



**WINCHESTER COMMON COUNCIL
JANUARY 13, 2015
AGENDA
6:00 P.M.**

CALL TO ORDER AND ROLL CALL

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

ELECTION OF OFFICERS

- CALL FOR NOMINATIONS AND ELECTION – PRESIDENT OF COUNCIL
- CALL FOR NOMINATIONS AND ELECTION – VICE-PRESIDENT OF COUNCIL
- CALL FOR NOMINATIONS AND ELECTION – VICE MAYOR

APPROVAL OF MINUTES – December 9, 2014 Regular Meeting and December 16, 2014 Work Session

REPORT OF THE MAYOR

REPORT OF THE CITY MANAGER

REPORT OF THE CITY ATTORNEY

PUBLIC HEARINGS

- 1.1 O-2014-44:** Second Reading – AN ORDINANCE TO AUTHORIZE THE ADDITIONAL APPROPRIATION OF FUNDS FOR NECESSARY EXPENDITURES OF THE CITY OF WINCHESTER, VIRGINIA FOR THE FISCAL YEAR ENDING JUNE 30, 2015 **(REQUIRES ROLL-CALL VOTE)(pages 3-13)**
- 1.2 O-2014-45:** Second Reading – AN ORDINANCE TO AMEND AND REENACT ARTICLE 17 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO NONCONFORMING USES AND VESTED RIGHTS. (TA-14-476) **(REQUIRES ROLL-CALL VOTE)(pages 14-25)**
- 1.3 O-2014-48:** Second Reading – AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15.1, 16, 16.1, 18, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TELECOMMUNICATIONS FACILITIES, PERMIT AND REVIEW

REQUIREMENTS, AND FEES. (TA-14-645) **(REQUIRES ROLL-CALL VOTE)**(pages 26-36)

- 1.4 O-2014-46:** Second Reading – AN ORDINANCE TO REZONE 0.064 ACRES OF LAND AT 116 W. LEICESTER STREET (*Map Number 192-01-S-12*) & 118 W. LEICESTER STREET (*Map Number 192-01-S-13*) FROM MEDIUM DENSITY RESIDENTIAL DISTRICT (MR) ZONING WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY TO RESIDENTIAL BUSINESS DISTRICT (RB-1) ZONING WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY. (RZ-14-625)(*The proposed rezoning would permit up to 2 units.*) **(REQUIRES ROLL-CALL VOTE)**(pages 37-45)
- 1.5 O-2014-47:** Second Reading – AN ORDINANCE TO REZONE 0.736 ACRES OF LAND AT 2508 PAPERMILL ROAD (*Map Number 291-03- -1*) FROM INTENSIVE INDUSTRIAL DISTRICT (M-2) ZONING TO COMMERCIAL INDUSTRIAL DISTRICT (CM-1) ZONING. (RZ-14-639) (*The rezoning would permit retail development in conjunction with the adjoining property to the south.*)(**REQUIRES ROLL-CALL VOTE**)(pages 46-55)
- 1.6 R-2014-51:** Authorizing the Local Zone Administrator to Resubmit an Amendment Application to the Virginia Department of Housing and Community Development (DHCD) Regarding the City of Winchester's Enterprise Zone Program due to DHCD's Recommended Application Alterations (pages 56-91)
- 1.7 Public Hearing:** Appeal of the decision by the Board of Architectural Review (BAR-14-689) regarding the replacement of windows for the property located at 455 North Loudoun Street (pages 92-103)

2.0 PUBLIC COMMENTS

3.0 CONSENT AGENDA

- 3.1 R-2014-52:** Authorization to rename Vanceright Avenue to Vanceright Circle (pages 104-111)

4.0 AGENDA

- 4.1 Motion** to reappoint Kelly Wolfe as a member of the Planning Commission to a four year term expiring December 31, 2018

5.0 ADJOURNMENT

0-2014-44

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: November 18, 2014 CUT OFF DATE:

RESOLUTION ORDINANCE X PUBLIC HEARING

ITEM TITLE: Authorize Supplemental Appropriations for the FY 2015 budget

STAFF RECOMMENDATION: Approve as recommended; send to public hearing

PUBLIC NOTICE AND HEARING: January 13, 2015

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA:

See attached ordinance

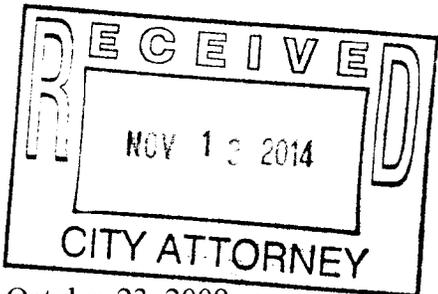
INSURANCE:

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. 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>[Signature]</i>	_____	<i>11/13/2014</i>
6. City Manager	<i>[Signature]</i>	_____	<i>13 NOV 2014</i>
7. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: *[Signature]* 11/7/14
 Finance Director Date



APPROVED AS TO FORM:

[Signature] 11/13/2014
 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Mary Blowe, Finance Director
Date: November 18, 2014
Re: Ordinance to authorize the additional appropriation of funds for necessary expenditures for Fiscal Year 2015

THE ISSUE: The FY 2015 budget needs to be amended to account for additional revenues and proposed expenditures.

RELATIONSHIP TO STRATEGIC PLAN: These budget amendments help to create a more livable City for all and also develop a high performing organization with the use of grant funds.

BACKGROUND: City Staff is requesting the following amendments to the FY 2015 budget:

1. **General Fund** to increase by **\$14,288,693**, this is mainly to account for the bond refunding totaling \$12,388,650 and additional grant proceeds for Sheriff, Police and Fire Departments. In addition, the revenue has been adjusted for the anticipated decreases in local recycling reimbursement from the landfill and state aid to localities revenue. These revenue reductions and an expenditure increase for Jail salaries (\$103,000) are being offset by an increase in personal property revenue due to the adjusted PPTRA rate. Also, included are the transfer to schools of the prior year operating balance to be used for school capital improvements and the transfer of debt savings to the CIP fund. See attached for detailed revenue and expenditure amounts and accounts.
2. **Highway Maintenance Fund** to increase by \$18,557 from insurance proceeds to replace traffic equipment.
3. **Transit Fund** to increase by \$605,000 for replacements buses and equipment funded by 80% Federal funds, 10% State funds and 10% local funds.
4. **City Capital Improvement Fund** to increase by \$800,000 from general fund transfer to purchase property.
5. **School Funds** – see attached School Board Resolutions dated July 14, 2014 and November 10, 2014.

BUDGET IMPACT: The budget will increase to allow for the expenditure of identified funds.

OPTIONS: Adopt ordinance as presented or amend the ordinance

RECOMMENDATIONS: Staff recommends the adoption of this ordinance.

**FY 2015 Supplemental Appropriations
General Fund 111**

				Amount		
Description		Account Number		Debit	Credit	
<u>November 2014 Supplement (Pending 1/13/2015 Council Action)</u>						
Revenue	Local Taxes - Personal Property	111-0000-311	0301		300,000	
Revenue	Local GLG match	111-0000-319	0220		8,056	
Revenue	Local - Recycling	111-0000-319	0240		(100,000)	
Revenue	State - Aid to Localities	111-0000-323	xxxx		(107,474)	
Revenue	State Grant - Downtown Façade Improvement	111-0000-324	1004		20,000	
Revenue	State Grant - Va Main Street	111-0000-324	1004		6,936	
Revenue	Federal Grant - Department of Historic Resources	111-0000-333	1047		23,749	
Revenue	Federal Grant - State Homeland Security Program	111-0000-333	1063		55,500	
Revenue	Bond Proceeds	111-0000-341	0458		11,092,980	
Revenue	Bond Premium	111-0000-341	0420		1,295,670	
Revenue	Asset Forfeiture Funds	111-0000-341	0703		22,577	
Revenue	Fund Balance/Supplemental Appropriation	111-0000-341	0701		1,670,699	
Total Revenue				\$	-	\$ 14,288,693
Expenditure	Sheriff - Asset Forfeiture	111-2171-420	6010	1,600		
Expenditure	Commonwealth Attorney - Asset Forfeiture	111-2211-422	3325	8,657		
Expenditure	Police Grants - Ballistic Vest Carriers	111-3172-431	6010	12,000		
Expenditure	Police Grants - VISIO Software upgrade	111-3172-431	6026	320		
Expenditure	Fire - Hazmat Team Grant	111-3241-432	xxxx	55,500		
Expenditure	Inspections - Salaries	111-3421-434	1101	(10,474)		
Expenditure	Planning - Civil War Interpretive Markers	111-8111-481	3170	31,200		
Expenditure	Planning - Travel	111-8111-481	xxxx	605		
Expenditure	Zoning Gavis Property	111-8141-484	3170	110,000		
Expenditure	OTW - VMS Conference	111-8171-481	xxxx	6,936		
Expenditure	OTW Downtown Façade Improvement	111-8171-481	5699	20,000		
Expenditure	Celebrating Patsy Cline Music Festival	111-9150-472	5647	25,000		
Expenditure	NRJDC Salary Increase	111-9151-433	5631	103,000		
Expenditure	MPO	111-9151-444	4673	9,472		
Expenditure	Winchester Regional Airport	111-9151-481	5639	24,000		
Expenditure	Transfer to Transit Fund - Matching Grant Buses	111-9311-493	9222	60,500		
Expenditure	Transfer to CIP Fund - Purchase property	111-9311-493	9235	800,000		
Expenditure	Transfer to Schools Operating (Donations from PY)	111-9311-493	9232	20,162		
Expenditure	Transfer to Schools CIP (Carryforward Funds)	111-9311-493	9240	531,565		
Expenditure	Transfer to Schools Textbook (Carryforward Funds)	111-9311-493	9232	90,000		
Expenditure	Bond Issuance Costs	111-9511-495	9125	188,350		
Expenditure	Bond Refunding Escrow	111-9511-496	9126	12,200,300		
Total Expenditures				\$ 14,288,693	\$ -	

**WINCHESTER PUBLIC SCHOOLS
SCHOOL BOARD RESOLUTION
JULY 14, 2014**

Be it resolved that the Winchester City School Board requests the following budget amendments for fiscal year 2014-2015:

SCHOOL OPERATING FUND

ADOPTED STATE REVENUES PAYMENTS HAS AN OVERALL DECREASE OF \$73,951. The revised State Revenue payments were released on June 12, 2014 and affect the anticipated revenues for FY15. SOQ programs experienced a decrease of \$105,324. Categorical programs decreased by \$7 and Lottery Funded programs increased by \$31,380. Combined, these three programs experienced a net loss of \$73,951. .

FOOD SERVICES FUND

REPLACEMENT OF MACHINERY AND EQUIPMENT FOR FOOD SERVICE INCREASE OF \$60,000. Request appropriation from fund balance to purchase kitchen equipment for QES, VA AVE, DMMS and JKES.

FEDERAL GRANT FUND

GRANT AWARD FOR SUPPLEMENTAL SPECIAL EDUCATION FUNDING INCREASE OF \$10,000. These reimbursable federal funds will be used to purchase laptops, laptop cart and graphic calculators.

CONSTRUCTION FUND

CONSTRUCTION FUND INCREASE OF \$19,711,700 . These funds will enable the construction of John Kerr Elementary School.


Chairman


Bonnie Stickley
Clerk of the Board

**WINCHESTER PUBLIC SCHOOLS
SCHOOL BOARD RESOLUTION
NOVEMBER 10, 2014**

Be it resolved that the Winchester City School Board requests the following budget amendments for fiscal year 2014-2015:

SCHOOL OPERATING FUND

PROJECT GRADUATION INCREASE OF \$2,500. These reimbursable state funds will target students who have not achieved a verified credit in English, Writing, Reading, and/or Algebra.

CTE STATE EQUIPMENT INCREASE OF \$6,351. These reimbursable state funds will be used for Career-Technical Education (CTE) Equipment and materials.

CTE WORKPLACE READINESS GRANT OF \$912. These reimbursable state funds will provide workplace readiness skills for standard diploma graduates.

TIMBROOK HOUSE INCREASE OF \$16,200. These funds provide tutoring and remedial education assistance to students involved in the Timbrook House program.

UVA, BLANDY EXPERIMENTAL FARM GRANT INCREASE OF \$2,821. These reimbursable funds provide staff development workshops in Integrated Math and Science for Inclusive Classrooms.

FOOD SERVICES FUND

FRESH FRUIT AND VEGETABLE PROGRAM (FFVP) GRANT INCREASE OF \$60,820. These reimbursable federal funds will be used to provide fresh fruit and vegetable snacks for students at QES and VACDES.

FEDERAL GRANT FUNDS

TITLE I INCREASE OF \$75,115. These carryover reimbursable funds are used for expenses associated with the pre-school program, and the elementary reading programs.

TITLE II, PART A, INCREASE OF \$10,055. These reimbursable funds are used for professional development and class size reduction.

TITLE III, INCREASE OF \$38,160. These reimbursable carryover funds will be used for the instruction of LEP Students and translation services.

TITLE VIB, INCREASE OF \$108,678. These reimburseable funds are used to help fund Special Education programs.

TITLE VI-B PRESCHOOL, INCREASE OF \$1,419. These reimburseable preschool funds are used for expenses related to the preschool program.

BUDGET AMENDMENTS
NOVEMBER 2014

HOMELESS – PROJECT HOPE GRANT INCREASE OF 10,464 These reimbursable funds will be used for instructional supplies and pupil transportation.

SUMMARY OF FEDERAL GRANT FUNDS

GRANT	ALLOCATION	CARRY OVER	TOTAL	FY15 BUDGET	DIFFERENCE
Title VIB Grant	901,884	113,946	1,015,830	907,152	108,678
Title VIB Preschool	28,983	0	28,983	27,564	1,419
Title I Grant	918,420	81,982	1,000,402	925,287	75,115
Homeless Grant	20,000	17,464	37,464	27,000	10,464
Title II Grant	146,366	4,285	150,651	140,596	10,055
Title III Grant	95,409	31,306	126,715	88,555	38,160
TOTAL	2,111,062	248,983	2,360,045	2,116,154	243,891

CAPITAL IMPROVEMENTS FUND

CAPITAL IMPROVEMENT FUND INCREASE OF \$83,805 . These funds are composed of a state security equipment grant of \$83,805.

CAPITAL IMPROVEMENTS FUND

CAPITAL IMPROVEMENT FUND INCREASE OF \$190,349 . These funds are composed of the remaining balances within the fund at the end of FY14. Specifically, \$98,796 is for Technology and \$91,553 is for facilities. These funds are used to complete projects started in FY14 and finished during the summer of FY15.

FUNDRAISING FUND

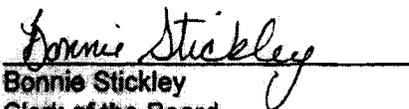
FUND RAISING FUND DECREASE OF \$13,739 . These funds are composed of the remaining balances within the fund at the end of FY14. During the FY15 budget process, \$400,000 was appropriated, this decrease will correct this appropriated amount to reflect the actual remaining balance.

TEXTBOOK FUND

TEXTBOOK FUND INCREASE OF \$37,630 . These funds are composed of the remaining balances within the fund at the end of FY14.



Erica Truban
Chairman



Bonnie Stickley
Clerk of the Board

**WINCHESTER PUBLIC SCHOOLS
SCHOOL BOARD RESOLUTION
NOVEMBER 10, 2014**

Be it resolved that the Winchester City School Board requests the following budget amendments for fiscal year 2014-2015:

SCHOOL OPERATING FUND

HOMELESS INCREASE FOR DONATIONS RECEIVED IN FY14 OF \$20,162.

These donated funds were received in FY14 from the Chain of Checks Charitable Program and to assist students and families affected by an apartment building fire. This remaining amount is from the original donation which is included in the carryover funds of \$641,727.

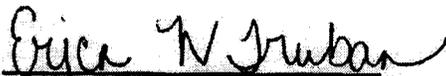
CAPITAL IMPROVEMENTS FUND

CAPITAL IMPROVEMENT FUND INCREASE OF \$531,565 . These funds are composed of carryover funds of \$641,727. They will be allocated as follows:

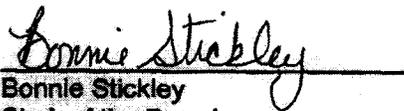
PROJECT	AMOUNT
Facilities	\$ 431,565
Technology	\$ 100,000
TOTAL	\$ 531,565

TEXTBOOK FUNDS

TEXTBOOK FUND CARRYOVER OF \$90,000. These carryover funds will be used to purchase textbooks for all schools. These funds are composed of carryover funds of \$641,727.



Erica Truban
Chairman



Bonnie Stickle
Clerk of the Board

COMMON COUNCIL



Rouss City Hall
15 North Cameron Street
Winchester, VA 22601
540-667-1815
TDD 540-722-0782
www.ci.winchester.va.us

AN ORDINANCE TO AUTHORIZE THE ADDITIONAL APPROPRIATION OF FUNDS FOR NECESSARY EXPENDITURES OF THE CITY OF WINCHESTER, VIRGINIA FOR THE FISCAL YEAR ENDING JUNE 30, 2015

WHEREAS, Council approves the following additional funds for the purposes herein specified for the fiscal year ending June 30, 2015:

GENERAL FUND

REVENUE

Local	208,056
State	(80,538)
Federal	79,249
Other Funding Sources	12,388,650
Fund Balance/Asset Forfeiture Reserves	22,577
Fund Balance/Supplemental Appropriation	<u>1,670,699</u>
TOTAL GENERAL FUND REVENUE	14,288,693

EXPENDITURES

Judicial Administration	10,257
Public Safety	160,346
Public Works	9,472
Parks, Recreation, Cultural	25,000
Community Development	192,741
Transfers	1,502,227
Debt	<u>12,388,650</u>
TOTAL GENERAL FUND EXPENDITURES	14,288,693

HIGHWAY MAINTENANCE FUND

REVENUE

Local	<u>18,557</u>
TOTAL HIGHWAY MAINTENANCE REVENUE	18,557

EXPENDITURES

Public Works	<u>18,557</u>
TOTAL HIGHWAY MAINTENANCE EXPENDITURES	18,557

TRANSIT FUND

<u>REVENUE</u>	
State	60,500
Federal	484,000
Transfer	<u>60,500</u>
TOTAL TRANSIT REVENUE	605,000
<u>EXPENDITURES</u>	
Public Works	<u>605,000</u>
TOTAL TRANSIT EXPENDITURES	605,000

CITY CAPITAL IMPROVEMENT FUND

<u>REVENUE</u>	
Transfers	<u>800,000</u>
TOTAL CITY CIP REVENUE	800,000
<u>EXPENDITURES</u>	
Community Development	<u>800,000</u>
TOTAL CITY CIP EXPENDITURES	800,000

SCHOOL OPERATING FUND

<u>REVENUE</u>	
State	(61,367)
Fund Balance/Supplemental Appropriation	<u>36,362</u>
TOTAL SCHOOL OPERATING REVENUE	(25,005)
<u>EXPENDITURES</u>	
Instruction	(31,356)
Technology	<u>6,351</u>
TOTAL SCHOOL OPERATING EXPENDITURES	(25,005)

SCHOOL FOOD SERVICES FUND

<u>REVENUE</u>	
Federal	60,820
Fund Balance/Supplemental Appropriation	<u>60,000</u>
TOTAL SCHOOL FOOD SERVICES REVENUE	120,820
<u>EXPENDITURES</u>	
Food Services	<u>120,820</u>
TOTAL SCHOOL FOOD SERVICES EXPENDITURES	120,820

SCHOOL FEDERAL GRANTS FUND

<u>REVENUE</u>	
Federal	253,891
TOTAL SCHOOL FEDERAL GRANTS REVENUE	<u>253,891</u>
 <u>EXPENDITURES</u>	
Instruction	243,891
Technology	<u>10,000</u>
TOTAL SCHOOL FEDERAL GRANTS EXPENDITURES	253,891

SCHOOL TEXTBOOK FUND

<u>REVENUE</u>	
Transfers	90,000
Fund Balance/Supplemental Appropriation	<u>37,630</u>
TOTAL SCHOOL TEXTBOOK REVENUE	127,630
 <u>EXPENDITURES</u>	
Instruction	<u>127,630</u>
TOTAL SCHOOL TEXTBOOK EXPENDITURES	127,630

SCHOOL FUNDRAISING FUND

<u>REVENUE</u>	
Fund Balance/Supplemental Appropriation	<u>(13,739)</u>
TOTAL SCHOOL FUNDRAISING REVENUE	(13,739)
 <u>EXPENDITURES</u>	
Facilities	<u>(13,739)</u>
TOTAL SCHOOL FUNDRAISING EXPENDITURES	(13,739)

SCHOOL CAPITAL IMPROVEMENTS FUND

<u>REVENUE</u>	
State	83,805
Transfers	531,565
Fund Balance/Supplemental Appropriation	<u>190,349</u>
TOTAL SCHOOL CIP REVENUE	805,719
 <u>EXPENDITURES</u>	
Facilities	<u>805,719</u>
TOTAL SCHOOL CIP EXPENDITURES	805,719

SCHOOL CONSTRUCTION FUND

REVENUE

Local	11,774
Fund Balance/Supplemental Appropriation	<u>19,699,926</u>
TOTAL SCHOOL CONSTRUCTION REVENUE	19,711,700

EXPENDITURES

Facilities	<u>19,711,700</u>
TOTAL SCHOOL CONSTRUCTION EXPENDITURES	19,711,700

WHEREAS, there is available in the general fund an unencumbered and unappropriated sum sufficient to meet such appropriations, and

WHEREAS, all appropriations shall lapse at the end of the budget year to the extent that they shall not have been expended or lawfully obligated or encumbered, and

WHEREAS, all ordinances and parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

NOW THEREFORE BE IT ORDAINED, by the Common Council of the City of Winchester that the additional appropriations specified herein are hereby appropriated for the purposes specified for the fiscal year ending June 30, 2015.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 11/25/14, CUT OFF DATE: 11/19/14
12/9/2014 - 1st Reading, 1/13/2015 - 2nd Reading/Public Hearing

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

TA-14-476 AN ORDINANCE TO AMEND AND REENACT ARTICLE 17 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO NONCONFORMING USES AND VESTED RIGHTS. (This amendment is a complete revision and update to Article 17, Nonconformities, bringing the article into compliance with State Code and updating standards for nonconforming uses, structures and lots of record.)

STAFF RECOMMENDATION:

Adopt the text amendment.

PUBLIC NOTICE AND HEARING:

Public hearing required at 2nd reading on 1/13/2015.

ADVISORY BOARD RECOMMENDATION:

Planning Commission unanimously forwarded with favorable recommendation.

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 Planning Director, City Attorney, City Manager, and Clerk of Council.

Initiating Department Director's Signature: (Zoning and Inspections)

Handwritten signature and date 11/19/14



APPROVED AS TO FORM:

Handwritten signature and date 11/19/2014 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale, Director of Zoning and Inspections *AMG*
Date: November 25, 2014
Re: **TA-14-476** AN ORDINANCE TO AMEND AND REENACT ARTICLE 17 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO NONCONFORMING USES AND VESTED RIGHTS. *(This amendment is a complete revision and update to Article 17, Nonconformities, bringing the article into compliance with State Code and updating standards for nonconforming uses, structures and lots of record.)*

THE ISSUE:

This is a publicly sponsored amendment serving as a complete revision to Article 17, Nonconformities, of the Zoning Ordinance.

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:

Zoning and Planning staff worked for several months to draft this update to the Zoning Ordinance to bring Article 17, Nonconformities, into compliance with State Code, as well as reorganize and update provisions that have not been modified since the adoption of the 1976 Zoning Ordinance. The resulting text amendment brings greater clarity and organization to the ordinance provisions making them easier to understand for citizens, as well and incorporating new planning tools and techniques into the ordinance provisions.

(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.

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

REQUEST DESCRIPTION

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

STAFF COMMENTS

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

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

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

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

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

1. Establishing clearer provisions as to how a determination of a nonconforming status occurs by the Zoning Administrator. (Section 17-1-4)
2. Codifying the existing practice of allowing for the modification of a nonconforming structure provided that the modification reduces the extent of the nonconformity. (Section 17-2-3)
3. Modifying the amount of repair/maintenance that can be conducted on a nonconforming structure. Previously, owners were limited to 10% of the replacement value of the structure per calendar year; now owners can complete repairs up to 35% of the replacement value of the structure per year. (Section 17-2-5)
4. Allows for the owner of a nonconforming use to pursue a conditional use permit (CUP) to change an existing nonconforming use to a more restricted and less intensive nonconforming use. This will allow for greater flexibility for owners to use their property, while also measuring and mitigating potential impacts from the change in use. The ordinance includes specific evaluation factors to be considered by the Planning Commission and Council for each proposal. If Council believes that the proposal is consistent with the Comprehensive Plan, the neighborhood, and will not have unmitigated impacts they can approve the new use. (Section 17-3-3)

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

RECOMMENDATION

At their November 18, 2014 meeting, the Planning commission unanimously forwarded **TA-14-476** with a favorable recommendation because the amendment as proposed is consistent with good planning practice by establishing clear provisions for nonconforming uses, structures and lots, as well as ensuring current provisions are consistent with the Code of Virginia.

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

TA-14-476

Draft 1 – 10/03/14

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

ARTICLE 17

NONCONFORMITIES

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

SECTION 17-1 GENERAL PROVISIONS

17-1-1 Definitions

- A. This section applies to any nonconformity. There are three categories of nonconformities established within this Article, defined as the following:
- 1) Nonconforming use – A use that was lawfully established but no longer complies with the use regulations applicable to the use or the zoning district.
 - 2) Nonconforming structure – A structure that was lawfully erected but no longer complies with development standards established in this Ordinance.

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

17-1-2 Change in District Boundaries

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

17-1-3 Vested Rights

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

- B. For the purpose of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project:
 - (i) The City Council has accepted proffers or proffered conditions which specify use related to a zoning amendment;
 - (ii) The City Council has approved an application for a rezoning for a specific use or density;
 - (iii) The City Council or Board of Zoning Appeals has granted a special exception or conditional use permit;
 - (iv) The Board of Zoning Appeals has approved a variance;
 - (v) The City Council or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances;
 - (vi) The City Council or its designated agent has approved a final subdivision plat, site plan of development for the landowner's property; or
 - (vii) The Administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal

and no longer subject to change, modification or reversal under subsection C of §15.2-2311 of the Code of Virginia, as amended.

17-1-4 Determination of Nonconforming Status

- A. The burden of establishing a nonconforming status of a use or structure shall be upon the owner of the claimed nonconformity.
- B. Upon request, the Administrator shall make a written determination pertaining to the existence of a lawful nonconforming use and/or structure. In verifying the lawful status of a nonconforming use and/or structure, the Administrator shall determine whether the use and/or structure is, in fact, a lawful nonconformity as defined by this Article; and if so then:
 - 1) The location and gross floor area (in square feet) of all buildings, if any, associated with the nonconforming use;
 - 2) Any site improvements currently existing on the property which are also nonconforming (including accessory buildings, parking, outside storage, travel ways, green area, landscaping, etc.); and,
 - 3) A description of the principal use(s) and all accessory uses that make up the lawful nonconforming use as a whole.
- C. The decision of the Administrator shall be based upon information provided by the owner of the property on which the nonconforming use is located, on information provided by other persons with knowledge of the property and on any other non-confidential information legally available to the Administrator. Such information may include, but shall not be limited to, permits, licenses, tax records, receipts, business records, photographs, plats, plans, bills, utility information, assessment information, and sworn affidavits from individuals with personal knowledge of the use and/or the property on which the use is located.

SECTION 17-2 NONCONFORMING STRUCTURES

17-2-1 General Requirements

- A. Any lawfully constructed structure which existed at the time of this Ordinance or any amendments thereto may continue in its legally nonconforming status so long as the structure does not violate other legal provisions and otherwise complies with the provisions of this Article.
- B. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

- C. A nonconforming structure may be used for any use allowed in the underlying zoning district, subject to all applicable use standards.
- D. If a variance is approved from otherwise applicable zoning district dimensional standards, the subject structure still shall be deemed nonconforming.

17-2-2 Enlargement

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

17-2-3 Modification, Restoration, or Replacement

- A. The Administrator may allow for a modification or alteration of a nonconforming structure, provided that the modification does not increase the nonconformity. Modifications which cause a structure to become more conforming to the requirements of this Ordinance shall be encouraged, including, but not limited to, required setbacks, height, density, bulk/area standards, or landscaping.
- B. Nonconforming structures other than buildings and signs (such as, but not limited to, underground storage tanks, private sewage disposal systems and parking lots) may be restored or replaced when such structures become unsafe or unsound. Relocation on the same lot may be approved by the Zoning Administrator, provided the new location is less nonconforming than the original location, and further provided that the new location shall not cause a greater detrimental impact on conforming uses in the neighborhood.

17-2-4 Destruction of Nonconforming Structure

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

plain regulations adopted as a condition of participation in the National Flood Insurance Program.

- B. Unless such building is repaired, rebuilt or replaced within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with the provisions of this Ordinance. However, if the nonconforming building is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then the property owner shall have an additional two years for the building to be repaired, rebuilt or replaced as otherwise provided.
- C. For purposes of this section, "act of God" shall include any natural disaster or phenomena including a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire. For purposes of this section, owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God. Nothing herein shall be construed to enable the property owner to commit an arson under § 18.2-77 or 18.2-80 of the Code of Virginia, and obtain vested rights under this section.

17-2-5 Repairs and Maintenance

- A. Nothing in this Section shall be deemed to prevent minor repair and keeping in good repair a nonconforming building or a building in which a nonconforming use is conducted, provided that such repair constitutes only routine maintenance necessary to keep the structure in the same general condition as it was when it originally became nonconforming. In no case shall any building that is declared by any authorized City official to be unsafe or unlawful by reason of physical condition be restored, repaired or rebuilt.
- B. Any repair, maintenance, or renovation during a one year period that exceeds 35% of the replacement value of the structure being repaired is deemed to be a major repair and shall require approval of a conditional use permit by City Council prior to the repair.
- C. For the purposes of this Section, the cost of land or any factors other than the cost of the structure are excluded in the determination of the cost of repair.

17-2-6 Expiration of Nonconforming Status

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

SECTION 17-3 NONCONFORMING USES

17-3-1 General Provisions

- A. No nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance unless said move results in decreasing the degree of nonconformity or results in conformity with the requirements for the district.
- B. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land, outside such building.
- C. A nonconforming use that was recognized prior to the adoption of this Article shall continue to operate under the provision of law under which the nonconforming use was recognized so long as the nonconforming use is not in violation of such provision of law, the adoption of this Article notwithstanding.

17-3-2 Expiration of Nonconforming Use

- A. If any nonconforming use shall cease to be operated for a period of at least two (2) years, the nonconforming use shall no longer be valid. Any subsequent use of land shall conform to the regulations specified in this Ordinance for the district for which such land is located.
- B. Operation of only an accessory or incidental use to the principal nonconforming use during the two (2) year period shall not operate to continue the principal nonconforming use.
- C. No use accessory to a principal nonconforming use shall be continued after nonconforming status is lost for the principal use.
- D. If any change in title of possession, or renewal of a lease of any such lot or structure occurs, the existing nonconforming use may continue.
- E. When any nonconforming use is superseded by a permitted use, the use shall thereafter conform to the regulations for the district, and no nonconforming use shall thereafter be resumed.

17-3-3 Change of Nonconforming Use

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

nonconforming use, the current nonconforming use shall be verified by the Zoning Administrator per Section 17-4.

- B. In determining whether a proposed use is a “less intensive and more restricted use” the following factors, among others, shall be considered:
 - 1) The number and size of parking spaces serving the new use;
 - 2) The design, mass and/or scale of the building(s) and site on which the new use is located;
 - 3) The use, type, area, and appearance of new signs;
 - 4) The intensity of the new nonconforming use, including the days and hours of operation, traffic, noise, odor, and similar impacts;
 - 5) The lighting provisions on the site for the new use;
 - 6) The landscaping provisions on the site for the new use;
 - 7) The amount of vehicular traffic in the neighborhood;
 - 8) The potential effect on the fair market value of neighboring properties from the new use; and,
 - 9) The considerations of the City’s Comprehensive Plan.
- C. Once a nonconforming use has been changed to a less intensive and more restricted use, the legal nonconforming status shall not be subsequently reinstated.
- D. Upon evaluation of a less intensive and more restricted use request, City Council may include reasonable requirements as a condition of the approval in order to mitigate potential impacts on the surrounding properties and the neighborhood, including but not limited to: parking requirements, landscaping, lighting, hours of operation, density, and signage.

17-3-4 Expansion of Nonconforming Use

- A. No nonconforming use may be expanded on a lot which is not properly zoned to permit such nonconforming use, unless the zoning is amended to permit such use or a conditional use permit is approved by City Council, as may be applicable.
- B. For the purposes of this section an expansion of use shall consist of one or more of the following:
 - 1) The square footage of the use is increased, regardless of whether inside or outside of a structure.
 - 2) The intensity or operation of a use is changed in a manner which causes a higher parking requirement, in accordance with Section 18-6.

- 3) The number of dwelling units is increased.

SECTION 17-4 NONCONFORMING LOTS

17-4-1 Development on a Nonconforming Lot

- A. Where a lot of record at the time of the effective date of this Ordinance has less area or width than herein required in the district in which it is located, said lot may nevertheless be used for a single-family detached dwelling if that use is permitted in the district in which it is located provided that side yards of not less than ten percent (10%) of the required lot width, with a minimum width of five (5) feet, are provided; and that the setback and rear yard requirements shall be as required by the zoning district in which the lot is located. If the lot is a corner lot, a side yard facing on the side street of not less than twenty percent (20%) of the required lot width, with a minimum of ten (10) feet shall be provided.
- B. In any district, existing single-family detached dwellings may be enlarged on any nonconforming lot of record, provided, however, that side yards of not less than ten percent (10%) of the lot width, with a minimum width of five (5) feet, are provided, and that the setback and rear yard requirements shall be as required by the zoning district in which the lot is located. If the lot is a corner lot, a side yard facing on the side street of not less than twenty percent (20 %) of the required lot width, with a minimum of ten (10) feet shall be provided.
- C. Additions to residences permitted under Section 17-4-1A and 17-4-1B, such as decks, porches, and terraces, must fully meet the requirements of Section 18-10 of this Ordinance.
- D. In any district, permitted structures, other than single-family detached dwellings, may be erected or enlarged on a nonconforming lot of record, provided that a variance of lot width, setback, and/or yard requirements is obtained through action of the Board of Zoning Appeals and that parking, green area and landscaping requirements are met.
- E. Where a lot of record at the time of the effective date of this Ordinance has less area or width than herein required in the district in which it is located, said lot may nevertheless be used for a community garden, if that use is permitted in the district in which said lot is located.

17-4-2 Highway Realignment or Condemnation

- A. Any lot, which by reason of realignment of a federal or state highway or by reason of condemnation proceedings, has been reduced in size to an area less than that required by law, shall be considered a lawful nonconforming lot of record subject to the provisions set forth in this section; and any lawful use or structure existing at the time of such highway realignment or condemnation proceedings which would thereafter no longer be permitted under the terms of this Ordinance shall be

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 11/25/14, CUT OFF DATE: 11/19/14
12/9/14 (1st Reading) 1/13/15 (2nd Reading/Public Hearing)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

TA-14-645 AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15.1, 16, 16.1, 18, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TELECOMMUNICATIONS FACILITIES, PERMIT AND REVIEW REQUIREMENTS, AND FEES. (This amendment revises the permitting and review requirements to allow for a more streamlined process for minor modifications to and collocations of telecommunications facilities)

STAFF RECOMMENDATION:

Adopt the text amendment.

PUBLIC NOTICE AND HEARING:

Public hearing required with 2nd reading on 1/13/2015.

ADVISORY BOARD RECOMMENDATION:

Planning Commission unanimously forwarded with favorable recommendation.

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 Planning Director, City Attorney, City Manager, and Clerk of Council.

Initiating Department Director's Signature: (Zoning and Inspections)

Handwritten signature of the Initiating Department Director.

11/19/14



APPROVED AS TO FORM:

Handwritten signature and date 11/19/2014, CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale, Director of Zoning and Inspections *AMG*
Date: November 25, 2014
Re: TA-14-645 AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15.1, 16, 16.1, 18, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TELECOMMUNICATIONS FACILITIES, PERMIT AND REVIEW REQUIREMENTS, AND FEES. *(This amendment revises the permitting and review requirements to allow for a more streamlined process for minor modifications to and collocations of telecommunications facilities)*

THE ISSUE:

Following Council's request, staff developed an ordinance revision to streamline the review process for telecommunications facilities.

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:

The updated provisions in the zoning amendment categorize the types of requests received from telecommunications providers into three groups: new telecommunications facilities, major modifications, and minor modifications. New facilities and major modifications will still require the CUP process; however, minor modifications will be an administrative review and approval. Majority of the telecommunications requests that staff receive involve modifications to existing facilities and collocations of facilities. Under the proposed changes, these minor changes will no longer require a CUP, instead they may be reviewed and approved administratively.

(Full staff report attached).

BUDGET IMPACT:

No funding is required.

OPTIONS:

- Adopt the zoning text amendment.
- Adopt the zoning text amendment with modifications.
- Decline to initiate the text amendment.
-

RECOMMENDATIONS:

The Planning Commission unanimously recommended approval.

City Council
November 25, 2014

TA-14-645 AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15.1, 16, 16.1, 18, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TELECOMMUNICATIONS FACILITIES, PERMIT AND REVIEW REQUIREMENTS, AND FEES

REQUEST DESCRIPTION

During a Council work session this fall, Council asked for staff to explore ways to streamline the review and permitting process for telecommunications facilities. Following a review of our Zoning Ordinance provisions and provisions of the Middle Class Tax Relief Act of 2012, staff presented opportunities to facilitate a more streamlined review process for collocations and modifications of existing facilities. At their October 14, 2014 meeting, City Council initiated this text amendment and sent it to the Planning Commission for review and recommendation. The Planning Commission reviewed and forwarded to Council with a favorable recommendation.

STAFF COMMENTS

The updated provisions in the draft amendment categorize the types of requests received from telecommunications providers into three groups: new telecommunications facilities, major modifications, and minor modifications. New facilities and major modifications will still require the CUP process; however, minor modifications will be an administrative review and approval.

Major modifications are based upon FCC guidance as to what constitutes a substantial increase in size of an existing facility:

- The height of the existing facility is increased by more than ten percent (10%) from the current height or twenty (20) feet, whichever is greater;
- More than 4 new equipment cabinets or 1 new shelter;
- Protrusion of more than twenty (20) feet or width of the tower, whichever is greater; or,
- Excavation outside existing leased or owned property and current easements.

Minor modifications include new antennas that do not meet the threshold for major modifications, as well as collocations on existing towers and buildings. The applicant will be able to submit an application for administrative review and approval. Through this process, the applicant will still need to secure additional zoning requirements, if needed, such as Historic Winchester and Corridor Enhancement district approval. A fee of \$500 will be associated with the application. The ordinance will also include the same three basic requirements for administrative approval as are typically included with a telecommunications CUP approval: certification the antennas meet federal requirements, bond covering removal of the equipment, and a requirement to remove the equipment once it is no longer in active use.

RECOMMENDATION

At their November 18, 2014 meeting, the Commission forwarded **TA-14-645** recommending approval because the amendment, as proposed, presents good planning practice by providing for a more streamlined review process for telecommunications facility installations and modifications.

ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15.1, 16, 16.1, 18, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TELECOMMUNICATIONS FACILITIES, PERMIT AND REVIEW REQUIREMENTS, AND FEES.

TA-14-645

Draft 1 – (10/07/14)

Ed. Note: The following text represents excerpts 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 3
LOW DENSITY RESIDENTIAL DISTRICT - LR**

SECTION 3-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

- 3-2-2 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 4
MEDIUM DENSITY RESIDENTIAL DISTRICT – MR**

SECTION 4-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

- 4-2-5 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 5
HIGH DENSITY RESIDENTIAL DISTRICT – HR**

SECTION 5-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

- 5-2-14 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 5.1
LIMITED HIGH DENSITY RESIDENTIAL DISTRICT - HR-1**

SECTION 5.1-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

5.1-2-6 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.**

**ARTICLE 6
RESIDENTIAL OFFICE DISTRICT - RO-1**

SECTION 6-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

6-2-5 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 7
RESIDENTIAL BUSINESS DISTRICT - RB-1**

SECTION 7-2. USES REQUIRING A CONDITIONAL USE PERMIT.

7-2-18 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 8
HIGHWAY COMMERCIAL DISTRICT - B-2**

SECTION 8-2. USES REQUIRING A CONDITIONAL USE PERMIT

8-2-17 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of**

existing facilities as provided in Section 18-2-1.2C. (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 9
CENTRAL BUSINESS DISTRICT - B-1**

SECTION 9-2. USES REQUIRING A CONDITIONAL USE PERMIT.

9-2-15 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C. (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 10
COMMERCIAL INDUSTRIAL DISTRICT - CM-1**

SECTION 10-2. USES REQUIRING A CONDITIONAL USE PERMIT.

10-2-8 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C. (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 11
LIMITED INDUSTRIAL DISTRICT - M-1**

SECTION 11-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

11-2-4 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C. (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 12
INTENSIVE INDUSTRIAL DISTRICT - M-2**

SECTION 12-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

12-2-1 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C. (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 13
PLANNED DEVELOPMENT**

SECTION 13-2. PLANNED COMMERCIAL DISTRICT – PC

13-2-4 USES PERMITTED WITH A CONDITIONAL USE PERMIT.

13-2-4.3 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.**

**ARTICLE 15
HEALTH SERVICES DISTRICT – HS**

SECTION 15-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

15-2-3 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 15.1
MEDICAL CENTER DISTRICT – MC**

SECTION 15.1-2. USES PERMITTED BY CONDITIONAL USE PERMIT.

15.1-2-3 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 16
HIGHER EDUCATION DISTRICT - HE-1**

SECTION 16-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

16-2-1 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 16.1
EDUCATION, INSTITUTION AND PUBLIC USE DISTRICT – EIP**

SECTION 16.1-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

16.1-2-1 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ Telecommunications facilities in accordance with Section 18-2-1.2 of this Ordinance with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.

18-2-1.2 Telecommunications Facilities

A. For the purposes of this section, the following definitions shall apply:

- 1) Telecommunications Facility: Any antenna, antenna array or other communications equipment consisting of personal wireless services, as defined in the Federal Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services, including cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), and paging, as well as unlicensed wireless services and common carrier wireless exchange access services, and similar services that currently exist or that may in the future be developed. Where reference is made to a telecommunications facility, unless otherwise specified or indicated by context, such reference will be deemed to include the support structure on which the antenna or other communications equipment is mounted, transmission cables, and any associated equipment shelter.**
- 2) New Telecommunications Facility: The establishment of a telecommunications facility, on a tower, building, or other support structure, where such facility does not presently exist.**
- 3) Major Modification: An alteration of a telecommunications facility wherein:**
 - i. The height of the existing facility is increased by more than ten percent (10%) from the current height or twenty (20) feet, whichever is greater;**
 - ii. More than 4 new equipment cabinets or 1 new shelter;**
 - iii. Protrusion of more than twenty (20) feet or width of the tower, whichever is greater; or,**
 - iv. Excavation outside existing leased or owned property and current easements.**
 - v. The calculation for such modifications shall be cumulative over time following the initial approval of the telecommunications facility. No**

such modification shall be permitted if the structure will exceed the height for the zoning district as provided in 18-2-1.2B.

- 4) Minor Modification: An alteration of an existing telecommunications facility that does not meet or exceed the thresholds for a major modification outlined in Section 18-2-1A(2). The calculation for such modifications shall be cumulative over time following the initial approval of the telecommunications facility. No such modification shall be permitted if the structure will exceed the height for the zoning district as provided in 18-2-1.2B. Any modification, replacement or collocation of antennas on a building containing an existing telecommunications facility shall be classified as a minor modification.

18-2-1.2B.

Proposals for new transmitting and receiving facilities and towers for cellular communications systems and similar communications systems telecommunications facilities or major modifications of such facilities shall demonstrate the following: (2/14/96, Case TA-95-07, Ord. No. 002-96; 8/13/13, Case TA-13-198, Ord. No. 2013-21)

- 1) All possible means for sharing space on existing towers or on existing buildings or other structures have been exhausted and no alternative other than constructing a new tower exists, and if a new tower is proposed, the applicant has executed a Letter of Intent to share space on their tower and negotiate in good faith with other interested parties.;
- 2) The height of any tower is no more than the minimum to accomplish required coverage and any new tower is separated from property lines in a residential district by not less than the height of the tower. In no case shall any tower exceed 75 feet in height in a LR, MR, HR, HR-1, RO-1, RB-1 or HS Districts, nor 100 feet in the B-1, B-2, CM-1, PC, MC, EIP or HE-1 Districts, nor 200 feet in the M-1 or M-2 Districts;
- 3) The tower construction is of a design which minimizes the visual impact and the tower and other facilities have been camouflaged and/or screened from adjacent properties and rights of way to the maximum extent practicable. To this end, the proposal must provide for retention of existing stands of trees and the installation of screening where existing trees do not mitigate the visual impact of the facility. Such screening must, at a minimum, meet the requirements of Section 19-5-6.4d of this Ordinance. The Planning Commission may recommend and the City Council may require additional trees and screening when the minimum provisions do not mitigate adverse visual impacts of the facility;

- 4) The electromagnetic fields do not exceed the radio frequency emission standards established by the American National Standards Institute or standard issued by the Federal Government subsequent to the adoption of this Ordinance.

C. Minor modifications of existing telecommunications facilities shall require approval of an administrative zoning permit in place of a conditional use permit and fee as provided in Section 23-8-1:

- 1) Such modifications shall be submitted for approval on a form designated by the Administrator.
- 2) Prior to approval of the zoning permit, the applicant shall demonstrate that required approval has been secured for any additional ordinance requirements as provided in this ordinance, including but not limited to site plan approval and certificates of appropriateness for facilities in the Historic Winchester (HW) and Corridor Enhancement (CE) districts, as needed.
- 3) Approval of an administrative telecommunications permit shall include the following conditions:
 - i. Submission of an as-built emissions certification after the facility is in operation, demonstrating compliance with radio frequency emission standards established by the Federal Government.
 - ii. Submittal of a bond at one hundred and fifty percent (150%) to guarantee removal of the approved facilities should the use cease.
 - iii. The applicant, tower owner, or property owner shall remove equipment within ninety (90) days once the equipment is no longer in active use.

ARTICLE 23

ADMINISTRATION AND INTERPRETATION

SECTION 23-8. FEES. (10/13/99, Case TA-99-04, Ord. No. 029-99; 10/9/02, Case TA-02-07, Ord. No. 024-2002; 8/13/13, Case TA-13-198, Ord. No. 2013-21)

23-8-1	Conditional Use (when applied for at same time as site plan)	\$200
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(10/8/02, Case TA-02-07, Ord. No. 024-2002)

Conditional Use (when applied for separate
from site plan) \$500

(10/8/02, Case TA-02-07, Ord. No. 024-2002)

Conditional Use – Telecommunications \$1500
Facility/Tower (New, Major Modification, ~~or~~
Collocation)

(8/13/13, Case TA-13-198, Ord. No. 2013-21)

Administrative Telecommunications Permit \$500
(Minor Modifications)

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 11/25/14 (work session) CUT OFF DATE: 11/19/14
12/9/14 (1st reading) 1/13/15 (2nd reading/Public Hearing)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

RZ-14-625 AN ORDINANCE TO REZONE 0.064 ACRES OF LAND AT 116 W. LEICESTER STREET (Map Number 192-01-S-12) & 118 W. LEICESTER STREET (Map Number 192-01-S-13) FROM MEDIUM DENSITY RESIDENTIAL DISTRICT (MR) ZONING WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY TO RESIDENTIAL BUSINESS DISTRICT (RB-1) ZONING WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY.

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 1/13/15 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) [Signature] 11/19/14



APPROVED AS TO FORM: [Signature] 11/19/2014 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Tim Youmans, Planning Director

Date: November 19, 2014

Re: **RZ-14-625** AN ORDINANCE TO REZONE 0.064 ACRES OF LAND AT 116 W. LEICESTER STREET (*Map Number 192-01-S-12*) & 118 W. LEICESTER STREET (*Map Number 192-01-S-13*) FROM MEDIUM DENSITY RESIDENTIAL DISTRICT (MR) ZONING WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY TO RESIDENTIAL BUSINESS DISTRICT (RB-1) ZONING WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY.

THE ISSUE:

Conditionally rezone two adjoining vacant lots along the north side of W. Leicester Street to allow for reconstruction of two townhouses similar in scale to the two blighted dwelling units that were demolished on the properties in recent years. A proffer would prohibit any commercial use of the properties.

RELATIONSHIP TO STRATEGIC PLAN:

Create A More Livable City for All

BACKGROUND:

See attached staff report

BUDGET IMPACT:

None

OPTIONS:

1. Approve with proffer as recommended by Planning Commission
2. Table request
3. Deny request

RECOMMENDATIONS:

Recommend Option 1

Council Work Session
November 25, 2014

RZ-14-625 AN ORDINANCE TO REZONE 0.064 ACRES OF LAND AT 116 W. LEICESTER STREET (*Map Number 192-01-S-12*) & 118 W. LEICESTER STREET (*Map Number 192-01-S-13*) FROM MEDIUM DENSITY RESIDENTIAL DISTRICT (MR) ZONING WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY TO RESIDENTIAL BUSINESS DISTRICT (RB-1) ZONING WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY.

REQUEST DESCRIPTION

The request is to conditionally rezone two adjoining vacant lots along the north side of W. Leicester Street midway between S. Braddock Street and S. Washington Street to allow for reconstruction of two townhouses similar in scale to the two blighted dwelling units that were demolished on the properties in recent years. The attached letter received on October 2, 2014 from Mr. Brent Markee explains the request and notes their intent to include proffers that would prohibit any commercial use of the properties.

AREA DESCRIPTION

The alley that runs in a north-south direction midway between S. Braddock Street and S. Washington Street is the interface of the Residential-Business (RB-1) district to the east and the Medium Density Residential (MR) district to the west. The historical pattern of development along the north side of W. Leicester St in this area is different than exists along most of the other east-west grid streets in the southwest portion of the historic district such that the lots were platted much smaller and narrower than the lots on the other cross streets.

The MR-zoned land to the west includes some other narrow lots with attached homes on them to the immediate west and larger detached single-family dwellings further to the west along S. Washington Street. The RB-1-zoned land to the east includes small and mid-sized dwellings, including duplexes and apartments on narrow lots along W. Leicester Street and S. Braddock Street. S. Braddock Street includes some commercial uses as well.



STAFF COMMENTS

The Comprehensive Plan calls for Neighborhood Stabilization in this area. The conditional rezoning would support appropriately scaled redevelopment of two townhouse dwellings (one dwelling per lot) on an infill basis. The two attached dwellings that previously existed on the two lots were demolished a couple of years ago due to their blighted condition. The current MR zoning would not permit any reasonable use of the property. The proposed RB-1 zoning would allow for replacement of the former two units with no increase in density. The rezoning does not affect the Historic Winchester (HW) overlay zoning. Any construction on the lots would need to comply with historic district standards and a certificate of appropriateness would need to be issued by the Board of Architectural Review.

Four adjoining property owners along W. Leicester Street spoke at the Planning Commission public hearing on this item. Concerns were expressed about whether or not new townhouse construction would fit the neighborhood, whether rebuilding on the east lot would create safety concerns along the alley, whether the new unit on the west lot would be set back from the side line where the former structure had been attached to the structure on the adjoining lot, and whether there would be an impact on available parking.

RECOMMENDATION

At its November 18, 2014 meeting, the Planning Commission unanimously forwarded **RZ-14-625** to City Council recommending approval as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-625, Prepared by Winchester Planning Department, 10-3-2014*" because the request is consistent with the Comprehensive Plan which calls for Neighborhood Stabilization in the site. The approval is subject to the proffers in the proffer statement titled "Rezoning Request Proffer" dated October 31, 2014.

AN ORDINANCE TO REZONE 0.064 ACRES OF LAND AT 116 W. LEICESTER STREET & 118 W. LEICESTER STREET FROM MEDIUM DENSITY RESIDENTIAL DISTRICT (MR) ZONING WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY TO RESIDENTIAL BUSINESS DISTRICT (RB-1) ZONING WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY
RZ-14-625

WHEREAS, the Code of Virginia provides that one of the purposes of Zoning Ordinances is to facilitate the creation of a convenient, attractive and harmonious community; and,

WHEREAS, the adopted Comprehensive Plan calls for Neighborhood Stabilization in the subject area; and,

WHEREAS, the current Medium Density Residential (MR) zoning of the two lots does not support reasonable redevelopment; and,

WHEREAS, the Planning Commission forwarded the request to Council on November 18, 2014 recommending approval of the rezoning as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-625, Prepared by Winchester Planning Department, 10-3-2014*" because the request is consistent with the Comprehensive Plan which calls for Neighborhood Stabilization in the area; 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 designated is consistent with 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 Medium Density Residential (MR) District to Residential-Business (RB-1) District:

Approximately 0.064 acres of land at 116 and 118 W. Leicester Street as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-625, Prepared by Winchester Planning Department 10-3-2014*". The rezoning is subject to the proffers in the proffer statement titled "*Rezoning Request Proffer*" dated October 31, 2014.

*Triple T Construction and Plumbing LLC
563 Priscilla Street Hedgesville, WV 25427
540-550-3076*

To whom it may concern,

I am writing in reference to property, 116 and 118 Leicester Street, owned by Mr. Agnaldo DeSouza of Inwood, WV. I have been hired by Mr. DeSouza to try and develop the property so he may recover some of his investment into the property. When the property was purchased a few years ago, there were two houses on the two lots attached together to another house on the next lot. The plan was to renovate the houses and rent them, but after consulting with the city, they were required to be torn down. Not only was the cost of demolition high but the third house had to be closed in where the previous houses had been attached. We assumed we would be grandfathered in to build two houses on these lots, and improve the city of Winchester's streets, but upon inquiry with the city we were told the current zoning wouldn't allow us to build ANYTHING on these two lots. The lots adjoin an alley where the RB-1 zoning ends, which allows multi family building, and is currently located in MR zoning which allows single family only. We cannot build a single family home on the lots, even if they are combined, because the lot would still be too small for the MR zoning requirements. Also I don't think we can recover even the original investment with one house, due to the deteriorated condition of many of the houses on that particular block. We are asking for a conditional rezoning to build two townhouses on these two lots, as we are not interested in anything commercial there. Most of the lots are large in the MR zoning area, but these lot are very small, only 45' wide combined and 175' deep, so they definitely fit better in the RB-1 zoning. Also the next four lots are the same with row houses on two of them, so we believe townhouses would blend in well there. So we respectfully ask that these lots be placed into the RB-1 zoning so we may proceed to build there, and recover the investment made into these two lots.



Sincerely,
Brent Markee Owner/Manager

116 & 118 W. LEICESTER STREET
REZONING REQUEST PROFFER

Tax Map Number: **192-01-S-12 & 192-01-S-13**
Owner: **Agnaldo Silva De Souza**
Applicant: **Brent Markee**

Date: October 31, 2014



Property Information

The undersigned applicant hereby proffers that in the event the Common Council of Winchester (Council) shall approve the rezoning of *116 W. Leicester Street and 118 W. Leicester Street* from *Medium Density Residential District (MR)* into *Residential Business District (RB1)*, 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 maybe subsequently amended or revised by the applicant and such be approved by the Council in accordance with the 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 be become void and have no subsequent affect.

Site Plan 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 two (02) Townhouses.

RZ-14-625

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: Agnaldo De Souza Date: 11-03-14

STATE OF VIRGINIA, AT LARGE

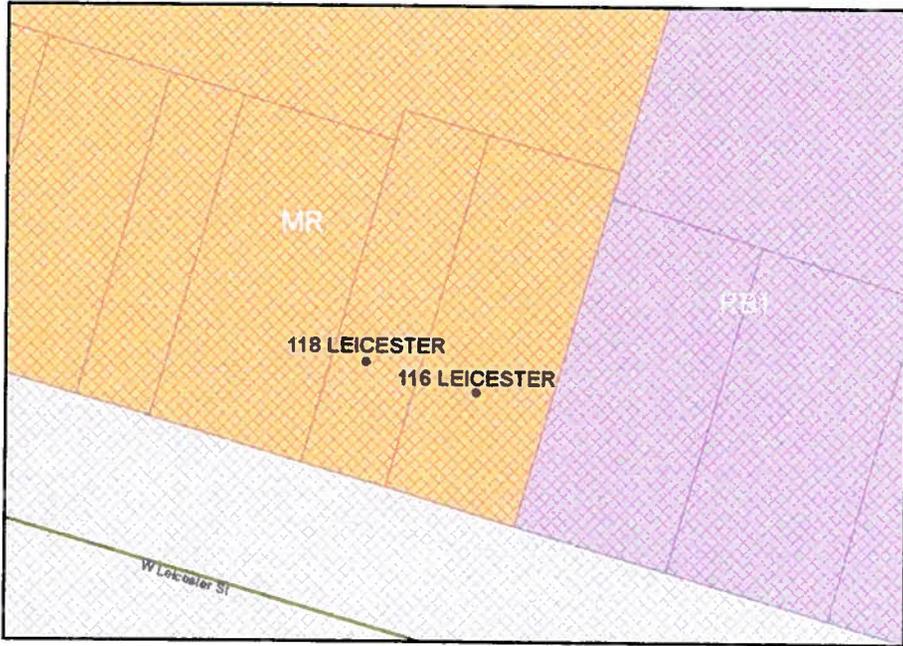
COUNTY /CITY OF Winchester, To Wit:

The foregoing instrument was acknowledged before me this 3 day of November, 2014
by Agnaldo De Souza.

My commission expires 09/30/2016.
Notary Public Jose Elias Martinez.

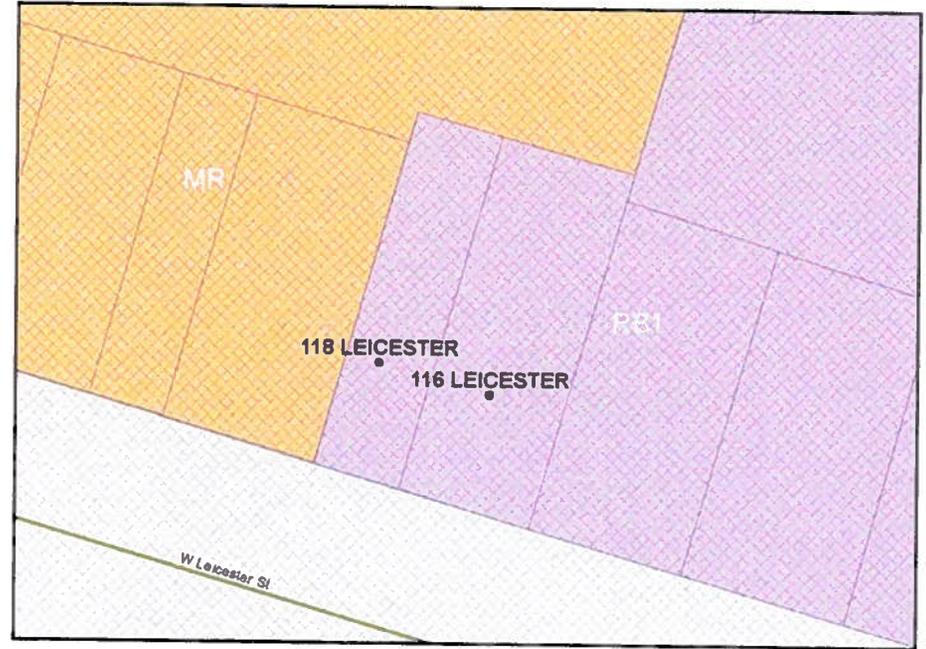
JOSE ELIAS MARTINEZ
NOTARY PUBLIC 7527577
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES 09-30-2016

REZONING EXHIBIT
RZ-14-625
PREPARED BY WINCHESTER PLANNING DEPARTMENT
10-03-2014



EXISTING

MEDIUM DENSITY RESIDENTIAL DISTRICT (MR) ZONING
 WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY
 FOR 116 & 118 WEST LEICESTER STREET



PROPOSED

RESIDENTIAL BUSINESS DISTRICT (RB-1) ZONING
 WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY
 FOR 116 & 118 WEST LEICESTER STREET



Zoning

MZONE

- MR Medium Density Residential
- RB1 Residential Business
- Historic District Overlay

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 11/25/14 (work session) CUT OFF DATE: 11/19/14
12/9/14 (1st reading) 1/13/15 (2nd reading/Public Hearing)

RESOLUTION __ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

RZ-14-639 AN ORDINANCE TO REZONE 0.736 ACRES OF LAND AT 2508 PAPERMILL ROAD (Map Number 291-03-1) FROM INTENSIVE INDUSTRIAL DISTRICT (M-2) ZONING TO COMMERCIAL INDUSTRIAL DISTRICT (CM-1) ZONING

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 1/13/15 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 of the initiating department director.

11/19/14



APPROVED AS TO FORM:

Handwritten signature and date 11/19/2014, CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Tim Youmans, Planning Director

Date: November 19, 2014

Re: RZ-14-639 AN ORDINANCE TO REZONE 0.736 ACRES OF LAND AT 2508 PAPERMILL ROAD (Map Number 291-03- -1) FROM INTENSIVE INDUSTRIAL DISTRICT (M-2) ZONING TO COMMERCIAL INDUSTRIAL DISTRICT (CM-1) ZONING

THE ISSUE:

Conditionally rezone from M-2 to CM-1 the southerly 70-foot wide portion of the Silver Lake LLC property currently housing Noland to allow for this 0.736-acre area to be assembled in with the adjoining vacant lot owned by Silver Lake that is already zoned CM-1 so that it can be enlarged to accommodate a grocery store.

RELATIONSHIP TO STRATEGIC PLAN:

Grow the Economy

BACKGROUND:

See attached staff report

BUDGET IMPACT:

Positive sales tax revenue

OPTIONS:

1. Approve with proffers as recommended by Planning Commission
2. Table request
3. Deny request

RECOMMENDATIONS:

Recommend Option 1

Council Work Session
November 25, 2014

RZ-14-639 AN ORDINANCE TO REZONE 0.736 ACRES OF LAND AT 2508 PAPERMILL ROAD (Map Number 291-03- -1) FROM INTENSIVE INDUSTRIAL DISTRICT (M-2) ZONING TO COMMERCIAL INDUSTRIAL DISTRICT (CM-1) ZONING

REQUEST DESCRIPTION

The request is to conditionally rezone from M-2 to CM-1 the southerly 70-foot wide portion of the Silver Lake LLC property currently housing Noland as outlined in the letter (see attached) from Mr. Tyron S. Powers dated October 6, 2014. The rezoning would allow for this 0.736-acre area to be assembled in with the adjoining vacant lot owned by Silver Lake that is already zoned CM-1 so that it can be enlarged to accommodate a grocery store. The request includes proffers (see attached proffer statement dated October 14, 2014) which would limit use to retail and would only take effect if the related boundary line adjustment between the two parcels is recorded.

AREA DESCRIPTION

The subject portion of the Noland site is zoned M-2 and contains wholesale and warehouse use. Federal Mogul land further to the north was rezoned from M-2 to B-2 in September of 2013 to support commercial revitalization/infill on that 44-acre redevelopment site.

Land to the south and the east is zoned CM-1 and has been developed with retail, restaurant, and service uses. This includes the Bank of Clarke County site which shares access to S. Pleasant Valley Rd and Papermill Rd with the vacant site proposed for grocery store development. Land to the west is zoned M-2 and includes the Cavalier Kitchens site.



STAFF COMMENTS

The Comprehensive Plan calls for Commerce Area Revitalization/Infill in this area. The rezoning to CM-1 is consistent with this vision. The Plan advocates proactively redeveloping property where needed to achieve maximum sustainable potential. The subject portion of the industrial site housing Noland Company is underutilized and is enclosed by an unattractive chain link fence with strands of barbed wire on top that detracts from the emerging national chain retail and restaurant area to the east and south.

The proffer linking the effectuation of the rezoning to the related boundary line adjustment ensures that the rezoning action will not result in split zoning on the existing M-2 property.

RECOMMENDATION

At its November 18, 2014 meeting, the Planning Commission forwarded **RZ-14-639** to City Council unanimously recommending approval as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-639, Prepared by Winchester Planning Department, 10-7-2014*" because the request is consistent with the Comprehensive Plan which calls for Commerce Area Revitalization/Infill on the site. The approval is subject to the proffers in the proffer statement titled "2508 Papermill Road, Winchester, Virginia 22601 Rezoning Request Proffer" dated October 14, 2014.

AN ORDINANCE TO REZONE 0.736 ACRES OF LAND AT 2508 PAPERMILL ROAD FROM INTENSIVE INDUSTRIAL DISTRICT (M-2) ZONING TO COMMERCIAL INDUSTRIAL DISTRICT (CM-1) ZONING
RZ-14-639

WHEREAS, the Code of Virginia provides that one of the purposes of Zoning Ordinances is to facilitate the creation of a convenient, attractive and harmonious community; and,

WHEREAS, the adopted Comprehensive Plan calls for Commerce Area Revitalization/Infill on the site and the Winchester Strategic Plan includes as a goal to grow the economy as part of the long term vision for the City of Winchester; and,

WHEREAS, Intensive Industrial (M-2) zoning of the site is inconsistent with the predominant commercial land use along South Pleasant Valley; and,

WHEREAS, the Planning Commission forwarded the request to Council on November 18, 2014 recommending approval of the rezoning as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-639, Prepared by Winchester Planning Department, 10-7-2014*" because the request is consistent with the Comprehensive Plan which calls for Commerce Area Revitalization/Infill on the site; 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 designated is consistent with 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 Intensive Industrial (M-2) District to Commercial-Industrial (CM-1) District:

Approximately 0.736 acres of land at 2508 Papermill Road as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-639, Prepared by Winchester Planning Department 10-7-2014*". The rezoning is subject to the proffers in the proffer statement titled "2508 Papermill Road, Winchester, Virginia 22601 Rezoning Request Proffer" dated October 14, 2014.

October 6, 2014

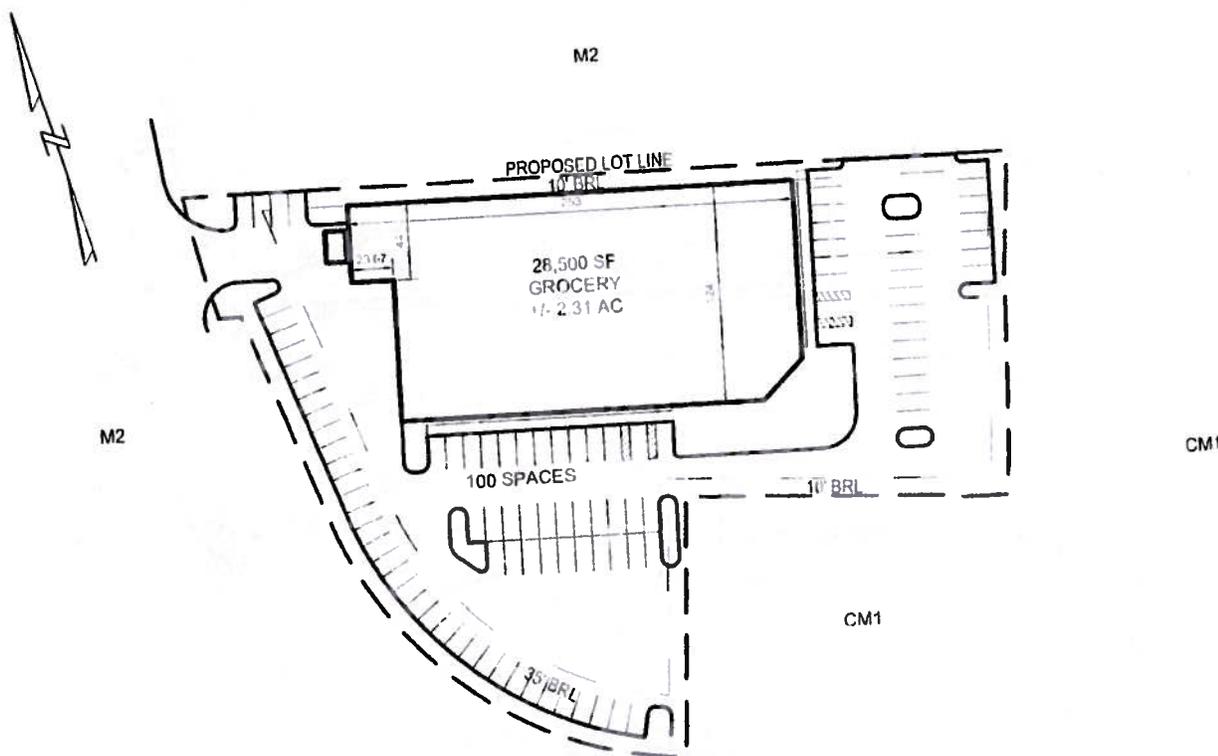
City of Winchester, Virginia
Zoning Administrator
15 North Cameron Street
Winchester, VA 22601Re: Rezoning of Property
2508 Papermill Rd
Winchester, VA 226010
Tax Map 301((5)) Parcel 3 Deed Book 316 Pg. 429
291

To Whom It May Concern,

On behalf of MGP Retail Consulting please find the attached Rezoning Application and supporting documents requesting rezoning of the referenced property. MGP is in the process of developing this property with construction of a grocery store (Concept Site Plan and ALTA survey attached). The property is currently zoned CM-1 (which is preferred). However, the development also requires a boundary line adjustment which has been agreed upon with the adjacent property owner and will be adjusted with approval through the City of Winchester at a later date. The adjacent lot is currently zoned M-2 and requires rezoning to CM-1 to match the zoning of the development lot. Therefore, this rezoning will be based on a proffer condition that the boundary line adjustment has been accepted and recorded by the City of Winchester.

Sincerely,
AECOM

Tyron S Powers
Project ManagerEnclosures: Rezoning Application
List of adjacent property owners
ALTA Survey
Concept Site Plan
Application Fee (\$1,600)Copy to: Victor Guerrero, MGP
Richie Wilkins
AECOM
Correspondence File**RZ-14-639**

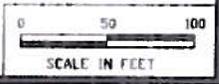


BRL = BUILDING RESTRICTION LINE
 SWM = STORMWATER MANAGEMENT
 TO CONSIST OF AN UNDERGROUND
 PIPE STORAGE SYSTEM

WINCHESTER
 CONCEPT SITE PLAN
 CITY OF WINCHESTER, VA
 10-08-14

AECOM

RZ-14-639



**2508 PAPERMILL ROAD, WINCHESTER, VIRGINIA 22601
REZONING REQUEST PROFFER
(Conditions for this Rezoning Request)**

**Tax Map Number: Tax Map 291 ((3)) Parcel 1
Owner: Silver Lake LLC – James R. Wilkins III
Applicant: MGP Retail Consulting**

October 14, 2014

Property Information

The undersigned applicant hereby proffers that in the event the Common Council of Winchester (Council) shall approve the rezoning of ± 0.736 acres of 2508 Papermill Road, Winchester, VA 22601 from M-2 into CM-1, 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 Plan 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 retail development.
2. **The proposed rezoning of the approximately 0.736 acres of Tax Parcel 291-3-1 from M-2 into CM-1 shall only be considered valid upon the acceptance and recordation of a minor subdivision (boundary line adjustment) plat showing the combination of the 0.736 acres and Tax Parcel 291-5-3.**

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: [Signature] Date: 1/10/14

STATE OF VIRGINIA, AT LARGE

COUNTY/CITY OF Winchester, To Wit:

The foregoing instrument was acknowledged before me this 11th day of October, 2014 by JAMES R. WILKINS, III

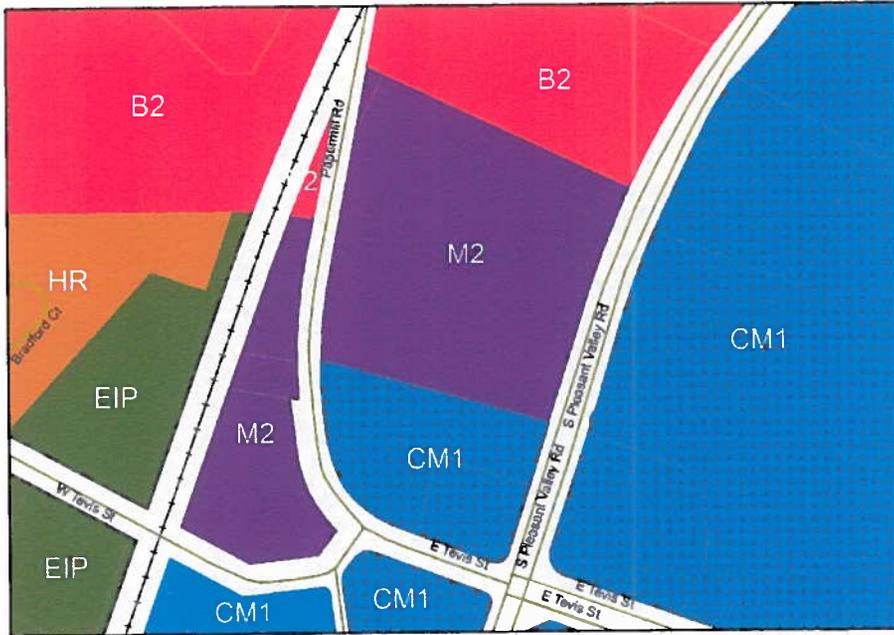
My Commission expires Mar 30, 2017

Notary Public Cindy Grove

CINDY GROVE
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #184054

RZ-14-639

REZONING EXHIBIT
RZ-14-639
 PREPARED BY WINCHESTER PLANNING DEPARTMENT
 10-07-2014



EXISTING
 INTENSIVE INDUSTRIAL DISTRICT (M-2) ZONING
 FOR 2508 PAPERMILL ROAD



PROPOSED
 COMMERCIAL INDUSTRIAL DISTRICT (CM-1) ZONING
 FOR 2508 PAPERMILL ROAD



Zoning Overlay
Overlay
 Conditional
 Railroad

Zoning
MZONE

-  B2 Highway Commercial District
-  CM1 Commercial Industrial District
-  EIP Education, Institution and Public Use District
-  HR High Density Residential District
-  M2 Intensive Industrial District

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: December 17, 2014 **CUT OFF DATE:** __

RESOLUTION X ORDINANCE PUBLIC HEARING X

ITEM TITLE: Resolution Authorizing the Local Zone Administrator to Resubmit an Amendment Application to the Virginia Department of Housing and Community Development (DHCD) Regarding the City of Winchester's Enterprise Zone Program due to DHCD's Recommended Application Alterations.

STAFF RECOMMENDATION: Approval

PUBLIC NOTICE AND HEARING: Authorize advertisement of amendment application of the City's enterprise zone program for purposes of receiving public comment and hold public hearing January 13th, 2015

ADVISORY BOARD RECOMMENDATION: The Economic Development Authority of the City of Winchester approves of the attached application

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. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>[Signature]</i>	_____	<i>12/11/2014</i>
6. City Manager	_____	_____	_____
7. Clerk of Council	<i>[Signature]</i>	_____	<i>12/11/14</i>

Initiating Department Director's Signature: _____ *12/10/14*
Date

[Signature]
Economic Development Coordinator



APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Tyler Schenck, Economic Redevelopment Coordinator
Date: 12/17/2014
Re: Submission of Virginia Enterprise Zone Amendment Application

THE ISSUE: City Staff has a strong desire to submit an amendment application to the Virginia Department of Housing and Community Development for our enterprise zone program.

RELATIONSHIP TO STRATEGIC PLAN: Will assist in the City's desire to grow the economy

BACKGROUND: This application is being submitted to accommodate recent economic development trends and needs in the City of Winchester. Specifically, this application will include a boundary amendment that will incorporate more land in the City into the enterprise zone and an incentive amendment that will add an additional local incentive and modify an existing incentive. This revised amendment application incorporates recommended alterations from the Virginia Department of Housing and Community Development.

BUDGET IMPACT: N/A

OPTIONS: Council may approve or disapprove the City's submission of this application

RECOMMENDATIONS: City Staff recommends the submission of this application

A RESOLUTION THAT AUTHORIZES THE CITY OF WINCHESTER TO SUBMIT AN AMENDMENT OF THE CITY OF WINCHESTER'S VIRGINIA ENTERPRISE ZONE PROGRAM TO THE VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

WHEREAS, the City of Winchester has a desire to improve the capability of its enterprise zone boundaries and incentives; and,

WHEREAS, the Virginia Department of Housing and Community Development requires all Virginia Enterprise Zone localities to submit a resolution from the locality's common council supporting the amendment; and,

WHEREAS, the Virginia Department of Housing and Community Development requires all localities submitting a Virginia Enterprise Zone amendment application to hold a public hearing and discuss the amended boundaries and incentives during a regular meeting of the locality's governing body.

NOW THEREFORE BE IT RESOLVED, that the adoption of this Resolution shall serve as approval of the City of Winchester's submission of an enterprise zone amendment application to the Virginia Department of Housing and Community Development; and

BE IT FURTHER RESOLVED, that the Winchester Common Council held a public hearing during their January 13, 2015 regular meeting to provide the public an opportunity to discuss the proposed alterations to the Winchester Enterprise Zone program; and,

BE IT FURTHER RESOLVED, that City Staff discussed the Winchester Enterprise Zone program boundary and incentive amendments during the Winchester Common Council regular meeting held on January 15, 2015; and,

BE IT FURTHER RESOLVED, that the city manager or her designee is authorized to submit all information needed to apply for an enterprise zone amendment; and

BE IT FURTHER RESOLVED, that all pending City of Winchester enterprise zone incentive applications will be retroactively awarded the full value of all proposed VEZ incentive changes; and

BE IT FURTHER RESOLVED, that the city manager or her designee is authorized to meet other program administrative and reporting requirements, as defined by the enterprise zone regulations, throughout the life of the zone.

TO THE CITIZENS OF WINCHESTER:

Virginia Enterprise Zone Amendment Application Public Hearing Notice

The City of Winchester, Virginia will hold a public hearing on January 13, 2015 at 7:00 P.M. at Rouss City Hall, 15 N. Cameron Street, Winchester, Virginia 22601 to solicit input on the proposed Virginia Enterprise Zone Amendment Application to the Virginia Department of Housing and Community Development. The proposed amendments will be available for discussion. All interested citizens are urged to attend. Further information may be obtained from the Economic Development Coordinator, Tyler Schenck by calling 540-667-1815 or through email at tyler.schenck@winchesterva.gov.

Enterprise Zone Amendment Application

Applicant Locality(ies): City of Winchester
Name of Zone: Winchester Enterprise Zone
Zone Number: 71

Virginia Department of Housing and Community
Development
600 East Main St, Suite 300
Richmond, Virginia 23219
(804) 371-7030
EZONE@dhcd.virginia.gov
www.dhcd.virginia.gov



**VIRGINIA DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT**
Partners for Better Communities

Overview of Amendment Application

Instructions for completing the coversheet and application can be found in the appendices beginning on page 12 of this document. Please read all of the appendices carefully before completing this application. The new enterprise zone statute establishes new zone amendment guidelines which are summarized below and outlined in detail in the appendices.

Each enterprise zone can consist of up to three non-contiguous zone areas. In cases where a locality has multiple zone designations, each of those zones can consist of up to three non-contiguous geographic areas. In the case of joint zones, each locality's portion of the joint zone can consist of up to three non-contiguous geographic areas, but one of those three non-contiguous areas must be contiguous to at least one other participant's zone area. For more details, refer to page 15 in the appendix. There are no longer zone-specific distress criteria requirements in the amendment application; the zone-specific distress criteria have been removed from the amendment application process.

An enterprise zone boundary amendment cannot consist of a site for a single business firm and cannot be less than 10 acres.

Enterprise zone amendment applications can be submitted once every twelve months from the date of the locality's last zone amendment. Joint zones may amend their zones in one application or independently so long as each locality amends their portion of the zone only once every twelve months from the date of that locality's last amendment. The locality submitting the amendment application must be up to date in its annual reporting requirements. **Once DHCD approves an enterprise zone amendment, the modifications to the zone are retroactive back to January 1st of the calendar year in which the amendment was approved. This means that businesses added via a boundary amendment approved in 2013 could submit grant applications for the 2013 grant year.**

Checklist of Required Attachments

Place the required attachments at the end of the amendment application. Unless otherwise specified, the attachment is required for all types of application amendments.

- Public Hearing Advertisements (2)**
Published once a week for two successive weeks in a newspaper of general circulation; final advertisement cannot be published < 5 days or > 21 days prior to the hearing
- Official Public Hearing Minutes**
- Local Assurances**
- Resolution**
In the case of a joint zone all participating localities must submit approval resolutions, even if they are not amending their portion of the zone
- Joint Application Agreement (Joint zones only)**
- Maps (Boundary amendments only)**
- Incentive charts (Incentive amendments only)**

Coversheet

(For joint zone amendments, each locality must complete a separate coversheet)

<p>Locality:</p> <p>City of Winchester</p> <p>Government Address: 15 N. Cameron Street Winchester, Virginia 22601</p> <p>Chief Elected Official (Name and Title): Elizabeth Minor, Mayor</p> <p>Local Zone Administrator: Name: Tyler Schenck Title: Economic Development Coordinator Phone: 540-667-1815 E-mail: tyler.schenck@winchesterva.gov</p> <p>Application Type: <input checked="" type="checkbox"/> Single (one locality) Enterprise Zone <input type="checkbox"/> Joint (more than one locality) Enterprise Zone</p> <p>If Joint application, list all participating localities:</p> <p>Certification of Chief Administrative Officer: <i>To the best of my knowledge and belief, data in this proposal is true and correct and the governing body of the participant has duly authorized the proposal through resolution. The resolution is attached.</i></p> <p>Signature: _____ Date: _____</p> <p>Name: Eden Freeman Title: City Manager</p>	<p>Type of Amendment (check all applicable boxes): <input type="checkbox"/> Boundary deletion <input checked="" type="checkbox"/> Boundary amendment <input checked="" type="checkbox"/> Incentive amendment</p> <p>Number of existing non-contiguous areas present in locality's zone: <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3</p> <p>Non-contiguous areas added or deleted as part of amendment application: <input checked="" type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2</p> <p>Total non-contiguous zone areas after amendment: <u>2</u></p> <p>Enterprise Zone Public Hearings: <input checked="" type="checkbox"/> Single Application (one hearing) <input type="checkbox"/> Joint Application (one hearing in each locality) <input type="checkbox"/> Joint Application (joint hearing)</p> <p>Attachments: <input checked="" type="checkbox"/> Advertisements <input checked="" type="checkbox"/> Minutes <input checked="" type="checkbox"/> Resolutions <input checked="" type="checkbox"/> Local assurances <input type="checkbox"/> Joint application agreement (joint zones only)</p> <p>Locality has submitted all annual reports required to date: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Amendment requests will not be processed until locality's annual reporting requirements are fulfilled.</p>
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I. Zone Size

Complete this section only if this amendment modifies the zone boundaries. Delete this section if your amendment is for incentive modification only.

A. Basic size limits are determined by the type of locality. Each locality in a joint zone may have the maximum zone acreage for that type of locality. If this is a joint amendment application, Question A must be completed for each locality. For joint applications, duplicate the check boxes for as many localities participating in the zone. List the locality's name next to each duplicated box. Refer to Appendix II on page 15 for zone size limits and boundary modification requirements.

Type of locality:

- County: _____
 Consolidated City: Winchester
 Town (existing town zones only)/City: _____

Size guideline option used:

- Basic land size minimum and maximum
 7 percent of land area (Cities and Towns only)
 7 percent of population (Cities and Towns only)

B. Complete the chart below showing the size of the zone after the proposed modifications. For joint zones, please list each locality's zone size adjustments on a separate line. Additional rows may be added to the table as needed. Zone size guidelines can be found in Appendix II on page 15.

Locality	Current zone size in acreage	Proposed deletion size in acreage	Proposed addition size in acreage	Amended zone size in acreage (total acreage)
Winchester	440.47		159.23	599.70

Map Requirements – Required only for boundary amendments.

For each of the required maps, joint applications must also submit one map showing the entire zone area. The required maps must be able to fit inside a legal size mailing envelope. Each of the required maps must be produced at the same scale. GIS generated maps are preferred. Topographic maps are highly discouraged. **Zone administrators MUST submit a draft boundary amendment map to DHCD prior to holding the public hearing for review.**

Map 1 – Map of the locality indicating the current and amended boundaries of the enterprise zone area. **Please indicate the amended zone boundaries using the following key:**

-  Proposed Additions – Red fill with bold red dashed border
-  Proposed Deletions – Blue fill with bold blue dashed border
-  Existing Zone Boundaries – Green fill

All required features listed in the charts must be included on each map and clearly visible.

Required Features Included on Map (where present in zone):

- Major Streets/Roads/Highways Labeled (dark gray lines)
- City/County/Town limit lines identified by bold blue line
- Key Businesses/Employers
- Key Properties/Revitalization Project Areas/ Developable Land
- Airports/ Ports of Entry
- Major Railways
- Office or Industrial Parks
- Special Districts

Map 2 - Map of the modified enterprise zone boundary indicating the existing land use characteristics according to the following classifications:

Privately Held Land

Business/Commercial
Industrial
Institutional
Single-family residential
Multi-family
Agriculture
Parking
Mixed-use (or “Other”)

Publicly Held Land

State/Federal Land
Local publicly owned land in use
Unused local public land
Parks & Recreational Areas
Parking

Indicate on this map the total zone acreage and the approximate number of acres devoted to each type of use.

Map 3 – Map of the modified enterprise zone showing the boundaries of existing zoning districts. (If the area is not zoned, this map is not required.)

Place required maps at the end of the application.

II. Boundary Addition

Complete this section only if this amendment adds acreage to the zone. Delete this section if your amendment is for a boundary deletion or incentive modification only. Boundary additions cannot consist of a site for a single business and cannot be less than 10 acres in size. Counties with enterprise zones can include acreage within corporate town limits, provided the acreage addition falls within the total zone size requirements for the locality. Towns with enterprise zones CANNOT add portions of the unincorporated areas into the zone through the amendment process.

Describe the areas proposed for inclusion into the zone boundaries. Indicate if the added areas are contiguous to existing zone boundaries or will count as one of the three total non-contiguous zone areas per locality. Explain the strategic importance of adding the area(s) to the zone. Discuss relevant economic conditions, economic development/revitalization efforts occurring within the proposed addition. Quantify this information where possible.

(Limit response to space provided.)

The acreage added contiguous to the existing Winchester Enterprise Zones will accommodate for recent economic development activity and existing blighted or underutilized areas within the community.

The City of Winchester intentionally omitted a large amount of available acreage when we applied for VEZ designation in case a large employer or site became vacant or dilapidated. Due to this foresight, the City has the acreage needed to include the recently closed Federal Mogul. This property consists of a sizable tract of land in the middle of Winchester and yields several environmental concerns. It will likely need financial incentives to entice its redevelopment. In addition, the proposed modified VEZ boundaries incorporate the underutilized Ward Plaza property. This strip mall remains primarily vacant and is adjacent to arguably the highest traversed avenue in Winchester and is surrounded by higher-income residents of the region. Also, the new VEZ boundary in the southern noncontiguous zone follows Valley Avenue north to the O'Sullivan Films manufacturing site. Although this company is a large employer and a coveted business in Winchester, they have yet to reach their full capacity and require financial incentives to spur their next employment growth and capital investment.

Lastly, the boundaries in the northern noncontiguous zone are minutely adjusted to incentivize the redevelopment of blighted or underutilized properties that were omitted from our initial northern enterprise zone.

III. Incentive Amendment

Complete this section only if this amendment modifies incentives. Delete this section if your amendment is for boundary modification only. All zones are required by statute to offer local enterprise zone incentives. Localities should regularly review their incentive package to ensure utilization by businesses and effectiveness in attracting/expanding targeted business sectors within the zone. In the case of boundary amendments to include corporate town limits, the town functions as part of the county's zone boundaries and is not required to offer local incentives but may do so. Refer to Appendix III on page 17 for more information about local incentives.

- A. Why are the local incentives being modified? Discuss utilization, any changing trends or special circumstances affecting the decision to modify.

The City is proposing the addition of one incentive that will provide a grant to commercial property redevelopers seeking to forgo tax abatement and pursue a cash grant. Developers often approach City representatives and voice their displeasure with the inability to receive local incentives after flipping a commercial property, and this proposed incentive should alleviate this issue.

Lastly, two existing incentives are being modified after extensive collaboration with real estate investors and developers. The two substantially rehabilitated incentives will have their maximum square footage thresholds raised from 15% to 50% while reducing the length of the tax abatement from 12 to 10 years.

- B. What aspects of the incentives are being modified and why? Explain the research that the modification is based on (i.e. survey of zone businesses).

Two existing incentives are being amended and one new incentive is being proposed after extensive conversation with local developers and property investors. After numerous interactions with the development community and hosting a VEZ Q&A seminar, we feel that our proposed incentive amendments will rectify current lapses in our EZ program and provide a more robust incentive package.

- C. Has the modified incentive package or new incentive(s) been reviewed by the local governing body's attorney and determined to be legal? Yes No

- D. Are incentives deleted as part of the amendment proposal? Yes No

If yes, complete the following chart concerning the required replacement incentive and explain (below the chart) why the incentive is being deleted. For example, the creation of a regional water/waste water facility may necessitate amending the city's existing water and sewer hookup fee incentive because the city no longer collects these fees and therefore cannot rebate them.

Additional rows may be added to the chart as needed. Local incentives can be deleted if replaced by incentives that are equal or superior to those in the application or most recent amendment. **Contact DHCD staff to discuss your plans to modify incentives prior to holding the public hearing.**

Existing Incentive (by locality)	Replacement Incentive (by locality)	Justification for replacement

(Limit section IV responses aside from the above chart to the space provided plus one additional page.)

Incentive Package. Complete this section only if this amendment modifies incentives. Delete this section if your amendment is for boundary modification only. Provide information for **new and existing** incentives. This chart may be reproduced to accommodate all incentives. Identify new or revised incentives with an asterisk. **This chart will replace the current chart in your Enterprise Zone designation application. Complete the incentive chart to include all incentives to be offered upon approval of the incentive amendment.**

Locality Offering the Incentive: Winchester Economic Development Authority (WEDA)	
Proposed Enterprise Zone Name: Major Economic Development Project Incentive	
Incentive #:1 Name: Major Economic Development Project Incentive Description: A grant, which may be delivered directly or in some other form equal to the present value of 100% of net new taxes paid by a company over three years, paid annually in the arrears or as an upfront incentive secured by a forgivable deed of trust at the discretion of the WEDA. If other local Enterprise Zone incentives are received by the company, the sum of all local Enterprise Zone incentives cannot exceed the present value of five years of net new taxes paid to the City by the company.	Locality/Provider: Winchester Economic Development Authority (WEDA)
	Qualification Requirements: Must make a capital investment of at least \$2.5 million and create at least 25 new jobs that pay at least the City's median income. The company must remain in Winchester for at least five years after the last grant is received.
	Exclusive to Zone: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (please explain how incentives will be tailored to the zone)
	Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone
Financial Value of Incentive: Equal to the present value of 100% of net new taxes paid by a company over the first three years. Example: A company investing \$2.5 million in real estate and machinery purchases would receive a grant \$68,250 over three years.	Effective Date: Effective upon designation of Enterprise Zone
Action to Implement: <input checked="" type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input type="checkbox"/> Other:	Source of Funds: City of Winchester General Fund. Funds will be transferred to WEDA from City after recipient pays all taxes to City, annually.
	Annual Budget Allocation Pending Approval: \$250,000 (to be adjusted annually based on actual and projected liabilities)

Locality Offering the Incentive: Winchester Economic Development Authority (WEDA)	
Proposed Enterprise Zone Name: New or Expanding Technology-driven Business Grant	
Incentive #: 2 Name: New or Expanding Technology-driven Business Grant Description: Series of grants, in arrears, equal to 50% of net new taxes paid to the City over a five-year period.	Locality/Provider: WEDA
	Qualification Requirements: Must be a high-tech firm making a capital investment of at least \$1 million. The company must remain in Winchester for at least five years after last grant is received; cannot combine with Business Development Grant Program for Vacant Properties; subject to the limitation of the Major Economic Development Project Incentive. High-tech firms are defined by the City as advanced manufacturing; bio-information and bio-medical knowledge-producing federal government contractors; and other technology-driven firms at the discretion of the WEDA Board. Guidelines for the designation of technology-driven firms will be developed by the WEDA Board.
	Exclusive to Zone: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (please explain how incentives will be tailored to the zone)
	Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone
Financial Value of Incentive: 50% of all new taxes paid to the City for 5 years. Maximum of \$500,000 over five-year period.	Effective Date: Effective upon designation of Enterprise Zone
Action to Implement: <input checked="" type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input type="checkbox"/> Other:	Source of Funds: City of Winchester General Fund. Funds will be transferred to WEDA from City after recipient pays all taxes to City, annually.
	Annual Budget Allocation Pending Approval: \$100,000 (to be adjusted annually based on actual and projected liabilities)

Locality Offering the Incentive: City of Winchester	
Proposed Enterprise Zone Name: Exemption from Land Development Fees-Non-residential and Residential Properties	
Incentive #: 3 Name: Exemption from Land Development Fees-Non-Residential Properties and Residential Properties Description: Expedited development and building permit reviews (regulatory reform). Refund of building permit fees, zoning application fees and subdivision plat for both non-residential and residential.	Locality/Provider: City of Winchester
	Qualification Requirements: Non-Residential: Must be for commercial, industrial, or mixed-use real estate improvements with a minimum new construction cost of \$500,000 or, if a renovation, a cost equal to at least 60% of pre-renovation assessed value of improvements. Residential: Must be for residential development in the N. Loudoun Street District. Finished product must result in an assessment of improvements at 140% or higher than the average residential improvement assessment within the N. Loudoun St. district.
Financial Value of Incentive: Non-Residential: Cost of building permit, zoning application, or subdivision plat fees. Example: A \$1,000,000, 10,000 sq. ft. new construction project on 2 acres requiring rezoning would receive fee exemptions worth \$3,800. Residential: Cost of building permit, zoning application, or subdivision plat fees. Example: For a \$100,000 renovation of a residential property that creates a 60 sq. ft. expansion, the fee exemption would be the \$180 minimum. A similar renovation that included plumbing, a new roof, porch, and inspection would bring the total to \$210. For a new residential construction of \$200,000 and 2,000 sq. ft., the fee exemption would be \$480. This includes all necessary permit and inspection fees.	Exclusive to Zone: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (please explain how incentives will be tailored to the zone)
	Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone
	Effective Date: Effective upon designation of Enterprise Zone
Action to Implement: <input checked="" type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input type="checkbox"/> Other:	Source of Funds: Fees paid by recipient (refunded) Annual Budget Allocation Pending Approval: None

Locality Offering the Incentive: City of Winchester and Winchester Economic Development Authority (WEDA)	
Proposed Enterprise Zone Name: Knowledge-based Jobs Grant	
Incentive #: 4 Name: Knowledge-based Jobs Grant Description: Grant equal to \$1,000 per new knowledge-based professional job. Maximum grant is \$25,000.	Locality/Provider: City of Winchester/WEDA
	Qualification Requirements: A new company must create at least 10 knowledge-based, professional jobs within a twelve month period or at least 5 knowledge-based, professional jobs if an existing company; jobs must pay at least 120% of City's median annual income. The company must remain in Winchester for at least five years after grant is received. A knowledge-based professional job is defined as architecture and engineering occupations; arts, design, entertainment, sports and media occupations; business and financial occupations, except loan counselors and tax preparers; computer and mathematical occupations; healthcare practitioners (excluding technicians); lawyers; life, physical, and social science occupations; and management occupations.
	Exclusive to Zone: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (please explain how incentives will be tailored to the zone)
	Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone
Financial Value of Incentive: Up to \$25,000	Effective Date: Effective upon designation of Enterprise Zone
Action to Implement: <input checked="" type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input type="checkbox"/> Other:	Source of Funds: City of Winchester General Fund. Funds will be transferred to WEDA from City after recipient pays all taxes to City, annually.
	Annual Budget Allocation Pending Approval: \$25,000 to be adjusted annually based on actual and projected liabilities

Locality Offering the Incentive: Winchester Economic Development Authority (WEDA)	
Proposed Enterprise Zone Name: Entrepreneurship Incentive	
Incentive #: 5 Name: Entrepreneurship Incentive Description: A grant equal to 50% of the cost of website design and construction, up to \$1,000, paid to a Winchester City based design provider; 50% of the cost of website hosting or high speed internet access, up to \$500; and a 200 basis point interest rate reduction on a Winchester Enterprise Zone Micro-loan.	Locality/Provider: WEDA
	Qualification Requirements: Qualifying start-up firms are new firms, obtaining a business license and located at a commercially zoned address, 50% of whose market is located outside of Winchester-Frederick County or which provides a product not currently available in the City of Winchester. Must create at least 1 new job (not including the owner(s)) and up to 9 jobs in the first year of operation. The company must not move to a location outside Winchester within five years of receiving this incentive.
	Exclusive to Zone: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (please explain how incentives will be tailored to the zone)
	Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone
Financial Value of Incentive: Up to \$1,700.	Effective Date: Effective upon designation of Enterprise Zone
Action to Implement: <input checked="" type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input type="checkbox"/> Other:	Source of Funds: WEDA
	Annual Budget Allocation Pending Approval: \$6,000 (may be adjusted based on demand)

Locality Offering the Incentive: Winchester Economic Development Authority (WEDA)	
Proposed Enterprise Zone Name: Enterprise Zone Micro-loan	
Incentive #: 6 Name: Winchester Enterprise Zone Micro-loan Program Description: Loans of between \$1,000 and \$10,000 to new or existing businesses to fund working capital, minor leasehold improvements, and small equipment and furniture needs; interest rate is 7%, with typical 24 month term, except equipment loans (36-60 months).	Locality/Provider: WEDA
	Qualification Requirements: Must be new or existing business that is funding working capital, minor leasehold improvements, and small equipment and furniture needs. Personal guarantee required. Collateral required on equipment loans.
	Exclusive to Zone: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (please explain how incentives will be tailored to the zone)
	Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone
Financial Value of Incentive: \$1,000-\$10,000	Effective Date: Effective upon designation of Enterprise Zone
Action to Implement: <input checked="" type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input type="checkbox"/> Other:	Source of Funds: WEDA
	Annual Budget Allocation Pending Approval: \$15,000 (may be adjusted based on demand)

Locality Offering the Incentive: Winchester Economic Development Authority (WEDA)	
Proposed Enterprise Zone Name: Retail Mix Enhancement Grant	
Incentive #: 7 Name: Retail Mix Enhancement Grant Description: A grant equal to 50% of local business taxes generated by a new retailer that enhances the retail mix in Downtown or Berryville Ave. to be used to reimburse bona fide marketing expenses incurred during pre-opening and the first year of operation.	Locality/Provider: WEDA
	Qualification Requirements: Qualifying retailers are those that, as determined by the City, are positioned to attract shoppers from beyond the City of Winchester and may include, by way of example: art galleries, antique dealers, book stores, "high end" or specialty grocers, high fashion retailers, and specialty item gift stores.
	Exclusive to Zone: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (please explain how incentives will be tailored to the zone)
	Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone
Financial Value of Incentive: Equal to 50% of local business taxes. Example: A retailer with \$500,000 in sales and \$50,000 in equipment plus a business license fee amounts to a total value of \$4,600 for the incentive.	Effective Date: Effective upon designation of Enterprise Zone
Action to Implement: <input checked="" type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input type="checkbox"/> Other:	Source of Funds: City of Winchester General Fund. Funds will be transferred to WEDA from City after recipient pays all taxes to City, annually
	Annual Budget Allocation Pending Approval: \$10,000 (may be adjusted based on demand)

Locality Offering the Incentive: Winchester Economic Development Authority (WEDA)	
Proposed Enterprise Zone Name: Major Mixed-use Development Incentive	
Incentive #: 8 Name: Major Mixed-use Development Incentive Description: An incentive providing public financing, in whole or in part, for on-site infrastructure in a mixed-use development with private investment of at least \$5 million; the public financing contribution would equal at least 35% and no more than 65% of net new taxes paid to the City resulting from the mixed-use development, as determined by a development agreement between the developer of the mixed-use project and the WEDA, with the concurrence of the Winchester City Council	Locality/Provider: WEDA
	Qualification Requirements: Recipient must make private investment of at least \$5 million in a mixed-use development/project and must sign a development agreement with the WEDA.
	Exclusive to Zone: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (please explain how incentives will be tailored to the zone)
	Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone
Financial Value of Incentive: 35%-65% of net new taxes paid to the City Example: For a \$5 million investment with public financing at least 35% the financial value of this incentive would be \$332,500 over 20 years.	Effective Date: Effective upon designation of Enterprise Zone
Action to Implement: <input checked="" type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input type="checkbox"/> Other:	Source of Funds: Bonds issued by WEDA and/or City of Winchester; General Fund for repayment of bonds
	Annual Budget Allocation Pending Approval: NA. To be determined by payments on outstanding bonds.

Locality Offering the Incentive: Winchester Economic Development Authority (WEDA)	
Proposed Enterprise Zone Name: Business Growth Revolving Loan Fund	
Incentive #: 9 Name: Business Growth Revolving Loan Fund Description: Provides below market-rate loans for gap financing to small-to-medium sized businesses in the City of Winchester where the applicant is unable to fully finance the proposed project with equity, bank financing and other private and public financing.	Locality/Provider: WEDA
	Qualification Requirements: To be eligible for funding, a proposed project must comply with all City Zoning regulations and meet all Federal, State and local regulations concerning historic properties and environmental matters. The applicant must demonstrate that the proposed project is viable and that the business has the economic ability to repay the funds. All projects shall be completed, all funds expended, and all jobs created and/or retained within 24 months from the date of the loan approval.
	Exclusive to Zone: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (please explain how incentives will be tailored to the zone) The maximum loan amount has been raised from \$75,000 or 40% of the total project cost, whichever is less, to \$100,000 or 45% of the project cost. Also, the interest rate will be lowered from 100 basis points above the U.S. Treasury security to 50 basis points above the U.S. Treasury security.
	Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone
Financial Value of Incentive: Loan amount \$100,000 or 45% of the total project cost, whichever is less. Reduced interest cost. Example: The decreased interest amount provides an overall savings of \$1,394.52 over the 5 year life of a \$100,000 loan.	Effective Date: Effective upon designation of Enterprise Zone
Action to Implement: <input type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input checked="" type="checkbox"/> Other: WEDA Resolution	Source of Funds: WEDA Annual Budget Allocation Pending Approval: \$100,000 (may be adjusted based on demand)

Locality Offering the Incentive: Winchester Economic Development Authority (WEDA)	
Proposed Enterprise Zone Name: Real Estate Development Revolving Loan Fund	
Incentive #: 10 Name: Real Estate Development Revolving Loan Fund Description: This incentive provides below market-rate loans for gap financing for small-to-medium sized non-residential or mixed-used real estate development where vacant or under-utilized property will be put to productive use and where the applicant is unable to finance fully the proposed project with equity, bank financing and other private and public financing. These loans shall be provided to eligible applicants for land costs that include acquisition and site preparation; building costs that include acquisition, construction, and rehabilitation; soft costs associated with property development, including legal, architectural, engineering, surveys and other related costs; bridge financing where other source(s) of capital are expected to flow into the project at a later date; and other activities that the WEDA may identify as appropriate for the program.	Locality/Provider: WEDA
	Qualification Requirements: To be eligible for funding, a proposed project must comply with all City Zoning regulations and meet all Federal, State and local regulations concerning historic properties and environmental matters. The applicant must demonstrate that the proposed project is viable and that the business has the economic ability to repay the funds. All projects shall be completed, all funds expended, and all jobs created and/or retained within 24 months from the date of the loan approval.
	Exclusive to Zone: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (please explain how incentives will be tailored to the zone) The maximum loan amount is being raised from \$200,000 or 40% of the total project cost, whichever is less, to \$250,000 or 45% of the project cost. The interest rate will also be lowered from 100 basis points above the U.S. Treasury security to 50 basis points above the U.S. Treasury security.
	Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone
Financial Value of Incentive: Loan Amount: \$250,000 or 45% of the project cost, whichever is less. Reduced interest cost. Example: The decreased interest amount provides an overall savings of \$3,486.33 for a loan of \$250,000 over 5 years.	Effective Date: Effective upon designation of Enterprise Zone
Action to Implement: <input type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input checked="" type="checkbox"/> Other: EDA Resolution	Source of Funds: WEDA Annual Budget Allocation Pending Approval: \$400,000

Locality Offering the Incentive: Winchester Economic Development Authority (WEDA)	
Proposed Enterprise Zone Name: Commercial Façade Program	
Incentive #: 11 Name: Commercial Façade Program Description: This incentive provides a minimum interest loan to businesses or property owners that wish to make exterior façade improvements.	Locality/Provider: WEDA
	Qualification Requirements: All businesses and property owners within the Enterprise Zone are eligible to apply for Façade Improvement Loans. Also, loans are possible if the property is being leased or purchased under contract if all parties to the lease or contract agree to the improvements.
	Exclusive to Zone: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (please explain how incentives will be tailored to the zone) The maximum loan amount is raised from \$25,000 to \$35,000. The interest rate will be lowered from 3% to 2.5%. A one year deferral of loan payments will also be provided. The incentive is being extended from the Old Town Development District to the entire EZ.
	Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone
Financial Value of Incentive: Loan Amount: Up to \$35,000. Reduced Interest Cost. Example: \$464.40 for a \$35,000 loan over 5 years.	Effective Date: Effective upon designation of Enterprise Zone
Action to Implement: <input type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input checked="" type="checkbox"/> Other: EDA Resolution	Source of Funds: WEDA
	Annual Budget Allocation Pending Approval: \$100,000

Locality Offering the Incentive: Winchester Economic Development Authority (WEDA)	
Proposed Enterprise Zone Name: Business Development Grant for Vacant Properties	
Incentive #: 12 Name: Business Development Grant for Vacant Properties Description: Provides a grant to eligible businesses in the amount equal up to a maximum of 100% of new city business tax revenues generated, as determined by the Commissioner of the Revenue, based on the incremental increase over a five-year period, paid annually in the arrears.	Locality/Provider: WEDA
	Qualification Requirements: Property must have been vacant for 2 years or more prior to the rehabilitation. The property must be a "substantial rehabilitation" equaling 75% of the assessed value of the property. Must be commercial property or mixed use in the Enterprise Zone. Must be a new business to the City, or an expansion location within the City.
	Exclusive to Zone: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (please explain how incentives will be tailored to the zone) Reduce minimum size requirement from 10,000 square feet to 5,000 square feet for a grant size equal to 25% of taxes paid; reduce minimum size requirement from 25,000 square feet to 20,000 square feet for a grant size equal to 50% of taxes paid; reduce minimum size requirement from 50,000 square feet to 40,000 square feet for a grant size equal to 100% of taxes paid.
	Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone
Financial Value of Incentive: 25%-100% of taxes paid. Example: A commercial business with \$1,000,000 in sales and \$100,000 in equipment in a 10,000 sq. ft. building would receive \$21,500 in grants over five years. The same company in a 40,000 sq. ft. building would receive \$86,000 in grants over five years.	Effective Date: Effective upon designation of Enterprise Zone
Action to Implement: <input checked="" type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input type="checkbox"/> Other:	Source of Funds: City of Winchester General Fund. Funds will be transferred to WEDA from City after recipient pays all taxes to City, annually.
	Annual Budget Allocation Pending Approval: \$100,000 (to be adjusted annually based on actual and project liabilities)

Locality Offering the Incentive: City of Winchester	
<p>*Incentive #: 13 (MODIFIED) Name: Substantially Rehabilitated Commercial/Industrial Property Real Estate Tax Exemption Description:</p> <p>Provides tax exemption for a period of 12 years for substantially rehabilitated real estate within the Enterprise Zone for that portion of the real estate assessment which is a net increase above the real estate assessment on improvements prior to the occurrence of substantial rehabilitation.</p> <p>Provides tax exemption for a period of 10 years for substantially rehabilitated real estate within the Enterprise Zone for that portion of the real estate assessment which is a net increase above the real estate assessment on improvements prior to the occurrence of substantial rehabilitation.</p>	<p>Locality/Provider: City of Winchester</p>
	<p>Qualification Requirements: Assessed value of commercial or industrial structures must be increased by at least 60%, without increasing total square footage by more than 15%.</p> <p>Assessed value of commercial or industrial structures must be increased by at least 60%. Qualifying square footage includes original structure and up to 150% of original square footage.</p>
	<p>Exclusive to Zone:</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, if no please explain how incentives will be tailored to zone</p> <p>The City extended the existing Substantially Rehabilitated Property Real Estate Tax Exemption for commercial and industrial structures from the Winchester Historical District to the entire Enterprise Zone.</p>
<p>Financial Value of Incentive: An assessed \$1,000,000 commercial or industrial property that has improved its value to an assessed \$1,600,000 is exempt from paying \$5,700 per year for 10 years for a total value of \$57,000.</p>	<p>Period of Availability: Available for the entire existence of the Enterprise Zone</p>
<p>Effective date: Effective upon approval by DHCD</p>	<p>Effective date: Effective upon approval by DHCD</p>
<p>Action to Implement:</p> <p><input checked="" type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input type="checkbox"/> Other:</p>	<p>Source of Funds: N/A Tax exemption</p>
	<p>Annual Budget Allocation Pending Approval: N/A</p>

Locality Offering the Incentive: City of Winchester	
Proposed Enterprise Zone Name: Substantially Rehabilitated Residential Property Real Estate Tax Exemption	
<p>*Incentive #: 14 (MODIFIED) Name: Substantially Rehabilitated Residential Property Real Estate Tax Exemption Description: Provides tax exemption for a period of 12 years for substantially rehabilitated real estate within the Enterprise Zone for that portion of the real estate assessment which is a net increase above the real estate assessment on improvements prior to the occurrence of substantial rehabilitation</p> <p>Provides tax exemption for a period of 10 years for substantially rehabilitated real estate within the Enterprise Zone for that portion of the real estate assessment which is a net increase above the real estate assessment on improvements prior to the occurrence of substantial rehabilitation.</p>	<p>Locality/Provider: City of Winchester</p>
	<p>Qualification Requirements: Assessed value of residential structures must be increased by at least 40% without increasing total square footage by more than 15%.</p> <p>Assessed value of residential structures must be increased by at least 40%. Qualifying square footage includes original structure and up to 150% of original square footage.</p>
	<p>Exclusive to Zone:</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (please explain how incentives will be tailored to the zone) The City will extend the existing Substantially Rehabilitated Property Real Estate Tax Exemption for residential structures from the Winchester Historical District to include the entire N. Loudoun St. district within the Enterprise Zone. The amount of area eligible for this incentive increases by 80% after VEZ designation.</p>
	<p>Period of Availability: (please explain the rationale behind the period of availability) Incentive is available for the entire existence of the Enterprise Zone</p>
<p>Financial Value of Incentive: An assessed \$100,000 residential property that has improved its value to an assessed \$140,000 is exempt from paying \$380 per year for 10 years, for a total value of \$3,800.</p>	<p>Effective Date: Effective upon designation of Enterprise Zone</p>
<p>Action to Implement:</p> <p><input checked="" type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input type="checkbox"/> Other:</p>	<p>Source of Funds: N/A Tax exemption</p> <p>Annual Budget Allocation Pending Approval: N/A</p>

Locality Offering the Incentive: Winchester Economic Development Authority (WEDA)	
<p>*Incentive #: 15 (NEW) Name: Commercial and Mixed-use Property Rehabilitation Grant Description: Provides a cash grant for substantially improved commercial or mixed-use property within the Enterprise Zone for increasing the assessed value of a commercial or mixed-use property by at least 60%.</p>	Locality/Provider: Winchester Economic Development Authority (WEDA)
	Qualification Requirements: Rehabilitated property must be a commercial or mixed-use. Upon completion of rehabilitation, the assessed value of the property must be improved by at least 60%. Grant will be paid upon the post-rehabilitated assessed value of the property. Plans for substantial improvement must meet the guidelines as determined by the local zone administrator.
	Exclusive to Zone: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, if no please explain how incentives will be tailored to zone
	Period of Availability: Available for the entire existence of the Enterprise Zone
Financial Value of Incentive: \$10,000 per grant for a new assessed value of \$250,000-\$499,000. \$15,000 per grant for a new assessed value of \$500,000 or more.	Effective date: Effective upon approval by DHCD
Action to Implement: <input checked="" type="checkbox"/> Local Ordinance <input type="checkbox"/> Approval by Board of Supervisors <input type="checkbox"/> Other:	Source of Funds: Incentive will be funded by the City of Winchester.
	Annual Budget Allocation Pending Approval: N/A

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Appendix I: Public Hearing and Resolution Requirements

Public Hearing Requirements

A local governing body must hold **at least one public hearing** on the application for Enterprise Zone amendment **prior to** the locality's passage of its enterprise zone resolution and prior to submission to DHCD. A copy of the advertisement of the public hearing **and** the public hearing minutes must accompany the application. **Enterprise Zone Regulation 13 VAC-5-112 490 states that Public Hearings may not have been held more than six months prior to the amendment submission.**

For a joint application, each participating local governing body may either hold a separate public hearing or schedule a joint public hearing.

Public Hearing Advertisement Requirements

- ❑ Ads must be published once a week for two successive weeks in a newspaper of general circulation.
- ❑ The final advertisement cannot be published less than five days or more than twenty-one days prior to the hearing.
- ❑ The ad must give the time, date, and location of the hearing.

The complete requirements for conducting public hearings are stated in §15.2-2204, Code of Virginia.

Information regarding joint zone amendments

- Localities participating in a joint zone can choose to amend their respective portions of the zone application simultaneously through the submission of one amendment application. However, this is not required. Participants in a joint zone may amend their portion of the zone independently of each other.
- Each locality can only amend their portion of the zone application once every twelve months from the approval date of their last amendment.
- **All localities participating in the joint zone (regardless of whether or not they are amending their portion of the zone) must pass approval resolutions and sign joint application agreements for any amendment made by a partnering joint applicant.**
- DHCD will not process any amendment application until the applicant or applicants in the case of a joint zone amendment are up to date on their annual reporting requirements.

Minimum Resolution Format Requirements

While DHCD does not provide a template for zone amendment resolutions, **we outline the minimum requirements below which can also serve as the framework for a resolution.**

Single Jurisdiction--Resolutions accompanying single locality applications for enterprise zone amendment should state that the local governing body:

- ❑ Is applying for enterprise zone amendment;
- ❑ Authorizes its chief administrator (or clerk where there is no chief administrator) to submit all information needed to apply for a zone amendment.
- ❑ Authorizes its chief administrator (or clerk) to meet other program administrative and reporting requirements, as defined by the Enterprise Zone Regulations, throughout the life of the zone.

Joint Application--Separate resolutions are required of each participating locality and should state that:

- ❑ The local governing body is applying for enterprise zone amendment jointly with other localities (provide names);
- ❑ One jurisdiction (provide name) is designated to act as program administrator;
- ❑ The local governing body authorizes the chief administrator (or clerk) acting as program administrator to submit all information needed to apply for an enterprise zone amendment and to carry out all program administrative and reporting requirements on its behalf;
- ❑ The local governing body authorizes the chief administrator (or clerk) acting as program administrator to carry out all program administrative and reporting requirements on its behalf, as defined by the Enterprise Zone Regulations, throughout the life of the zone.
- ❑ Each jurisdiction participating in a joint EZ application has completed a Joint Application Agreement. **See page 14 of appendix for format of agreement.**

Appendix I: Local Assurances

Local Assurances and Authorizations are used to certify the accuracy of the information provided by the applicant and to insure that the Program Regulations will be met. **Important:** All applications must include a certified resolution from the local governing body. If a joint application, include resolutions of each local governing body. **Attach the resolutions at the end of the amendment application.** Joint applications must also include Joint Application Amendment Agreement (JA) – refer to page 14 of the appendix.

As the representative of the local governing body of Winchester, I hereby certify that:
(locality)

1. The information in the Enterprise Zone application is accurate to the best of my knowledge.
2. A public hearing was held by the aforementioned locality to solicit comments on this request for application amendment. A copy of the public hearing advertisement and a copy of the public hearing minutes are attached.
3. Any local enterprise zone incentives proposed by the aforementioned locality in the Enterprise Zone application represents a firm commitment by the locality and have been reviewed by the local governing body's attorney as to their legality;
4. It is understood that if at any time the aforementioned locality is unable or unwilling to fulfill a commitment to provide local enterprise zone incentives, or if no state enterprise zone incentives have been utilized within a five-year period, the zone shall be subject to termination.

Chief Administrator: _____

Title: City Manager _____

Date: _____

Appendix I: Joint Application Agreement

Each jurisdiction participating in a joint application must complete the following form. This form insures that all jurisdictions are in agreement with the application being submitted by the amending jurisdiction. Completed joint application amendment agreements should be attached at the end of the amendment application.

JOINT APPLICATION AMENDMENT AGREEMENT

As the representative of the local governing body of _____, I hereby certify that:
(locality)

1. The aforementioned locality is in agreement with the other participating localities in filing this amendment;
2. Any local enterprise zone incentives proposed by the aforementioned locality in this amendment application represent a firm commitment;
3. It is understood that if at any time the aforementioned locality is unable or unwilling to fulfill a commitment to provide local enterprise zone incentives listed in this application, the zone shall be subject to termination; and
4. A public hearing was held on _____ to solicit comments on application.
(date)

Chief Administrator's signature

Date

Name: _____

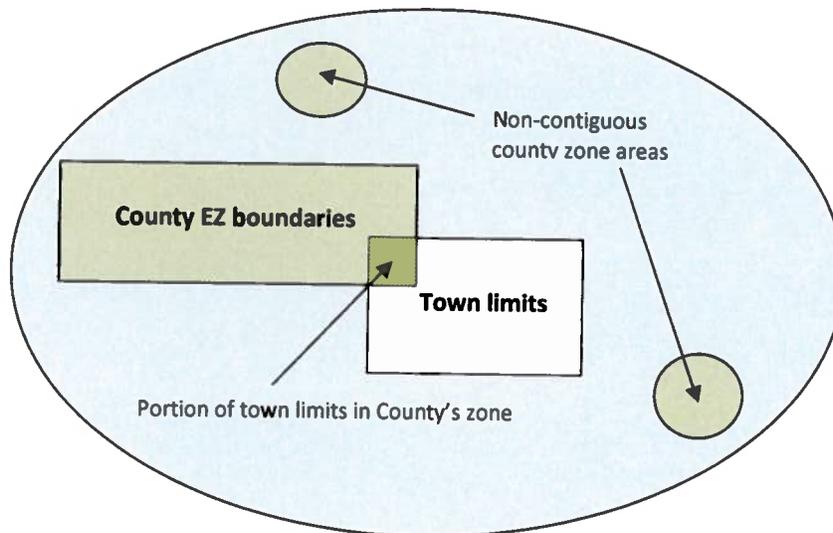
Title: _____

Appendix II: Zone Size Requirements and Configurations

Size Limits for Zones in Towns and Cities	Size Limits for Zones in Counties
<p>Minimum: one-quarter (1/4) square mile (160 acres). Maximum: one square mile (640 acres). Exception: may be larger than one square mile provided it does not exceed seven percent of the locality's land area or it does not encompass more than seven percent of the locality's total population. To calculate the population exception, use the Weldon Cooper Centers' most recent final (not provisional) population estimates for the locality. The following is link to the Weldon Cooper Public Service Center: http://www.coopercenter.org/demographics/POPULATION%20ESTIMATES/</p>	<p>Minimum: one-half (1/2) square mile (320 acres). Maximum: six square miles (approximately 3,840 acres).</p> <p style="text-align: center;">Size Limits for Zones in Consolidated Cities</p> <p>Zones in cities where the present boundaries have been created through the consolidation of a city and county (Chesapeake, Hampton, Newport News, and Virginia Beach) or the consolidation of two cities (Suffolk and Richmond), must use the minimum and maximum size guidelines for zones in unincorporated areas of counties described above.</p>

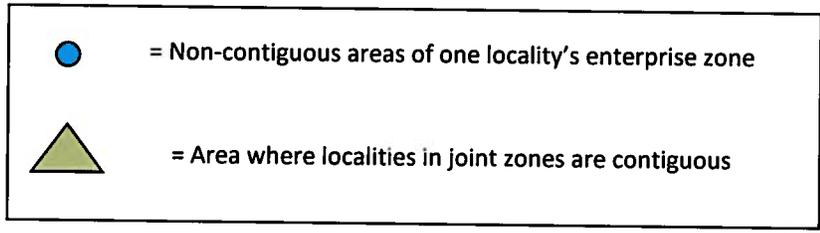
Single zone: An enterprise zone located entirely within a single jurisdiction. The locality's zone can consist of three non-contiguous zone areas. A county zone including areas within incorporated town limits constitutes a single zone and town acreage is considered part of the county's zone acreage.

Counties can amend their zone boundaries to include part of the corporate town limits as part of the zone. This addition does NOT constitute a joint zone. The acreage within the town limits counts towards the county's maximum zone acreage. Towns added into the county acreage are not required to offer local enterprise zone incentives, but may.

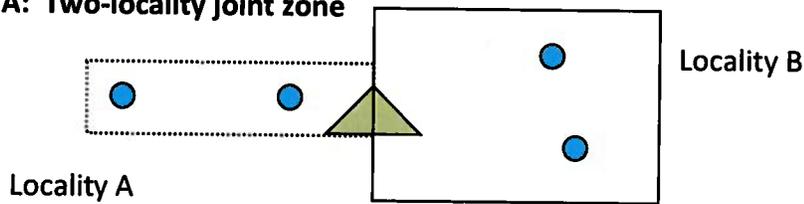


Appendix II: Zone Size Requirements and Configurations

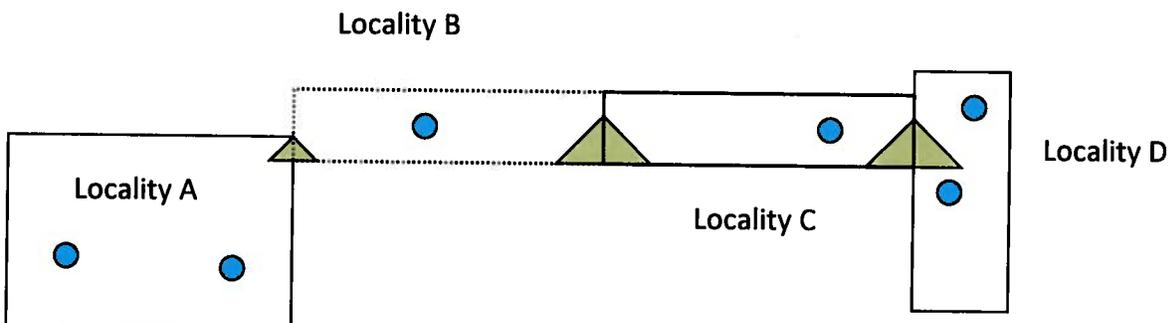
Joint zone: An enterprise zone located in two or more jurisdictions. Each locality's portion of the joint zone can consist of up to three non-contiguous geographic areas relative to that locality. The three non-contiguous areas comprise that locality's total zone size and the acreage of all three non-contiguous areas must meet the total size requirements for that type of locality. If a locality participates in a joint zone and also has two other zone designations, each of the three zones can consist of three non-contiguous areas. In the case of the joint zone, one of the locality's three possible zone areas must be contiguous to at least one other participant's zone area. The following are some examples of joint zone configurations:



EXAMPLE A: Two-locality joint zone



EXAMPLE B: Four-locality joint zone



Appendix III: Incentive Amendments

Local incentives are a critical part of the success of an enterprise zone and they should be selected carefully. It is important for a locality to develop a package of incentives that will best assist in overcoming the specific barriers to development within their zone by supporting targeted business sectors. The number of incentives is not as important as the quality and impact of the incentives. If no zone businesses have qualified for a particular local incentive for more than one year, it might be appropriate to make amendments to the incentive. **Local incentives that require a business to qualify for state incentives are HIGHLY discouraged.**

1. Role of Local Incentives

- Local incentives should help address the locality's economic conditions and barriers to economic development goals.
- Local incentives should be tailored to both new and existing targeted business sectors.
- Local incentives should fill in the gaps of the state incentives therefore qualification for local incentives should NOT be contingent on state incentive qualification.

2. Constitutionality of Local Incentives

Because Virginia is a Dillon Rule state, localities have very little authority to offer local tax incentives unless expressly allowed through the Code of Virginia. The Virginia Enterprise Zone Grant Act allows participating localities to offer a variety of incentives to businesses.

Local enterprise zone incentives must in no way violate the Virginia Constitution. The Uniformity Clause of Article 10, Section 1, of the Virginia Constitution specifies that taxation must be uniform in territory, subject, and class. As it relates to the Enterprise Zone program the concern is that taxation must be uniform throughout an entire locality unless there is state enabling legislation that allows otherwise. **The local governing body's attorney should review local incentives to ensure their compliance with the Virginia Constitution.**

The following examples offer simple guidelines for common tax-related local incentives:

Real estate tax exemption: Virginia Code sections 58.1-3220 and 3221 serve as the enabling legislation and give all localities the authority to offer exemptions on real estate tax when certain conditions are met. This incentive can be offered locality wide, not just within the zone. In such cases where this incentive is offered locality-wide, the incentive criteria needs to be customized in the zone in order to be considered as a local enterprise zone incentive. **Real estate tax abatement, refunds, or rebates are prohibited under the State Constitution.**

Machinery & tools tax grants: The Uniformity Clause applies and there is no enabling legislation to allow for the exemption of this tax. Therefore, a locality wishing to offer an incentive related to the machinery and tools tax must first collect the tax uniformly from all appropriate taxpayers across the locality -those within the enterprise zone as well as those outside the zone. Once the tax is collected, the locality may offer businesses a grant based on their machinery and tool tax. This is usually done through the local Industrial Development Authority. **Machinery and tools tax abatement, refunds, or rebates are prohibited under the State Constitution.**

BPOL tax, utility tax, or permit fees: The Uniformity Clause does not apply to these taxes and fees. Localities are free to offer these incentives in the form of rebates, refunds, and abatements.

Appendix III: Incentive Amendments Cont...

3. Examples of Local Incentives

An incentive that is available throughout a locality will not be considered an enterprise zone incentive unless special actions are taken to encourage greater utilization of the incentive within the proposed enterprise zone or a greater benefit is provided within the zone (i.e. lower qualification threshold or larger grant amount). Local governments provide a variety of financial and non-financial incentives to encourage economic growth and investment. The following list is not inclusive but serves as an example of the most frequently offered local enterprise zone incentives:

Local Enterprise Zone Development Taxation Program: Section 58.1-3245.6 through Section 58.13245.11 of the Code of Virginia enables designated zone localities to establish a Local Enterprise Zone Development Taxation Program. Incremental tax revenues generated from real property or machinery and tools, or both can be used to establish an enterprise zone development fund to pay for enhancements to government services that promote economic development.

Tax Exemption: §58.1-3221 of the Code of Virginia enables localities to defer the taxes on the increase in assessed value as a result of the rehabilitation of real estate for structures at least 15 years of age in enterprise zones and 20 years of age elsewhere in the jurisdiction.

Local Tax Rebates: BPOL tax fees, local sales tax on items purchased in the community for conduct and trade of business in the enterprise zone.

Business Loans: Facade improvement loans for both commercial and industrial properties, low interest loan funds for start-up and expansion, revolving loan funds composed of local and private funding sources.

Fee Waivers: Permit fees, sewer and water tap fees, utility fees.

Public Improvements: Highways, streets, sidewalks, water and sewer systems, signals, etc.

Job Training: Targeted training programs to meet business needs.

Non-financial: Fast track permitting, loan packaging assistance, and design assistance.

Suggested Rationale to Use When Developing Local Enterprise Zone Incentives

- a. Incentives should be directly linked to actions that are consistent with local enterprise zone revitalization and development goals.
- b. Survey existing zone businesses to gain feedback on existing local incentives and recommendations for new local incentives.
- c. Establish performance baselines that provide a threshold for qualification. Incentives should reward firms that make a commitment to invest in a zone by creating new jobs and/or investment.
- d. Develop measurable incentives.
- e. Incentives should represent sound fiscal policy and not provide an excessive level of benefit that would be inappropriate from an economic point of view.

Appendix III: Incentive Amendments Cont...

4. Local Incentive Qualification Requirements

A locality should establish qualification requirements for each of its local incentives so that the incentives allow for a good return on investment for the locality (i.e. private investment or jobs leveraged). These requirements should be reasonable (not too restrictive) so that businesses can actually qualify. The detailed qualification requirements for each local incentive should be outlined in writing and approved by the local governing body prior to the submitting the amendment to DHCD. As part of this process, pertinent terms of the incentive qualifications should be defined as should the process for incentive application approval, life of the incentive, and the value of incentives. For example, if a locality is offering a machinery and tools tax grant based on the creation of five new jobs the locality needs to define “new jobs” for the purposes of the incentive qualification. Continuing with this example, would “new jobs” be considered net new, permanent full time and would there be any wage or benefit requirements in this definition?

In addition, a locality may establish conditions on the availability of such incentives. For example, a locality may propose to make grant funds available to new businesses during the first five years of zone operation. It may propose a three-year utility tax exemption for new or expanding firms or propose to restrict the availability of low interest business loans to new firms locating in the zone that agree to meet certain locally set hiring requirements. **Conditions should NOT require businesses to qualify for a state incentive in order to qualify for a local incentive.**

5. Financial Value of Incentives

The quantity of local enterprise zone incentives offered is not as important as the quality of local incentives. The incentives should be meaningful and beneficial to targeted business sectors. For example, if the cost of water and sewer service is higher in the county than in the city, the county zone may consider offering a water/sewer hookup fee incentive to help offset its higher service fees. The financial impact of the water/sewer hookup fee incentive should provide a considerable reduction, not just mere pennies in savings. Some incentives may have a different type of monetary value but can still have a valuable impact on the business. For example, if crime and vandalism to zone businesses is an issue, free consultations with the Crime Prevention through Environmental Design (CPTED) planner with the police department can be a valuable incentive where the value of the incentive would be the “consultant” market rate or police employee wage for such training.

6. Local Assigned Agents

A locality may designate an assigned agent, such as a local redevelopment and housing authority, a nonprofit entity or a private for-profit entity, to provide local incentives. This arrangement should be documented by a written commitment from the agent.

7. Termination

Section §59.1-284 of the Virginia Enterprise Zone Grant Act describes two circumstances that can result in the termination of a designated zone. First, in the event the local government or an assigned agent is unable or unwilling to provide regulatory flexibility, tax incentives or other public incentives as proposed in the application for zone designation, the zone may be terminated. This is avoidable if the applicant is able to amend the application by substituting an incentive that is equal or superior to the incentive originally approved. Second, if no business firms in an enterprise zone have qualified for state incentives within a five-year period, the zone will be terminated.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 12/16/14 (work session) **CUT OFF DATE:** 12/10/14
1/13/15 (regular mtg)

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

ITEM TITLE:

Appeal of BAR Decision regarding window replacement for Omgs at 455 N. Loudoun St (BAR-14-689)

STAFF RECOMMENDATION:

Reverse decision as contained in attached resolution.

PUBLIC NOTICE AND HEARING:

Public hearing for 1/13/15 Council mtg

ADVISORY BOARD RECOMMENDATION:

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

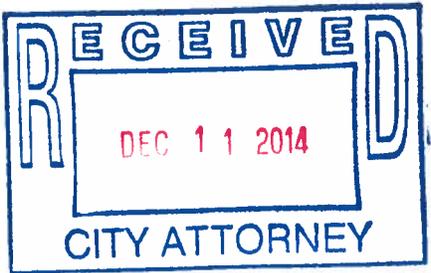
FUNDING DATA: N/A

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	AMB		12/11/14
2. City Attorney	<i>[Signature]</i>		12/11/2014
3. City Manager			
4. Clerk of Council	KJH for E. Freeman		12/11/14

Initiating Department Director's Signature: *[Signature]* 12/10/14
(Planning Dept)



APPROVED AS TO FORM:
[Signature] 12/11/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Timothy Youmans, Planning Director
Date: December 10, 2014
Re: Omps Appeal of BAR Decision (BAR-14-689) to City Council

THE ISSUE:

An appeal of a BAR decision pertaining to window replacement at 455 N. Loudoun Street. City Council must hold a public hearing within 60 days of the date of appeal filed on November 25, 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:

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

See attached letter from Larry T. Omps dated October 21, 2014 which was addressed to Josh Crump, staff to the BAR with the application for a Certificate of Appropriateness. The letter mentions the removal of the inappropriate storm windows and the retaining of the wooden window frames. It notes the use of an acrylic coating similar to Kolbe K-Kron that has been approved for the historic district.

The Board of Architectural Review heard the matter at its November 20, 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 not appropriate in the historic district. The November 24th action letter from staff noted the options to appeal the decision within 30 days. On November 25, 2014, Mr. Omps provided written notice to the City Manager requesting appeal of the decision of the BAR.

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."

The Board did not discuss options 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.

The 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."

As with the recent Hanke window replacement appeal case, it is noteworthy that there were already aluminum storm windows in place (presumably prior to 1976) on the windows in this circa 1912 apartment building that previously served as a funeral home. The applicant is removing the inappropriate 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.***"

Much of the period wood in the windows is either being preserved or replaced with wood. The concrete/stone sills are also being retained. Since most of the stone and wood window elements are being retained and since the exterior-most aluminum storm windows are being removed, there is some latitude for City Council to find that the request, though started without approval, is consistent with the standards.

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 applicant undertook the work without BAR approval and that the Board properly applied the standards for window replacement;
2. Modify the decision of the Board of Architectural Review to preclude replacement of windows that have not already been replaced; 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 #3 which acknowledges the actions by the applicant to retain most of the period materials (wood and stone) and remove the inappropriate storm windows.

**BOARD OF ARCHITECTURAL REVIEW
MINUTES**

The Board of Architectural Review held its regularly scheduled meeting on Thursday, November 20, 2014, at 4:00p.m. in Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

POINTS OF ORDER:

PRESENT: Chairman Rockwood, Mr. Serafin, Mr. Walker, Mr. Bandyke, Ms. Jackson, Ms. Elgin

ABSENT: None

STAFF: Josh Crump, Carolyn Barrett

VISITORS: Larry Omgs, Jim Riley, George Stathopoulos, Glen Burke

APPROVAL OF MINUTES:

Chairman Rockwood called for corrections or additions to the minutes of November 6, 2014. Mr. Walker asked for a correction on page two. Chairman Rockwood called for a motion. Ms. Jackson moved to approve the minutes as corrected. Mr. Bandyke seconded the motion. Voice vote was taken and the motion passed 6-0.

CONSENT AGENDA:

None.

NEW BUSINESS:

BAR 14-689 Request of Jucapa LLC for a Certificate of Appropriateness to repair the windows at the property located at 455 North Loudoun Street.

Mr. Omgs spoke about replacing the windows at the property. He said none of the windows are standard and the plan was to change the windows to more efficient and better appearing windows.

Mr. Walker asked about whether there was more wood exposed on the interior or exterior of the windows. Mr. Omgs said they were removing the aluminum storm windows and putting back one-over-one windows. Mr. Serafin asked if they were vinyl clad windows. Mr. Omgs said the window frames are original, the sashes are vinyl clad and covered with wood. There may be a quarter-inch of vinyl showing.

Chairman Rockwood asked if the existing sashes being replaced are covered with vinyl. Mr. Omgs said some of them were. Chairman Rockwood asked if the replacement windows were made out of wood. Mr. Omgs said the acrylic coating was approved by the Secretary of the Interior or approved by the BAR for covering Kolbe windows. Chairman Rockwood said he was trying to understand which part of the windows was wood. Mr. Omgs pointed out which sections were wood and which were clad.

Mr. Bandyke asked if he was taking the sashes out of the windows and Mr. Omps said yes, they were putting in new insulated sashes.

Chairman Rockwood asked if the existing sashes were wood or vinyl. Mr. Omps said a combination of both. Some were from 1912, some were from other years. Chairman Rockwood asked how many of each were left to be replaced. Mr. Omps said he did not know. Chairman Rockwood asked if a majority to be replaced were wood or vinyl. Mr. Omps said at least 10 had not been replaced and the building had 30 or 40 windows. Mr. Bandyke asked if the ones that had been replaced were similar to the windows depicted composition wise and Mr. Omps said some of them were.

Chairman Rockwood asked if Mr. Omps could tell where the original windows to be replaced were on the building. Mr. Omps said on the south side and two smaller windows in the front of the building. Mr. Serafin said the Kolbe K-Kron coating on windows is like a high-tech automotive paint on windows. It looked like what Mr. Omps was replacing them with was a vinyl cladding which is a different thing. Mr. Omps said what they were doing was covering most of the vinyl with wood to give it a more natural appearance. Chairman Rockwood asked Mr. Omps to identify which windows were currently original wood sashes and which had been replaced previously with vinyl. Mr. Omps pointed out the windows on the drawings.

Mr. Bandyke said that if it is vinyl coated, a vinyl window or any vinyl on it at all, it is not acceptable. If it is K-Kron, which is a wood window with a baked on finish, that is acceptable because it is on wood. It is not vinyl because it is painted on. Mr. Omps has added wood onto the jamb of the window. The window sashes themselves are vinyl on the outside and that is a problem. The windows look better than the storm windows that were on the building but vinyl cannot be allowed. The K-Kron is approved because that is paint. Even though the sashes are hidden behind aluminum screens they are still vinyl. Chairman Rockwood asked if K-Kron windows could be purchased. Mr. Omps said those were about \$1,000 each. The ones he is putting in are \$200.00. Mr. Omps suggested the Historic District be divided up into two tiers. The downtown area could be perfectly historic. Five blocks out could have more latitude. There are many homes that people cannot repair to historical standards because they cannot afford it.

Chairman Rockwood said all they can do is work with applications as they come in. There are properties throughout the district that are sometimes problematic and have been allowed to run down to the extent that it is very expensive to improve them. Throughout the district, there are important historic buildings that they are charged with preserving and the standards are well established. In some cases it is a difficult thing. There are things that would not have been approved if brought before them. The building that Mr. Omps is talking about has several things that had they been presented, they would not have been approved such as the aluminum siding, bump out on the porch, aluminum ceiling on the porch and several windows.

Mr. Walker said he appreciated the care that had been given to trying to make the windows as historic as they can be with the wood trim and removal of aluminum storm windows. Unfortunately, vinyl will never be a historical material. Mr. Bandyke said it is number one on the rules for windows. The only option is a wood window that is a double glazed wood window. They are less than \$1,000.00 and they are not going to be coated like K-Kron windows which means they are a lesser quality which is the last thing needed for a window but unfortunately it has to be wood but it can be coated with anything he wanted.

Mr. Serafin said it would set a precedent that if wood windows could be replaced with vinyl here than why not on the mall or through the historic district. Chairman Rockwood said Mr. Omphs could look into alternative windows such as a non-clad window that would require maintenance to keep up but that may be cheaper to install. The price differential might not be as burdensome. Mr. Omphs said the difficulty they have is virtually all of them are custom sizes and you cannot just open a catalog and pick them out. He understood the board's position and if they vote it down, he will not take it personally. Chairman Rockwood asked if there was any other discussion by the board. He then called for a motion.

Mr. Bandyke made a motion to deny the request for a Certificate of Appropriateness for **BAR-14-689** because the replacement windows are vinyl. Mr. Serafin seconded the motion. Voice vote was taken and the motion passed 6-0.

BAR 14-705 Request of the Religious Society of Friends for a Certificate of Appropriateness to install a storage shed at 203 North Washington Street.

Jim Riley spoke about the shed and its placement on the property. It will be on the side that is not facing the street. It will be for mowing equipment and tools. The shed is pre-made from a dealer by the Apple Blossom Mall. The building is made out of white pine with board and batten styling and stained with a rustic cedar color.

Mr. Bandyke asked if it would be on a gravel or concrete pad. Mr. Riley thought it would be concrete blocks set in the ground and the church would put mulch or other material around it. Chairman Rockwood asked if the door would be on the north side and Mr. Riley said yes.

Mr. Bandyke made a motion to grant a Certificate of Appropriateness for **BAR 14-705** with the following comments:

- That it be a wooden storage building;
- It has a green metal roof;
- Board and batten siding;
- All wood trim;
- Four foot door;
- Set on small block piers or something of that nature;
- No windows.

Mr. Walker seconded the motion. Voice vote was taken and the motion passed 6-0.

BAR 14-707 Request of Nostimon LLC for a Certificate of Appropriateness to replace the roof at 202 East Piccadilly Street.

Mr. Stathopoulos outlined the project and stated that they wanted to replace the roof like-for-like. Mr. Bandyke asked if anything was mentioned about gutters. Mr. Stathopoulos said no. Mr. Bandyke said it looked like it was strapped to the roof and it would need to be rehung and restrapped. He recommended that be checked on. If they are being replaced same-for-same, it would not need to be brought back before the board.

Chairman Rockwood asked if it was a standing seam roof. Mr. Bandyke said it was a true standing seam and instead of a cap on the ridge, it was folded over, that is part of the standing seam. Some metal roofs are capped at the hip or ridge.

Mr. Serafin made a motion to grant a Certificate of Appropriateness for **BAR-14-707** with the following comments:

- The hip and ridge be a non-cap seam.
- Remaining items as submitted.

Mr. Bandyke seconded the motion. Voice vote was taken and the motion passed 6-0.

BAR 14-710 Request of GW Development LLC for a Certificate of Appropriateness to apply new trim around entryway and signage for restaurant entrance at 103 East Piccadilly Street.

Mr. Burke spoke about the rebranding of the Dancing Goat Restaurant and the plans for the entryway and signage of the restaurant to fit more into the feel of the old town area.

Mr. Bandyke asked if anything was going to be put on the top of the columns. He also asked about the lighting for the sign. Mr. Burke said there were two flood lights in the planters that are aimed at the signs. The board members asked questions pertaining to the size and material of the lettering for the new signs.

Mr. Bandyke made a motion to grant a Certificate of Appropriateness to **BAR-14-710** as described below:

- Change the two brick pilasters on either side of the entrance to a two foot higher elevation with a concrete or stone cap and allowances for either a concrete or metal pot or some sort of container on top if desired or need be.
- The door entrance will be flanked by two wood fluted columns with plinths and capitals
- The half round signage will be changed to "Food and Spirits" and will be applied metal letters.
- The name of the restaurant will be changed to "George's" and that signage will be above the "Food and Spirits" awning which will be depicted as submitted.
- The sign for George's Restaurant will have a metal bracket painted black and signage as submitted.
- The Half Note Lounge on the Piccadilly side will have a similar metal bracket with the same signage as submitted.
- Current lighting is not to be changed.
- Menu board is to be made out of wood with a glass or plastic door.

Ms. Jackson seconded the motion. Voice vote was taken and the motion passed 6-0.

OLD BUSINESS:

None.

DISCUSSION:

Mr. Bandyke made a motion to adopt the meeting calendar for 2015. Ms. Jackson seconded the motion. Voice vote was taken and the motion passed 6-0.

Mr. Serafin asked about doing a press release about windows or having a discussion to educate the public on the Historical District standards. Mr. Crump said postcards were going to be sent out in May to residents and businesses in the district as it was done last year.

ADJOURN:

With no further business before the Board, the meeting was adjourned at 5:24pm.

DISCUSSION:

Mr. Bandyke made a motion to adopt the meeting calendar for 2015. Ms. Jackson seconded the motion. Voice vote was taken and the motion passed 6-0.

Mr. Serafin asked about doing a press release about windows or having a discussion to educate the public on the Historical District standards. Mr. Crump said postcards were going to be sent out in May to residents and businesses in the district as it was done last year.

ADJOURN:

With no further business before the Board, the meeting was adjourned at 5:24pm.



COMMERCIAL & RESIDENTIAL RENTAL PROPERTIES

1600 Amherst Street ■ Winchester, VA 22601 ■ (540) 662-9371

October 21, 2014

Mr. Josh Crump
Rouss City Hall
15 North Cameron Street
Winchester, VA 22601

Dear Mr. Crump:

This is a request to repair windows at 455 North Loudoun Street, Winchester, Virginia.

The existing windows are a combination of vinyl replacements and original wooden sash. A majority of the windows were replaced as part of the apartment renovation years ago.

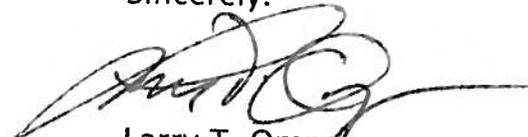
The remaining windows are in poor condition, and are unusual sizes and combinations. In an effort to preserve as much of the original window as possible, sashes were fabricated to fit in the original wooden frames. None of the wooden frames of windows being upgraded will be removed.

The sashes will be the same configuration as original windows, with an acrylic coating similar to the Kolbe K-Kron coating that has been approved for the historic district.

This is essentially a like-for-like replacement. The wooden frames remain and the sashes have the same configuration as original. The result will be a window without storm windows which take away from the historic look, particularly with the windows that are unique combinations.

Attached are photos of a window before replacement with storm windows and a window which has been replaced.

Sincerely,



Larry T. Ompr

LTO/nso





CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 12/16/14 (work session), CUT OFF DATE: 12/09/14
1/13/15 (regular mtg/public hearing)

RESOLUTION X ORDINANCE ___ PUBLIC HEARING ___

ITEM TITLE:

Resolution- Naming A Public Street To Vanceright Circle

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Input solicited from all property owners along Vanceright Ave/Circle. Seven (7) respondents; all support renaming of Vanceright Circle.

ADVISORY BOARD RECOMMENDATION:

N/A

FUNDING DATA:

Minimal cost associated with ordering sign and installation by Public Works.

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. Public Works	FE		12/8/14
2. Police	GS		12/9/14
3. Fire & Rescue	X		12/15/14
4. City Attorney	[Signature]		1/5/2015
5. City Manager	MD		7 Jan 2015
6. Clerk of Council			

Initiating Department Director's Signature: [Signature] 12/8/14

APPROVED AS TO FORM:
[Signature]
CITY ATTORNEY



CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Tim Youmans, Planning Director
Date: November 19, 2014
Re: Renaming Vanceright Avenue to Vanceright Circle.

THE ISSUE:

In seeking clarification for the proper name for a public street extending from Miller Street, property owners along existing Vanceright Avenue request renaming to Vanceright Circle to reduce confusion and to ensure unimpeded emergency response.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 2- Create a More Livable City for All: Objective- Create a Safe Community.

BACKGROUND:

Recently there has been confusion on the correct street suffix for Vanceright. Historically the street name has been "Vanceright Avenue" as shown in city records. At some point in time, residents began using "Vanceright Circle" as their physical and mailing address.

To ensure unimpeded emergency response and to clarify the official street name of Vanceright, on November 17, 2014 a letter (see attached letter) was sent to the residents/property owners along Vanceright asking for their input on whether it should be called "Vanceright Avenue" or "Vanceright Circle". The responses received by the City were unanimously for "Vanceright Circle".

BUDGET IMPACT:

Replacement street sign for the roadway to be changed to "Vanceright Circle" will be need to be ordered and installed.

OPTIONS:

- 1) Approve Renaming Resolution.
- 2) Disapprove Renaming Resolution.
- 3) Defer further action at this time.

RECOMMENDATIONS:

Staff recommends Option #1.

RESOLUTION NAMING A PUBLIC STREET TO VANCERIGHT CIRCLE

WHEREAS, citizens have expressed interest in renaming a public street extending from Miller Street as depicted on the attached exhibit entitled “Vanceright Circle Exhibit” ; and,

WHEREAS, the Common Council may name streets in accordance with the provisions of §15.2-2019 of the Code of Virginia, as amended;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Winchester, Virginia, that the street as described herein is hereby named **VANCERIGHT CIRCLE**.

BE IT FURTHER RESOLVED that the Clerk of Council is directed to forward a certified copy of this action to the Clerk of the Circuit Court who shall record the certified copy in accordance with the provisions of §15.2-2019 of the Code of Virginia, as amended.



Vanceright Circle Exhibit

000 0067

FINAL PLAT
MINOR SUBDIVISION
STREET VACATION
LOT 1A

C. H. HIMELRIGHT'S VANCERIGHT AVENUE LOTS
CITY OF WINCHESTER, VIRGINIA

HANDLEY HEIGHTS
LOT 12

N 35°15'00"E 70.71'
68.11'

2.60'

LOT 1A

AREA TABULATION
BEFORE ADJUSTMENT
LOT 1A 8,326 SQ. FT.

AFTER ADJUSTMENT
LOT 1A 8656 SQ. FT.

LOT 3A

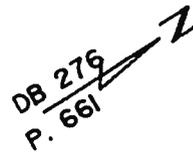
N 58°00'00"W 87.25'

PROPERTY LINE HEREBY VACATED

330 sq. ft.

S 58°00'00"E 111.85'

MILLER STREET



9.00'
S 32°00'00"W

N 58°00'00"W 43.61'

RADIUS=15.00'
ARC LENGTH=23.56'
CHORDBEARING= S12°59'51"E
CHORD=21.21'

S 32°00'00" 46.60'

VANCERIGHT AVENUE
(56' R/W)

FURSTENAU SURVEYING

111 SOUTH LOUDOUN STREET
WINCHESTER, VIRGINIA (540) 662-9323

DATE: AUGUST 7, 2002

SCALE: 1" = 25'

TAX MAP 211-4-1

SHEET 2 OF 2

SURVEYOR'S CERTIFICATE :

BK 217 PG 233

I hereby certify that the land in this subdivision is a portion of land conveyed to John S. Scully, IV and Ray Robinson, Jr. by Deed December 15, 1986, and recorded in the City of Winchester Clerk of the Circuit Court Office in Deed Book 207 Page 804.

[Signature]
G. V. " Kirk " Hughes, C. L. S.

OWNER'S CONSENT :

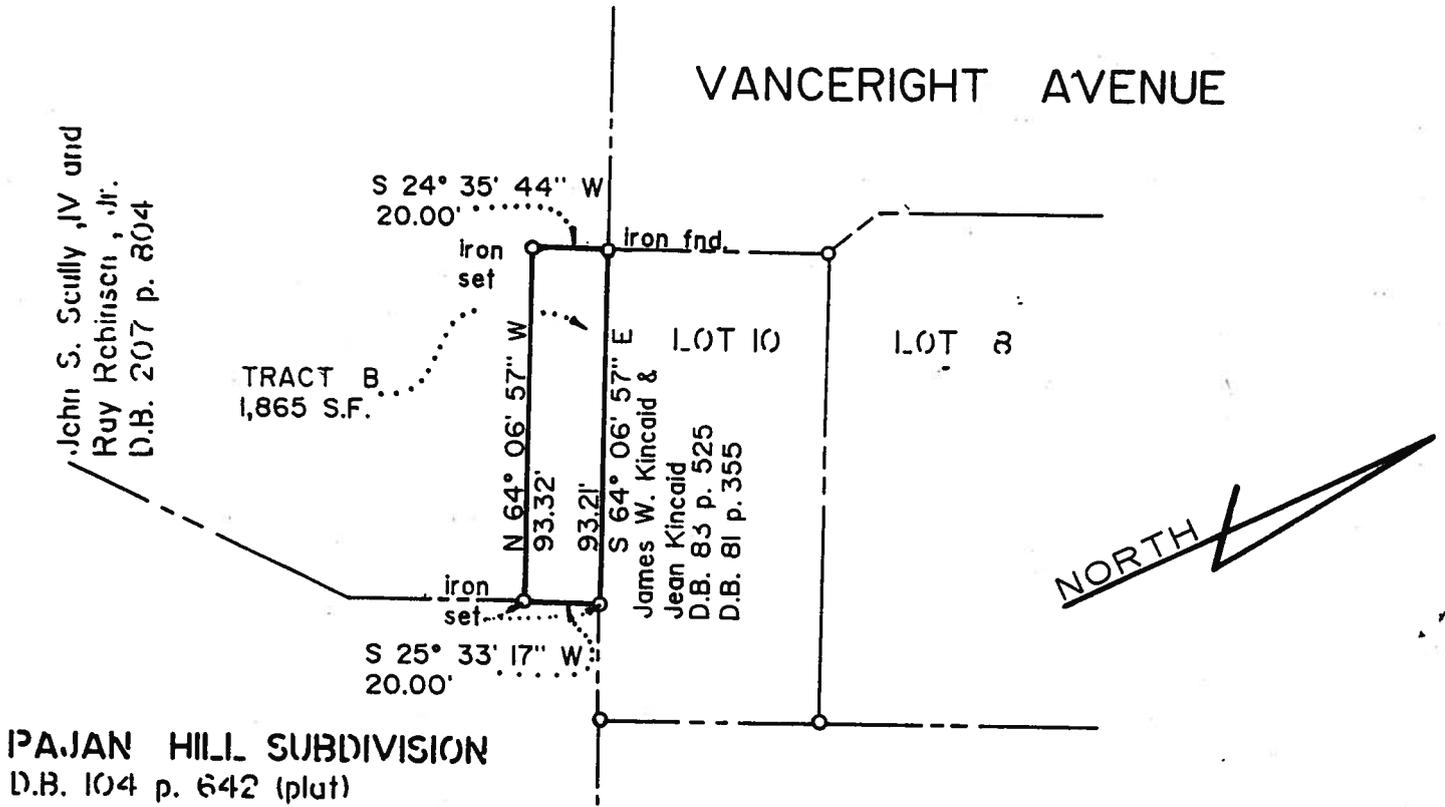
The above and foregoing subdivision as appears in this plat is with the free consent and in accordance with the desires of the owners, proprietors, and trustees, if any

[Signature]
John S. Scully, IV and Ray Robinson, Jr., Partners, T/A OMNI

7/10-87
Date

[Signature] *[Signature]*
James W. Kincaid Jean Kincaid

8/31-87
Date



NOTE :

Tract B is to be added to and become a part of Lot 10 owned by James W. Kincaid and Jean Kincaid.

APPROVED : *[Signature]*
Director of Planning Date 1 Sept 87

PLAT SHOWING MINOR SUBDIVISION

1,865 s.f., being a portion of the land of John S. Scully, IV and Ray Robinson, Jr.

WINCHESTER, VIRGINIA

SCALE : 1" = 50'

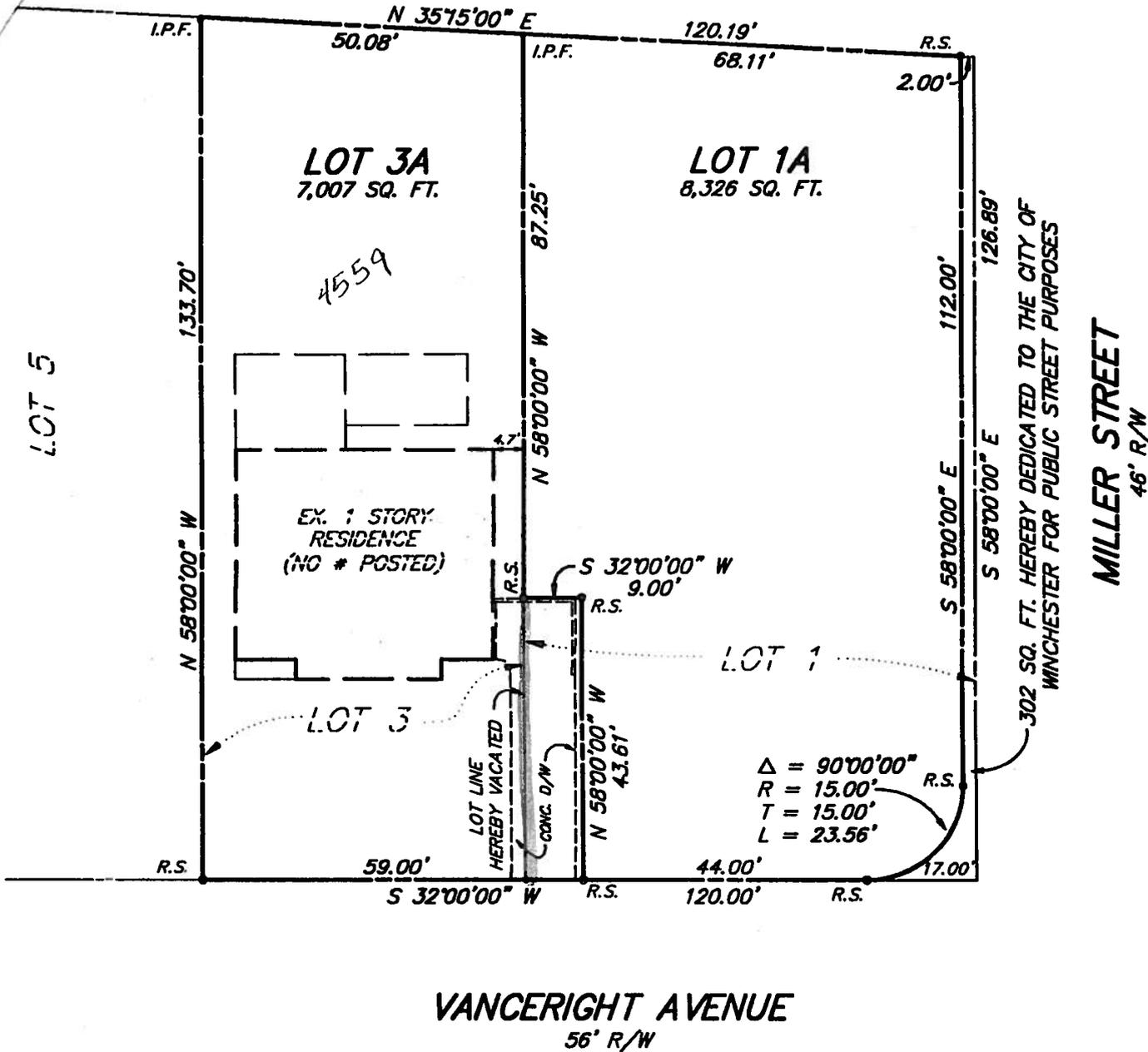
JULY 7, 1987

REV. 7/20/87
Rev. 8/6/87



HANDLEY HEIGHTS II
LOT 12

5.001
211-04-1- 211-04-3
BK 276 PG 0661



I.P.F. - IRON PIPE FOUND
R.S. - REBAR TO BE SET

AREA TABULATION

LOT 1A = 8,326 SQ. FT.

LOT 3A = 7,007 SQ. FT.

STREET DEDICATION = 302 SQ. FT. ✓

TOTAL AREA = 15,635 SQ. FT.

GRAPHIC SCALE



1 inch = 25 ft.

MAP
OK

SHEET 3 OF 3