



WINCHESTER COMMON COUNCIL  
ROUSS CITY HALL  
15 NORTH CAMERON STREET, WINCHESTER  
SEPTEMBER 22, 2015  
AGENDA  
6:00 PM

**CALL TO ORDER AND ROLL CALL**

**MOMENT OF SILENCE**

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES** – September 8, 2015 Regular Meeting and September 8, 2015 Work Session

**REPORT OF THE MAYOR**

**REPORT OF THE CITY MANAGER**

**REPORT OF THE CITY ATTORNEY**

**1. PUBLIC HEARINGS**

- 1.1. **O-2015-17:** Second Reading - AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 17, 18, AND 21 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS; NONCONFORMING STRUCTURES; PERMIT REQUIREMENTS FOR FAMILY DAY HOMES; POWERS, PROCEDURES AND EX PARTE COMMUNICATIONS OF THE BOARD OF ZONING APPEALS; AND VIOLATIONS AND PENALTY. (Amendment Will Incorporate Changes to the Board of Zoning Appeals and Family Day Homes Following Legislation Passed During the 2015 General Assembly Session) **(REQUIRES ROLL CALL VOTE)**
- 1.2. **O-2015-20:** Second Reading - AN ORDINANCE TO AMEND SECTION 2-1 AND 2-2 OF THE WINCHESTER CITY CODE PERTAINING TO THE CITY SEAL AND DUTIES OF THE CLERK OF COUNCIL **(REQUIRES ROLL CALL VOTE)**
- 1.3. **O-2015-18:** Public Hearing - AN ORDINANCE TO VACATE A PORTION OF AN ALLEY RIGHT OF WAY BETWEEN 328 AND 400 HIGHLAND AVENUE AND CONVEY IT TO THE ADJACENT PROPERTY OWNER(S). SV-15-406 **(Request Public Hearing be postponed to October 13, 2015 Regular Meeting to allow applicant to provide notice to adjoining property owners)**
- 1.4. **Public Hearing** - Appeal of BAR Decision Regarding Window Replacement for Sam Simpson at 210 S. Washington St. BAR-15-336

**1.5. Public Hearing:** To receive the nominations and citizen input on the appointment of Marie Imoh as an "At-Large Ward 4" member of the City School Board to an unexpired four year term commencing October 13, 2015, and ending June 30, 2015

## **2. PUBLIC COMMENTS**

## **3. CONSENT AGENDA**

**3.1. O-2015-21:** First Reading - ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE CITY OF WINCHESTER, VIRGINIA, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$7,200,000, TO FINANCE THE COSTS OF CERTAIN CAPITAL IMPROVEMENT PROJECTS

**3.2. R-2015-30:** RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND AWARD OF A GENERAL OBLIGATION PUBLIC IMPROVEMENT BOND OF THE CITY OF WINCHESTER, VIRGINIA, IN THE MAXIMUM PRINCIPAL AMOUNT OF \$7,200,000 AND PROVIDING FOR THE FORM, DETAILS AND PAYMENT THEREOF

**3.3. R-2015-31:** Resolution to Accept the Virginia Department of Fire Programs (VDFP) Burn Building Grant

## **4. AGENDA**

**4.1.** Motion to appoint \_\_\_\_\_ as a member of the Frederick-Winchester Service Authority for a three year term expiring August 31, 2017

## **5. EXECUTIVE SESSION**

(1) MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO §2.2-3711(A)(1) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF DISCUSSION AND CONSIDERATION OF INFORMATION REGARDING THE SUBJECT OF THE EMPLOYMENT, ASSIGNMENT, APPOINTMENT, AND PERFORMANCE OF SPECIFIC PUBLIC OFFICERS APPOINTEES, AND EMPLOYEES OF THE CITY OF WINCHESTER INCLUDING THE APPOINTMENT OF OR PROSPECTIVE APPOINTMENT OF MEMBERS TO CERTAIN BOARDS AND COMMISSIONS, *specifically including but not limited to* the consideration of the possible appointments/reappointments to the Winchester School Board AND

(2) PURSUANT TO §2.2-3711(A)(7) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF RECEIVING LEGAL ADVICE AND STATUS UPDATE FROM THE CITY ATTORNEY AND LEGAL CONSULTATION REGARDING THE SUBJECT OF SPECIFIC LEGAL MATTERS REQUIRING THE PROVISION OF LEGAL ADVICE BY THE CITY ATTORNEY AND MATTERS OF ACTUAL OR PROBABLE LITIGATION *specifically including but not limited to* current Winchester Circuit Court case Henschel et. al. v. City of Winchester

## 6. ADJOURNMENT

# CITY OF WINCHESTER, VIRGINIA

## CITY COUNCIL AGENDA ITEM

**CITY COUNCIL MEETING OF:** September 22, 2015

**RESOLUTION** \_\_\_ **ORDINANCE**  **DESCRIPTION/PRESENTATION** \_\_\_

**ITEM TITLE:** AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 17, 18, AND 21 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS; NONCONFORMING STRUCTURES; PERMIT REQUIREMENTS FOR FAMILY DAY HOMES; POWERS, PROCEDURES AND EX PARTE COMMUNICATIONS OF THE BOARD OF ZONING APPEALS; AND VIOLATIONS AND PENALTY. (Amendment Will Incorporate Changes to the Board of Zoning Appeals and Family Day Homes Following Legislation Passed During the 2015 General Assembly Session)

**PUBLIC HEARING DATE:** September 22, 2015 at 6:00 PM

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 completion of review only addresses the readiness of the issue for Council consideration. This does not address the recommendation for approval or denial of the issue.

**Review:**

Aaron Grisdale	Completed	08/19/2015 2:35 PM
Timothy A. Youmans	Completed	08/19/2015 2:36 PM
Mary Blowe	Completed	08/19/2015 2:38 PM
Anthony Williams	Completed	08/20/2015 2:56 PM
Eden Freeman	Completed	09/03/2015 11:59 AM

**Aaron Grisdale**

Aaron Grisdale, Zoning and Building Inspections Director

8/19/2015



**APPROVED AS TO FORM:**

*[Signature]*  
CITY ATTORNEY

*[Signature]*  
Eden Freeman, City Manager

9/3/2015

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council

**From:** Aaron Grisdale, Zoning and Building Inspections Director

**Date:** September 22, 2015

**Re:** AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 17, 18, AND 21 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS; NONCONFORMING STRUCTURES; PERMIT REQUIREMENTS FOR FAMILY DAY HOMES; POWERS, PROCEDURES AND EX PARTE COMMUNICATIONS OF THE BOARD OF ZONING APPEALS; AND VIOLATIONS AND PENALTY. (Amendment Will Incorporate Changes to the Board of Zoning Appeals and Family Day Homes Following Legislation Passed During the 2015 General Assembly Session)

**THE ISSUE:** A publicly sponsored Zoning Ordinance amendment to incorporate changes following modifications to enabling legislation in the Code of Virginia. The changes affect powers, duties and ex parte communications with the Board of Zoning Appeals, and licensing requirements for Family Day Homes.

**RELATIONSHIP TO STRATEGIC PLAN:**

(2) Promote and accelerate revitalization of catalyst and other areas throughout the city;

**BACKGROUND:**

This ordinance incorporates updates mandated by changes to Virginia Code during the 2015 General Assembly session. (See attached staff report).

**BUDGET IMPACT:**

None

**OPTIONS:**

Adopt the ordinance amendment.  
 Modify and adopt the ordinance amendment.  
 Decline to adopt the ordinance amendment.

**RECOMMENDATIONS:**

The Planning Commission unanimously forwarded the amendment with a favorable recommendation.

**AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 17, 18, AND 21  
OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO  
DEFINITIONS; NONCONFORMING STRUCTURES; PERMIT REQUIREMENTS  
FOR FAMILY DAY HOMES; POWERS, PROCEDURES AND EX PARTE  
COMMUNICATIONS OF THE BOARD OF ZONING APPEALS; AND  
VIOLATIONS AND PENALTY. (AMENDMENT WILL INCORPORATE  
CHANGES TO THE BOARD OF ZONING APPEALS AND FAMILY DAY  
HOMES FOLLOWING LEGISLATION PASSED DURING THE 2015 GENERAL  
ASSEMBLY SESSION)**

TA 15-376

Draft 1 - (07/02/15)

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 1  
DEFINITIONS**

**1-2-94.2** **VARIANCE: A reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**

**1-2-94.23** **WELLNESS & FITNESS CENTER:** A facility which consists of physical fitness and therapy, wellness services, and related educational and/or informational programs, and sports medicine as the primary components of healthcare services provided. (1/11/11, Case TA-10-473, Ord. No. 2010-63)

**ARTICLE 17  
NONCONFORMITIES**

**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. **Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.**~~

## ARTICLE 18 GENERAL PROVISIONS

### SECTION 18-19. HOME OCCUPATIONS.

- 18-19-3 The operation of a family day home may occur as an accessory and subordinate use to a residence provided the following:
- A. A family day home for not more than ~~five (5)~~ **four (4)** children shall be considered as residential occupancy by a single family; and, therefore does not require a Certificate of Home Occupation.
  - B. A family day home serving six **five (5)** through twelve **(12)** children, exclusive of the provider's own children and any children who reside in the home, shall obtain a Certificate of Home Occupation and shall be licensed by the Virginia Department of Social Services, provided the following:
    1. Prior to the issuance of a Certificate of Home Occupation for a family day home serving six **five (5)** through twelve **(12)** children, the applicant shall send a notice developed by the Administrator to each adjacent property owner by registered or certified mail, and shall provide proof to the Administrator of the completion of such mailings.
    2. If the Administrator receives no written objection from a person so notified within thirty (30) days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of this Ordinance, the Administrator may issue the permit sought.
    3. Any applicant denied a permit through this administrative process may request that the application be considered by City Council after a hearing following public notice per Section 23-7-1 of this Ordinance.
    4. Upon such hearing, City Council may, in its discretion, approve the permit, subject to such conditions as agreed upon by the applicant and the locality, or deny the permit.
  - C. No family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered.
  - D. A family day home where the children in care are all ~~grandchildren of the provider~~ **related to the provider by blood or marriage** shall not be required to be licensed or obligated to obtain a Certificate of Home Occupation.

## ARTICLE 20 BOARD OF ZONING APPEALS

**SECTION 20-2. POWERS OF THE BOARD OF ZONING APPEALS.**

20-2-1 The Board of Zoning Appeals shall have the following powers and duties:

20-2-2 To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this Article or of any ordinance pursuant thereto. **The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this Article.**

20-2-3 To authorize **grant** upon appeal **or original application** in specific cases such a variance from the terms of the ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the Ordinance shall be observed and substantial justice done, as follows: **the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance, provided below:**

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

**Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition related to the property or improvements thereon at the time of the effective date of the ordinance, and:**

**A. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;**

**B. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;**

**C. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the**

formulation of a general regulation to be adopted as an amendment to the ordinance;

D. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and,

E. The relief or remedy sought by the variance application is not available through a special exception process or the process of an administrative modification at the time of the filing of the variance application.

(7/15/09, Case TA-09-66, Ord. No. 2009-18)

- 20-2-3.2 ~~No such variance shall be authorized by the Board unless it finds:~~**Repealed.**
- a. ~~That the strict application of this Ordinance would produce a clearly demonstrable hardship. (9/13/05, Case TA-05-03, Ord. No. 026-2005)~~
- b. ~~That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.~~
- c. ~~That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.~~
- 20-2-3.3 Repealed. (10/13/92, Case TA-92-02, Ord. No. 016-92)
- 20-2-3.4 ~~No variance shall be authorized unless the Board finds that the condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance.~~ **Repealed.**
- 20-2-3.5 In authorizing **granting** a variance the Board may impose such conditions regarding the location, character, and other features of the proposed structure ~~for~~**or** use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
- 20-2-4 To hear and decide appeals from the decision of the Zoning Administrator **after notice and hearing as provided in this Article.** (10/13/92, Case TA-92-02, Ord. No. 016-92)
- 20-2-5 Repealed. (9/13/05, Case TA-05-03-05, Ord. No. 026-2005)
- 20-2-6 To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, **and after public hearing with notice,** the Board shall **may** interpret the map **in such way as to carry out the intent and purpose of the ordinance for** in the particular section or district in question. The Board shall not have the power to change substantially the locations of district boundaries as established by the Ordinance. (3/15/88, Case TA-87-17, Ord. No. 014-88; 10/13/92, Case TA-92-02, Ord. No. 016-92)
- 20-2-7** **No provisions of this Article shall be construed as granting the board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.**

### **SECTION 20-3. PROCEDURES.**

- 20-3-1 An application or appeal to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the locality affected by any decision of the Administrator or from any order, requirement, decision or

determination made by any other administrative officer in the administration or enforcement of this Ordinance, or any modification of zoning requirements pursuant to §15.2-2286 of the Code of Virginia, as amended. Notwithstanding any charter provision to the contrary **and violations provided in Section 20-2-3,** any written notice of a zoning violation or a written order of the Administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with §15.2-2311 of the Code of Virginia, as amended, and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given. A written notice of a zoning violation or a written order of the Administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section. The application or appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator, and with the Board, a notice of appeal specifying the grounds thereof.

The Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Administrator certifies to the Board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Administrator and for good cause shown. (10/13/92, Case TA-92-02, Ord. No. 016-92; 9/14/10, Case TA-10-334, Ord. No. 2010-39)

20-3-2

All applications or appeals to the Board shall be made to the Administrator on a form provided for such purpose, and shall be accompanied by a filing fee as per Section 23-8, evidence of delinquent tax payment per Section 23-9, and disclosure of real party interest per Section 23-10 of this Ordinance. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. Except as provided for below, the time period for appeal shall be no less than thirty (30) days from the date of receipt of the Notice of Violation sent by the Administrator, pursuant to § 15.2-2311 and § 15.2-2286, Code of Virginia, et seq.: (3/13/90, Case TA-89-12, Ord. No. 008-90; 10/13/92, Case TA-92-02, Ord. No. 016-92; 8/16/02, Case TA-02-04, Ord. No. 014-2002; 3/11/09, Case TA-08-14, Ord. No. 2009-09; 9/14/10, Case TA-10-334, Ord. No. 2010-39)

- a. An appeal period of ten (10) days shall be provided for violations of this Ordinance pertaining to maximum occupancy of residential dwellings.
- b. **Any violation of Sections 18-8-12.1 through 18-8-12.3, pertaining to temporary signs.**
- c. **Any violation of Sections 18-9-5 through 18-9-5.4, pertaining to yard sales.**
- d. **Any violation of Section 18-12, pertaining to visual obstructions.**

- e. Any violation of Section 18-17, pertaining to mobile storage units and temporary events.

20-4

EX PARTE COMMUNICATIONS

20-4-1

The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.

20-4-2

Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314 of the Code of Virginia, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704 of the Code of Virginia. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.

20-4-3

For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542 of the Code of Virginia. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

**ARTICLE 21**

**VIOLATION AND PENALTY**

21-2-2

The appeal period for violations of this Ordinance pertaining to the following uses shall be ten (10) days, pursuant to §15.2-2286 (12/10/13, Case TA-13-138, Ord. No. 2013-14):

- a. Any violation of Sections 18-8-12.1 through 18-8-12.3, pertaining to temporary signs.
- b. Any violation of Sections 18-9-5 through 18-9-5.4, pertaining to yard sales.
- c. Any violation of Section 18-12, pertaining to visual obstructions.
- d. Any violation of Section 18-17, pertaining to mobile storage units and temporary events.

City Council Work Session  
August 28, 2015

**TA-15-376** AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 17, 18, AND 21 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS; NONCONFORMING STRUCTURES; PERMIT REQUIREMENTS FOR FAMILY DAY HOMES; POWERS, PROCEDURES AND EX PARTE COMMUNICATIONS OF THE BOARD OF ZONING APPEALS; AND VIOLATIONS AND PENALTY. (Amendment Will Incorporate Changes to the Board of Zoning Appeals and Family Day Homes Following Legislation Passed During the 2015 General Assembly Session)

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#### REQUEST DESCRIPTION

This is a publicly initiated ordinance amendment to incorporate updates to the Zoning Ordinance as a result of the actions of the General Assembly during their 2015 session. There were two main areas that impact the Winchester Zoning Ordinance: the Board of Zoning Appeals and Family Day Homes.

The more substantive changes dealt with the powers and review standards for the Board of Zoning Appeals, the definition of a variance, and ex parte communications for the BZA. The changes to the BZA review authority eliminates the undefined threshold of a “demonstrable hardship” and replaces the standard with “unreasonably restrict the utilization of the property.” Furthermore, the legislation included mandatory provisions pertaining to ex parte communications between the Board of Zoning Appeals, the applicant and staff. The intent is to eliminate the opportunities for discussions about the merits and law of the case outside of the formal hearing.

Secondly, the General Assembly made some major updates to state code pertaining to the licensure and other requirements for family day homes. The main impact on zoning regulations with the Family Day Home pertains to the threshold for when such facilities are permitted by-right and when the facilities may be regulated by local zoning ordinances. Previously any family day home with 5 or less children had to be treated as by-right in a single family dwelling; this threshold has been reduced to four children. Facilities with 4-12 children may be authorized by the Zoning Administrator in the form of a Home Occupation.

#### RECOMMENDATION

As these are updates to the enabling legislation in the Code of Virginia, Staff recommends favorable recommendation by City Council.

During their August 18<sup>th</sup> meeting, the Planning Commission forwarded **TA-15-376** with a favorable recommendation because the ordinance as presented provides for good planning practice in ensuring that the City’s Zoning Ordinance is consistent with mandatory provisions of the Code of Virginia.

# CITY OF WINCHESTER, VIRGINIA

## CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: September 22, 2015

RESOLUTION \_\_\_ ORDINANCE  DESCRIPTION/PRESENTATION \_\_\_

**ITEM TITLE:** An Ordinance to Amend Section 2-1 and 2-2 of the Winchester City Code Pertaining to the City Seal and Duties of the Clerk of Council

**PUBLIC HEARING DATE:**

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 completion of review only addresses the readiness of the issue for Council consideration. This does not address the recommendation for approval or denial of the issue.

Review:

Eden Freeman	Completed	09/03/2015 10:41 AM
Anthony Williams	Completed	09/03/2015 1:07 PM
Eden Freeman	Completed	09/03/2015 3:16 PM

  
 Eden Freeman, City Manager 9/3/2015



**APPROVED AS TO FORM:**

  
 CITY ATTORNEY

  
 Eden Freeman, City Manager 9/3/2015

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Kari VanDiest, Deputy Clerk of Council  
**Date:** September 22, 2015  
**Re:** An Ordinance to Amend Section 2-1 and 2-2 of the Winchester City Code Pertaining to the City Seal and Duties of the Clerk of Council

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## **THE ISSUE:**

At the August 14, 2015, Work Session of the Common Council, Council directed the City Manager to work with staff to prepare an ordinance to amend City Code to replace the existing city seal with a revised seal that more accurately depicts the four governments to which the City (and the town prior to it becoming a city) was subservient. The amendment also expressly authorizes the Clerk of Council or designee to seal adopted ordinances and approved resolutions.

## **RELATIONSHIP TO STRATEGIC PLAN:**

Goal #3 - Advance the Quality of Life for Winchester residents

## **BACKGROUND:**

During an overview of the seal, it was noted that the center portion of the seal is intended to represent the four governments to which Winchester was subservient. However, it was observed that the flag image for the American government was not very characteristic of the United States flag and that the flag image used to represent the Confederate States of America (CSA) government was a battle flag of the CSA Army rather than a national CSA flag in effect during most of the period that Winchester was under CSA government control. The proposed seal includes an image of the 50-star United States flag in the upper left quadrant (switched with the Union Jack) and an image of the 11-star CSA 'Stars & Bars' flag in the lower right quadrant (switched from the lower left).

Upon further review, it was discovered that modern-day representations of the seal include alterations from the version adopted in 1936. The new seal incorporates the current version of the centerfield of the Virginia state flag which was legislature changed in 1950. The updated Virginia flag is relocated to the lower left quadrant of the seal.

## **BUDGET IMPACT:**

Costs for changing just the official city seal would, at a minimum, include purchasing a new die to press the gold foil seals that are attached to official ordinances and

resolutions. Beyond that, Council could direct City staff to remove or replace images of the City seal such as the stained glass piece hanging in the Council Chambers and the piece hanging in the lobby on the 3<sup>rd</sup> floor of City Hall. New vinyl decals could be requested for use on the lecterns in the 4<sup>th</sup> floor Exhibit Hall and any other City furniture (or they could simply be removed and not replaced).

**OPTIONS:**

1. Adopt the amendment
2. Reject the amendment

**RECOMMENDATIONS:**

Given that the Common Council specifically directed that this item be brought forward and involves a policy decision, Staff is not making a recommendation on the adoption or rejection of this item.

**AN ORDINANCE TO AMEND SECTION 2-1 AND 2-2 OF THE WINCHESTER CITY CODE PERTAINING TO THE CITY SEAL AND DUTIES OF THE CLERK OF COUNCIL**

**WHEREAS**, the Common Council of the City of Winchester, Virginia adopted a revised seal on April 1, 1936 to replace an earlier seal that was deemed undesirable; and,

**WHEREAS**, the City has discussed changes to the City seal and/or the City flag on multiple occasions, including discussions in 1993, 2001, 2003, 2004, and 2006; and,

**WHEREAS**, Council adopted a City logo on October 12, 2010 recognizing the need to effectively present the City of Winchester in a uniform positive manner to all of its various constituents; and,

**WHEREAS**, Council directed staff to provide an overview of the history of the city seal, flag, and logo for presentation at the July 14, 2015 Council work session during which it was discovered that modern-day representations of the seal included unauthorized changes to the official seal adopted in 1936; and,

**WHEREAS**, Council has carefully deliberated the topic of the city seal over several months, listening to city residents as well as citizens of other jurisdictions as to the pros and cons of keeping the existing seal or changing it; and,

**WHEREAS**, an alternative seal design was presented at the August 11, 2015 Council Work Session and forwarded for consideration of an ordinance; and,

**WHEREAS**, while non-binding on future Councils, it is the intent of this Council that no further changes be made to City seal in the future.

**NOW, THEREFORE BE IT ORDAINED** that the Common Council of the City of Winchester, Virginia, does hereby amend Sections 2-1 and 2-2 of the Winchester City Code as follows and hereby adopts the revised city seal.

**BE IT FURTHER ORDAINED** that the City Manager is directed to implement the changes to the City seal.

**Ordinance No. 2015-XX.**

**ADOPTED** by the Common Council of the City of Winchester on the \_\_\_\_<sup>th</sup> day of \_\_\_\_\_ 2015.

*Witness my hand and the seal of the City of Winchester, Virginia.*

*Kari J. Van Diest  
Deputy Clerk of the Common Council*

## ARTICLE I. IN GENERAL

## SECTION 2-1. CITY SEAL--DESCRIBED.



There is adopted, a Seal of the City of Winchester. The Seal may be used for official **City** purposes only as authorized by the City, and shall be affixed to all **adopted** ordinances and **approved** resolutions. The City Seal, as depicted above, consists of a disc, ~~two inches in diameter~~ with a border or outer circle, within which shall be engraved at the top of the circle, the words "City of Winchester," and at the bottom of the circle the word "Virginia." Within this circle shall be engraved a shield which shall be quartered and shall display thereon **the flags of the governments to which Winchester was subservient**, in the upper left quarter, **a portion of the flag of the United States of America** ~~the Union Jack of Great Britain as it existed during the period when Winchester owed allegiance to that flag~~; in the upper right quarter, **the Union Jack of Great Britain as it existed during the period when Winchester owed allegiance to that flag** ~~Commonwealth of Virginia~~; in the lower left quarter, **a facsimile of the circa 2015 center field of the flag of the Commonwealth of Virginia** ~~the cross and stars of the battle flag of the Confederate States of America~~; and in the lower right quarter, **a portion of the original national flag of the Confederate States of America with eleven stars** ~~a portion of the union with three of the stars, three of the red stripes and two of the white stripes of the flag of the United States of America~~. At the top and center of the shield shall be a bust of a Shawnee Indian warrior **and a pipe**. Below the shield shall be the **Fairfax family** motto "Fare Fac," and below that the date **year that Col. James Wood founded the old town** "1744." At the right of the shield shall be a decoration of a garland of the ivy vine, and at the left a laurel branch. This seal shall be so

engraved as to produce the above- described design when it is impressed on paper. When the seal is reproduced in colors, the several quarterings, the Indian bust, the laurel and ivy shall be in their proper colors, and the lettering in the outer circle shall be in colonial blue upon a background of colonial buff. This seal shall be the authorized and official and corporate seal of the City and shall be accepted and used as such. (Code 1959, §1-8; Ord. No. 2011-21, 10-11-11)

**Charter reference**--Authority to use corporate seal, §1.

**Cross references**--Air pollution commission, §3-2 *et seq.*; building official, §6-1; plumbing and gas inspector, §6-46; electrical inspector, §6-98; housing code board of appeals, §6-331 *et seq.*; elections, Ch. 7; fire department, §10-16 *et seq.*; fire marshal, §10-30 *et seq.*; fire prevention code board of appeals, §10-47(F-105.11); library board, §12-16 *et seq.*; park and recreation council, §18-1; park and recreation board, §18-16 *et seq.*; planning commission, §19-16 *et seq.*; police department, §20-16 *et seq.*; director of utilities, §29-1 *et seq.*; tree commission, §30-32 *et seq.*

### **SECTION 2-2. SAME--CUSTODIAN; USE.**

The Clerk of the Council shall be custodian of the City Seal and City Logo. The Clerk, or designee, shall affix the City Seal and/or City Logo, as appropriate, to such papers or documents as ~~he may be~~ authorized to affix it do so by ordinance or resolution of the Council. (Code 1959, §2-47; Ord. No. 2011-21, 10-11-11)

# CITY OF WINCHESTER, VIRGINIA

## CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: September 22, 2015

RESOLUTION \_\_\_ ORDINANCE  DESCRIPTION/PRESENTATION \_\_\_

**ITEM TITLE:** Sv-15-406 an Ordinance to Vacate a Portion of an Alley Right of Way Between 328 and 400 Highland Avenue and Convey it to the Adjacent Property Owner(S).

**PUBLIC HEARING DATE:** September 22, 2015 at 6:00 PM

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 completion of review only addresses the readiness of the issue for Council consideration. This does not address the recommendation for approval or denial of the issue.

**Review:**

Timothy A. Youmans	Completed	09/09/2015 5:10 PM
Anthony Williams	Completed	09/17/2015 1:55 PM
Eden Freeman	Completed	09/17/2015 4:14 PM

**Timothy A. Youmans**

Timothy A. Youmans, Planning Director 9/9/2015



**APPROVED AS TO FORM:**

*[Signature]*  
CITY ATTORNEY

*[Signature]*  
Eden Freeman, City Manager 9/17/2015

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Josh Crump, Planner  
**Date:** September 22, 2015  
**Re:** Sv-15-406 an Ordinance to Vacate a Portion of an Alley Right of Way Between 328 and 400 Highland Avenue and Convey it to the Adjacent Property Owner(S).

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**THE ISSUE:**

The request from Habitat for Humanity (HFH) is to vacate a public alley extending off of the east side of Highland Avenue between homes at 328 and 400 Highland Avenue and convey it to adjoining property owner(s).

**RELATIONSHIP TO STRATEGIC PLAN:**

Goal #2- Promote and accelerate revitalization of catalyst and other areas throughout the city

**BACKGROUND:**

See attached staff report.

**BUDGET IMPACT:**

Nominal revenue from sale of vacated right of way.

**OPTIONS:**

1. Approve as recommended by Planning Commission.
2. Approve with modifications to allow conveyance to adjoining property owner(s) instead of only to the owner of 400 Highland Ave.
3. Deny.

**RECOMMENDATIONS:**

Recommend Option 2

**SV-15-406 AN ORDINANCE TO VACATE A PORTION OF AN ALLEY RIGHT OF WAY BETWEEN 328 AND 400 HIGHLAND AVENUE AND CONVEY IT TO THE ADJACENT PROPERTY OWNER(S).**

WHEREAS, the Common Council has received a request of Mr. Michael Butler on behalf of Habitat for Humanity of Winchester-Frederick County (HFHWFC), owner of certain parcels of real estate known as 400 Highland Avenue, to vacate and convey to HFHWFC all of an unnamed public alley extending from Highland Avenue eastward to Athey Alley, a public alley running in a north-south direction in between Highland Avenue and Gray Avenue, said right of way depicted on an undated exhibit entitled "Location Map~ Unnamed East-West Alley Between Highland Ave & Athey Alley"; and,

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

WHEREAS, the Planning Commission of the City of Winchester has reviewed the aforesaid request and, at its meeting of August 18, 2015, recommended approval of this action; and,

WHEREAS, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted by the Common Council of the City of Winchester, Virginia, and viewers were appointed to report on the inconvenience, if any, of said vacation, all as required by and provided for under the Code of Virginia, 1950, as amended; and,

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

WHEREAS, the applicant is the property owner of 400 Highland Avenue immediately adjacent to the north side of the public right of way proposed to be vacated and conveyed; and,

WHEREAS, the owner of the property at 328 Highland Avenue immediately adjacent to the south side of the public right of way proposed to be vacated and conveyed has no objection to the vacation but maybe interested in acquiring a portion of the vacated right-of-way; and,

WHEREAS, the Common Council has agreed to convey the vacated alley right of way to the adjoining property owner(s) for **Fifty Cents (\$0.50)** per square foot subject to the property owner(s) establishing all necessary easements to the City of Winchester to be depicted upon a survey plat.

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Winchester, Virginia, that the public alley right of way depicted on an undated exhibit entitled "Location Map~ Unnamed East-West Alley Between Highland Ave & Athey Alley" be vacated and conveyed to adjoining property owner(s) subject to the grantees establishing necessary easements to the City of Winchester.

**BE IT FURTHER ORDAINED** that this ordinance shall not take effect until such time as approval of a Minor Subdivision plat depicting the easements and the required assemblage of the vacated area in with certain adjoining properties along Highland Avenue has been secured, with the sale price for the vacated area being **Fifty Cents**

**(\$0.50)** per square foot. The City Attorney is directed to prepare a deed for the conveyances and the City Manager is directed and authorized to execute all documents and take all actions necessary to carry out this Ordinance.

City Council  
September 22, 2015

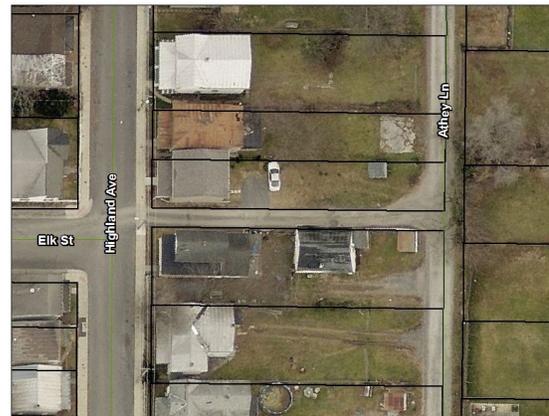
**SV-15-406** AN ORDINANCE TO VACATE A PORTION OF AN ALLEY RIGHT OF WAY BETWEEN 328 AND 400 HIGHLAND AVENUE AND CONVEY IT TO THE ADJACENT PROPERTY OWNER(S).

#### REQUEST DESCRIPTION

The request from Habitat For Humanity (HFH) is to vacate a public alley extending off of the east side of Highland Avenue between homes at 328 and 400 Highland Avenue. The short east-west alley connects to Athey Alley- a north-south public alley running along the back of homes along the west side of Gray Avenue and homes along the east side of Highland Avenue. If vacated, the land would be assembled with the property containing a single-family dwelling at 400 Highland Avenue owned by HFH.

#### AREA DESCRIPTION

The subject alley and all private property adjoining it is zoned Limited High Density (HR-1) District. The predominant land use is single-family residential on relatively small narrow lots.



#### STAFF COMMENTS

Mr. Michael Butler, former President of Habitat For Humanity, has provided a memorandum dated 6-18-15 addressed to Council President Willingham, City Manager Freeman, and Planning Director Youmans outlining the request. In the memo, he notes having conferred with relevant public safety and public services officials as well as the immediately adjoining property owner to the south. Since that owner is agreeable to the vacation and does not wish to acquire any of the vacated alley, then it would be acceptable for City Council to consider vacating the alley and conveying all of it to the applicant to assemble with 400 Highland Avenue.

City Council would need to appoint viewers to determine what, if any, inconvenience would result to affected property owners. The Comprehensive Plan does not call for any changes in the area that would necessitate eliminating or retaining the alley. The only downside of vacating the alley is that it creates a much longer alley without this midblock connection to adjoining public streets.

Council would need to determine what compensation should be received from the grantee of this City property. In the past, alley conveyances in residential district have typically been up to fifty (50) cents per square foot of land conveyed. A Minor Subdivision would also be required to assemble the vacated area into the adjoining property at 400 Highland Avenue. A utility easement would need to be established since there is an existing sanitary sewer line located within the existing alley.

#### RECOMMENDATION

Based upon the input from relevant City officials, the Planning Commission forwarded **SV-15-406** to City Council recommending approval of vacation and conveyance of the subject alley to the owner of 400 Highland Avenue to be assembled into that property because the request does not conflict with the Comprehensive Plan.




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## MEMORANDUM

To: John Willingham, President, Common Council City of Winchester, Virginia  
 Eden Freeman, City Manager, City of Winchester, Virginia  
 Tim Youmans, Director, Planning Director, City of Winchester, Virginia

From: Michael Butler, Executive Director, Habitat for Humanity of Winchester-Frederick County, Virginia (HFHWFC)

Subject: Vacation of Alley between 400 and 328 Highland Ave.

Date: 6.18.15

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We are requesting the right of way vacation of the alley located between 400 and 328 Highland Ave., and Highland Ave. to Athey Alley.

I have had discussions with the Major Kelly Rice of Winchester Police Department, Chief Alex Baldwin of Winchester Fire and Rescue and Perry Eisenach, Director, Winchester Public Utilities and Works and they find no reasons to oppose the vacation. They understand the reasons for the vacation request and concur that it would be a positive effort.

There are 5 reasons that we are requesting this vacation and they all focus on safety:

1. There is a moderate level of traffic through the alley. Drivers use the alley as a means to get to Athey Alley, as cut through from Elk St. to get to other streets, since they cannot go north on Highland Ave. There are children that live in the 2 houses that border the alley and play in and around the alley. 328 Highland Ave. has been hit on several occasions by cars driving through the alley.
2. People use the alley on foot to cut through to Athey Alley and in addition use the alley as point to cut through yards for multiple reasons. One of those reasons is to avoid being seen on the streets and another is to carry on nefarious activities.
3. Groups of people have been gathering in the alley at all hours of the night and day, which both bothers and concerns the residents.
4. On May 3, 2015 the victim of a shooting in the vicinity of the intersection of Elk and Highland was chased down the Valley and ended up on the back porch of 400 Highland Ave. This incident deeply concerned the residents. This incident showed how the alley leaves them more vulnerable to violence because of its presence.
5. The alley road bed is not being regularly maintained. There are potholes and the road has other irregularities that make it difficult and unsafe to navigate

After the minor subdivision of the property and transfer of the property to HFHWFC, we will within 60 days, transfer the property to the owners of 400 Highland Ave., Brandie and Brandon Brown, a HFHWFC partner family. Soon thereafter the Brown's will construct a fence to surround the property.

Christopher Maben the owner of the property at 328 Highland Ave., just south of the alley in question, approve of the complete vacation of the alley to HFHWFC.

PO Box 1653  
 Winchester, VA 22604  
 (540) 662-7066  
[info@habitatwfc.org](mailto:info@habitatwfc.org)  
[www.habitatwfc.org](http://www.habitatwfc.org)

Vacation Request, June 18, 2015, Page 2

Habitat would like to request that the alley be vacated by the City of Winchester to HFHWFC, so that we may transfer the property to the home owners at 400 Highland Avenue. We feel this action would be a positive action for the neighborhood. Additionally, since this property will not be used for a commercial or profit making venture, but rather for safety and security purposes, both for the bordering homeowners and the neighborhood in general, we would request that this property be transferred at no cost to Habitat. We hope that you look favorably upon our request and realize the benefit to the community this endeavor will have.

We would like to request that we be provided address labels with the name and mailing address as it appears in Land Records for owners of all properties within 300 feet of any portion of the subject site. We have included the \$25.00 for the labels in the check with the application fee.

Thank you for your support of the Habitat mission.




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**MEMORANDUM**

To: John Willingham, President, Common Council City of Winchester, Virginia  
 Eden Freeman, City Manager, City of Winchester, Virginia  
 Tim Youmans, Director, Planning Director, City of Winchester, Virginia

From: Michael Butler, Executive Director, Habitat for Humanity of Winchester-Frederick County, Virginia (HFHWFC)

Subject: Adjacent Land Owners (328 & 400 Highland Ave.) to Alley between 400 and 328 Highland Ave.

Date: 6.18.15

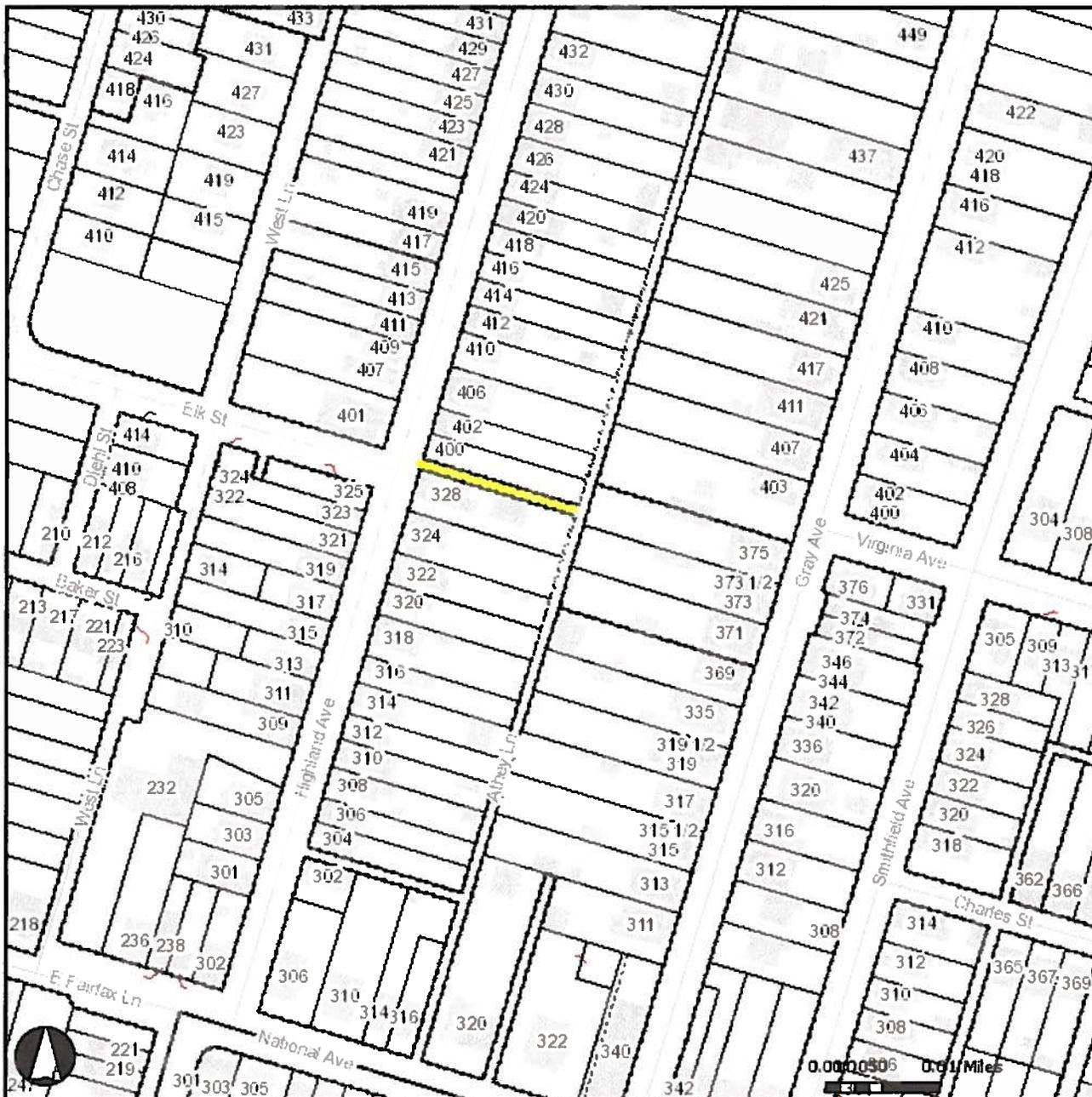
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The landowners that are adjacent to the above referenced alley are:

- Brandie and Brandon Brown, 400 Highland Ave., Winchester, VA 22601 (Owner and occupant of 400 Highland Ave.)
- Chris Maben, CNC Properties, 113 Winns Cir., Winchester, VA 22602 (Owner of 328 Highland Ave.)

After discussion with the land owners they agree with the vacation and closure of the alley as a thoroughfare. The owners of 328 Highland Ave. do not want any ownership of the alley and are willing to cede any ownership to Habitat. The owners of 400 Highland Ave. are willing to take ultimate ownership, from Habitat, of the land that the alley now encompasses. Please see letter addressing request for full explanation of vacation plan.

# Map





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# CITY OF WINCHESTER, VIRGINIA

## CITY COUNCIL AGENDA ITEM

**CITY COUNCIL MEETING OF:** September 22, 2015

**ITEM TITLE:** Appeal of BAR Decision Regarding Window Replacement for Sam Simpson at 210 S. Washington St. BAR-15-336

**PUBLIC HEARING DATE:** September 22, 2015 at 6:00 PM

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 completion of review only addresses the readiness of the issue for Council consideration. This does not address the recommendation for approval or denial of the issue.

**Review:**

Josh Crump	Completed	09/03/2015 9:32 AM
Anthony Williams	Completed	09/03/2015 1:10 PM
Eden Freeman	Completed	09/03/2015 3:14 PM

**Josh Crump**

Josh Crump, Planner

9/3/2015



**APPROVED AS TO FORM:**

*[Signature]*  
CITY ATTORNEY

*[Signature]*  
Eden Freeman, City Manager

9/3/2015

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Josh Crump, Planner  
**Date:** September 22, 2015  
**Re:** Appeal of BAR Decision Regarding Window Replacement for Sam Simpson at 210 S. Washington St. BAR-15-336

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## **THE ISSUE:**

An appeal of a BAR decision pertaining to window replacement at 210 S. Washington Street. City Council must hold a public hearing within 60 days of the date of appeal filed on July 17, 2015.

## **RELATIONSHIP TO STRATEGIC PLAN:**

**Vision:** To be a beautiful, vibrant city with a historic downtown, growing economy, great neighborhoods with a range of housing options and easy movement.

**Goal #2:** Promote and accelerate revitalization of catalyst and other areas throughout the city.

## **BACKGROUND:**

During a city inspection after a citizen complaint, replacement of windows with new vinyl windows, as well as other exterior changes, was observed at 210 S. Washington Street. Much of the exterior work was already completed and many of the original wooden windows were already replaced with vinyl windows after an extensive renovation project undertaken by the owner, Sam Simpson.

Mr. Simpson was cited by the City's Zoning and Inspections department for not having a certificate of appropriateness (COA) from the BAR for the exterior work and applied for a COA for this work on May 22<sup>nd</sup>. The first BAR case for this property (BAR-15-310) was heard on June 4, 2015 (see attached minutes of the June 4, 2015 meeting). The Board split the COA for the property into two motions; the first motion approved the exterior changes for the roof materials and door and shutter colors. The second motion denied the replacement vinyl windows due to being an "inappropriate use in the Historic District". During the meeting, it was brought up by Chairman Rockwood of the Board if "replacing the front windows [with wooden windows] would keep the spirit of the District." A decision letter was sent on June 5, 2015 (see attached letter dated June 5, 2015) by Planner I Josh Crump, describing the Board's decision and three options to mitigate the window issue which included; replacing all vinyl windows with wooden windows; replacing the five front vinyl windows with wooden windows; or appealing the BAR's decision to City Council. Mr. Simpson opted for the second option and applied for a COA to replace the five front windows with wooden windows on June 8, 2015.

The BAR heard this matter (BAR-15-336) at its June 18, 2015 meeting (see attached

minutes of the June 18, 2015 meeting). At the BAR meeting, Mr. Simpson proposed to remove the five front vinyl windows and replace them with wood windows. He explained it would be a financial hardship to replace all the windows in the house at the same time. The Board indicated they would like to see wood windows on the three sides of the house that are visible and consider the rear of the house a separate issue. The Board suggested a staggered replacement schedule where the front façade windows would be replaced first and then give a lengthy period of time to replace the remainder windows on the sides. The Board's decision in BAR-15-336 approved a COA to replace the wood windows that were existent in the house on the front and side of the house with wood windows as included in the application with simulated divided lights: The windows in the front of the house to be replaced within one year and the windows on the side of the house to be replaced within two years. The rear would be left with vinyl windows since it is not visible from public view and one vinyl window on the side since it was originally vinyl when Mr. Simpson purchased the house.

On July 17, 2015, Mr. Simpson submitted an appeal of the BAR's decision from the June 18<sup>th</sup> meeting (see attached letters). In a follow up letter, Mr. Simpson clarified his appeal stating that he is appealing the provision in the BAR's decision to replace the side windows with wooden windows and utilizing the vinyl windows that replaced the original windows without a COA. The letter also states Mr. Simpson is willing to replace the windows on the front of the house with wooden windows.

The appeal of the BAR decision and required fee were submitted 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."

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." "

While the Board gave Mr. Simpson a lengthy period of time to replace the windows on the house due to the financial circumstances involved, the key part of this case is whether the public views from the side of the house portray the same significance as the public view from the front of the house within the Historic District. 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.**"*

Attached are Google Street View images taken approximately in July 2014 of 210 S. Washington Street simulating driving or walking past the house. These images show the

original window before the replacement windows were installed in early 2015. From the street it is hard to distinguish the material from the window. Further, during the spring and summer months when foliage is still on surrounding landscaping, views to the side of the house from the public view shed are reduced.

**BUDGET IMPACT:**

None

**OPTIONS:**

1. Uphold the decision of the Board of Architectural Review to approve 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 and gave the applicant reasonable amount of time to complete the work;
2. Modify the decision of the Board of Architectural Review to allow the replacement of wooden windows with vinyl for only the sides of the house; or,
3. Partial Reversal of 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 # 1 or 2

## Alexandria Boards of Architectural Review Window Policy

Adopted 10/20/2010 (OHAD) & 10/27/2010 (PG)  
Amended 12/04/2013 (OHAD) & 11/20/2013 (PG)

### A. General

1. Direct replacement of any window requires an administrative finding of appropriateness from the Board of Architectural Review (BAR) staff, under sec. 10-109 and 10-209 of the Alexandria Zoning Ordinance. A building permit from Code Administration is also required per a City Code amendment, effective June 1, 2010.
2. BAR staff may administratively approve the direct replacement of windows in the existing openings which comply with all of the policies stated in section B, below, and with the Alexandria Replacement Window Performance Specifications listed in section C, below. Prior to any approval, qualified BAR staff must first field survey and confirm the existing window's age, architectural style and condition.
3. Where staff makes a written finding that a window is not visible from a public right-of-way, the window is not regulated by the BAR and may be replaced with any suitable window allowed by the Virginia Construction Code. However, whether visible or not, a building permit is required from Code Administration to replace a window in the historic districts.
4. Proposed replacement windows not in compliance with the Board's adopted policies, or not architecturally compatible or historically appropriate in the opinion of staff, require review and approval of a Certificate of Appropriateness by the BAR at a public hearing. The BAR will evaluate such cases on the merits of that particular building and the window product proposed. Refer to the chapter on Windows in the BAR's *Design Guidelines* and the Parker-Gray Residential Reference Guide for additional information.
5. Any appropriate and compatible modern window permitted by this Window Policy or approved by the Board as part of the overall building's Certificate of Appropriateness approval may be used on new buildings and additions.
6. Vinyl or vinyl clad windows, and windows with removable muntins ("grilles") or muntins sandwiched between the glass, are not considered appropriate or compatible in any location in the Old and Historic Alexandria District and are only considered appropriate on Later (post 1931) buildings in very limited circumstances in the Parker-Gray District.
7. The use of storm windows is strongly encouraged to protect historic windows and to conserve energy. According to the BAR's adopted *Design Guidelines*, storm windows are not regulated by the BAR and do not require a building permit but they should be installed so as not to damage historic material and to be visually minimally obtrusive. Energy panels may be used on single glazed replacement window sash.
8. These policies may be amended by the Boards as new materials become available but will be reviewed by the Board and updated at least every five years.

### B. Staff Administrative Approval of Replacement Windows

Staff may administratively approve direct replacement of windows if the proposed windows comply with the Alexandria Replacement Window Performance Specifications (p.2) and all of the policies stated below:

#### 1. Original Windows

All original or previously replaced windows with either wood-pegged mortise and tenon sash joinery or with cylinder ("wavy") glass must be repaired and retained. This generally applies to all 18<sup>th</sup> or 19<sup>th</sup> century buildings but the use of cylinder glass can extend to 1930. Where staff confirms in the field that these elements are too deteriorated to repair, they may be replicated to match exactly on a case by case basis. Original window frames and trim from the 18<sup>th</sup> and 19<sup>th</sup> centuries must also be preserved and repaired or replicated.

## 2. Previously Replaced Windows

Previously replaced windows which contain modern frames, sash and smooth (sheet, plate or float) glass may be replaced with one of the following in the historically appropriate style:

- a. 18<sup>th</sup> and 19<sup>th</sup> century buildings with multi-light sash must use single glazed painted wood windows on the street facades. Energy panels may be used on single glazed replacement sash. Secondary elevations of these buildings may use painted wood simulated divided light insulated glass windows.
- b. 1-over-1, or 2-over-2 sash windows with modern float glass in modern sash may be replaced with double glazed painted wood windows on any façade.
- c. Buildings whose sash was previously replaced but which retain their historic frames must use appropriate sash replacement kits that preserve the existing frames.

## 3. Double Glazing

Double glazed (insulated) and simulated divided light painted wood windows may be used throughout on buildings or additions constructed after 1930, when Thermopane brand insulated glass windows were invented.

## 4. Aluminum Clad Wood, Wood Composite, and Fiberglass

High quality, appropriately detailed aluminum clad wood, wood composite, or fiberglass replacement windows may be used in both historic districts on buildings constructed after 1965, when these windows became commercially available. For buildings located in the Parker-Gray District, use the *Parker-Gray Residential Reference Guide* to determine additional applicable locations. These windows may also be used on any 20<sup>th</sup> century commercial building more than four stories in height and on multifamily projects with more than four dwelling units. Aluminum clad wood or fiberglass windows may generally replace steel sash windows on any building when using the same light configuration, color and operation, except where staff believes an architecturally significant building has existing intact and restorable steel sash.

## C. Alexandria Replacement Window Performance Specifications

Windows may be provided by any manufacturer but their construction materials and form must comply with the specifications below in order to be approved administratively by BAR staff:

1. Wood replacement windows must be full frame or sash replacement kits in the existing frame rather than insert or pocket replacements. Fiberglass insert windows must have tight tolerances with minimal jamb widths and overlay panning;
2. The dimensions and proportions of the window rails, stiles, muntins, frame, sill and exterior trim must match historically appropriate window proportions;
3. Multi-light insulated glass windows must have permanently fixed muntins on both the interior and exterior, with spacer bars between the glass that are a non-reflective, medium value color;
4. Muntins must be paintable and have a putty glaze profile on the exterior;
5. All glazing must be clear, non-reflective and without tint. Low-E (low emissivity) glazing is encouraged for energy conservation but the glass must have a minimum 72% visible light transmission (VLT) with a through-the-glass shading coefficient between 0.87 – 1.0, and a reflectance of less than 10%. Low-E 272 generally meets these criteria;
6. The vinyl weatherstrip portion of the wood window jambs should be minimally visible;
7. Insect screen frames must match the color of the window frame and the screen mesh must be a neutral color with sufficient light transmittance that the window sash remains visible behind; and,
8. The applicant must submit complete window manufacturer specification sheets and a contractor order form to BAR staff with the building permit application to confirm compliance with these specifications.

After the August 25, 2015 Council work session, staff reached out to other localities in Virginia for advice on how their Architecture Review Boards handles the issue of window replacements within their local historic districts. Staff contacted representatives in Alexandria, Fredericksburg, Staunton, and Williamsburg.

In Alexandria, the city BAR issued a "Window Policy" (see attached document), that helps guide decisions of the BAR and staff on replacement windows. The BAR generally finds vinyl or vinyl clad windows are not considered appropriate in their two historic districts. In the "newer" historic district known as the "Parker-Gray Historic District", vinyl windows (composite or vinyl finishes that are added onto wood wooden) are considered appropriate on later (post 1931) buildings in very limited circumstances. There has only been one appeal of the BAR to City Council in Alexandria within the last five years. The decision was to uphold the decision of the BAR consistent with the adopted Window Policy. An interesting sidebar to Alexandria's review policies is that they do not review storm windows. The thought is that, by allowing unregulated storm windows, there would be more argument to keep the original wooden windows preserved behind them. Unlike Winchester, Alexandria does require a building permit for window replacement and that helps to catch illegal window replacements.

In Fredericksburg, the city ARB has received requests for window replacement, but generally holds firm to the Department of the Interior federal guidelines. Current Planning Director Charles Johnston does not recall any appeals of window replacement denials by the local board being appealed to City Council. Like Alexandria, Fredericksburg requires a building permit for window replacement.

In Staunton, there are 5 National Historic districts that are fully encompassed into the local historic district where the local board takes a firm position on not allowing replacement of wooden windows with vinyl on any elevations visible from public property. Long-serving Planning Director Sharon Angle does not recall a single appeal of vinyl window replacement denials to City Council in the past 20 years. Staunton has a presentation that one of their preservation planners prepared that documents how investing in repairing existing wooden windows pays off since newer replacement windows (both wood and vinyl) are not constructed as well as require more frequent replacement. As a sidebar, Ms. Angle noted that she was surprised to hear that Winchester was entertaining relaxed standards since Winchester served as the model for establishing the historic district in Staunton and offered training to the Staunton BAR members back when they were first established.

In Williamsburg, the City has extensive historic districts separate from the area controlled by the Colonial Williamsburg foundation. Deputy Planning Director Carolyn Murphy, who staffs the local ARB, noted that their Board is even reluctant to allow replacement of wooden windows with new wooden windows and has never accepted vinyl replacement windows. As part of their review of replacement wooden windows, they have a preservation planner or architect go out to the site and examine the requested windows to determine whether a wooden replacement is needed or whether repair should be undertaken instead. They have had a few appeals of BAR decisions to City Council, all of which have been upheld. Ms. Murphy noted that the material of the window is considered a very important part of the fabric of the historic district that must be preserved in addition to other aspects of the windows such as window dimensions, profile, muntin integrity, color, and glazing.



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Website: www.winchesterva.gov

June 25, 2015

Samuel Simpson  
210 S. Washington Street  
Winchester, VA 22601

Dear Mr. Simpson:

On Thursday, June 18, 2015, the Board of Architectural Review acted on the following request:

**BAR-15-336** Request of Samuel Simpson for a Certificate of Appropriateness to replace vinyl windows in the front of the house with wood windows at 210 South Washington Street.

On a vote of 5-0, the Board approved **BAR-15-336** with the following comments:

- Replace the wood windows that were existent in the house on the front and side of the house with wood windows as included in the application;
- the one vinyl window on the side of the house to be left as is;
- the windows on the back of the house to be replaced with vinyl windows with simulated divided lights;
- the windows in the front of the house to be replaced within one year;
- the windows on the side of the house to be replaced within two years.

The decision of the Board may be appealed to the Common Council of the City of Winchester within 30 days of the Board's decision. Please do not hesitate to contact me should you have any questions at 667-1815, ext. 1413.

Sincerely yours,

Joshua Crump  
Planner I

7/17/15  
I would like to appeal this decision

Samuel E. Simpson

*"To be a financially sound City providing top quality municipal services while focusing on the customer and engaging our community."*

I would like to appeal the B.A.R.'s decision to replace the newly installed vinyl windows with wood in the front and both sides. I would like only to replace the front of home with wood and leave the sides vinyl. I do not think the sides ~~of the~~ being vinyl take away from the historic value or look of home.

Thank you.

Samuel E. Simpson  
210 S. Washington St.  
Winchester, VA

Applicant was not present.

*Mr. Walker made a motion to table **BAR-15-304** until the next meeting. Ms. Jackson seconded the motion. Voice vote was taken and the motion passed 7-0.*

**BAR-15-308** Request of Jonathan Sladek for a Certificate of Appropriateness for an accessory building at 436 Lafayette Place.

Mr. Sladek explained that his shop on North Cameron Street had closed and he needed a place to store his tools. He used all reclaimed wood siding and windows to build his shed. Vice Chairman Bandyke said the only issue he had was with the asphalt shingles. Mr. Sladek said he matched them with what was on his house. He scaled down the shed to have the same dimensions as his house. Vice Chairman Bandyke said it was considered a new structure even though it was constructed to look like an old structure. He outlined the rules for roofing materials in the Historic District. Mr. Sladek said he would have done a metal roof if his house had a metal roof. He had to put the shingles up in order to protect his tools inside the shed.

Board members asked questions about the foundation and the materials to be used around the outside of it. Mr. Sladek asked about fencing around his property. He has had several intruders and would like to protect his property better. Chairman Rockwood said the Board could work with him on fencing if it is visible from the public right-of-way. The Zoning office could provide guidelines for construction of one.

The Board members asked questions about visibility of the building from the public right-of-way. Vice Chairman Bandyke asked Ms. Schroth, since she had seen the building, how prominent the roof of the shed is from the right-of-way. She stated that if you are coming down the street from either direction, it is not visible until you are right in front of it. The trees surrounding it are pine so it is not visible during the winter. Chairman Rockwood said if they required a metal roof, it would not have any relation to other structures around it.

*Mr. Serafin made a motion to approve a Certificate of Appropriateness for **BAR-15-308** using half round gutters and having paint colors approved through the Zoning Department. The foundation is to be parged or covered with stone. Shingles are approved as submitted. Vice Chairman Bandyke seconded the motion. Voice vote was taken and the motion passed 7-0.*

**BAR-15-310** Request of Sam Simpson for a Certificate of Appropriateness to change the windows, roof and exterior paint at 210 South Washington Street.

Mr. Simpson stated that he was unaware his house was in the historic district until he found a notice on his door. He said he had tried to stay within the period the house was built. There were already some vinyl windows in the home when he had bought it. Some of them were nailed shut. One had a cut out for an air conditioner. He was unaware it was inappropriate to use vinyl windows.

The Board members asked questions about the location of the windows and which had been replaced. Mr. Simpson said he had replaced all but one window. He tried to keep the same look of the home. Vice Chairman Bandyke asked how long Mr. Simpson had owned the home. Mr. Simpson said he bought the home in November 2014 and started the project January 1, 2015. Vice Chairman Bandyke asked if there was any indication when he bought the house that it was in the Historic District. Mr. Simpson said none of the paperwork he received said anything about it. His neighbors had complimented him on bringing the house back to life but they never said anything to him. He did not know until he found the

red notice on his door. He received the postcard from the City eight days before he was given the notice.

Chairman Rockwood said this situation has happened before with other properties. People do renovations without actual knowledge of the policies of the Board. The Board has drawn a firm line on it. Mr. Crump said the guidelines discourage the use of vinyl but they are just guidelines and are there for their accommodation. Vice Chairman Bandyke said he wanted to go on record that vinyl windows are unacceptable in the Historic District. They have never approved vinyl windows. If they disapprove them and City Council makes a decision to reverse it that is their decision. The Board does not accept PVC, composite or vinyl windows. They are efficient, long-lasting products but they are not included in the Historic District. If these windows are approved, it will start a precedent. Mr. Simpson said he kept the same look as the original windows. Chairman Rockwood said he agreed and from the street, it was hard to distinguish. The problem is not all houses are situated like his and it is a recurring problem that comes before the Board. He wondered if replacing the front windows would keep the spirit of the District.

Mr. Simpson said he had put a lot of work into a home that needed it and thought he had done a great job. He apologized for not following procedure and wanted to straighten it out and try to comply with what the Board wanted.

Mr. Serafin said the windows that could be seen from the street should be replaced. If he had brought the project to them beforehand, they would have rejected the vinyl windows. Mr. Simpson asked how home owners are made aware their home is in the Historic District. He has not had anything since the postcard. Chairman Rockwood said if you were going to buy a property anywhere, one of the things that should be looked at is the zoning and where the property lies. A question that should be asked is what are the zoning requirements on a parcel. Mr. Simpson said in the past he has not needed permits for a roof, paint colors or windows until he found out he was in the Historic District. He said Mr. Crump had given him the literature for the District and he is now aware. However, he will be losing money with having to replace the windows. Chairman Rockwood said if he had brought this project before them before starting work, they would have told him what type of windows to use and given him guidance. The Board agreed he had done a nice job on the house. Mr. Simpson said he had grown up in Winchester but had not lived here in 15 years. He thought he was doing the right thing in fixing up the home. He does not live in the house right now due to personal circumstances. Vice Chairman Bandyke asked questions about the roofing, front door and paint colors. The Board decided to make separate motions for the windows and remaining items.

*Vice Chairman Bandyke made two separate motions for **BAR-15-310**.*

*Motion #1- To approve a Certificate of Appropriateness for **BAR-15-310** for the following:*

- *Roofing materials and paint colors as submitted.*

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

*Motion #2-The Board denied a Certificate of Appropriateness for **BAR-15-310** for the following:*

- *The vinyl windows are inappropriate for use in the Historic District.*

*Mr. Serafin seconded the motion. Voice vote was taken and the motion passed 6-0. Ms. Schroth abstained.*



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June 5, 2015

Sam Simpson  
439 Historic Packhorse Trail  
Hedgesville, WV 25427

Dear Mr. Simpson:

On Thursday, June 4, 2015, the Board of Architectural Review acted on the following request:

**BAR-15-310** Request to change the windows, roof and exterior paint at 210 South Washington Street. The board split the Certificate of Appropriateness into two motions:

Motion #1- On a vote of 6-0, the Board approved a Certificate of Appropriateness for **BAR-15-310** for the following:

- Roofing materials & colors for the door and shutters as submitted.

Motion #2- On a vote of 6-0, the Board denied a Certificate of Appropriateness for **BAR-15-310** for the following:

- The vinyl windows are inappropriate for use in the Historic District.

City staff would encourage you to review the Winchester Historic District Design Guidelines, specifically Chapter 3, titled "Residential Rehabilitation" regarding windows. It is highly suggested that replacing the installed vinyl windows with materials, such as wood, is more appropriate to the Historic District guidelines. To mitigate the window issue, there are three options we are advising.

Option A: Resubmit a Certificate of Appropriateness application for the Board of Architectural Review replacing all vinyl windows with wooden windows.

Option B: Resubmit a Certificate of Appropriateness application for the Board of Architectural Review replacing the five front vinyl windows facing South Washington Street with wooden windows.

Option C: Appeal the BAR decision to Winchester City Council. As per section 14-9-1.1 of the Winchester Zoning Ordinance (copy enclosed), the decision of the Board may be appealed in a notice in writing (along with a \$75.00 fee) to the Common Council of the City of Winchester within 30 days of the Board's decision (due by July 6, 2015).

Please do not hesitate to contact me should you have any questions at 667-1815, ext. 1413.

Sincerely,

Joshua Crump  
Planner I

*"To provide a safe, vibrant, sustainable community while striving to constantly improve the quality of life for our citizens and economic partners."*

## BOARD OF ARCHITECTURAL REVIEW MINUTES

The Board of Architectural Review held its regularly scheduled meeting on Thursday, June 18, 2015, 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, Ms. Jackson, Ms. Elgin, Ms. Schroth

**ABSENT:** Vice Chairman Bandyke

**STAFF:** Josh Crump, Aaron Grisdale, Carolyn Barrett

**VISITORS:** Sam Simpson, Samuel Leinbach, Alexander Kilimnik

### APPROVAL OF MINUTES:

Chairman Rockwood called for corrections or additions to the minutes of June 4, 2015. Hearing none, Chairman Rockwood called for a motion. Ms. Jackson moved to approve the minutes as submitted. Mr. Walker seconded the motion. Voice vote was taken and the motion passed 6-0.

### CONSENT AGENDA:

None

### NEW BUSINESS:

**BAR-15-327** Request of Samuel P. Leinbach Jr. for a Certificate of Appropriateness to replace and add new storm windows at 317 Fairmont Avenue.

Mr. Leinbach presented his project and gave information about the windows he would like to use. The board members asked questions about the window details. Mr. Leinbach said he was going to replace six windows in the sleeping porch upstairs to start with.

*Mr. Walker made a motion to grant a Certificate of Appropriateness to **BAR-15-327** as submitted for the new storm windows and flush mount installation style. Mr. Serafin seconded the motion. Voice vote was taken and the motion passed 6-0.*

**BAR-15-336** Request of Samuel Simpson for a Certificate of Appropriateness to replace vinyl windows in the front of the house with wood windows at 210 South Washington Street.

Mr. Simpson proposed to remove the front vinyl windows and replace them with wood windows. He explained it would be a financial hardship to replace all the windows in the house at the same time. Each window is a different size and custom made for the opening it is in. He would have to remove and reframe the openings for standard sized windows. Mr. Serafin said custom-made wood windows are available. Mr. Simpson said he was having a hard time finding them and the board members named several businesses that carried them.

Mr. Walker said the Board was in a tough position because the windows had already been replaced with vinyl. If they granted a Certificate of Appropriateness, it would set a dangerous precedent for that kind of action to continue. There are guidelines they have to adhere to. He would like to see wood windows on the three sides of the house that are visible and consider the back of the house a separate issue.

Mr. Simpson said he had exhausted all funds making renovations to the house and was in danger of losing it. Had he known the house was in the Historic District, he would not have used vinyl windows. Mr. Serafin said the monetary aspects of a case cannot bear on their decision. They would have to verify financial hardship on every case. Chairman Rockwood suggested the front façade be changed and then give a lengthy period of time to replace the remainder. Mr. Simpson asked what would happen if he had to sell the home. Chairman Rockwood said he could appeal to the City Council. Staff can advise what steps he would need to take to do so. After further discussion by the Board, Chairman Rockwood called for a motion.

*Mr. Serafin made a motion to grant a Certificate of Appropriateness to **BAR-15-336** to replace the wood windows that were existent in the house on the front and side of the house with wood windows as included in the application with simulated divided lights. The one vinyl window on the side of the house to be left as is. The windows on the back of the house to be replaced with vinyl windows. The windows in the front of the house to be replaced within one year. The windows on the side of the house to be replaced within two years. Mr. Walker seconded the motion. Voice vote was taken and the motioned passed 5-0. Ms. Schroth abstained.*

**BAR-15-334** Request of Alexander Kilimnik for a Certificate of Appropriateness for the addition/repair of a deck at 107 East Cecil Street.

Mr. Kilimnik spoke about the project and his intentions for the home. He started work in October 2014. He was not aware of the Historic District requirements when he replaced the windows. Mr. Grisdale gave a description and timeframe of the repairs and zoning violations that have occurred on the property since May 2015.

Mr. Kilimnik said he had assumed only houses that had historic plaques needed prior approval for work and his neighbors had the same assumptions. He talked about measures he had taken to protect the house while the stop work order is in effect. He spoke about the condition of the house when he purchased it. Chairman Rockwood asked how many doors and windows had been replaced. Mr. Kilimnik said eight windows and three doors and described their condition before replacement.

Mr. Kilimnik explained his reasons for purchasing the vinyl windows. He had observed similar windows in other parts of the Historic District. Chairman Rockwood pointed out that what was seen on the street may have been done before the BAR existed or could have been a like-for-like replacement. He explained the guidelines concerning integrity of materials and gave examples.

*Mr. Serafin made a motion to table **BAR-15-334** until the application is revised and resubmitted. Ms. Jackson seconded the motion. Voice vote was taken and the motioned passed 5-0.*

Ms. Schroth departed the meeting at 5:05pm.

#### **OLD BUSINESS:**

**BAR-15-196** Request of 309 BRAD LLC for new construction at 309 North Braddock Street.



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

June 25, 2015

Samuel Simpson  
210 S. Washington Street  
Winchester, VA 22601

Dear Mr. Simpson:

On Thursday, June 18, 2015, the Board of Architectural Review acted on the following request:

**BAR-15-336** Request of Samuel Simpson for a Certificate of Appropriateness to replace vinyl windows in the front of the house with wood windows at 210 South Washington Street.

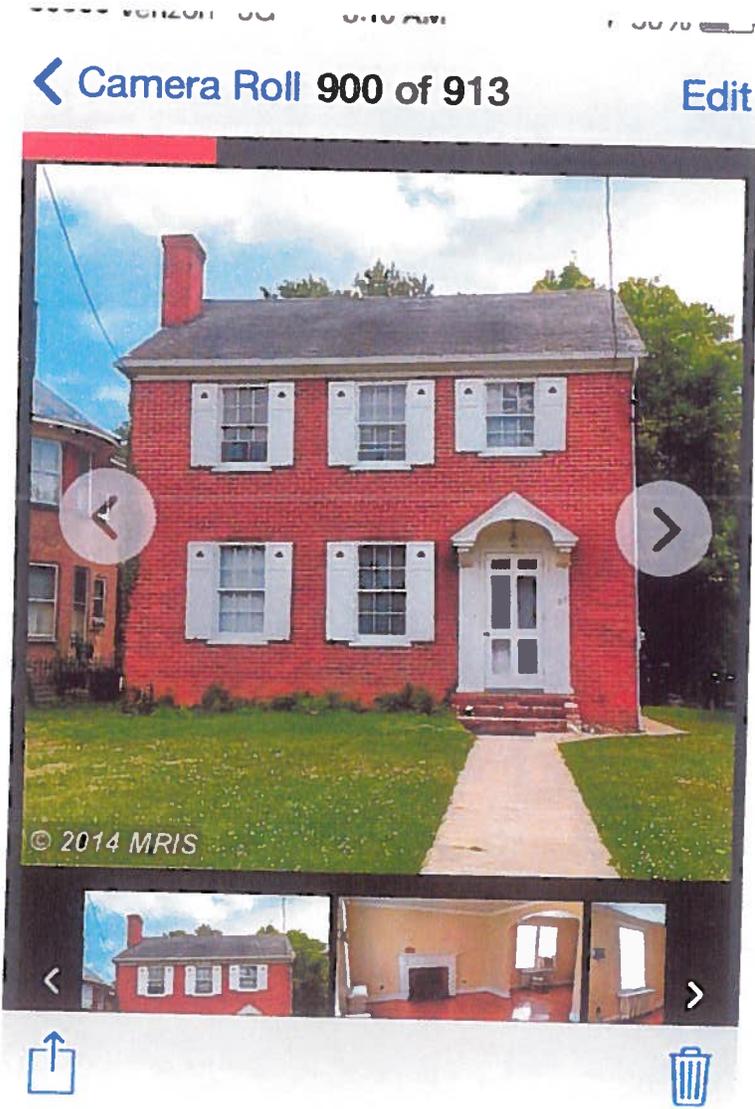
On a vote of 5-0, the Board approved **BAR-15-336** with the following comments:

- Replace the wood windows that were existent in the house on the front and side of the house with wood windows as included in the application;
- the one vinyl window on the side of the house to be left as is;
- the windows on the back of the house to be replaced with vinyl windows with simulated divided lights;
- the windows in the front of the house to be replaced within one year;
- the windows on the side of the house to be replaced within two years.

The decision of the Board may be appealed to the Common Council of the City of Winchester within 30 days of the Board's decision. Please do not hesitate to contact me should you have any questions at 667-1815, ext. 1413.

Sincerely yours,

Joshua Crump  
Planner I



Before



After









## SUMMARY OF RIGHTS AND OBLIGATIONS OF SELLERS AND PURCHASERS UNDER THE VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT



Virginia's Residential Property Disclosure Act (the "Act") (Virginia Code §55-517 et seq.) requires real estate licensees to inform the parties to a transaction with whom they deal of their rights and obligations under the Act. The licensee providing this information to you is prepared to answer any questions you may have about what the Act means to you, and to furnish you with a copy of the Act at your request.

The Act applies to sales, exchanges, installment sales, or leases with option to purchase of residential real property improved with one to four dwelling units. The Act does not apply to: transfers pursuant to court order (in estate administration, pursuant to writ execution, foreclosure, bankruptcy, condemnation, or by decree for specific performance); transfers among co-owners; transfers among spouses; transfers among parents or grandparents and their children or grandchildren; tax sales; transfers involving a government or housing authority; or (subject to certain exceptions discussed below) sales of new homes.

The Act requires sellers to furnish purchasers with a disclosure statement developed by the Virginia Real Estate Board. The statement must be furnished to the purchaser before final ratification of the purchase contract or the purchaser may terminate the contract or sue later for damages. The statement will direct purchasers to the RESIDENTIAL PROPERTY DISCLOSURES web page ([http://www.dpor.virginia.gov/News/Residential\\_Property\\_Disclosures/](http://www.dpor.virginia.gov/News/Residential_Property_Disclosures/)) for important information about the real property. Purchasers are advised to consult the webpage.

A seller, in furnishing a disclosure statement, makes no representations or warranties as to the condition of the property or any improvements located thereon nor with respect to the matters set forth and described at the RESIDENTIAL PROPERTY DISCLOSURES web page ([http://www.dpor.virginia.gov/News/Residential\\_Property\\_Disclosures/](http://www.dpor.virginia.gov/News/Residential_Property_Disclosures/)). Purchaser is advised to exercise whatever due diligence purchaser deems necessary including a certified home inspection, as defined in §54.1-500, in accordance with the terms and condition of the purchase contract, but in any event prior to settlement.

A builder of a new home must disclose to a purchaser in writing all known material defects which would constitute a violation of any applicable building code. In addition, for property located wholly or partially in any locality comprising Planning District 15 (the City of Richmond, the Town of Ashland, and the counties of Charles City, Chesterfield, Goochland, Hanover, Henrico, New Kent and Powhatan), the builder (or seller, if the owner is not the builder) shall disclose in writing whether mining operations have previously been conducted on the property or the presence of any abandoned mines, shafts or pits. This disclosure does not abrogate any warranty or other obligations the builder may have to the purchaser, and must be made (i) when selling a completed home, before acceptance of the purchase contract, or (ii) when selling a home before or during construction, after issuance of a certificate of occupancy. No disclosure or statement of any kind is required if there is no such information to disclose. Any required disclosure may be, but need not be, contained in the disclosure statement described in this Summary.

A purchaser must be furnished with a disclosure statement signed by the seller prior to final ratification of the purchase contract. If such statement is not received by final ratification, the purchaser's sole remedy shall be to terminate the purchase contract by sending written notice to the seller either by hand delivery or U. S. Mail, postage prepaid, at or prior to the earliest of (i) 3 days after receiving the statement (if delivered in person); (ii) 5 days after postmark (if sent by U. S. Mail, postage prepaid); (iii) settlement; (iv) occupancy by purchaser; (v) purchaser's making written application for a mortgage loan if such application discloses that the termination right ends upon application; (vi) purchaser's execution of a written waiver of the right to terminate (such waiver may not be in the purchaser contract).

If the seller fails to provide the required disclosure statement, the contract may be terminated as set forth above. If the seller fails to provide the required disclosure statement, or the seller misrepresents, willfully or otherwise, the information required in such disclosure, except as a result of information provided by the locality in which the property is located, the purchaser may bring an action to recover actual damages suffered as a result of such violation. No purchaser of property located in a noise zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have a right to maintain an action for such damages. Any such action must be brought within one year of the date the purchaser received the disclosure statement. If no disclosure statement was provided to the purchaser, the action must be brought within one year of the date of settlement, or purchaser's occupancy of the property by lease with option to purchase.

Purchasers should be aware that neither a seller nor a real estate licensee is obligated to disclose facts or occurrences which have no effect on the physical structure of the property, its physical environment, or the improvements located thereon, or the fact that the property was the site of a homicide, felony, or suicide. Furthermore, it is a violation of federal law to disclose whether a previous occupant of the property was afflicted with the HIV virus or has AIDS.

Purchasers should be aware that in providing a disclosure statement:

(a) The seller is making no representations with respect to any matters that may pertain to parcels adjacent to the subject property. Purchasers should exercise whatever due diligence they deem necessary with respect to adjacent parcels in accordance with the terms and conditions of the purchase contract, but in any event prior to settlement on the subject property.

(b) The seller makes no representations as to any matters that pertain to whether the provisions of any historic district ordinance affect the property. Purchasers are advised to exercise whatever due diligence they deem necessary with respect to any historic district designated by the locality pursuant to §15.2-2306, including review of any local ordinance creating such district or any official map adopted by the locality depicting historic districts, in accordance with terms and conditions as may be contained in the purchase contract, but in any event prior to settlement on the property.

(c) The seller makes no representations with respect to whether the property contains any resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§10.1-2100 et seq.) adopted by the locality where the property is located pursuant to §10.1-2109. Purchasers should exercise whatever due diligence they deem necessary to determine whether the provisions of any such ordinance affect the property, including review of any official map adopted by the locality depicting resource protection areas, in accordance with terms and conditions as may be contained in the purchase contract, but in any event prior to settlement on the property.

(d) The seller makes no representations with respect to information on any sexual offenders registered under Chapter 23 (§19.2-387 et seq.) of Title 19.2. Purchasers are advised to exercise whatever due diligence they deem necessary with respect to such information, in accordance with the terms and conditions of the purchase contract, but in any event prior to settlement. Such information may be obtained by contacting the local police department or the Department of State Police, Central Criminal Records Exchange, at (804) 674-2000, or on the Internet at [www.vsp.state.va.us/vsp.html](http://www.vsp.state.va.us/vsp.html).

(e) The seller makes no representations with respect to whether the property is within a dam break inundation zone. Purchaser is advised to exercise whatever due diligence the purchaser deems necessary with respect to whether the property resides within a dam break inundation zone, including a review of any map adopted by the locality depicting dam break inundation zones.

(f) The undersigned owner(s) makes no representations with respect to the presence of any stormwater detention facilities located on the property and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary to determine the presence of any stormwater detention facilities on the property, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract.

(g) The undersigned owner(s) makes no representations with respect to the presence of any wastewater system, including the type or size thereof or associated maintenance responsibilities related thereto, located on the property and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary to determine the presence of any wastewater system on the property, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract.

(h) The owner makes no representations with respect to any right to install or use solar energy collection devices on the property.

(i) The seller represents that there are no pending enforcement actions pursuant to the Uniform Statewide Building Code (§36-97 et seq.) that affect the safe, decent and sanitary living conditions of the property of which the seller has been notified in writing by the locality, nor any pending violation of the local zoning ordinance that the seller has not abated or remedied within the time period set out in the written notice of violation from the locality or established by a court of competent jurisdiction, except as set out in the disclosure statement.

If the property is located in a locality in which a military air installation is located, the seller must provide purchasers with a disclosure statement setting forth whether the property is located in a noise zone or accident potential zone, or both, if so designated on the official zoning map of the locality. Such disclosure shall state the specific noise or accident potential zone, or both, in which the property is located.

Please acknowledge receiving a copy of this summary by signing below.

Date \_\_\_\_\_

Date \_\_\_\_\_

**RESIDENTIAL PROPERTY DISCLOSURE STATEMENT**  
**NOTICE TO SELLER AND PURCHASER**

The Virginia Residential Property Disclosure Act (§ 55-517 et seq. of the *Code of Virginia*) requires the owner of certain residential real property, whenever the property is to be sold or leased with an option to buy, to furnish this form to the purchaser and to refer the purchaser to a Virginia Real Estate Board website for additional information.

Certain transfers of residential property are excluded from this requirement (see § 55-518).

Property Address/  
Legal Description: \_\_\_\_\_

The owner makes no representations with respect to the matters set forth and described at the RESIDENTIAL PROPERTY DISCLOSURES web page. The purchaser is advised to consult the website ([http://www.dpor.virginia.gov/News/Residential\\_Property\\_Disclosures/](http://www.dpor.virginia.gov/News/Residential_Property_Disclosures/)) for important information about the real property.

The undersigned owner(s) represents that there are no pending enforcement actions pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) that affect the safe, decent, and sanitary living conditions of the real property described above of which the owner has been notified in writing by the locality, nor any pending violation of the local zoning ordinance which the violator has not abated or remedied under the zoning ordinance, within a time period set out in the written notice of violation from the locality or established by a court of competent jurisdiction, except as disclosed on this statement.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The owner(s) acknowledge having carefully examined this statement and further acknowledge that they have been informed of rights and obligations under the Virginia Residential Property Disclosure Act.

\_\_\_\_\_  
Owner Date Owner Date

The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further acknowledge that they have been informed of their rights and obligations under the Virginia Residential Property Disclosure Act.

\_\_\_\_\_  
Purchaser Date Purchaser Date

DPOR 7/11

# CITY OF WINCHESTER, VIRGINIA

## CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: September 22, 2015

RESOLUTION  ORDINANCE  DESCRIPTION/PRESENTATION

**ITEM TITLE:** ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE CITY OF WINCHESTER, VIRGINIA, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$7,200,000, TO FINANCE THE COSTS OF CERTAIN CAPITAL IMPROVEMENT PROJECTS

**PUBLIC HEARING DATE:** October 13, 2015 at 12:00 AM

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 completion of review only addresses the readiness of the issue for Council consideration. This does not address the recommendation for approval or denial of the issue.

**Review:**

Mary Blowe	Completed	09/01/2015 3:12 PM
Anthony Williams	Completed	09/01/2015 3:30 PM
Eden Freeman	Completed	09/01/2015 4:37 PM

**Mary Blowe**

Mary Blowe, Chief Financial Officer 9/1/2015



**APPROVED AS TO FORM:**

*[Signature]*  
CITY ATTORNEY

*[Signature]*  
Eden Freeman, City Manager 9/1/2015

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Mary Blowe, Chief Financial Officer  
**Date:** September 22, 2015  
**Re:** ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE CITY OF WINCHESTER, VIRGINIA, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$7,200,000, TO FINANCE THE COSTS OF CERTAIN CAPITAL IMPROVEMENT PROJECTS

**THE ISSUE:**

As part of the budget process the following projects required bond proceeds:

- JJC Improvements- \$3,700,000
- City Hall Renovations & HVAC replacement- \$1,315,000
- Valley Avenue/Whitlock Drainage- \$385,000
- Meadow Branch Extension- \$600,000
- JKES furniture & fixtures- \$1,000,000

**RELATIONSHIP TO STRATEGIC PLAN:**

With the projects listed above we are supporting the goal to promote and accelerate revitalization of targeted areas within the City. Also, we are improving City services and advancing the City’s strategic plan goal by promoting a culture of transparency, *efficiency and innovation.*

**BACKGROUND:**

During the budget process, the projects listed above were approved to be funded with bonds. Since this is a small issuance, we are going to introduce both a resolution (for a private placement) and an ordinance (for a public offering). So, if we do not receive an acceptable bid for our bonds with the private placement, we are in a position to go forward with a public offering. The document that is not needed with automatically expire upon closing.

**BUDGET IMPACT:**

Maturity Date	Principal
9/15/2016	\$ 275,000
9/15/2017	\$ 280,000
9/15/2018	\$ 290,000
9/15/2019	\$ 300,000
9/15/2020	\$ 305,000

9/15/2021	\$ 315,000
9/15/2022	\$ 325,000
9/15/2023	\$ 330,000
9/15/2024	\$ 340,000
9/15/2025	\$ 350,000
9/15/2026	\$ 360,000
9/15/2027	\$ 370,000
9/15/2028	\$ 380,000
9/15/2029	\$ 390,000
9/15/2030	\$ 405,000
9/15/2031	\$ 415,000
9/15/2032	\$ 425,000
9/15/2033	\$ 435,000
9/15/2034	\$ 450,000
9/15/2035	\$ 460,000
	<u>\$ 7,200,000</u>

Interest on be determined by either the Private placement bid, or public offering.

**OPTIONS:**

Two options are being presented, a private placement or public offering. After the RFP's are evaluated the CFO will bring the offers (rates) forward to Council for final approval.

**RECOMMENDATIONS:**

I recommend we run the resolution and ordinance during the same time frame to be able to achieve the best rate possible on our 2015 bond issuance.

**ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE CITY OF WINCHESTER, VIRGINIA, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$7,200,000, TO FINANCE THE COSTS OF CERTAIN CAPITAL IMPROVEMENT PROJECTS**

**WHEREAS**, the Common Council of the City desires to issue general obligation bonds to finance the costs of certain capital improvement projects for the City, including (but not limited to) one or more of the following projects: the acquisition, construction, extension, renovation and equipping of joint judicial center improvements, City Hall renovations and HVAC replacement, road, street and sidewalk improvements, and public school improvements (collectively, the “Project”);

**BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WINCHESTER, VIRGINIA:**

1. Pursuant to the City Charter and the Public Finance Act of 1991, there are hereby authorized to be issued and sold general obligation bonds (the “Bonds”) of the City in an aggregate principal amount not to exceed \$7,200,000 to provide funds, together with other funds as may be available, to finance costs of the Project and to pay costs incurred in connection with issuing the Bonds.

2. The Bonds shall bear such date or dates, mature at such time or times not exceeding 40 years from their dates, bear interest at such rate or rates, be in such denominations and form, be executed in such manner and be sold in one or more series at such time or times and in such manner as the Common Council may hereafter provide by appropriate resolution or resolutions.

3. The Bonds shall be general obligations of the City for the payment of principal of and premium, if any, and interest on which its full faith and credit shall be irrevocably pledged.

4. The Clerk of the Common Council, in collaboration with the City Attorney, is authorized and directed to see to the immediate filing of a certified copy of this ordinance in the Circuit Court of the City.

5. This ordinance shall take effect immediately.

**Ordinance No. \_\_\_\_-2015.**

The undersigned Clerk of the Common Council of the City of Winchester, Virginia, hereby certifies that (a) the foregoing ordinance was introduced at a regular meeting of the Common Council on September 22, 2015, and was adopted at a regular meeting of the Common Council on October 13, 2015, and (b) the foregoing ordinance constitutes a true and correct extract from the minutes of the October 13, 2015 regular meeting of the Common Council, and of the whole thereof so far as applicable to the matters referred to in such extract.

**WITNESS** my signature and the seal of the City of Winchester, Virginia, this \_\_\_\_ day of October, 2015.

(SEAL)

---

Clerk of the Common Council, City of  
Winchester, Virginia

# CITY OF WINCHESTER, VIRGINIA

## CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: September 22, 2015

RESOLUTION  ORDINANCE  DESCRIPTION/PRESENTATION

**ITEM TITLE:** RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND AWARD OF A GENERAL OBLIGATION PUBLIC IMPROVEMENT BOND OF THE CITY OF WINCHESTER, VIRGINIA, IN THE MAXIMUM PRINCIPAL AMOUNT OF \$7,200,000 AND PROVIDING FOR THE FORM, DETAILS AND PAYMENT THEREOF

**PUBLIC HEARING DATE:**

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 completion of review only addresses the readiness of the issue for Council consideration. This does not address the recommendation for approval or denial of the issue.

Review:

Mary Blowe	Completed	09/01/2015 3:14 PM
Anthony Williams	Completed	09/01/2015 3:30 PM
Eden Freeman	Completed	09/01/2015 5:29 PM

**Mary Blowe**

Mary Blowe, Chief Financial Officer 9/1/2015



**APPROVED AS TO FORM:**

*[Signature]*  
CITY ATTORNEY

*[Signature]*  
Eden Freeman, City Manager 9/1/2015

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council

**From:** Mary Blowe, Chief Financial Officer

**Date:** September 22, 2015

**Re:** RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND AWARD OF A GENERAL OBLIGATION PUBLIC IMPROVEMENT BOND OF THE CITY OF WINCHESTER, VIRGINIA, IN THE MAXIMUM PRINCIPAL AMOUNT OF \$7,200,000 AND PROVIDING FOR THE FORM, DETAILS AND PAYMENT THEREOF

## **THE ISSUE:**

As part of the budget process the following projects required bond proceeds:

- JJC Improvements- \$3,700,000
- City Hall Renovations & HVAC replacement- \$1,315,000
- Valley Avenue/Whitlock Drainage- \$385,000
- Meadow Branch Extension- \$600,000
- JKES furniture & fixtures- \$1,000,000

## **RELATIONSHIP TO STRATEGIC PLAN:**

With the projects listed above we are supporting the goal to promote and accelerate revitalization of targeted areas within the City. Also, we are improving City services and advancing the City's strategic plan goal by promoting a culture of transparency, *efficiency and innovation*.

## **BACKGROUND:**

During the budget process, the projects listed above were approved to be funded with bonds. Since this is a small issuance, we are going to introduce both a resolution (for a private placement) and an ordinance (for a public offering). So, if we do not receive an acceptable bid for our bonds with the private placement, we are in a position to go forward with a public offering. The document that is not needed with automatically expire upon closing.

## **BUDGET IMPACT:**

Maturity Date	Principal
9/15/2016	\$ 275,000
9/15/2017	\$ 280,000
9/15/2018	\$ 290,000
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9/15/2020	\$ 305,000
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9/15/2023	\$ 330,000
9/15/2024	\$ 340,000
9/15/2025	\$ 350,000
9/15/2026	\$ 360,000
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9/15/2033	\$ 435,000
9/15/2034	\$ 450,000
9/15/2035	\$ 460,000
<u>Total</u>	<u>\$ 7,200,000</u>

Interest on be determined by either the Private placement bid, or public offering.

**OPTIONS:**

Two options are being presented, a private placement or public offering. After the RFP's are evaluated the CFO will bring the offers (rates) forward to Council for final approval.

**RECOMMENDATIONS:**

I recommend we run the resolution and ordinance during the same time frame to be able to achieve the best rate possible on our 2015 bond issuance.

**RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND AWARD OF A  
GENERAL OBLIGATION PUBLIC IMPROVEMENT BOND OF THE CITY OF  
WINCHESTER, VIRGINIA, IN THE MAXIMUM PRINCIPAL AMOUNT OF  
\$7,200,000 AND PROVIDING FOR THE FORM, DETAILS AND PAYMENT  
THEREOF**

**RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND AWARD OF A GENERAL OBLIGATION PUBLIC IMPROVEMENT BOND OF THE CITY OF WINCHESTER, VIRGINIA, IN THE MAXIMUM PRINCIPAL AMOUNT OF \$7,200,000 AND PROVIDING FOR THE FORM, DETAILS AND PAYMENT THEREOF**

**WHEREAS**, on October 13, 2015, the Common Council (the “Council”) of the City of Winchester, Virginia (the “City”), adopted an ordinance authorizing the issuance of general obligation bonds in a principal amount not to exceed \$7,200,000 to finance the costs of certain capital improvement projects for the City, including (but not limited to) one or more of the following projects: the acquisition, construction, extension, renovation and equipping of joint judicial center improvements, City Hall renovations and HVAC replacement, road, street and sidewalk improvements, and public school improvements (collectively, the “Project”);

**WHEREAS**, the City’s administration in collaboration with Public Financial Management, acting in the role as the City’s financial advisor (the “Financial Advisor”), has recommended to the Council that the City issue and sell a single general obligation public improvement bond through a direct placement with a commercial banking or other financial institution to finance the Project;

**WHEREAS**, at the request of the City, the Financial Advisor has solicited bids for the purchase of the Bond (as hereinafter defined); and

**WHEREAS**, the Council desires to delegate to the City Manager the authority to award the sale of the Bond and to determine the final pricing terms of the Bond within certain parameters set forth below;

**BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF WINCHESTER, VIRGINIA:**

**1. Issuance of Bond.** Pursuant to the Constitution and statutes of the Commonwealth of Virginia, including the Public Finance Act of 1991 and the City Charter, the Council hereby provides for the issuance and sale of a general obligation bond of the City in the maximum principal amount of \$7,200,000 (the “Bond”) to provide funds to finance the Project and to pay the costs of issuing the Bond. Further, the Council hereby authorizes the City Manager to determine, in collaboration with the Financial Advisor, which bid is in the best interests of the City to accept and to award the Bond to such commercial banking or other financial institution (the “Bank”).

**2. Bond Details.** The Bond shall be designated “General Obligation Public Improvement Bond, Series 2015,” or such other designation as may be determined by the City Manager, shall be in registered form, shall be dated such date as determined by the City Manager and shall be numbered R-1. The Bond shall be sold to the Bank with final terms that the City Manager, in collaboration with the Financial Advisor, determines to be in the best interests of the City; provided, however, that the Bond (a) shall be issued in an aggregate principal amount not to exceed \$7,200,000, (b) shall bear interest at an initial rate not to exceed 4.5%, subject to adjustment, if any, as determined by the City Manager, (c) shall be sold to the Bank at a price of

100% of the original principal amount thereof, and (d) shall mature no later than December 31, 2035.

Interest on the Bond shall be payable semi-annually on dates determined by the City Manager. Principal on the Bond shall be payable in installments in amounts and on dates determined by the City Manager. Following the determination of the final pricing terms, the City Manager shall execute a certificate setting forth such final pricing terms and shall file such certificate with the records of the Council. The actions of the City Manager in selling the Bond shall be conclusive, and no further action with respect to the sale and issuance of the Bond shall be necessary on the part of the Council.

If the date on which any payment is due with respect to the Bond is not a Business Day (as hereinafter defined), the payment shall be made on the next succeeding Business Day. "Business Day" shall mean a day on which banking business is transacted, but not including a Saturday, Sunday, legal holiday or any other day on which banking institutions are authorized by law to close in the Commonwealth of Virginia.

Principal and interest shall be payable by the Registrar (as hereinafter defined) by check or draft mailed to the registered owner at the address as it appears on the registration books kept by the Registrar on the date selected by the City Manager as the record date for the Bond (the "Record Date"); provided, however, that at the request of the registered owner of the Bond, payment will be made by wire transfer pursuant to the most recent wire instructions received by the Registrar from such registered owner. Principal, premium, if any, and interest shall be payable in lawful money of the United States of America.

**3. Redemption Provisions.** Subject to the limitations contained herein, the City Manager is hereby authorized to determine the redemption provisions of the Bond. Such redemption provisions may include the payment of a call premium not to exceed 2% of the par amount of the Bond (or portion thereof) to be redeemed and/or may include a "make-whole" payment based on market conditions, all as the City Manager may determine to be in the best interests of the City.

**4. Execution and Authentication.** The Bond shall be signed by the manual or facsimile signature of the President of the Common Council and the City Treasurer, the City's seal shall be affixed thereto or a facsimile thereof printed thereon and shall be attested by the manual or facsimile signature of the Clerk or Deputy Clerk of the Common Council; provided, however, that no Bond signed by facsimile signatures shall be valid until it has been authenticated by the manual signature of the Registrar or, if a bank has been appointed registrar pursuant to section 7, an authorized officer or employee of such bank and the date of authentication has been noted thereon.

**5. Bond Form.** The Bond shall be in substantially the form of Exhibit A attached hereto, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the officers signing the Bond, whose approval shall be evidenced conclusively by the execution of the Bond and the delivery thereof to the Bank.

**6. Pledge of Full Faith and Credit.** The full faith and credit of the City are irrevocably pledged for the payment of principal of and premium, if any, and interest on the Bond. Unless other funds are lawfully available and appropriated for timely payment of the Bond, the Council shall levy and collect an annual ad valorem tax, over and above all other taxes authorized or limited by law and without limitation as to rate or amount, on all locally taxable property in the City sufficient to pay when due the principal of and premium, if any, and interest on the Bond.

**7. Registration, Transfer and Owners of Bond.** The Bond shall be issued in registered form without coupons, payable to the registered holders or registered assigns. The City Treasurer is hereby appointed to act as the registrar and paying agent for the Bond (the "Registrar"). The Council may, in its discretion, appoint at any time a bank or trust company to serve as successor Registrar for the Bond. The Registrar shall maintain registration books for the registration of the Bond and transfers thereof. Upon presentation and surrender of the Bond at the office of the City Treasurer, or the corporate trust office of the Registrar if the City Treasurer is no longer serving as Registrar, together with an assignment duly executed by the registered owner or its duly authorized attorney or legal representative in such form as shall be satisfactory to the Registrar, the City shall execute, and the Registrar shall authenticate, if required by Section 4, and deliver in exchange, a new Bond having an equal aggregate principal amount, of the same form and maturity, bearing interest at the same rate and registered in names as requested by the then registered owner or its duly authorized attorney or legal representative. Any such exchange shall be at the expense of the City, except that the Registrar may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

The Registrar shall treat the registered owner as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the owner, except that interest payments shall be made to the person or entity shown as owner on the registration books on the Record Date.

**8. Preparation and Delivery of Bond.** Subject to the provisions of paragraphs 1 and 2, the officers of the City are authorized and directed to take all proper steps to have the Bond prepared and executed in accordance with its terms and to deliver the Bond to the Bank upon payment therefor.

**9. Mutilated, Lost or Destroyed Bond.** If the Bond has been mutilated, lost or destroyed, the City shall execute and deliver a new Bond of like date and tenor in exchange and substitution for, and upon cancellation of, such mutilated Bond or in lieu of and in substitution for such lost or destroyed Bond; provided, however, that the City shall so execute and deliver only if the registered owner has paid the reasonable expenses and charges of the City and the Registrar in connection therewith and, in the case of a lost or destroyed Bond, (a) has filed with the City and the Registrar evidence satisfactory to the City that such Bond was lost or destroyed and (b) has furnished to the City and the Registrar satisfactory indemnity.

**10. Deposit of Bond Proceeds.** The City Treasurer is authorized to (a) provide for the deposit of the proceeds of the Bond in a special account to be maintained with an escrow

agent or depository, pursuant to an escrow agreement or other contract between the City and such escrow agent or depository, all as deemed necessary in the discretion of the City Treasurer and the City Manager, and (b) requisition and apply such proceeds to pay the costs of the Project and the costs incurred in issuing the Bond.

#### **11. Arbitrage Covenants.**

(a) The City represents that there have not been issued, and covenants that there will not be issued, any obligations that will be treated as part of the same “issue” as the Bond within the meaning of Treasury Regulations Section 1.150-1(c).

(b) The City covenants that it shall not take or omit to take any action the taking or omission of which will cause the Bond to be an “arbitrage bond” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), or otherwise cause interest on the Bond to be includable in the gross income for federal tax purposes of the registered owner thereof under existing law. Without limiting the generality of the foregoing, the City shall comply with any provision of law that may require the City at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the Bond, unless the City receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest on the Bond from being includable in the gross income for federal income tax purposes of the registered owner thereof under existing law. The City shall pay any such required rebate from its legally available funds.

**12. Non-Arbitrage Certificate and Elections.** Such officers of the City as may be requested by bond counsel for the City are authorized and directed to execute an appropriate certificate setting forth (a) the expected use and investment of the proceeds of the Bond in order to show that such expected use and investment will not violate the provisions of Section 148 of the Code, and (b) any elections such officers deem desirable regarding rebate of earnings to the United States for purposes of complying with Section 148 of the Code. Such certificate shall be prepared in consultation with bond counsel for the City, and such elections shall be made after consultation with bond counsel.

**13. Limitation on Private Use.** The City covenants that it shall not permit the proceeds of the Bond or the facilities financed thereby to be used in any manner that would result in (a) 5% or more of such proceeds or facilities being used in a trade or business carried on by any person other than a governmental unit, as provided in Section 141(b) of the Code, (b) 5% or more of such proceeds or facilities being used with respect to any output facility (other than a facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Code, or (c) 5% or more of such proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit, as provided in Section 141(c) of the Code; provided, however, that if the City receives an opinion of nationally recognized bond counsel that any such covenants need not be complied with to prevent the interest on the Bond from being includable in the gross income for federal income tax purposes of the registered owners thereof under existing law, the City need not comply with such covenants.

**14. SNAP Investment Authorization.** The Council has received and reviewed the Information Statement describing the State Non-Arbitrage Program of the Commonwealth of Virginia (“SNAP”) and the Contract Creating the State Non-Arbitrage Program Pool I (the “Contract”), and the Council has determined to authorize the City Manager to utilize SNAP in connection with the investment of the proceeds of the Bond, if the City Manager determines that the utilization of SNAP is in the best interests of the City. The Council acknowledges that the Treasury Board of the Commonwealth of Virginia is not, and shall not be, in any way liable to the City in connection with SNAP, except as otherwise provided in the Contract.

**15. Other Actions.** All other actions of officers of the City in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bond are ratified, approved and confirmed. The officers of the City are authorized and directed to execute and deliver all certificates and instruments and to take all such further action as may be considered necessary or desirable in connection with the issuance, sale and delivery of the Bond.

**16. Repeal of Conflicting Resolutions.** All prior resolutions or parts thereof in conflict herewith are repealed.

**17. Effective Date.** This Resolution shall take effect immediately.

EXHIBIT A

REGISTERED

REGISTERED

No. R-1

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
COMMONWEALTH OF VIRGINIA  
CITY OF WINCHESTER

General Obligation Public Improvement Bond  
Series 2015

The City of Winchester, Virginia (the "City"), for value received, promises to pay, to \_\_\_\_\_ or its registered assigns or legal representative (the "Bank"), the principal sum of \_\_\_\_\_ **AND 00/100 DOLLARS (\$\_\_\_\_\_)**, together with interest from the date of this bond on the unpaid principal, at the annual rate of \_\_%, calculated on the basis of a 360-day year of twelve 30-day months, [subject to redemption prior to maturity as hereinafter provided]. Interest shall be payable semi-annually on each [March 1] and [September 1], commencing [March 1, 2016], and principal shall be payable annually on [September 1] in the amounts and years as set forth on Schedule I attached hereto. Principal of [and premium, if any,] and interest on this bond are payable in lawful money of the United States of America by the [City Treasurer], who has been appointed paying agent and registrar for this bond, or by such bank or trust company as may be appointed by the City as successor paying agent and registrar (the "Registrar").

If the date on which any payment is due with respect to this bond is not a Business Day (as hereinafter defined), the payment shall be made on the next succeeding Business Day. "Business Day" shall mean a day on which banking business is transacted, but not including a Saturday, Sunday, legal holiday or any other day on which banking institutions are authorized by law to close in the Commonwealth of Virginia.

This bond is issued pursuant to the Constitution and statutes of the Commonwealth of Virginia, including the Public Finance Act of 1991 and the City Charter. This bond has been authorized and issued pursuant to an ordinance and a resolution, both adopted by the Common Council on [October 13], 2015, to provide funds to (a) finance the costs of certain capital improvement projects for the City, including (but not limited to) one or more of the following projects: the acquisition, construction, extension, renovation and equipping of joint judicial center improvements, City Hall renovations and HVAC replacement, road, street and sidewalk improvements, and public school improvements (collectively, the "Project") and (b) pay the costs of issuing this bond.

[This bond is subject to redemption prior to maturity, in whole or in part at any time, at the option of the City, upon payment of a redemption price equal to \_\_% of the principal amount to be redeemed, plus accrued and unpaid interest, if any, to the redemption date.]

Attachment: Winchester - 2015 GO - Bond Resolution\_57109794\_3-c-c (R-2015-30 : Bond Issuance 2015)

The full faith and credit of the City are irrevocably pledged for the payment of principal of [and premium, if any,] and interest on this bond. Unless other funds are lawfully available and appropriated for timely payment of this bond, the Common Council shall levy and collect an annual ad valorem tax, over and above all other taxes authorized or limited by law and without limitation as to rate or amount, on all locally taxable property in the City sufficient to pay when due the principal of [and premium, if any,] and interest on this bond.

The Registrar shall treat the registered owner of this bond as the person exclusively entitled to payment of principal of [and premium, if any,] and interest on this bond and the exercise of all rights and powers of the owner, except that interest payments shall be made to the person shown as the registered owner on the registration books on the [15th] day of the month preceding each interest payment date.

All acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia to happen, exist or be performed precedent to and in the issuance of this bond have happened, exist and have been performed, and this bond, together with all other indebtedness of the City, is within every debt and other limit prescribed by the Constitution and statutes of the Commonwealth of Virginia.

**IN WITNESS WHEREOF**, the Common Council of the City of Winchester, Virginia, has caused this bond to be issued in the name of the City of Winchester, Virginia, to be signed by the President of the Common Council and the City Treasurer, its seal to be affixed hereto and attested by the Clerk of the Common Council, and this bond to be dated the date first above written.

(SEAL)

\_\_\_\_\_  
President of the Common Council,  
City of Winchester, Virginia

\_\_\_\_\_  
City Treasurer, City of Winchester, Virginia

(ATTEST)

\_\_\_\_\_  
Clerk of the Common Council,  
City of Winchester, Virginia

Attachment: Winchester - 2015 GO - Bond Resolution - 57109794\_3-c-c (R-2015-30 : Bond Issuance 2015)

**ASSIGNMENT**

FOR VALUE RECEIVED the undersigned sell(s), assign(s) and transfer(s) unto

\_\_\_\_\_  
(Please print or type name and address, including postal zip code, of Transferee)

PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF TRANSFEREE:

\_\_\_\_\_  
: :  
: :  
: :  
: :

the within bond and all rights thereunder, hereby irrevocably constituting and appointing \_\_\_\_\_,  
Attorney, to transfer said bond on the books kept for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an Eligible Guarantor Institution such as a Commercial Bank, Trust Company, Securities Broker/Dealer, Credit Union or Savings Association who is a member of a medallion program approved by The Securities Transfer Association, Inc.

\_\_\_\_\_  
(Signature of Registered Owner)

NOTICE: The signature above must correspond with the name of the registered owner as it appears on the front of this bond in every particular, without alteration or enlargement or any change whatsoever.

Attachment: Winchester - 2015 GO - Bond Resolution\_57109794\_3-c-c (R-2015-30 : Bond Issuance 2015)

**SCHEDULE I**

**[Final Payment Schedule to be attached at closing]**

**Attachment: Winchester - 2015 GO - Bond Resolution\_57109794\_3-c-c (R-2015-30 : Bond Issuance 2015)**

# CITY OF WINCHESTER, VIRGINIA

## CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: September 22, 2015

RESOLUTION  ORDINANCE  DESCRIPTION/PRESENTATION

**ITEM TITLE:** Resolution to Accept the Virginia Department of Fire Programs (VDFP) Burn Building Grant

**PUBLIC HEARING DATE:**

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 completion of review only addresses the readiness of the issue for Council consideration. This does not address the recommendation for approval or denial of the issue.

Review:

Allen Baldwin	Completed	09/01/2015 2:40 PM
Mary Blowe	Completed	09/01/2015 2:57 PM
Anthony Williams	Completed	09/01/2015 3:14 PM
Eden Freeman	Completed	09/03/2015 10:46 AM

**Allen Baldwin**

Allen Baldwin, Chief of Fire & Rescue 9/1/2015



**APPROVED AS TO FORM:**

*[Signature]*  
CITY ATTORNEY

*[Signature]*  
Eden Freeman, City Manager 9/3/2015

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Allen Baldwin, Chief of Fire & Rescue  
**Date:** September 22, 2015  
**Re:** Resolution to Accept the Virginia Department of Fire Programs (VDFP) Burn Building Grant

---

## **THE ISSUE:**

The Winchester Regional Training Center burn building constructed in the early 1980's has reached its life expectancy for the training of firefighters. This building is utilized to train and certify firefighters in live fire scenarios. The building has been deemed non-compliant by the Virginia Department of Fire Programs (VDFP) as it no longer meets the requirements of NFPA 1001, 1402, and 1403 standards. In addition, the burn building is not considered to be structurally sound due to its age, condition and use and is no longer considered safe for live fire evolutions.

## **RELATIONSHIP TO STRATEGIC PLAN:**

Goal 3: Advance Quality of Life for All Winchester Residents.

## **BACKGROUND:**

The Winchester Regional Training Center began operation in 1966 as an effort to provide firefighter training to the City of Winchester firefighters and surrounding jurisdictions. Modifications to this center have been made over the years with the assistance of VDFP through state grant funds. The burn building in question has seen significant rehabilitation over the years to prolong its life. With the evolution of NFPA standards, the certifying process for firefighters has placed higher demands on facilities to upgrade to meet these requirements.

Currently, the FY2017 budget contains a capital project to replace this building in the amount of \$600,000 with additional monies coming from VDFP in the amount of \$430,000 for a total of \$1,030,000. The City Manager advised the WFRD to seek funding from this grant and the city was awarded a \$480,000 grant from VDFP to construct a new building. In addition, fire and rescue leadership from Clarke County and Frederick County have provided letters of support for this project although no amount of financial support has been defined at this time. We anticipate both entities will contribute financially once we have better cost estimates. The construction of this project will be subject to competitive bidding and the final cost of construction may be less than currently estimated.

**BUDGET IMPACT:**

Staff currently estimates that an additional amount of \$300,000 from the participating jurisdictions will be needed as the cost sharing portion to complete the building bringing the total project to \$780,000. To begin this project, a supplemental appropriation for this project will be sent forward to Council in the fall.

The performance period for the grant is 20 years with required yearly inspections by certified engineers as well as ongoing repairs that can be supplemented by additional VDFP grant monies. Limited budget requests may be made necessary in future years to offset the required inspection costs and potential repairs.

**OPTIONS:**

Option 1: Authorizes the City Manager to accept and execute any agreements related to the acceptance of the VDFP grant to design and construct a burn building and to administer all of the necessary reporting duties related to this grant and authorize the supplemental appropriations at a later date.

Option 2: Refusal of the award.

**RECOMMENDATIONS:**

It is recommended that the City Council authorize the acceptance of the \$480,000 grant award from the VDFP and direct staff to begin planning and estimating efforts to construct a new burn building at the Winchester Regional Training Center.

**RESOLUTION TO ACCEPT THE VIRGINIA DEPARTMENT OF FIRE  
PROGRAMS (VDFP) BURN BUILDING GRANT**

**A RESOLUTION TO AUTHORIZE THE  
CITY MANAGER TO ACCEPT AND EXECUTE  
THE VDFP BURN BUILDING GRANT AWARD**

**WHEREAS**, the City of Winchester Fire and Rescue Department is in need of a new regional burn building facility; and

**WHEREAS**, the Virginia Department of Fire Programs (VDFP) solicited applications for their Burn Building Grant; and

**WHEREAS**, the City of Winchester submitted an application to VDFP that requested funding to assist the City of Winchester's Fire and Rescue Department in the design and construction of a new burn building facility; and,

**WHEREAS**, VDFP received the City of burn building grant application and awarded the City of Winchester with \$480,000 to design and construct a burn building.

**NOW THEREFORE BE IT RESOLVED**, that the Common Council of the City of Winchester, Virginia hereby authorizes the City Manager to accept and execute any documents related to the acceptance and management of the VDFP grant to design and construct a burn building and to administer all of the necessary reporting duties related to this grant.

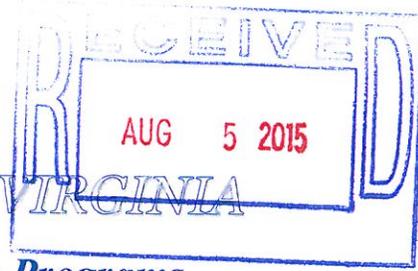


COMMONWEALTH of VIRGINIA

*Virginia Department of Fire Programs*

Melvin D Carter  
EXECUTIVE DIRECTOR

Finance Bra:  
1005 Technology Park D  
Glen Allen, VA 23059-4  
Phone: 804/ 371-0  
Fax: 804/ 371-3



August 3, 2015

Chief J.D. Orndorff  
Winchester City  
231 E Piccadilly Street  
Winchester, VA 22601

Dear Chief Orndorff:

On behalf of the Virginia Fire Services Board, we are pleased to advise **Winchester**, Virginia of a **grant award of up to \$480,000 for the new construction** of a burn building as a prop to assist in training the fire service for its jurisdiction. The grant award is allocated as up to \$450,000 for the new construction and up to \$30,000 for architect and/or engineering services, totaling \$480,000.

According to the amended application submitted, the City has elected to construct its burn building according to the minimum standards specified in Prototype I, Class A.

This award is effective: FY2016

Accordingly, the **City has until August 31, 2016 to submit a valid building permit and begin construction** consistent with the terms and conditions of the mutually executed Disbursement Agreement. Following such date, the City will have an additional twelve (12) months to complete construction and collect the balance of their award. **The project expiration date is marked as August 31, 2017.** 

Be advised that all documents are available on our website at [www.vafire.com](http://www.vafire.com) under the Grants and Local Aid: Burn Building link, including the VFSB Burn Building Policy which is effective as of July 1, 2013. The City is required to review these documents very carefully in order to progress with its project in compliance with the terms and conditions of this grant award and the Policy that governs the Burn Building Grant Program.

In accordance with the Burn Building Policy, the City will be required to attend an Orientation Meeting at the Division 2 Office in Culpeper, Virginia that must be held within thirty (30) days of award notification. The purpose of this meeting is to introduce VDFP staff to new grants recipients, provide an overview of the Burn Building Grant Program, and offer an opportunity for grants recipients to ask questions about the grants process. **The City must schedule the Orientation Meeting by September 3, 2015.**

Two originals of the Burn Building Disbursement Agreement are included. The City Manager must sign both originals and have them sent to my attention. Both originals will be counter signed by the Virginia Department of Fire Programs. One original will be returned to the City for Local file retention. **No funds disbursements will be authorized or released without the executed disbursement Agreement.**

Funds disbursement for new construction projects will be made in five (5) installments upon notification by the jurisdiction to the Agency. Once a valid building permit has been submitted and an executed Agreement is on file, the jurisdiction is eligible to draw the first 25% of the construction grant. Once A/E services are complete, jurisdictions may also request reimbursement for such services up to the amount awarded by the VFSB not to exceed \$30,000. Remaining funds disbursements for the construction grant will be made upon jurisdiction request on the percentage of completion method at 50%, 75% and 100% completion. In order to be eligible for final payment, the prop must be placed in operation. It is the responsibility of the jurisdiction to maintain all such records subject to audit by this Agency or its assignees for a period of five (5) years following the date of the last transfer of award funds to the grant recipient.

If you have any questions, feel free to contact me at my office 804/249-1958, or via email at [Joe.Thompson@vdfp.virginia.gov](mailto:Joe.Thompson@vdfp.virginia.gov).

Respectfully,



Joseph Thompson  
Grants & Local Aid Manager

Enclosure

c: Eden Freeman, City Manager  
Walter Bailey, Chair, Virginia Fire Services Board  
Robert Miner, Chair, Burn Building Subcommittee  
Melvin D Carter, Executive Director, Virginia Department of Fire Programs  
John Fugman, Division Manager, Virginia Department of Fire Program

# VIRGINIA FIRE SERVICE GRANT PROGRAM AGREEMENT

## Grant for Constructing or Repairing Burn Building or Fire Service Training Facilities

**Statutory Authority: §38.2-401 of the *Code of Virginia***

This Grant Agreement, made as of the \_\_\_\_\_ day of \_\_\_\_\_, by and among the VIRGINIA DEPARTMENT OF FIRE PROGRAMS (the "Department"), acting as authorized on behalf of the Virginia Fire Services Board (the "Board"), and \_\_\_\_\_ City of Winchester \_\_\_\_\_, (the "Grantee"), governs the distribution and use of Fire Services Grant Program moneys, as provided for in §38.2-401 (D) of the *Code of Virginia*.

**WHEREAS**, §38.2-401 (D) of the *Code of Virginia*, authorizes the Board to determine the distribution of grants to provide regional fire services training facilities; to finance the Virginia Fire Incident Reporting System; and to build or repair Burn Buildings; and

**WHEREAS**, the Grantee has submitted an application for a grant from the Fire Services Grant Fund Program to assist in funding the construction of or repair to a burn building, or funding the construction of or repair to a regional fire service training facility, City of Winchester Burn Building together with plans, specifications and project narrative for such project narrative for such project, more specifically described in Attachment A hereto (the "Project"); and

**WHEREAS**, the Board has approved the Project and has authorized the Department to act on its behalf in the distribution and administration of grants;

**NOW, THEREFORE**, pursuant to the authority granted to the Board and Department by §38.2-401 (D) of the *Code of Virginia*, and in consideration of the Grantee's adoption and ratification of the representations, terms and conditions as herein provided, and benefits to accrue to the Commonwealth and public from the accomplishment of this Project, the department offers a grant of \$ 480,000.00 to pay eligible Project cost subject to the terms and conditions listed below:

- 1 These funds shall be disbursed by the Department to the Grantee after the Agreement has been signed.
- 2 These funds shall be deposited in an interest-bearing account or normal risk and with a demand restriction, if any, not exceeding 30 calendar days until they are needed. The Grantee must be able to account for both the principle and the interest amounts. Any unused funds, including interest, shall be returned to the Department.
- 3 Unless an extension has been granted by the Department, the construction and/or repair tasks shall be completed, and all documentation pertaining to such activities shall be submitted to the Department on or before 12 months after the grant funds have been disbursed.
- 4 The Department may grant an extension of up to three months beyond the 12 month period to complete the construction and/or repairs, and to submit documentation. Any extension beyond three months must be submitted to the Virginia Fire Services Board for approval.

- 5 The Grantee agrees to carry out and complete all phases of the Project strictly in accordance with the plans, specifications and project narrative. The plans, specifications and project narrative may only be revised or modified with the Board or Department's prior written approval. The Grantee agrees to allow the Board representative access to the Project at all reasonable times to verify compliance with the approved plans, specifications and project narrative.
- 6 The Grantee agrees that no construction or repair work shall commence until the following types of insurance are in place for entities performing any such work, including subcontractors, and these types of insurance shall be maintained at all times while construction or repair work is being performed: (a) an All Risk Builders Risk Property insurance policy based on the completed value of all such work, with exclusions for design errors or defects removed by policy endorsement, and the locality shall be named additional insured in such policy; (b) a Workers' Compensation and Employer's Liability insurance policy covering all workers or employees engaged in such work, and, in case any such work is sublet, each subcontractor shall, similarly, provide Workers' Compensation and Employer's Liability Insurance for all of the subcontractor's workers or employees who are engaged in the work, and in amounts not less than the minimums required by the Code of Virginia and other applicable laws and regulations; (c) a Comprehensive Commercial General Liability insurance policy that provides a minimum level of \$500,000 combined single limit per occurrence, and the locality shall be named as an additional insured party in such policy; and (d) a Comprehensive Automobile Liability insurance policy that will insure against claims for property damage that may arise from the operation of motor vehicles associated with the construction or repair work, with a minimum level of \$500,000 combined single limit per occurrence. Before the commencement of any work, the locality must submit to the VDFP a Certificate of Coverage or Certificate of Insurance indicating that these types of insurance are in effect. All insurance shall be provided by insurers who are licensed to provide insurance in the Commonwealth of Virginia.
- 7 The Grantee agrees to operate and maintain the Project, now existing or built in whole or in part as a result of the Project, as a training facility for a period of 20 years from completion of this Project.
- 8 The Grantee agrees to operate, maintain and use the Project in accordance with the policies adopted by the Board, as amended from time to time.
- 9 Subject to lawful appropriation, the Grantee agrees to repay to the Department a sum which is equal to the pro-rata share (computed monthly) of all monies received under this Grant Agreement based on the period of operation and maintenance as specified in paragraph 7 above in the event that the Project ceases to be available for such specified training purposes prior to the expiration of such period, if such change in availability is due to an act or omission within the sole and direct control of the Grantee.
- 10 Grantee hereby agrees that the Project shall be maintained and operated at all times in a manner designed to prolong the useful life of the Project and that no condition will be allowed to exist that will, or is likely to, lead to a shorter than expected useful life for the Project. The Grantee further agrees to ensure appropriate encroachment factors of surrounding land for a period of 5 years from the completion date of the Project.

- 11 The Grantee represents to the Department that (a) its authorized representative whose signature appears below has read and understands the referenced provisions of the Code of Virginia and the Board's policy entitled "VFSB Burn Building Policy: Fire Service Grant Program, Grant Awards to Construct, Renovate, or Repair Burn Buildings throughout the Commonwealth", adopted thereunder, as amended from time to time, which are hereby incorporated into this Grant Agreement by reference in its entirety; (b) it agrees to comply with all applicable provisions of the Code of Virginia, including if appropriate, the Virginia Public Procurement Act that governs construction of public facilities by private entities. (c) It is duly authorized to enter into this Grant Agreement and to perform its obligations hereunder and has taken all necessary action to authorize such execution and performance.
- 12 This grant will be fully liquidated in public benefits to the Commonwealth 20 years from the completion date of the Project and the Grantee shall have no further financial obligation to the Commonwealth under this Grant Agreement upon the expiration of such time.
- 13 To the extent permitted by law, the Grantee shall retain title to the Project and underlying land, and the Grantee shall not release or transfer title without first receiving written approval from the Board prior to such release, which approval shall not be unreasonably withheld.
- 14 The Grantee agrees to retain all books, records and other documents relative to expenditures of Grant Funds for five years from the completion date of the Project. The Board, the Department and/or State auditors shall have full access to and the right to audit any of these records during the above-referenced period.
- 15 The Department shall be bound hereunder only to the extent of the Fire Services Grant Funds available or which may hereafter become available for the purpose of this Grant Agreement.
- 16 This writing constitutes the entire Grant agreement between the parties, supersedes any existing agreement among the parties hereto relative to the matters contained herein, and may be modified only by written amendment executed by all parties.
- 17 This agreement shall in all respects be governed by the laws of the Commonwealth of Virginia without regard to the legislative or judicial conflict of laws rules of any state.
- 18 If any provision of this Grant Agreement is determined to be invalid by a court of competent jurisdiction, it shall not render the remaining portions of this Grant Agreement void or unenforceable.
- 19 This Grant Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.
- 20 When any written notice or report is required or may be given hereunder, it will be deemed sufficient if the party giving such notice, request, or report delivers the same to the other party by U.S. mail, postage prepaid, or by other superior mailing, or by hand delivery. All notices, request, demands or reports delivered by mail or by hand will be deemed to have been given when received by any party hereto at the following addresses:
- Grantee: Such office or mailing address as stated on the Point of Contact Form attached hereto or to such other address of which the Grantee has notified the other parties hereto in writing.
- Agency and Board: Virginia Department of Fire Programs  
Attn: Burn Building Grant Administration  
1005 Technology Park Drive  
Glen Allen VA 23059-4500
- or to such other address of which the Department has notified the Grantee in writing.

**IN WITNESS WHEREOF**, the parties hereto have by their duly authorized representatives executed this Grant Agreement as of the date first above written, intending to be bound thereby.

DEPARTMENT OF FIRE PROGRAMS

BY:

\_\_\_\_\_  
Signature of Authorized Representative Date

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**GRANTEE**

The Grantee, City of Winchester does hereby accept and ratify all terms, conditions and agreements contained in this Grant Agreement and does hereby accept the grant and by such acceptance agrees to all of the terms and conditions hereof.

BY:

\_\_\_\_\_  
Signature of Authorized Representative Date

Name: Eden Freeman

Title: City Manager

Attachment: Grant Award (R-2015-31 : Virginia Department of Fire Programs Burn Building Grant)

# VIRGINIA FIRE SERVICE GRANT PROGRAM AGREEMENT

## Grant for Constructing or Repairing Burn Building or Fire Service Training Facilities

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**WHEREAS**, the Grantee has submitted an application for a grant from the Fire Services Grant Fund Program to assist in funding the construction of or repair to a burn building, or funding the construction of or repair to a regional fire service training facility, City of Winchester Burn Building together with plans, specifications and project narrative for such project, more specifically described in Attachment A hereto (the "Project"); and

**WHEREAS**, the Board has approved the Project and has authorized the Department to act on its behalf in the distribution and administration of grants;

**NOW, THEREFORE**, pursuant to the authority granted to the Board and Department by §38.2-401 (D) of the *Code of Virginia*, and in consideration of the Grantee's adoption and ratification of the representations, terms and conditions as herein provided, and benefits to accrue to the Commonwealth and public from the accomplishment of this Project, the department offers a grant of \$ 480,000.00 to pay eligible Project cost subject to the terms and conditions listed below:

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- 6 The Grantee agrees that no construction or repair work shall commence until the following types of insurance are in place for entities performing any such work, including subcontractors, and these types of insurance shall be maintained at all times while construction or repair work is being performed: (a) an All Risk Builders Risk Property insurance policy based on the completed value of all such work, with exclusions for design errors or defects removed by policy endorsement, and the locality shall be named additional insured in such policy; (b) a Workers' Compensation and Employer's Liability insurance policy covering all workers or employees engaged in such work, and, in case any such work is sublet, each subcontractor shall, similarly, provide Workers' Compensation and Employer's Liability Insurance for all of the subcontractor's workers or employees who are engaged in the work, and in amounts not less than the minimums required by the Code of Virginia and other applicable laws and regulations; (c) a Comprehensive Commercial General Liability insurance policy that provides a minimum level of \$500,000 combined single limit per occurrence, and the locality shall be named as an additional insured party in such policy; and (d) a Comprehensive Automobile Liability insurance policy that will insure against claims for property damage that may arise from the operation of motor vehicles associated with the construction or repair work, with a minimum level of \$500,000 combined single limit per occurrence. Before the commencement of any work, the locality must submit to the VDFP a Certificate of Coverage or Certificate of Insurance indicating that these types of insurance are in effect. All insurance shall be provided by insurers who are licensed to provide insurance in the Commonwealth of Virginia.
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- 11 The Grantee represents to the Department that (a) its authorized representative whose signature appears below has read and understands the referenced provisions of the Code of Virginia and the Board's policy entitled "VFSB Burn Building Policy: Fire Service Grant Program, Grant Awards to Construct, Renovate, or Repair Burn Buildings throughout the Commonwealth", adopted thereunder, as amended from time to time, which are hereby incorporated into this Grant Agreement by reference in its entirety; (b) it agrees to comply with all applicable provisions of the Code of Virginia, including if appropriate, the Virginia Public Procurement Act that governs construction of public facilities by private entities. (c) It is duly authorized to enter into this Grant Agreement and to perform its obligations hereunder and has taken all necessary action to authorize such execution and performance.
- 12 This grant will be fully liquidated in public benefits to the Commonwealth 20 years from the completion date of the Project and the Grantee shall have no further financial obligation to the Commonwealth under this Grant Agreement upon the expiration of such time.
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- 15 The Department shall be bound hereunder only to the extent of the Fire Services Grant Funds available or which may hereafter become available for the purpose of this Grant Agreement.
- 16 This writing constitutes the entire Grant agreement between the parties, supersedes any existing agreement among the parties hereto relative to the matters contained herein, and may be modified only by written amendment executed by all parties.
- 17 This agreement shall in all respects be governed by the laws of the Commonwealth of Virginia without regard to the legislative or judicial conflict of laws rules of any state.
- 18 If any provision of this Grant Agreement is determined to be invalid by a court of competent jurisdiction, it shall not render the remaining portions of this Grant Agreement void or unenforceable.
- 19 This Grant Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.
- 20 When any written notice or report is required or may be given hereunder, it will be deemed sufficient if the party giving such notice, request, or report delivers the same to the other party by U.S. mail, postage prepaid, or by other superior mailing, or by hand delivery. All notices, request, demands or reports delivered by mail or by hand will be deemed to have been given when received by any party hereto at the following addresses:
- Grantee: Such office or mailing address as stated on the Point of Contact Form attached hereto or to such other address of which the Grantee has notified the other parties hereto in writing.
- Agency and Board: Virginia Department of Fire Programs  
Attn: Burn Building Grant Administration  
1005 Technology Park Drive  
Glen Allen VA 23059-4500
- or to such other address of which the Department has notified the Grantee in writing.

**IN WITNESS WHEREOF**, the parties hereto have by their duly authorized representatives executed this Grant Agreement as of the date first above written, intending to be bound thereby.

DEPARTMENT OF FIRE PROGRAMS

BY:

\_\_\_\_\_  
Signature of Authorized Representative Date

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**GRANTEE**

The Grantee, City of Winchester does hereby accept and ratify all terms, conditions and agreements contained in this Grant Agreement and does hereby accept the grant and by such acceptance agrees to all of the terms and conditions hereof.

BY:

\_\_\_\_\_  
Signature of Authorized Representative Date

Name: Eden Freeman

Title: City Manager

Attachment: Grant Award (R-2015-31 : Virginia Department of Fire Programs Burn Building Grant)