Ordinance has been prepared at the direction of Common Council.

AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 2-24 OF THE WINCHESTER CITY CODE TO REVISE THE MEETING SCHEDULE OF COMMON COUNCIL AND ALLOW FOR AN ADDITIONAL REGULAR MONTHLY MEETING OF COMMON COUNCIL.

WHEREAS, the Regular Meeting dates of Common Council are established under Section 2-24 of the Winchester City Code; and

WHEREAS, §15.2-1416 of the Code of Virginia requires Council to adopt establish the days, times, and places of regular meetings to be held annually; and

WHEREAS, Common Council for the City of Winchester has complied with this requirement by the adoption of Resolution 2014-21 which establishes a schedule of Regular Meetings of Common Council on the second Tuesday of each month with Work Sessions being held on the third and fourth Tuesdays of each month; and

WHEREAS, it is the belief of Common Council that having the Work Sessions of Common Council scheduled for 6:00 p.m. on every second and fourth Tuesday followed by a Regular Meeting on each second and fourth Tuesday at 7:00 p.m. or immediately following the Council Work Sessions if such Work Sessions extend beyond 7:00 p.m. will increase the efficiency of Council and enable City Staff to work more effectively in processing matters through the Agenda Process; and

WHEREAS it is the wish of Common Council to clarify the authority of the President of Council with respect to his authority to cancel meetings under specified conditions.

NOW therefore be it ORDAINED that Section 2-24 of the Winchester City Code is hereby amended and readopted as follows:

SECTION. 2-24. REGULAR MEETING DATE; CALL OR ORDER OF SPECIAL MEETING.

(a) The ~~R~~regular ~~m~~Meetings of the Council shall be held on the second and fourth Tuesday of each month at 7:00 p.m. or immediately following Council Work Sessions if such Work Sessions extend beyond 7:00 p.m. Work Sessions beginning at 7 shall begin at 6:00 P.M. Unless otherwise properly Noticed, all Regular Meetings and Work Sessions shall be held at Council Chambers in Rouss City Hall, 15 N. Cameron Street, Winchester, Virginia.

(b) Special meetings of the Council may be called by the President, or the Vice-President when authorized to act for the President, at any time and, in case of his absence, inability

or refusal, may be convened by the order in writing of three (3) members of the Council, addressed to the Clerk of the Council. Every call or order for a special meeting shall contain a notice of the object of such meeting, and no other business shall be transacted unless two-thirds of the members present shall vote to take up such business.

(Code 1959, §2-2) (Ord. No. 036-95, 9-12-95; Ord. No. 2011-21, 10-11-11)
State Law Reference--Special meetings of Council, Code of Virginia, §15.2-1417.

BE IT FURTHER ORDAINED that Resolution 2014-21 is hereby rescinded and replaced with Resolution _____, which is hereby approved.

2015



- = Planning Commission Work Session
- = Planning Commission Meeting
- = Proposed Council WS + Regular Meeting

January

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February

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June

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September

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October

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November

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29	30					

December

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27	28	29	30	31		

B-2014-46

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: October 28, 2014 **CUT OFF DATE:** __

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

ITEM TITLE: Resolution of the Common Council of the City of Winchester, Virginia on the Issuance of up to \$55,000,000 of Revenue Bonds by the Economic Development Authority of the City of Winchester, Virginia for the Benefit of Westminster-Canterbury of Winchester, Inc.

STAFF RECOMMENDATION: Approval of the attached resolution

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: The Economic Development Authority recommends the City's approval of this resolution

FUNDING DATA: N/A

INSURANCE: N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance _____	<u>TS</u>	_____	<u>10-10-14</u>
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. City Attorney _____	<u>[Signature]</u>	_____	<u>10/13/2014</u>
5. City Manager _____	<u>TS</u>	_____	<u>13 Oct 2014</u>
6. Clerk of Council _____	_____	_____	_____

Initiating Department Director's Signature: [Signature] _____ Date: 10/10/14

Economic Development Coordinator



APPROVED AS TO FORM:

[Signature] 10/13/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Tyler Schenck, Economic Development Coordinator
Date: 10/28/2014
Re: Resolution of the Common Council of the City of Winchester, Virginia on the Issuance of up to \$55,000,000 of Revenue Bonds by the Economic Development Authority of the City of Winchester, Virginia for the Benefit of Westminster-Canterbury of Winchester, Inc.

THE ISSUE: As the governing entity of the EDA, the Common Council must approve the attached approval resolution prior to the EDA's issuance of any bonds

RELATIONSHIP TO STRATEGIC PLAN: Goal 1 – Grow the Economy.

BACKGROUND: Westminster-Canterbury of Winchester, Inc. have requested the Economic Development Authority of the City of Winchester to issue a series of its revenue bonds to finance certain capital improvements at the Company's facilities, to refund the outstanding principal amount of the Residential Care Facility Revenue Bonds Series 2005A, to fund capitalized interest on the Bond and to finance costs of issuance.

This matter will be placed upon the Economic Development Authority of the City of Winchester's agenda for November 4th, 2014 meeting, on which a public hearing will be held by the EDA as required by applicable law.

BUDGET IMPACT: N/A

OPTIONS: Council may approve or disapprove the Resolution

RECOMMENDATIONS: City Staff recommends that the Common Council approve the Resolution

EXHIBIT C

**RESOLUTION
OF THE COMMON COUNCIL OF THE CITY OF WINCHESTER, VIRGINIA
ON THE ISSUANCE OF UP TO \$55,000,000 OF REVENUE BONDS
BY THE ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF WINCHESTER, VIRGINIA
FOR THE BENEFIT OF WESTMINSTER-CANTERBURY OF WINCHESTER, INC.**

WHEREAS, the Economic Development Authority of the City of Winchester, Virginia (the "Authority") has approved the application of Westminster-Canterbury of Winchester, Inc. (the "Company"), a Virginia non-stock, not-for-profit corporation, requesting that the Authority issue up to \$55,000,000 of its revenue bonds in one or more series at one time or from time to time (the "Bonds") to assist the Company to:

(a) finance certain capital improvements at the Company's facilities (the "Facilities") located at 300 Westminster Canterbury Drive, Winchester, Virginia 22603, and a portion of which is located in Frederic County, Virginia, including, but not limited to, (i) the construction and equipping of a new approximately 15,900 square foot two story health care center consisting of 22 skilled nursing beds, (ii) the construction and equipping of a new approximately 12,100 square foot two story building, which will include a fitness center, dining facilities, multipurpose rooms, office space and recreational space, (iii) the renovation of approximately 37,000 square feet of the existing health care center and the addition of approximately 2,300 square feet, (iv) the renovation of approximately 6,000 square feet of existing buildings located on the Facilities to provide additional administrative and office space, (v) the renovation of the existing loading dock servicing the Facilities, (vi) renovations to existing courtyards located at the Facilities and (vii) other routine capital improvements at the Facilities (collectively, the "Project");

(b) refund the outstanding principal amount of the Residential Care Facility Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 2005A (the "Series 2005A Bonds") originally issued by the Authority for the purpose of (i) financing certain capital improvements at the Facilities, including the acquisition, construction, renovation and expansion of (A) approximately 64 independent living apartments in an approximately 177,000 square foot residential building, (B) an approximately 15,000 square foot vitality center including fitness, pool and recreational areas, (C) existing dining, kitchen and fitness areas at the Facilities and (D) other capital improvements at the Facilities and (ii) refunding the outstanding principal amount of the Authority's Residential Care Facility First Mortgage Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 1998, which were originally issued for the purposes of refunding the Authority's Replacement Bonds (Westminster-Canterbury of Winchester, Inc.), Series 1991, which were originally issued to refund the Authority's Residential Care Facility First Mortgage Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 1985, which were originally issued to (A) finance the acquisition,

construction and equipping of the Facilities, (B) finance the construction and equipping of an approximately 47,000 square foot independent living apartment building at the Facilities, and (C) finance the costs of renovations to the health center;

(c) fund capitalized interest on the Bonds; and

(d) finance costs of issuance incurred in connection with the refunding of the Series 2005A Bonds and the issuance of the Bonds (collectively, the "Plan of Finance");

WHEREAS, the Authority held a public hearing on November 4, 2014;

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), provides that the governmental unit having jurisdiction over the issuer of private activity bonds and over the area in which any facility financed with the proceeds of private activity bonds is located must approve the issuance of the bonds;

WHEREAS, the Authority issues its bonds on behalf of the City of Winchester, Virginia (the "City"), a portion of the Project is located in the City and the Common Council of Winchester (the "Council"), constitutes the highest elected governmental unit of the City;

WHEREAS, the Authority has recommended that the Council approve the Plan of Finance and the issuance of the Bonds; and

WHEREAS, a copy of the Authority's resolution approving the issuance of the Bonds, subject to the terms to be agreed upon, a certificate of the public hearing and a Fiscal Impact Statement have been filed with the Council.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF WINCHESTER:

1. The Council approves the issuance of the Bonds, in an aggregate principal amount up to \$55,000,000, by the Authority for the benefit of the Company, solely to the extent required by Section 147(f) of the Code and Section 15.2-4906 of the Code of Virginia of 1950, as amended, to permit the Authority to assist in accomplishing the Plan of Finance.

2. The approval of the issuance of the Bonds does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Plan of Finance or the Company. In accordance with the Act, the Bonds shall not be deemed to constitute a debt or a pledge of the faith and credit or taxing power of the Commonwealth or any political subdivision thereof, including the Authority and the City.

3. This resolution shall take effect immediately upon its adoption.

Adopted by the Common Council of Winchester this ____ day of November, 2014.

Common Council of Winchester
City of Winchester, Virginia

[SEAL]

BRYAN & COLEMAN, P.L.C.
ATTORNEYS AT LAW

116 SOUTH BRADDOCK STREET
WINCHESTER, VIRGINIA 22601
TELEPHONE: (540) 545-4130
FAX: (540) 545-4131

MICHAEL L. BRYAN, ESQUIRE

Email: mbryan2@earthlink.net

October 9, 2014

Hand Delivered:

Tyler Schenck
Economic Development Coordinator
33 East Boscawen Street
Winchester, Virginia 22601

RE: Westminster-Canterbury of Winchester, Inc. Bond Issue

Dear Tyler:

Westminster-Canterbury of Winchester, Inc. is seeking the issuance of up to \$55,000,000.00 of Revenue Bonds by the Economic Development Authority of the City of Winchester, Virginia (the "EDA") to finance certain capital improvements at the Company's facilities located at 300 Westminster-Canterbury Drive, Winchester, Virginia 22603, to refund the outstanding principal amount of the Residential Care Facility Revenue Bonds (Westminster-Canterbury of Winchester, Inc.) Series 2005A originally issued by the Authority, to fund capitalized interest on the Bond and to finance costs of issuance. This matter will be placed upon the EDA's agenda for the EDA meeting to be held on November 4, 2014, on which date a public hearing will be held by the Authority as required by applicable law (the "TEFRA Hearing").

Immediately after the EDA meeting on November 4th, I will forward a packet of documents to the Common Council for its consideration and hopefully its approval at its November 11th meeting. The packet of documents will include the Resolution considered by the Authority, the Certificate concerning the proceedings held during the EDA meeting, a copy of the TEFRA Notice and a Fiscal Impact Statement. In addition, the Common Council will be asked to consider the adoption of a Resolution, a copy of which is enclosed marked Exhibit C. A draft set of these documents is enclosed.

The action which is requested by Common Council at its meeting on November 11th is the adoption of the enclosed Resolution (Exhibit C). Please place this matter on the Common Council agenda for the next available Work Session of Common Council so that the matter may

be considered and hopefully advanced to the regular monthly meeting of Common Council on November 11th. If there are any questions about this matter, please get in touch with me right away.

Thank you.

Very truly yours,

A handwritten signature in blue ink, appearing to be "MLB", with a long horizontal flourish extending to the right.

Michael L. Bryan
MLB/pmn

Enclosures

November 4, 2014

Common Council of Winchester
City of Winchester, Virginia
Rouss City Hall
15 North Cameron Street
Winchester, Virginia 22601

**Economic Development Authority of the City of Winchester, Virginia
Approval of Proposed Revenue Bond Financing
for Westminster-Canterbury of Winchester, Inc.**

Westminster-Canterbury of Winchester, Inc. (the "Company"), a Virginia non-stock, not-for-profit corporation, whose principal place of business is 300 Westminster-Canterbury Drive, Winchester, Virginia 22603, has requested that the Economic Development Authority of the City of Winchester, Virginia (the "Authority") issue up to \$55,000,000 of its revenue bonds, in one or more series at one time or from time to time (the "Bonds"), the proceeds of which will be loaned to the Company to:

(a) finance certain capital improvements at the Company's facilities (the "Facilities") located at 300 Westminster Canterbury Drive, Winchester, Virginia 22603, and a portion of which is located in Frederick County, Virginia, including, but not limited to, (i) the construction and equipping of a new approximately 15,900 square foot two story health care center consisting of 22 skilled nursing beds, (ii) the construction and equipping of a new approximately 12,100 square foot two story building, which will include a fitness center, dining facilities, multipurpose rooms, office space and recreational space, (iii) the renovation of approximately 37,000 square feet of the existing health care center and the addition of approximately 2,300 square feet, (iv) the renovation of approximately 6,000 square feet of existing buildings located on the Facilities to provide additional administrative and office space, (v) the renovation of the existing loading dock servicing the Facilities, (vi) renovations to existing courtyards located at the Facilities and (vii) other routine capital improvements at the Facilities;

(b) refund the outstanding principal amount of the Residential Care Facility Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 2005A (the "Series 2005A Bonds") originally issued by the Authority for the purpose of (i) financing certain capital improvements at the Facilities, including the acquisition, construction, renovation and expansion of (A) approximately 64 independent living apartments in an approximately 177,000 square foot residential building, (B) an approximately 15,000 square foot vitality center including fitness, pool and recreational areas, (C) existing

dining, kitchen and fitness areas at the Facilities and (D) other capital improvements at the Facilities and (ii) refunding the outstanding principal amount of the Authority's Residential Care Facility First Mortgage Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 1998, which were originally issued for the purposes of refunding the Authority's Replacement Bonds (Westminster-Canterbury of Winchester, Inc.), Series 1991, which were originally issued to refund the Authority's Residential Care Facility First Mortgage Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 1985, which were originally issued to (A) finance the acquisition, construction and equipping of the Facilities, (B) finance the construction and equipping of an approximately 47,000 square foot independent living apartment building at the Facilities, and (C) finance the costs of renovations to the health center;

(c) fund capitalized interest on the Bonds; and

(d) finance costs of issuance incurred in connection with the refunding of the Series 2005A Bonds and the issuance of the Bonds (collectively, the "Plan of Finance").

As set forth in the approving resolution of the Authority attached hereto (the "Resolution"), the Authority has authorized the issuance of the Bonds to accomplish the Plan of Finance. The Authority has conducted a public hearing on the Plan of Finance and has recommended that you approve the Plan of Finance and the issuance of the Bonds by the Authority as required by Section 147(f) of the Internal Revenue Code of 1986, as amended, and Section 15.2-4906 of the Code of Virginia of 1950, as amended (the "Virginia Code").

Attached hereto is (1) a certificate evidencing the conduct of the public hearing and the action taken by the Authority, (2) the Fiscal Impact Statement required pursuant to Section 15.2-4907 of the Virginia Code, (3) the form of resolution suggested by counsel to evidence your approval and (4) a copy of the Authority's resolution authorizing the issuance of the Bonds to accomplish the Plan of Finance.

Secretary, Economic Development Authority of the
City of Winchester, Virginia

**RESOLUTION OF THE ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF WINCHESTER, VIRGINIA
AUTHORIZING THE ISSUANCE OF UP TO \$55,000,000
REVENUE BONDS FOR THE BENEFIT OF
WESTMINSTER-CANTERBURY OF WINCHESTER, INC.**

WHEREAS, the Economic Development Authority of the City of Winchester, Virginia, a political subdivision of the Commonwealth of Virginia (the "Authority"), is empowered by the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the "Act"), to issue its revenue bonds to protect and promote the health and welfare of the inhabitants of the Commonwealth of Virginia by assisting in the financing and refinancing of medical facilities and facilities for the residence or care of the aged, owned and operated by organizations which are exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Authority has received a request from Westminster-Canterbury of Winchester, Inc., a Virginia non-stock, not-for-profit corporation (the "Company"), requesting that the Authority issue its revenue bonds, in one or more series at one time or from time to time, to assist the Company in:

(a) financing certain capital improvements at the Company's facilities (the "Facilities") located at 300 Westminster Canterbury Drive, Winchester, Virginia 22603, and a portion of which is located in Frederick County, Virginia, including, but not limited to, (i) the construction and equipping of a new approximately 15,900 square foot two story health care center consisting of 22 skilled nursing beds, (ii) the construction and equipping of a new approximately 12,100 square foot two story building, which will include a fitness center, dining facilities, multipurpose rooms, office space and recreational space, (iii) the renovation of approximately 37,000 square feet of the existing health care center and the addition of approximately 2,300 square feet, (iv) the renovation of approximately 6,000 square feet of existing buildings located on the Facilities to provide additional administrative and office space, (v) the renovation of the existing loading dock servicing the Facilities, (vi) renovations to existing courtyards located at the Facilities and (vii) other routine capital improvements at the Facilities (collectively, the "Project");

(b) refunding the outstanding principal amount of the Residential Care Facility Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 2005A (the "Series 2005A Bonds") originally issued by the Authority for the purpose of (i) financing certain capital improvements at the Facilities, including the acquisition, construction, renovation and expansion of (A) approximately 64 independent living apartments in an approximately 177,000 square foot residential building, (B) an approximately 15,000 square foot vitality center including fitness, pool and recreational areas, (C) existing dining, kitchen and fitness areas at the Facilities and (D) other capital improvements at the Facilities and (ii) refunding the outstanding principal amount of the Authority's Residential Care Facility First Mortgage Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 1998, which were originally issued for the purposes of refunding the Authority's Replacement Bonds (Westminster-Canterbury of

Winchester, Inc.), Series 1991, which were originally issued to refund the Authority's Residential Care Facility First Mortgage Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 1985, which were originally issued to (A) finance the acquisition, construction and equipping of the Facilities, (B) finance the construction and equipping of an approximately 47,000 square foot independent living apartment building at the Facilities, and (C) finance the costs of renovations to the health center;

(c) funding capitalized interest on the Bonds; and

(d) financing costs of issuance incurred in connection with the refunding of the Series 2005A Bonds and the issuance of the Bonds (collectively, the "Plan of Finance");

WHEREAS, such assistance will benefit the inhabitants of the City of Winchester, Virginia (the "City"), the County of Frederick, Virginia (the "County") and the Commonwealth of Virginia, either through the increase of their commerce or through the promotion of their safety, health, welfare, convenience or prosperity;

WHEREAS, preliminary plans for the Plan of Finance have been described to the Authority and a public hearing has been held as required by Section 147(f) of the Code and Section 15.2-4906 of the Act;

WHEREAS, the Company has represented that the estimated cost of undertaking the Plan of Finance will require an issue of revenue bonds in the aggregate principal amount not to exceed \$55,000,000;

WHEREAS, (a) no member of the Board of Directors of the Authority is an officer or employee of the City, (b) each member has, before entering upon his duties during his or her present term of office, taken and subscribed to the oath prescribed by Section 49-1 of the Code of Virginia of 1950, as amended and (c) at the time of their appointments and at all times thereafter, including the date hereof, all of the members of the Board of Directors of the Authority have satisfied the residency requirements of the Act; and

WHEREAS, to the best of the Authority's knowledge, no member of the Board of Directors of the Authority has any personal interest or business interest in the Company or the bonds or has otherwise engaged in conduct prohibited under the Conflict of Interests Act, Chapter 31, Title 2.2 of the Code of Virginia of 1950, as amended, in connection with this resolution or any other official action of the Authority in connection therewith.

NOW, THEREFORE, BE IT RESOLVED BY THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER, VIRGINIA:

1. It is hereby found and determined that the Plan of Finance will be in the public interest and will promote the commerce, safety, health, welfare, convenience or prosperity of the Commonwealth of Virginia, the City, the County and their citizens and in particular will promote the providing of health care facilities and other facilities for the residence and care of the aged in accordance with their special needs.

2. The Authority hereby agrees to assist the Company in undertaking the Plan of Finance by issuing its revenue bonds in an aggregate principal amount not to exceed \$55,000,000 upon terms and conditions mutually agreeable to the Authority and the Company. The bonds will be issued pursuant to documents satisfactory to the Authority. The bonds may be issued in one or more series at one time or from time to time.

3. It having been represented to the Authority that it is necessary to proceed immediately with the Plan of Finance, and the planning therefor, the Authority agrees that the Company may proceed with the Plan of Finance, enter into contracts for land, construction, materials and equipment for the Project, and take such other steps as it may deem appropriate in connection with the Plan of Finance, provided, however, that nothing in this resolution shall be deemed to authorize the Company to obligate the Authority without its consent in each instance to the payment of any moneys or the performance of any acts in connection with the Plan of Finance. The Authority agrees that the Company may be reimbursed from the proceeds of the bonds for all expenditures and costs so incurred by it, provided such expenditures and costs are properly reimbursable under the Act and applicable federal laws.

4. At the request of the Company, the Authority approves McGuireWoods LLP, Richmond, Virginia, as Bond Counsel in connection with the issuance of the Bonds.

5. All costs and expenses in connection with the undertaking of the Plan of Finance, including the fees and expenses of Bond Counsel and Authority Counsel, shall be paid by the Company or, to the extent permitted by applicable law, from the proceeds of the bonds. If for any reason such bonds are not issued, it is understood that all such expenses shall be paid by the Company and that the Authority shall have no responsibility therefor.

6. The Authority recommends that the governing bodies of the City and the County approve the issuance of the bonds for the purpose of undertaking the Plan of Finance.

7. No bonds may be issued pursuant to this resolution until such time as the issuance of the bonds has been approved by the governing bodies of the City and the County.

8. This resolution shall take effect immediately upon its adoption.

CERTIFICATE

The undersigned Secretary of the Economic Development Authority of the City of Winchester, Virginia (the "Authority") certifies that the foregoing is a true, correct and complete copy of a resolution adopted by a majority of the Directors of the Authority present and voting at a meeting duly called and held on November 4, 2014, in accordance with law, and that such resolution has not been repealed, revoked, rescinded or amended but is in full force and effect on this date.

WITNESS the following signature and seal of the Authority, this 4th day of November, 2014.

Secretary of the Economic Development Authority of the
City of Winchester, Virginia

[SEAL]

CERTIFICATE

The undersigned Secretary of the Economic Development Authority of the City of Winchester, Virginia (the "Authority") certifies as follows:

1. A meeting of the Authority was duly called and held on Tuesday, November 4, 2014, at 12:00 p.m. in the Common Council Chambers in Rouss City Hall, 15 North Cameron Street, Winchester, Virginia 22601, pursuant to proper notice given to each Director of the Authority before such meeting. The meeting was open to the public. The time of the meeting and the place at which the meeting was held provided a reasonable opportunity for persons of differing views to appear and be heard.

2. The Chairman announced the commencement of a public hearing on the application of Westminster-Canterbury of Winchester, Inc., a Virginia non-stock, not-for-profit corporation organized under the laws of the Commonwealth of Virginia, and that a notice of the hearing was published once a week for two successive weeks in a newspaper having general circulation in the City of Winchester, Virginia and the County of Frederick, Virginia (the "Notice"), with the second publication appearing not less than six days nor more than twenty-one days prior to the hearing date. A copy of the Notice is attached and has been filed with the minutes of the Authority and is attached as Exhibit A.

3. A summary of the statements made at the public hearing is attached as Exhibit B.

4. Attached as Exhibit C is a true, correct and complete copy of an approving resolution (the "Resolution") adopted at such meeting of the Authority by a majority of the Directors present at such meeting. The Resolution constitutes all formal action taken by the Authority at such meeting relating to matters referred to in the Resolution. The Resolution has not been repealed, revoked, rescinded or amended and is in full force and effect on this date.

WITNESS my hand and the seal of the Authority, this ___ day of November, 2014.

Secretary, Economic Development Authority of the
City of Winchester, Virginia

[SEAL]

Exhibits:

- A - Copy of Certified Notice
- B - Summary of Statements
- C - Approving Resolution

EXHIBIT A

**NOTICE OF PUBLIC HEARING TO BE HELD BY THE
ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF WINCHESTER, VIRGINIA
ON THE ISSUANCE OF UP TO \$55,000,000 OF ITS REVENUE BONDS
FOR THE BENEFIT OF WESTMINSTER-CANTERBURY OF WINCHESTER, INC.**

Notice is hereby given that the Economic Development Authority of the City of Winchester, Virginia (the "Authority") whose address is 15 North Cameron Street, Winchester, Virginia 22601, will hold a public hearing on the application and plan of financing of Westminster-Canterbury of Winchester, Inc. (the "Company"), whose principal place of business is 300 Westminster-Canterbury Drive, Winchester, Virginia 22603, requesting the Authority issue up to \$55,000,000 of its revenue bonds (the "Bonds"), in one or more series at one time or from time to time, the proceeds of which will be loaned to the Company to:

(a) finance certain capital improvements at the Company's facilities (the "Facilities") located at 300 Westminster Canterbury Drive, Winchester, Virginia 22603, and a portion of which is located in Frederick County, Virginia, including, but not limited to, (i) the construction and equipping of a new approximately 15,900 square foot two story health care center consisting of 22 skilled nursing beds, (ii) the construction and equipping of a new approximately 12,100 square foot two story building, which will include a fitness center, dining facilities, multipurpose rooms, office space and recreational space, (iii) the renovation of approximately 37,000 square feet of the existing health care center and the addition of approximately 2,300 square feet, (iv) the renovation of approximately 6,000 square feet of existing buildings located on the Facilities to provide additional administrative and office space, (v) the renovation of the existing loading dock servicing the Facilities, (vi) renovations to existing courtyards located at the Facilities and (vii) other routine capital improvements at the Facilities;

(b) refund the outstanding principal amount of the Residential Care Facility Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 2005A (the "Series 2005A Bonds") originally issued by the Authority for the purpose of (i) financing certain capital improvements at the Facilities, including the acquisition, construction, renovation and expansion of (A) approximately 64 independent living apartments in an approximately 177,000 square foot residential building, (B) an approximately 15,000 square foot vitality center including fitness, pool and recreational areas, (C) existing dining, kitchen and fitness areas at the Facilities and (D) other capital improvements at the Facilities and (ii) refunding the outstanding principal amount of the Authority's Residential Care Facility First Mortgage Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 1998, which were originally issued for the purposes of refunding the Authority's Replacement Bonds (Westminster-Canterbury of Winchester, Inc.), Series 1991, which were originally issued to refund the Authority's Residential Care Facility First Mortgage Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 1985, which were originally issued to (A) finance the acquisition, construction and equipping of the Facilities, (B) finance the construction and equipping

of an approximately 47,000 square foot independent living apartment building at the Facilities, and (C) finance the costs of renovations to the health center;

(c) fund capitalized interest on the Bonds; and

(d) finance costs of issuance incurred in connection with the refunding of the Series 2005A Bonds and the issuance of the Bonds (collectively, the "Plan of Finance").

The issuance of the Bonds as requested by the Company will not constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia, the Authority or the City of Winchester, Virginia, but will be payable solely from revenues derived from the Company and pledged therefor and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivisions, including the Authority and the City of Winchester, Virginia, is pledged to the payment of the Bonds. The Authority has no taxing power.

The public hearing, which may be continued or adjourned, will be held at 12:00 p.m. on Tuesday, November 4, 2014, before the Authority, in the Common Council Chambers in Rouss City Hall, 15 North Cameron Street, Winchester, Virginia 22601. Any person interested in the issuance of the Bonds may appear at the hearing and present his or her views. A copy of the Company's application may be inspected at the Authority's office at the address stated above during business hours.

Economic Development Authority
of the City of Winchester, Virginia

EXHIBIT B

Summary of Statements

[To Be Determined]

**FISCAL IMPACT STATEMENT
FOR PROPOSED BOND FINANCING**

Date: November 4, 2014

To the Common Council of Winchester
City of Winchester, Virginia

Applicant: Westminster-Canterbury of Winchester, Inc.

**Facility/
Plan of
Finance:** (a) finance certain capital improvements at the Company's facilities (the "Facilities") located at 300 Westminster Canterbury Drive, Winchester, Virginia 22603, and a portion of which is located in Frederick County, Virginia, including, but not limited to, (i) the construction and equipping of a new approximately 15,900 square foot two story health care center consisting of 22 skilled nursing beds, (ii) the construction and equipping of a new approximately 12,100 square foot two story building, which will include a fitness center, dining facilities, multipurpose rooms, office space and recreational space, (iii) the renovation of approximately 37,000 square feet of the existing health care center and the addition of approximately 2,300 square feet, (iv) the renovation of approximately 6,000 square feet of existing buildings located on the Facilities to provide additional administrative and office space, (v) the renovation of the existing loading dock servicing the Facilities, (vi) renovations to existing courtyards located at the Facilities and (vii) other routine capital improvements at the Facilities, (b) refund the outstanding principal amount of the Residential Care Facility Revenue Bonds (Westminster-Canterbury of Winchester, Inc.), Series 2005A (the "Series 2005A Bonds") issued by the Economic Development Authority of the City of Winchester, Virginia, (c) fund capitalized interest on the bonds to be issued (the "Bonds") and (d) finance costs of issuance incurred in connection with the refunding of the Series 2005A Bonds and the issuance of the Bonds.

1.	Maximum amount of financing sought	\$55,000,000
2.	Estimated taxable value of the facility's real property to be constructed in the locality.	\$
3.	Estimated real property tax per year using present tax rates.	\$
4.	Estimated personal property tax per year using present tax rates.	\$
5.	Estimated merchants' capital tax per year using present tax rates.	\$
6.	(a) Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality	
	(b) Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality	\$
	(c) Estimated dollar value per year of services that will be purchased from Virginia companies within the locality	\$
	(d) Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality	\$
7.	Estimated number of regular employees on year round basis.	
8.	Average annual salary per employee.	\$

Chairman, Economic Development Authority of the City
of Winchester, Virginia

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 8/26/14 (work session), CUT OFF DATE: 11/5/14
9/9/14(1st Reading), 10/14/14 (public hearing & appoint viewers), 11/11/14 (2nd reading)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING

ITEM TITLE:

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

STAFF RECOMMENDATION:

Approval with conditions.

PUBLIC NOTICE AND HEARING:

Public hearing was held at 10/14/14 Council mtg. No citizen comments

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval with conditions
Viewers found no inconvenience caused by vacation

FUNDING DATA: N/A

INSURANCE: N/A

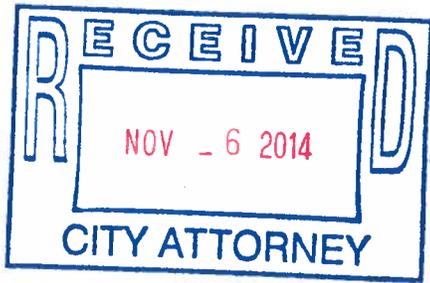
The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Economic Redevelopment	TS		11/6/14
2. Public Services	PE		11/6/14
3. City Attorney	[Signature]		11/6/2014
4. City Manager	[Signature]		6 NOV 2014
5. Clerk of Council			

Initiating Department Director's Signature:
(Planning Dept)

[Signature]

11/6/14



APPROVED AS TO FORM:

[Signature] 11/6/2014
64 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Tim Youmans, Planning Director

Date: November 5, 2014

Re: **O-2014-37** 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 **SV-14-433**

THE ISSUE:

This resubmitted request of Mr. Richard W. Pifer (as 1818 Roberts L.C.) 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 travelway would remain to serve the adjoining private property.

RELATIONSHIP TO STRATEGIC PLAN:

Goal #1: Grow the City

BACKGROUND:

See attached staff report

BUDGET IMPACT:

If conveyed, the City would receive approximately \$11, 250 for sale of the 4,500 square feet of vacated right-of-way.

OPTIONS:

- Approve with conditions as recommended by Planning Commission
- Approve with modified conditions
- Deny

RECOMMENDATIONS:

Planning Commission recommended approval with conditions.
Viewers found no inconvenience caused by vacation.



Rouss City Hall
15 North Cameron Street
Winchester, VA 22601

Telephone: (540) 667-1815
FAX: (540) 722-3618
TDD: (540) 722-0782
Website: www.winchesterva.gov

VIEWERS REPORT

The undersigned, pursuant to their appointment by the Common Council of the City of Winchester, Virginia, have made investigation of the property named below and have reviewed statements, if any, provided by the adjoining property owners concerning what, if any, inconvenience would be caused the public and/or adjacent landowners if the following were vacated:

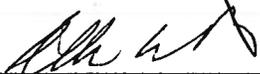
O-2014-37: AN ORDINANCE TO VACATE APPROXIMATELY 4,500 SQUARE FEET OF PUBLIC RIGHT-OF-WAY AT THE SOUTH END OF ROBERTS STREET AND CONVEY IT TO THE OWNER OF THE ADJACENT PROPERTY – SV-14-433

Whereas, the Viewers have reviewed the request and have viewed the subject area, it is,

Therefore, the opinion of the undersigned viewers that an inconvenience would not result to the public or the adjacent property owners from vacating the above-mentioned property provided that necessary easements for utilities are established.

Tyler Schenck  _____ (Seal)

Perry Eisenach  _____ (Seal)

Allen Baldwin  _____ (Seal)

Planning Commission
August 19, 2014

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.

REQUEST DESCRIPTION

This resubmitted request of Mr. Richard W. Pifer (as 1818 Roberts L.C.) 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 travelway would remain to serve the adjoining private property.

COMMENTS FROM THE PLANNING DEPARTMENT

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 timeframe spelled out in State Code. The applicant then refilled the request and it was approved by City Council on September 11, 2012. Again, the applicant failed to follow through on the Minor Subdivision to effectuate the conveyance within the one-year timeframe 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-ended 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 a 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.

Back in 2003, City Council established a sale price of \$2.50 per square foot subject to the applicant establishing all necessary easements. This figure was reapproved with the 2012 action. City Council should confirm whether or not the same sale price will be set for this 2014 ordinance.

RECOMMENDATION

A favorable motion could read:

MOVE, that the Planning Commission 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.

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.

SV-14-433

WHEREAS, the Common Council has received a request of Mr. Richard W. Pifer on behalf of 1818 Roberts L.C., owner of certain parcels of real estate known as 1818 and 1818½ Roberts Street, to vacate and convey to him excess public right of way of approximately 4,500 square feet comprising the southernmost segment of Robert Street adjoining his property, said right of way depicted on an undated exhibit entitled "Location Map~ Roberts Street Vacation"; and,

WHEREAS, the City is empowered to vacate rights of way in the City and convey them to certain individuals as a condition of vacation pursuant to and in conformance with the provisions of Virginia Code Section §15.2-2006 and §15.2-2008 *et. seq.*, respectively, as amended; and,

WHEREAS, the Planning Commission of the City of Winchester has reviewed the aforesaid request and, at its meeting of August 19, 2014, recommended approval of this action; 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, and viewers were appointed to report on the inconvenience, if any, of said vacation, all as required by and provided for under the Code of Virginia, 1950, as amended; and,

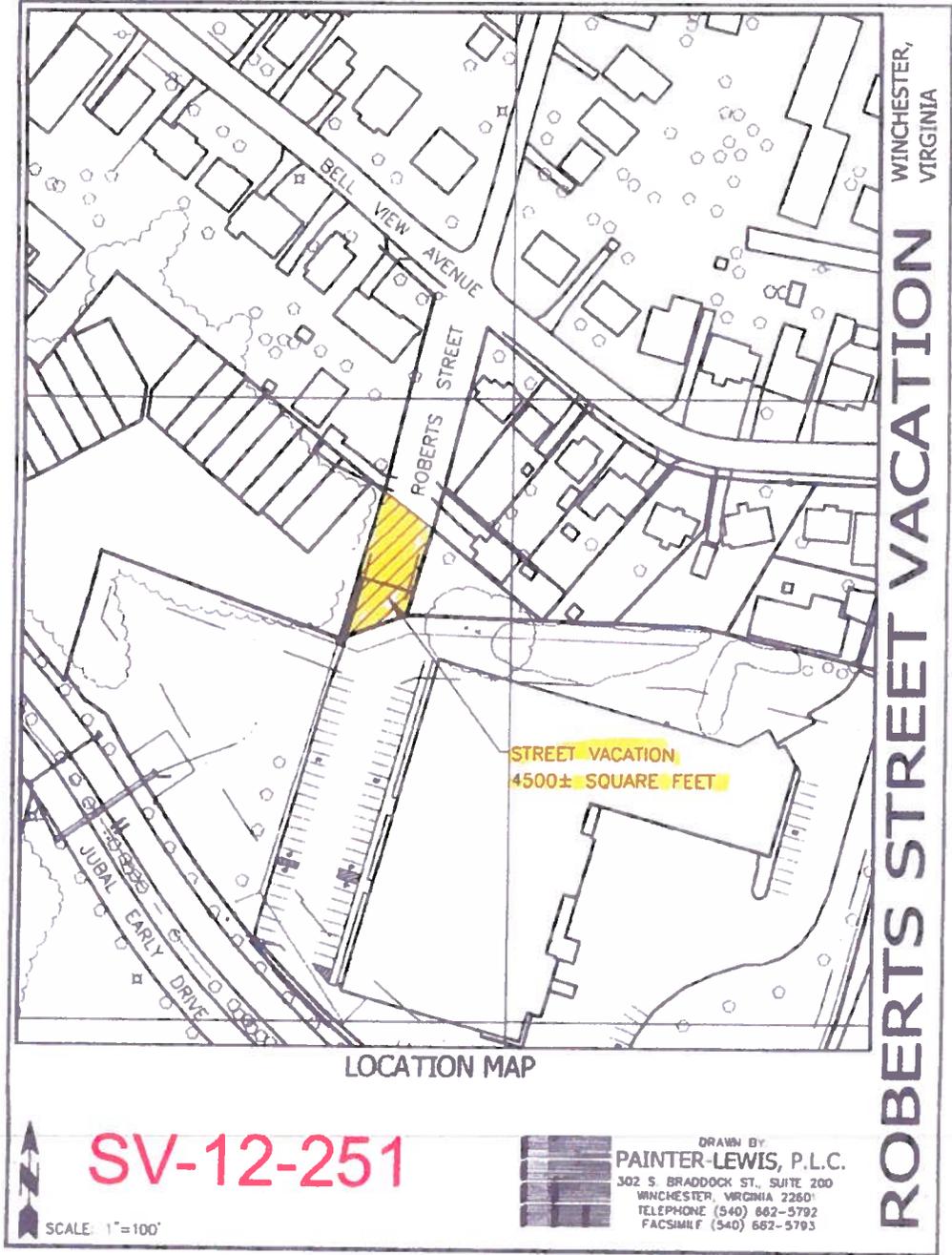
WHEREAS, the viewers have prepared a report in writing, said report concluding that an inconvenience would not result from discontinuing the right of way so long as the necessary easements are established; and,

WHEREAS, the applicant is the only property owner immediately adjacent to the public right of way proposed to be vacated and conveyed; and,

WHEREAS, the Common Council has agreed to convey approximately 4,500 square feet of vacated right of way to the applicant for Two Dollars and Fifty Cents (\$2.50) per square foot subject to the applicant establishing all necessary easements to the City of Winchester to be depicted upon a survey plat.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester, Virginia, that approximately 4,500 square feet of public right of way comprising the southernmost segment of Robert Street, said right of way depicted on an undated exhibit entitled "Location Map~ Roberts Street Vacation" be vacated and conveyed to 1818 Roberts L.C. subject to the applicant establishing necessary easements to the City of Winchester.

BE IT FURTHER ORDAINED that this ordinance shall not take effect until such time as the purchaser has secured City approval of an approved Minor Subdivision plat depicting the easements and the required assemblage of the vacated area in with those certain adjoining parcels of real estate owned by the applicant, with the sale price for the 4,500 square-foot more or less area being Two Dollars and Fifty Cents (\$2.50) per square foot. The City Attorney is directed to prepare a deed for this conveyance and the City Manager is directed and authorized to execute all documents and take all actions necessary to carry out this Ordinance.



Resubmitted as Exhibit for: **SV - 14 - 433**

0-2014-43

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 10/28/14 (work session), **CUT OFF DATE:** 10/22/14
11/11/14 (1st Reading) 12/09/14 (2nd Reading/Public Hearing)

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

ITEM TITLE:

TA-14-593 AN ORDINANCE TO AMEND AND REENACT SECTION 10-6 AND ENACT SECTION 10-9 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIDE AND REAR YARD SETBACK REQUIREMENTS AND SPECIAL PROVISIONS FOR REDEVELOPMENT SITES IN THE COMMERCIAL INDUSTRIAL (CM-1) DISTRICT. *Amendment establishes zero side and rear yard setback conditions in limited situations for properties in the CM-1 district identified as redevelopment sites within the Comprehensive Plan's Character Map.*

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 12/09/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission unanimously recommended approval.

FUNDING DATA: N/A

INSURANCE: N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Planning Director			10/22/14
2. City Attorney			10/22/2014
3. City Manager			22 Oct 2014
4. Clerk of Council			

Initiating Department Director's Signature: 10/22/14
(Zoning and Inspections)



APPROVED AS TO FORM:
 10/22/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale, Director of Zoning and Inspections
Date: October 28, 2014
Re: TA-14-593 AN ORDINANCE TO AMEND AND REENACT SECTION 10-6 AND ENACT SECTION 10-9 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIDE AND REAR YARD SETBACK REQUIREMENTS AND SPECIAL PROVISIONS FOR REDEVELOPMENT SITES IN THE COMMERCIAL INDUSTRIAL (CM-1) DISTRICT.

THE ISSUE:

This zoning ordinance text amendment was privately sponsored to implement opportunities for reduced setback requirements for redevelopment sites in the CM-1 district.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4 – Create a More Livable City for All, Objective 3 – Manage future growth, development and redevelopment consistent with City’s vision, comprehensive plan and development standards and policies

BACKGROUND:

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

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

(Full staff report attached).

BUDGET IMPACT:

No funding is required.

OPTIONS:

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

RECOMMENDATIONS:

The Planning Commission unanimously recommended approval.

City Council
October 28, 2014

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

REQUEST DESCRIPTION

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

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

This proposal is similar to a privately sponsored amendment which was submitted in 2009 for commercial centers in the B-2 district. At that time, the desire was to allow for the creation of new property lines and subdivisions for properties that qualify as a commercial center. As long as adequate easement provisions are established to provide for inter-parcel access, utilities, storm water management, etc., staff believes the ordinance will be consistent with good planning practice by providing an additional tool for property owners and developers to implement redevelopment in areas identified within the Comprehensive Plan for such activity.

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

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

STAFF COMMENTS

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

RECOMMENDATION

At their October 21, 2014 meeting, the Planning Commission unanimously forwarded **TA-14-593** with a favorable recommendation because the amendment, as proposed, presents good planning practice by providing for redevelopment opportunities in existing structures within designated redevelopment sites as identified within the Comprehensive Plan.

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

TA-14-593

Draft 1 – 9/19/2014

Ed. Note: The following text represents excerpts of Article 10 of the Zoning Ordinance that are subject to change. Words with strikethrough are proposed for repeal. Words that are boldfaced and underlined are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.

SECTION 10-6. YARD REGULATIONS.

- 10-6-1 Side. The minimum width of each side yard for a main structure shall be ten (10) feet, except that when such use abuts a residential district, there shall be a side yard of twenty-five (25) feet and except as per Section 10-8 of this Ordinance. No side yard shall be required when a building adjoins a railroad right-of-way or siding or as permitted by Section 10-9 of this Ordinance.
- 10-6-2 Rear. Each main structure shall have a rear yard of at least twenty-five (25) feet except as follows:
- 10-6-2.1 When a rear yard abuts a lot in a residential district the minimum rear yard shall be fifty (50) feet.
- 10-6-2.2 No rear yard shall be required when a building adjoins a railroad right-of-way or siding and the proposed building or structure functionally requires immediate proximity to the railroad right-of-way or siding as determined by the administrator or as permitted by Section 10-9 of this Ordinance. (9/11/01, TA-01-03, Ord. No. 028-2001)

SECTION 10-9. SPECIAL PROVISIONS FOR REDEVELOPMENT SITES

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

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

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

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