

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 7/22/14 (work session), CUT OFF DATE: 7/16/14
8/12/14 (1st Reading) 9/9/14 (2nd reading)

RESOLUTION \_\_\_ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

AN ORDINANCE AUTHORIZING AN ENCROACHMENT WITHIN THE PUBLIC RIGHT-OF-WAY ADJACENT TO 118 1/2-124 EAST CORK STREET

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 9/9/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

N/A

FUNDING DATA: N/A

INSURANCE: The Encroachment Agreement requires the City to be named as an additional insured on the owner's general liability 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.

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

Initiating Department Director's Signature: (Planning) [Handwritten Signature]

6/19/14



APPROVED AS TO FORM:

[Handwritten Signature] 6/20/2014 CITY ATTORNEY

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Will Moore, Planner  
**Date:** June 18, 2014  
**Re:** AN ORDINANCE AUTHORIZING AN ENCROACHMENT WITHIN THE PUBLIC RIGHT-OF-WAY ADJACENT TO 118½-124 EAST CORK STREET

**THE ISSUE:**

Request from a property owner for approval to construct stairs in an 18½ square foot area of public right of way along the E. Cork St sidewalk. The stairs would attach to, and be in line with, an existing encroaching porch.

**RELATIONSHIP TO STRATEGIC PLAN:**

Goal 3: Continue Revitalization of Historic Old Town.  
2013-14 Management Action, Item #3: *Market Rate Housing Units (25)*

**BACKGROUND:**

In November 2013, Council approved a conditional use permit for conversion of the ground floor of the properties from nonresidential to multi-family residential use. The sketch plan submitted with the CUP identified a proposed stair encroachment, and Council's approval included a condition that approval of the proposed encroachment would need to be obtained. The applicant has since formally submitted the detailed site plan for redevelopment of the property.

Encroaching stairs were previously attached to this porch prior to conversion of the ground floor to office use in the early 2000s. The porch and exterior door were not used during the period where the space was used as offices. All connections were internal to connecting buildings; the stairs were removed and the porch was completely railed. The redevelopment requires re-introduction of use of the porch and door. Virginia DHR has approved of the stairs as part of the submitted Rehabilitation Plan for purposes of obtaining historic tax credits.

An adjacent tree and tree well may need to be relocated in conjunction with the construction of the stairs in order to maintain necessary clearance on the sidewalk. If necessary, the owner has committed to this relocation at his expense and this is included in the related Encroachment Agreement.

**BUDGET IMPACT:**

N/A

**OPTIONS:**

- Approve as proposed
- Approve with modifications to the Ordinance/Encroachment Agreement
- Deny

**RECOMMENDATIONS:**

Staff recommends approval.

**AN ORDINANCE AUTHORIZING AN ENCROACHMENT WITHIN THE  
PUBLIC RIGHT-OF-WAY ADJACENT TO 118½-124 EAST CORK STREET**

**WHEREAS**, the Common Council of the City of Winchester (“Council”) is authorized to permit encroachments upon certain public rights-of-way pursuant to §15.2-2009 Code of Virginia; and,

**WHEREAS**, Council has received a request from Bowman-Turner, L.C. (“requestor”) to permit an encroachment of approximately eighteen and one-half square feet of certain improvements into the City’s public right-of-way adjacent to the requestor’s properties at 118½-124 East Cork Street; and,

**WHEREAS**, the requestor proposes to construct stairs and a handrail within the encroachment in line with an existing, encroaching porch in facilitation of a planned redevelopment of the adjacent properties for which Council approved a conditional use permit on November 12, 2013 subject to approval of the proposed stair encroachment; and,

**WHEREAS**, the requestor further proposes to relocate an existing tree and tree well, and repair the sidewalk in the previous tree well location, in order to preserve necessary clearance on the sidewalk per the Americans with Disabilities Act.

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Winchester:

1. that it hereby authorizes a revocable encroachment in the area shown on the attached Exhibit A dated June 13, 2014; and
2. that the encroachment is authorized for the sole purpose of permitting encroachment of stairs and a handrail in line with an existing encroaching porch and that no other improvements shall be placed in the area of encroachment; and
3. that it hereby authorizes and directs the City Manager to execute the Encroachment Agreement between Bowman Turner, L.C. and the City of Winchester; and
4. that a copy of this Ordinance, the Encroachment Agreement, and Exhibit A shall be recorded in the Office of the Clerk of the Court of the City of Winchester, Virginia and that such recordation shall be at the sole expense of the requestor .

Prepared by:  
Office of the City Attorney  
Roush City Hall  
15 N. Cameron St.  
Winchester, VA 22601

Exemption Claimed Under  
Section 58.1-811.A.3 for  
Taxes Imposed by Section  
58.1-801 on a Conveyance to  
a Virginia Political Subdivision  
Consideration: \$10.00

### ENCROACHMENT AGREEMENT

**THIS AGREEMENT** (the "Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **CITY OF WINCHESTER**, a Virginia Municipal Corporation, Grantor ("the City") and **BOWMAN-TURNER, L.C.**, Grantee ("the Grantee").

WHEREAS, the Grantee owns real property (the "Property") known as 118½-124 East Cork Street in the City of Winchester, more specifically identified as Map Numbers 193-01-P-31 and 32; and,

WHEREAS, the Grantee wishes to encroach in the public right-of-way adjacent to the Property by constructing stairs and a handrail to connect to an existing, encroaching porch attached to the Property; and,

WHEREAS, the City has determined that there is no objection to the encroachment described in this Agreement; and

WHEREAS, the Grantee, after obtaining any and all necessary permits, will construct the stairs and handrail in substantially the position shown on Exhibit A; and

WHEREAS, the Common Council of the City by Ordinance passed at its meeting of the \_\_\_\_ day of \_\_\_\_\_, 2014, approved a revocable encroachment upon the aforesaid right-of-way.

NOW, THEREFORE, the Parties agree as follows:

1. Grantor, insofar as its rights and interests are concerned, hereby grants permission to the Grantee for the above-mentioned revocable encroachment, subject to the following conditions.
2. The Grantor reserves all rights of access to the area of encroachment for construction, operation and maintenance of its facilities without incurring any liability for damage to or loss of use of the encroachment described herein or for inverse condemnation thereof arising out of any act of the City, its officials or its agents.
3. Grantee agrees that he will not construct or cause to be constructed or erected any other structure or improvement upon the area of encroachment other than the stairs and handrail ("improvements"), and that, upon thirty (30) day notice by the City, the Grantee will remove the improvements to allow access for City work within the area of encroachment, with the understanding that upon completion of the work by the City, the improvements may be re-erected.

4. The Grantee shall be fully responsible for relocating an existing tree and tree well adjacent to the area of encroachment and repairing the sidewalk in the previous tree well location if, as determined by the City's Public Services Director, such relocation and repair is necessary in order to preserve and maintain necessary clearance on the sidewalk per the Americans with Disabilities Act.

5. If the encroachment is determined by any official or agent of the City to be in such a defective condition as to cause damage to, or unsafe condition within, the City's right-of-way, the unsafe condition shall be corrected, remedied or removed at the Grantee's expense within thirty (30) days after notification by the City.

6. In the event that the City gives Notice to the Grantee that the encroachment is revoked, the Grantee shall remove the improvements within thirty (30) days of the date of said Notice and the Grantee shall restore the area of encroachment to the grade and condition that existed prior to Grantee's construction of said improvements.

7. The Grantee hereby agrees to defend, indemnify and save harmless the City and its agents, officials, and employees from any and all claims, demands, damages, including death, and liability of every kind and nature whatsoever for, on account of, or arising out of the use and maintenance of the improvements by the Grantee or under the consent hereby granted, and to name the City of Winchester as an additional insured under its general liability insurance policy.

8. This Encroachment Agreement shall in no way be construed as the granting of a perpetual easement to the Grantee or otherwise vesting in the Grantee any type of property right.

9. The City expressly reserves all rights, privileges, and immunities granted it under the laws and statutes of the United States and the Commonwealth of Virginia and under the City Code of the City of Winchester as to any claim made against it.

10. The terms of this Agreement are binding upon and shall inure to the benefit and obligation of the heirs, personal representatives, successors and assigns of the Parties, and shall run with the land.

SIGNATURES AND SEALS APPEAR ON THE FOLLOWING PAGE

**WITNESS** the following signatures and seals:

By:

\_\_\_\_\_ Date  
BOWMAN-TURNER, L.C.

Commonwealth of Virginia,

City/County of \_\_\_\_\_ To Wit:

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

By \_\_\_\_\_.

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

My Commission Expires \_\_\_\_\_

By: CITY OF WINCHESTER

\_\_\_\_\_ Date  
City Manager

Commonwealth of Virginia,

City/County of \_\_\_\_\_ To Wit:

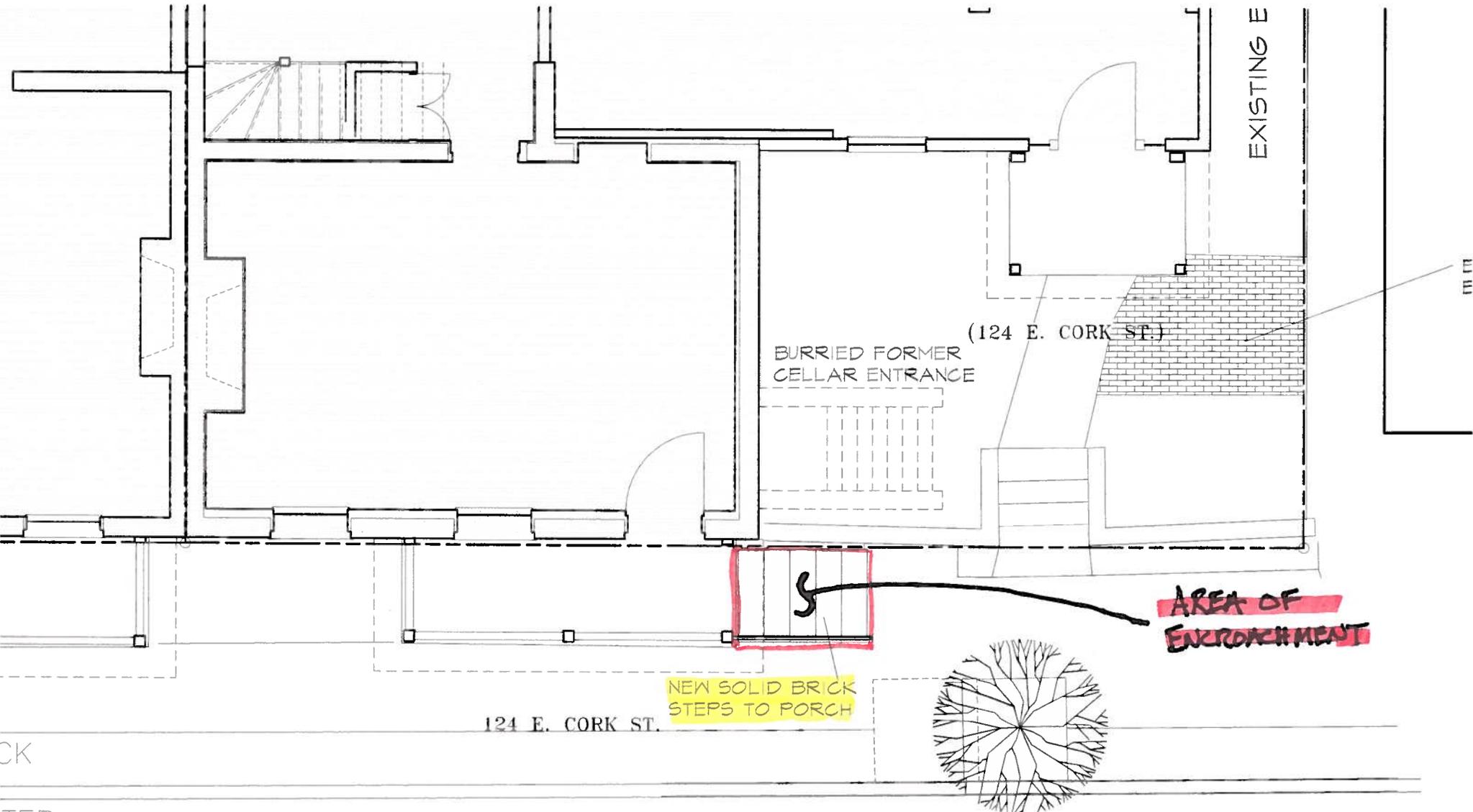
The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014

By \_\_\_\_\_.

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

My Commission Expires \_\_\_\_\_

APPROVED AS TO FORM: \_\_\_\_\_  
Anthony C. Williams, City Attorney



CK  
TER

# EAST CORK STREET

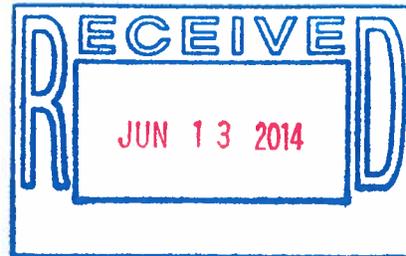
(PUBLIC RIGHT-OF-WAY)



EXISTING TREE BOX AND SMALL EXISTING TREE TO BE RELOCATED BY CONTRACTOR APPROX. 3'-6" EASTWARD TO PERMIT FREE (ADA 36") PASSAGE ON SIDEWALK AFTER CONSTRUCTION OF NEW STEPS TO 124 E. CORK. WORK INCLUDES THE COMPLETE REPAIR OF THE EXISTING BRICK AND CONCRETE SIDEWALK AS NEEDED TO MATCH THE ORIGINAL.

## Bowman-Turner, LC

3863 Centerview Dr.  
Suite #300  
Chantilly, VA 20151



June 9, 2014

To: Tim Youmans, Planning Director  
City of Winchester, Virginia

### **Re: Request For an Easement to Allow a Private Encroachment Upon City Property**

Dear Mr. Youmans:

Bowman-Turner has requested and has been granted a CUP to convert the ground floor of three properties on East Cork Street from Business use to Residential Use. These three properties, at 118-1/2, 120, and 124 E. Cork St., were originally built as private dwelling units. This CUP was granted by City Council on November 12, 2013, with a condition that an encroachment easement be requested and granted by the City for the proposed restored staircase to the front porch of building 124.

Because of the specific history of use of the property at 124 E. Cork St., there exists today a front porch and a front door to which there is no direct access—the porch has railings on all sides and no stairs from the street. We propose to remove a section of the existing porch railing on the east side and to build a short brick stairway down to the sidewalk. The porch is itself a building addition from approximately 1920, constructed on City property. The proposed steps we will construct will also be on City property and will constitute an additional encroachment on the Public Right-of-Way. (See attached detail). The dimensions of this additional encroachment are 5'-0" X 3'-8", or approximately 18-1/2 square feet in area.

We included this new construction in our CUP application, and have further obligated ourselves to relocate a tree well and a small existing street tree eastward along the sidewalk for a distance of approximately 3'-6", if needed, to preserve the necessary clearances on the sidewalk to conform to ADA clearances.

This proposal was also included in a Rehabilitation Plan (Part Two) submitted to the Virginia Department of Historic Resources (DHR) for the purpose of tax credit benefits, and the DHR has approved this feature.

Please consider this letter to be a formal request to grant us this easement. Thank you.

Sincerely,

Gary P. Bowman, General Manager,  
Bowman-Turner, LC



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](http://www.winchesterva.gov)

November 13, 2013

Bowman-Turner, LC  
3863 Centerview Drive  
Suite #300  
Chantilly, VA 20151



Dear Mr. Bowman:

On Tuesday, November 12, 2013, the Winchester City Council acted on the following:

**CU-13-495** Request of Bowman-Turner, LC, for a conditional use permit for conversion of ground floor nonresidential use to residential use at 118½, 120 and 124 East Cork Street (*Map Numbers 193-01-P-31 and 32*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

City Council approved the request because the proposal, as submitted, will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The recommendation is based upon finding that the proposed ground-floor residential units are as suitable or preferable to other permitted uses on the ground floor and is subject to the following:

1. Conformity with the submitted floor plans;
2. Acquisition of the necessary easement for the proposed stair encroachment; and,
3. Staff review and approval of the related site plan, to include a recommendation from the BAR on the proposed open space.

Please call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy A. Youmans".

Timothy A. Youmans  
Planning Director

cc: Larry Belkin



LOCATION OF NEW STAIRWAY