

## City Council Work Session

Tuesday, November 25, 2014

6:00 p.m.

Council Chambers – Rouss City Hall

### AGENDA

#### 1.0 Call to Order

**2.0 Public Comments:** (Each person will be allowed 3 minutes to address Council with a maximum of 10 minutes allowed for everyone)

#### 3.0 Items for Discussion:

**3.1 Presentation:** Non-Profit Organization Activities Subject to Local Taxation– Ann Burkholder, Commissioner of Revenue (pages 3-6)

**3.2 O-2014-45:** AN ORDINANCE TO AMEND AND REENACT ARTICLE 17 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO NONCONFORMING USES AND VESTED RIGHTS. (TA-14-476) – Aaron Grisdale, Director of Zoning & Inspections (pages 7-18)

**3.3 CU-14-640:** Conditional Use Permit – Request of Joshua Schakola on behalf of Verizon Wireless for a conditional use permit for modifications to a telecommunication tower at 701 Fairmont Ave (Map Number 153-01- -2-A) zoned Limited Industrial (M-1). – Aaron Grisdale, Director of Zoning & Inspections (pages 19-25)

**3.4 O-2014-48:** AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15.1, 16, 16.1, 18, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TELECOMMUNICATIONS FACILITIES, PERMIT AND REVIEW REQUIREMENTS, AND FEES. (TA-14-645) – Aaron Grisdale, Director of Zoning & Inspections (pages 26-36)

**3.5 O-2014-46:** AN ORDINANCE TO REZONE 0.064 ACRES OF LAND AT 116 W. LEICESTER STREET (*Map Number 192-01-S-12*) & 118 W. LEICESTER STREET (*Map Number 192-01-S-13*) FROM MEDIUM DENSITY RESIDENTIAL DISTRICT (MR) ZONING WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY TO RESIDENTIAL BUSINESS DISTRICT (RB-1) ZONING WITH HISTORIC WINCHESTER DISTRICT (HW) OVERLAY. (RZ-14-625)(*The proposed rezoning would permit up to 2 units.*) – Tim Youmans, Planning Director (pages 37-45)

**3.6 O-2014-47:** AN ORDINANCE TO REZONE 0.736 ACRES OF LAND AT 2508 PAPERMILL ROAD (*Map Number 291-03- -1*) FROM INTENSIVE INDUSTRIAL DISTRICT (M-2) ZONING TO COMMERCIAL INDUSTRIAL

DISTRICT (CM-1) ZONING. (RZ-14-639) (*The rezoning would permit retail development in conjunction with the adjoining property to the south.*) – Tim Youmans, Planning Director (pages 46-55)

- 3.7 CU-14-637:** Conditional Use Permit – Request of Ben Pelletier on behalf of Verizon Wireless for a conditional use permit for modifications to a telecommunication antennas at 1955 Valley Avenue (Map Number 251-01- - 5) zoned Limited Industrial (M-1). – Tim Youmans, Planning Director (pages 56-74)
- 3.8 CU-14-638:** Conditional Use Permit – Request of James Testa of Testa, Inc. for a conditional use permit single family detached dwelling at 2905 Shawnee Drive (Map Number 332-03- - 89) zoned Highway Commercial District (B-2). – Tim Youmans, Planning Director (pages 75-84)

#### **4.0 Executive Session**

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

#### **5.0 Adjournment**

# CITY OF WINCHESTER, VIRGINIA

## PROPOSED CITY COUNCIL AGENDA ITEM

**CITY COUNCIL/COMMITTEE MEETING OF:** 11/25/2014 **CUT OFF DATE:** \_\_\_\_\_

PRESENTATION  X

**ITEM TITLE:** Nonprofit Organization Activities Subject to Local Taxation

**STAFF RECOMMENDATION:** N/A

**PUBLIC NOTICE AND HEARING:**

**ADVISORY BOARD RECOMMENDATION:**

**FUNDING DATA:**

**INSURANCE:**

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>[Signature]</i>	_____	<i>11/20/2014</i>
6. City Manager	<i>[Signature]</i>	_____	<i>20 NOV 2014</i>
7. Clerk of Council	_____	_____	_____
Initiating Department Director's Signature: <i>[Signature]</i>	_____	_____	<i>11/20/2014</i> Date



**APPROVED AS TO FORM:**

*[Signature]*  
CITY ATTORNEY

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Ann T. Burkholder, Commissioner of the Revenue *ATB*  
**Date:** 11/20/2014  
**Re:** **Nonprofit Organization Activities Subject to Local Taxation**

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**THE ISSUE:** Certain business activities and special events of nonprofit organizations may be subject to local business and excise taxation, an area which has been historically overlooked.

**RELATIONSHIP TO STRATEGIC PLAN:** This is a matter of fair and equitable taxation in accordance with state and local code.

**BACKGROUND:** Typically one reads City Code with respect to activities of for-profit entities. Council action earlier this year regarding a specific nonprofit organization prompted the Commissioner's office to conduct a comprehensive review regarding activities of nonprofit entities in general.

(Refer to accompanying memorandum)

**BUDGET IMPACT:** Additional revenue estimate unknown.

**OPTIONS:** Amend or leave intact the current City Code

**RECOMMENDATIONS:** As both the Commissioner of the Revenue and Treasurer have limited resources available to administer current City Code with regard to special events, it is the hope of both offices that an eventual Special Events Policy, currently under development, will include a comprehensive fee structure in lieu of certain individual local taxes.

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To: Honorable Mayor, Members of City Council  
From: Ann T. Burkholder, Commissioner of the Revenue *ATB*  
Date: November 20, 2014

**SUBJECT: Non-Profit Organization Activities Subject to Local Taxation**

Certain business activities and special events of non-profit organizations may be subject to local taxation. Determination of taxable status is best handled on a case-by-case basis and depends upon both the nature of the entity and the nature of activity in which engaged.

Nature of the entity

It is a common misconception that "not-for-profit" equates to "charitable", but in fact there are multiple distinctions within the IRS 501(c) classification. For instance, the 501(c) (4) classification includes many civic leagues and social welfare groups. Typically, only those structured as 501(c) (3) entities meet the definition of "charitable organization" as cited for exemption in state and local code.

Nature of the activity

- **Gross Receipts:** The receipts of a **charitable** nonprofit organization are exempt from BPOL, except to the extent the organization has receipts from an unrelated trade or business. For example, thrift stores operated by local charitable organizations are subject to BPOL and business personal property taxation. For **other** nonprofit organizations, gross receipts may be subject to BPOL, with certain exclusions.
- **Excise Taxes:** The excise taxes of meals, motel, admissions and short-term rental are trust taxes, collected by the organization on behalf of the City. As these are taxes levied on the final consumer rather than the organization itself, City Code offers few exclusions.
  - **Admissions tax:** Imposed on admission to any place of amusement or entertainment. Excluded for those engaged in participatory sports (but not for observers); excluded for events in which the gross receipts go wholly to charitable purposes; excluded for school events, museums and events sponsored by governmental agency.
  - **Meals tax:** Imposed on every meal served, sold or delivered in the City by a food establishment or caterer.
- **Special Events:** With any special event, regardless of the nature of the sponsor, any vendors or participating businesses are subject to all local taxes. Typically the Commissioner's office assesses a \$30.00 itinerant merchant license fee pursuant to City

Code §28-26, although an aggregation of vendors may meet the definition of "carnival" pursuant to City Code §28-33, whereby an overall license tax of \$500 is imposed. Special events pose particular challenges for the Commissioner and Treasurer for the following reasons:

- Vendors often appear just prior to the start of the event and leave immediately after
- These events typically occur on nights and weekends, when neither office has staff available
- Winchester is a very active community, with multiple large and small events occurring at any given time

#### Administration of Applicable Taxes

The Commissioner is responsible for full, fair and equitable administration of all local taxes and recognizes that taxation of nonprofit entities has been historically overlooked. Therefore, rather than suddenly commencing to assess taxes on certain activities as they arise, this office is working on a comprehensive implementation plan. We must build a body of knowledge including a list of various civic organizations and contact information for each. We plan to send a courtesy letter to each explaining how local taxation laws may apply to the activities in which they engage, with a tentative implementation date of January 01, 2015. This is a major project.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

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

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

ITEM TITLE:

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

STAFF RECOMMENDATION:

Adopt the text amendment.

PUBLIC NOTICE AND HEARING:

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

ADVISORY BOARD RECOMMENDATION:

Planning Commission unanimously forwarded with favorable recommendation.

FUNDING DATA: N/A

INSURANCE: N/A

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

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

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

Handwritten signature and date 11/19/14



APPROVED AS TO FORM:

Handwritten signature and date 11/19/2014 CITY ATTORNEY

# CITY COUNCIL ACTION MEMO

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

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**THE ISSUE:**

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

**RELATIONSHIP TO STRATEGIC PLAN:**

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

**BACKGROUND:**

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

(Full staff report attached).

**BUDGET IMPACT:**

No funding is required.

**OPTIONS:**

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

**RECOMMENDATIONS:**

The Planning Commission unanimously recommended approval.

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

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**REQUEST DESCRIPTION**

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

**STAFF COMMENTS**

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

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

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

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

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

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

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

#### RECOMMENDATION

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

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

**TA-14-476**

Draft 1 – 10/03/14

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

**ARTICLE 17**

**NONCONFORMITIES**

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

**SECTION 17-1 GENERAL PROVISIONS**

**17-1-1 Definitions**

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

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

#### **17-1-2 Change in District Boundaries**

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

#### **17-1-3 Vested Rights**

- A. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner:
  - (i) Obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project,
  - (ii) Relies in good faith on the significant affirmative governmental act, and
  - (iii) Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.
- B. For the purpose of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project:
  - (i) The City Council has accepted proffers or proffered conditions which specify use related to a zoning amendment;
  - (ii) The City Council has approved an application for a rezoning for a specific use or density;
  - (iii) The City Council or Board of Zoning Appeals has granted a special exception or conditional use permit;
  - (iv) The Board of Zoning Appeals has approved a variance;
  - (v) The City Council or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances;
  - (vi) The City Council or its designated agent has approved a final subdivision plat, site plan of development for the landowner's property; or
  - (vii) The Administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal

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

#### **17-1-4 Determination of Nonconforming Status**

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

### **SECTION 17-2 NONCONFORMING STRUCTURES**

#### **17-2-1 General Requirements**

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

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

#### **17-2-2 Enlargement**

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

#### **17-2-3 Modification, Restoration, or Replacement**

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

#### **17-2-4 Destruction of Nonconforming Structure**

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

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

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

#### **17-2-5 Repairs and Maintenance**

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

#### **17-2-6 Expiration of Nonconforming Status**

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

### **SECTION 17-3 NONCONFORMING USES**

**17-3-1 General Provisions**

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

**17-3-2 Expiration of Nonconforming Use**

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

**17-3-3 Change of Nonconforming Use**

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

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

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

**17-3-4 Expansion of Nonconforming Use**

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

- 3) The number of dwelling units is increased.

## **SECTION 17-4 NONCONFORMING LOTS**

### **17-4-1 Development on a Nonconforming Lot**

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

### **17-4-2 Highway Realignment or Condemnation**

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

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 11/25/14 (work session) CUT OFF DATE: 11/19/14
12/09/14 (Regular meeting)

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

ITEM TITLE:

CU-14-640 Request of Joshua Schakola on behalf of Verizon Wireless for a Conditional Use Permit for modifications to a telecommunications tower at 799 Fairmont Avenue (Map Number 153-01- -2-A) zoned Limited Industrial (M-1) District. (Request to add three new antennas to existing tower facility).

STAFF RECOMMENDATION:

Approval with conditions.

PUBLIC NOTICE AND HEARING:

Public hearing for 12/09/14 Council meeting

ADVISORY BOARD RECOMMENDATION:

Planning Commission unanimously recommended approval with conditions

FUNDING DATA: N/A

INSURANCE: N/A

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

Table with 4 columns: DEPARTMENT, INITIALS FOR APPROVAL, INITIALS FOR DISAPPROVAL, DATE. Rows include Planning Director, City Attorney, City Manager, and Clerk of Council with handwritten signatures and dates.

Initiating Department Director's Signature: [Handwritten Signature] 11/19/14
(Zoning and Inspections)



APPROVED AS TO FORM:

[Handwritten Signature] 11/19/2014
CITY ATTORNEY

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Aaron Grisdale, Director of Zoning and Inspections *AMG*  
**Date:** November 25, 2014  
**Re:** **CU-14-640** Request of Joshua Schakola on behalf of Verizon Wireless for a Conditional Use Permit for modifications to a telecommunications tower at 799 Fairmont Avenue (Map Number 153-01- -2-A) zoned Limited Industrial (M-1) District. *(Request to add three new antennas to existing tower facility).*

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**THE ISSUE:**

Request to add three antennas and a GPS antenna to the existing tower facility.

**RELATIONSHIP TO STRATEGIC PLAN:**

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

**BACKGROUND:**

The applicant is proposing to add three new antennas behind existing antennas on the existing tower facility behind National Fruit at 799 Fairmont Avenue. No antenna removals are associated with this request. There will be no increase to the height of the facility.

(Full staff report attached).

**BUDGET IMPACT:**

No funding is required.

**OPTIONS:**

- Approve conditional use permit with recommended conditions
- Decline to approve the CUP.
- 

**RECOMMENDATIONS:**

The Planning Commission unanimously recommended approval with conditions.

**CU-14-640** Request of Joshua Schakola on behalf of Verizon Wireless for a Conditional Use Permit for modifications to a telecommunications tower at 799 Fairmont Avenue (Map Number 153-01- -2-A) zoned Limited Industrial (M-1) District. *(Request to add three new antennas to existing tower facility).*

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#### REQUEST DESCRIPTION

The applicant is proposing to add three (3) new antennas and install one GPS antenna as part of an upgrade of existing telecommunications facilities at the tower located on the National Fruit property at 799 Fairmont Avenue.

#### AREA DESCRIPTION

The existing tower is located in a wooded area in the northwest portion of the ±68 acre, M-1 zoned National Fruit Product Company industrial property. Land to the east is also zoned M-1 and includes the migrant worker camp and some single family residences along the west side of Fairmont Ave. Land to the west is zoned LR and is vacant. Land further to the southwest includes an M-1 zoned City water tank and an LR zoned single family residence. Land directly to the north is located in Frederick County and includes vacant land in the Rural Area (RA) and Residential Performance (RP) Districts.



#### STAFF COMMENTS

The applicant intends to add three antennas mounted to the pre-existing lattice tower behind existing antennas. The additional antennas are proposed in order to additional capacity and uninterrupted coverage in response to increasing demand for streaming and data usage. Collocation of antennas on existing structures as proposed is encouraged within the Zoning Ordinance. The applicant does not intend on expanding the existing ground support equipment with this request.

#### RECOMMENDATION

At their November 18, 2014 meeting, the Commission forwarded **CU-14-640** to Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommended approval is subject to the following conditions:

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

VERIZON WIRELESS  
Winchester

Statement of Compliance

Verizon Wireless at 799 Fairmont Ave

Winchester, VA 22601

**(Proposal is for minor alteration to the Verizon installation on Tower)**

**Description of Proposed Use.**

The Applicant is submitting this application to modify its antennas installation on the tower. The alteration consists of adding three (3) Remote Radio Heads (RRH), one (1) per sector, behind an existing antenna. There will also be an addition of three (3) Distribution Boxes, one (1) per sector, behind an existing antenna. One (1) GPS antenna will be added to the existing cable ice bridge. One (1) existing hybrid cable will be removed from the tower and replaced with three (3) new hybrid cables.

The proposed telecommunications installation is a vital part of Verizon Wireless' area wide wireless communications network. As part of that network, Verizon Wireless requires a wireless communications facility in order to provide seamless coverage in City of Winchester area next to offices, businesses as well as those travelling through the city area.

The proposed alteration is required in response to an increasing demand for streaming and data usage. Without the proposed alteration, customers will be unable to access or maintain a transmission speed of information and will not be able to obtain dependable service for voice communications.

The existing communications facility is a passive facility and will not have employees or personnel, hours of operation or impacts on traffic around the facility. The communications facility does not create any noise, dust, fumes or vibrations. The wireless facility will continue to be unmanned with one (1) or two (2) monthly maintenance visits. The use is not hazardous or in conflict with existing and anticipated traffic in the surrounding neighborhood.

**Requirement for Proposed Use**

Telecommunication carriers must locate antenna sites according to a network design within relatively limited geographic parameters in order to provide uninterrupted coverage. The demand for wireless Internet access and the use of "Smart Phones" has exponentially increased the demand. In order to meet demand, Verizon seeks to make the most efficient use of each facility. By collocating antennas on a rooftop with existing telecommunications facilities, Verizon makes better use of the space while avoiding the need to erect a new antenna support structure or install antennas on another structure.

**VERIZON WIRELESS  
Winchester**

The proposed heights of the replacement antennas are at a sufficient height so as to permit radio signals to clear any obstructions while simultaneously providing coverage to the intended service area.

This site offers both an excellent land-use and visual solution to Verizon Wireless' coverage objective within the narrow placement parameters of this particular search area.

**Conformance with the General Provisions of the Conditional Use Permit**

A Conditional Use Permit is hereby requested as the intended collocation complies with the following regulations set forth in Section 18-2.

**18-2-1 Conditional Use Permit**

**18-2-1.1**

Conditional use permits may be granted by the City Council for any of the uses for which a permit is required by the provisions of this Ordinance. In granting any such use permit, the City Council may impose any such conditions in connection therewith as will assure that it will conform with the requirements contained herein and will continue to do so, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. A conditional use permit shall not be issued unless the City Council shall find that:

- a. The proposal as submitted or as modified will not affect adversely the health, safety, or welfare of persons residing or working in the neighborhood of the proposed use; and will not be detrimental to public welfare or injurious to the property or improvements in the neighborhood. Among matters to be considered in this connection are traffic congestion, noise, lights, dust, odor, fumes, and vibration, with due regard for timing of operation, screening and other matters which might be regulated to mitigate adverse impact.
- b. The proposal as submitted or modified will conform to the Comprehensive Plan, or to specific elements of such plan, and the official policies adopted in relation thereto, including the purposes and the expressed intent of this Ordinance.

**COMPLIANCE:** Radio Frequencies do not affect the health safety or welfare of persons residing or working in the neighborhood per the FCC regulations. This is an existing passive facility, unmanned with only one (1) or two (2) monthly maintenance visits and does not be create any noise, dust, fumes or vibrations.

**18-2-1.2**

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

**VERIZON WIRELESS  
Winchester**

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

**COMPLIANCE:** The proposed alteration is to an existing telecommunications tower shared by other wireless telecommunications carriers thereby eliminating the need to locate on other structures which do not support existing telecommunications facilities or the need to erect a new tower.

**18-2-3 Procedures**

**18-2-3.1**

The procedures governing this application for and the granting of conditional use permit where required by this Ordinance shall be as follows: (10/11/83, Case 83-06, Ord. No. 034-83)

**18-2-3.2**

The applicant, who shall be a record owner, or contract owner with written approval of the owner, of the land involved (if a contract owner, copy of said contract shall be filled with and made a part of application), shall make application for the use permit to the Administrator on the form provided for that purpose, giving all information required by such form, including such other information which the Administrator may deem necessary for an intelligent consideration of the project for which a permit is desired. The application shall be accompanied by the 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 for this Ordinance and ten (10) copies of the following: (10/13/92, Case TA 92-02, Ord. No. 016-92; 8/16/02, Case TA-02-04, Ord. No. 014-2002)

VERIZON WIRELESS  
Winchester

**COMPLIANCE:** The applicable applications have been signed by the property owner who is engaged in an amendment to the current leased space with Verizon Wireless for the alterations of the space.

**18-2-3.3**

A site plan in accordance with Article 19 of this Ordinance.

**COMPLIANCE:** The site plans have been submitted with the Conditional Use Application.

**18-2-3.4**

The front, side, and rear elevations and floor plans of the proposed buildings.

**COMPLIANCE:** No new building is proposed, the alteration is on an existing Tower.

**18-2-3.5**

Public Notice and Hearing. The Administrator shall submit the conditional use permit application and copies of the site plan to the Commission, which shall make a recommendation to the City Council with shall approve, approve with conditions, or deny the application. No such use permits shall be considered by the Commission or the Council except after notice and hearing as per Section 23-7-1 of this Ordinance. Written notice shall be provided per Section 23-7-2 of this Ordinance for both the Commission and City Council hearings. (2/9/88, Case TA-87-14, Ord. No. 009-88; 10/13/92, Case TA 92-02, Ord. No. 016-92)

**COMPLIANCE:** Upon acceptance of the application, the applicant will conform to the guidelines for notification of any such hearings held by the Commission and City Council.

**18-2-3.6**

Notification Signs. For the hearing by both the Commission and City Council, the applicant shall place notification signage as per Section 23-7-3 of this Ordinance. (2/9/88, Case TA-87-14, Ord. No. 009-88; 10/13/92, Case TA-92-02, Ord. No. 016-92)

**COMPLIANCE:** Upon notice of scheduled hearing, applicant shall comply with proper posting of notification signs.

X

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Joshua Schakola  
Zoning Specialist

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

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

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

ITEM TITLE:

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

STAFF RECOMMENDATION:

Adopt the text amendment.

PUBLIC NOTICE AND HEARING:

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

ADVISORY BOARD RECOMMENDATION:

Planning Commission unanimously forwarded with favorable recommendation.

FUNDING DATA: N/A

INSURANCE: N/A

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

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

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

Handwritten signature and date 11/19/14



APPROVED AS TO FORM: Handwritten signature and date 11/19/2014, CITY ATTORNEY

# CITY COUNCIL ACTION MEMO

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

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## **THE ISSUE:**

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

## **RELATIONSHIP TO STRATEGIC PLAN:**

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

## **BACKGROUND:**

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

(Full staff report attached).

## **BUDGET IMPACT:**

No funding is required.

## **OPTIONS:**

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

## **RECOMMENDATIONS:**

The Planning Commission unanimously recommended approval.

City Council  
November 25, 2014

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

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**REQUEST DESCRIPTION**

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

**STAFF COMMENTS**

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

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

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

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

**RECOMMENDATION**

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

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

**TA-14-645**

Draft 1 – (10/07/14)

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

**ARTICLE 3  
LOW DENSITY RESIDENTIAL DISTRICT - LR**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 8-2. USES REQUIRING A CONDITIONAL USE PERMIT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE 13  
PLANNED DEVELOPMENT**

**SECTION 13-2. PLANNED COMMERCIAL DISTRICT – PC**

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

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

**ARTICLE 15  
HEALTH SERVICES DISTRICT – HS**

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

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

**ARTICLE 15.1  
MEDICAL CENTER DISTRICT – MC**

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

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

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

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

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

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

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

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

**18-2-1.2 Telecommunications Facilities**

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

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

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

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

18-2-1.2B.

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

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

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

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

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

**ARTICLE 23**

**ADMINISTRATION AND INTERPRETATION**

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

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

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

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

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

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

**Administrative Telecommunications Permit** \$500  
**(Minor Modifications)**

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

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

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

ITEM TITLE:

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

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 1/13/15 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval subject to proffers.

FUNDING DATA: N/A

INSURANCE: N/A

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

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

Initiating Department Director's Signature: (Planning Dept) [Signature] 11/19/14



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

# CITY COUNCIL ACTION MEMO

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

**From:** Tim Youmans, Planning Director

**Date:** November 19, 2014

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

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**THE ISSUE:**

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

**RELATIONSHIP TO STRATEGIC PLAN:**

Create A More Livable City for All

**BACKGROUND:**

See attached staff report

**BUDGET IMPACT:**

None

**OPTIONS:**

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

**RECOMMENDATIONS:**

Recommend Option 1

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

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#### REQUEST DESCRIPTION

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

#### AREA DESCRIPTION

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

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



#### STAFF COMMENTS

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

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

#### RECOMMENDATION

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

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

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

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

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

**WHEREAS**, the Planning Commission forwarded the request to Council on November 18, 2014 recommending approval of the rezoning as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-625, Prepared by Winchester Planning Department, 10-3-2014*" because the request is consistent with the Comprehensive Plan which calls for Neighborhood Stabilization in the area; and,

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

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Winchester, Virginia that the following land is hereby rezoned from the existing zoning designation of Medium Density Residential (MR) District to Residential-Business (RB-1) District:

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

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

To whom it may concern,

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



Sincerely,  
Brent Markee Owner/Manager

116 & 118 W. LEICESTER STREET  
**REZONING REQUEST PROFFER**

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



Date: October 31, 2014

**Property Information**

The undersigned applicant hereby proffers that in the event the Common Council of Winchester ( Council ) shall approve the rezoning of *116 W. Leicester Street and 118 W. Leicester Street* from *Medium Density Residential District (MR)* into *Residential Business District (RB1)*, then development of the subject property shall be done in conformity with the terms and conditions as set forth herein, except to the extent that such terms and conditions maybe subsequently amended or revised by the applicant and such be approved by the Council in accordance with the Virginia law. In the event that such rezoning is not granted, then these proffers shall be deemed withdrawn and have no effect whatsoever. These proffers shall be binding upon the applicant and their legal successor or assigns.

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

**Site Plan Improvements**

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

**1. Proposed Use:**

- If this rezoning is accepted, the proposed use shall be limited to two (02) Townhouses.

**RZ-14-625**

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

Respectfully submitted,

PROPERTY OWNER

By: Agnaldo De Souza Date: 11-03-14

STATE OF VIRGINIA, AT LARGE

COUNTY /CITY OF Winchester, To Wit:

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

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

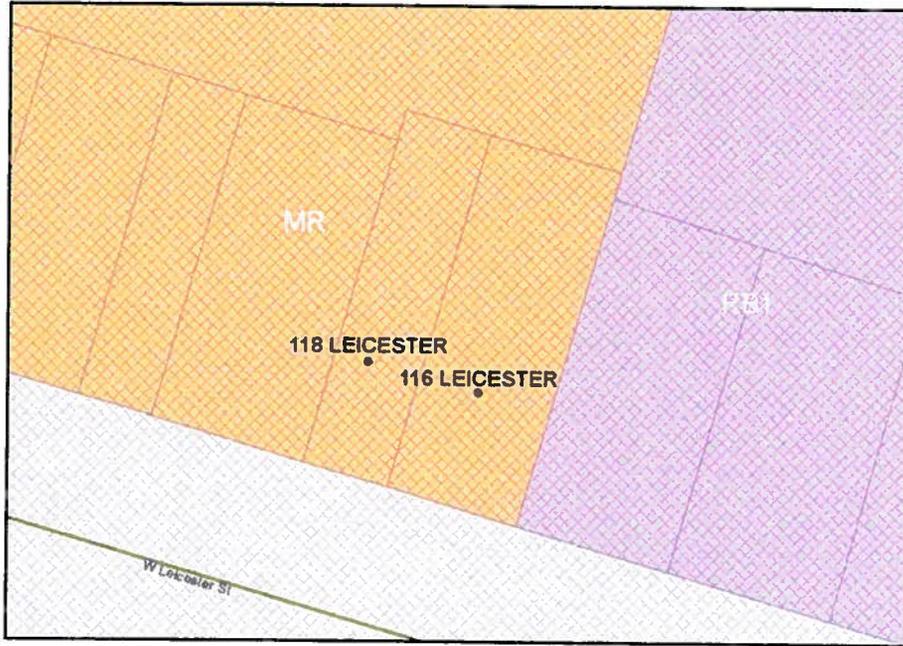
JOSE ELIAS MARTINEZ  
NOTARY PUBLIC 7527577  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES 09-30-2016

# REZONING EXHIBIT

## RZ-14-625

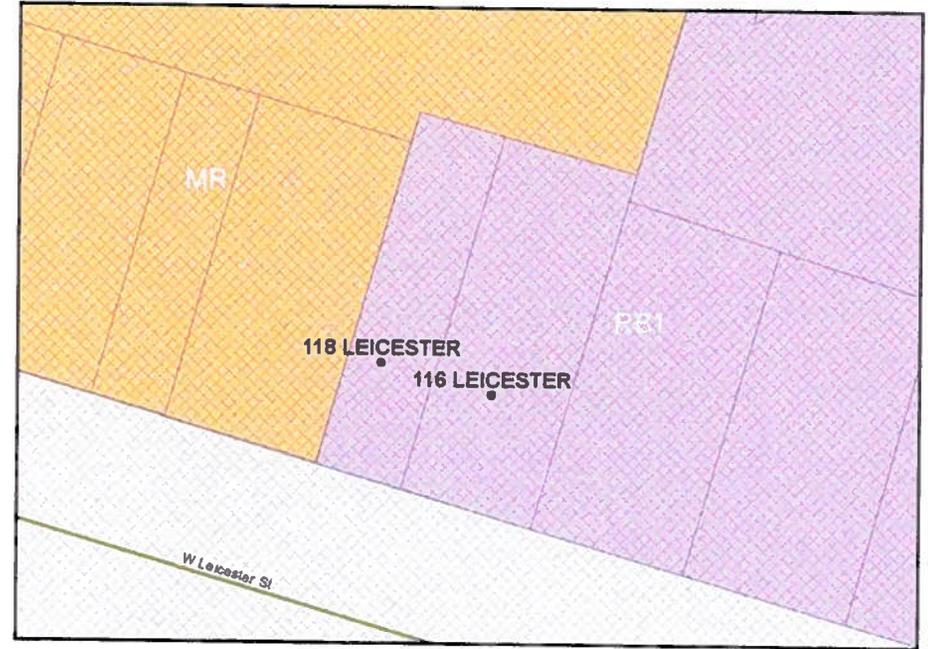
PREPARED BY WINCHESTER PLANNING DEPARTMENT

10-03-2014



### EXISTING

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



### PROPOSED

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



### Zoning

#### MZONE

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

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

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

RESOLUTION \_\_ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

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

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 1/13/15 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval subject to proffers.

FUNDING DATA: N/A

INSURANCE: N/A

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

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

Initiating Department Director's Signature: (Planning Dept)

Handwritten signature of the initiating department director.

11/19/14



APPROVED AS TO FORM:

Handwritten signature and date 11/19/2014 over the text CITY ATTORNEY

# CITY COUNCIL ACTION MEMO

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

**From:** Tim Youmans, Planning Director

**Date:** November 19, 2014

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

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**THE ISSUE:**

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

**RELATIONSHIP TO STRATEGIC PLAN:**

Grow the Economy

**BACKGROUND:**

See attached staff report

**BUDGET IMPACT:**

Positive sales tax revenue

**OPTIONS:**

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

**RECOMMENDATIONS:**

Recommend Option 1

Council Work Session  
November 25, 2014

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

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**REQUEST DESCRIPTION**

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

**AREA DESCRIPTION**

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

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



**STAFF COMMENTS**

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

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

## RECOMMENDATION

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

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

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

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

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

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

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

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Winchester, Virginia that the following land is hereby rezoned from the existing zoning designation of Intensive Industrial (M-2) District to Commercial-Industrial (CM-1) District:

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

October 6, 2014

City of Winchester, Virginia  
Zoning Administrator  
15 North Cameron Street  
Winchester, VA 22601

Re: Rezoning of Property  
2508 Papermill Rd  
Winchester, VA 226010  
Tax Map 301((5)) Parcel 3 Deed Book 316 Pg. 429  
291

To Whom It May Concern,

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

Sincerely,  
AECOM

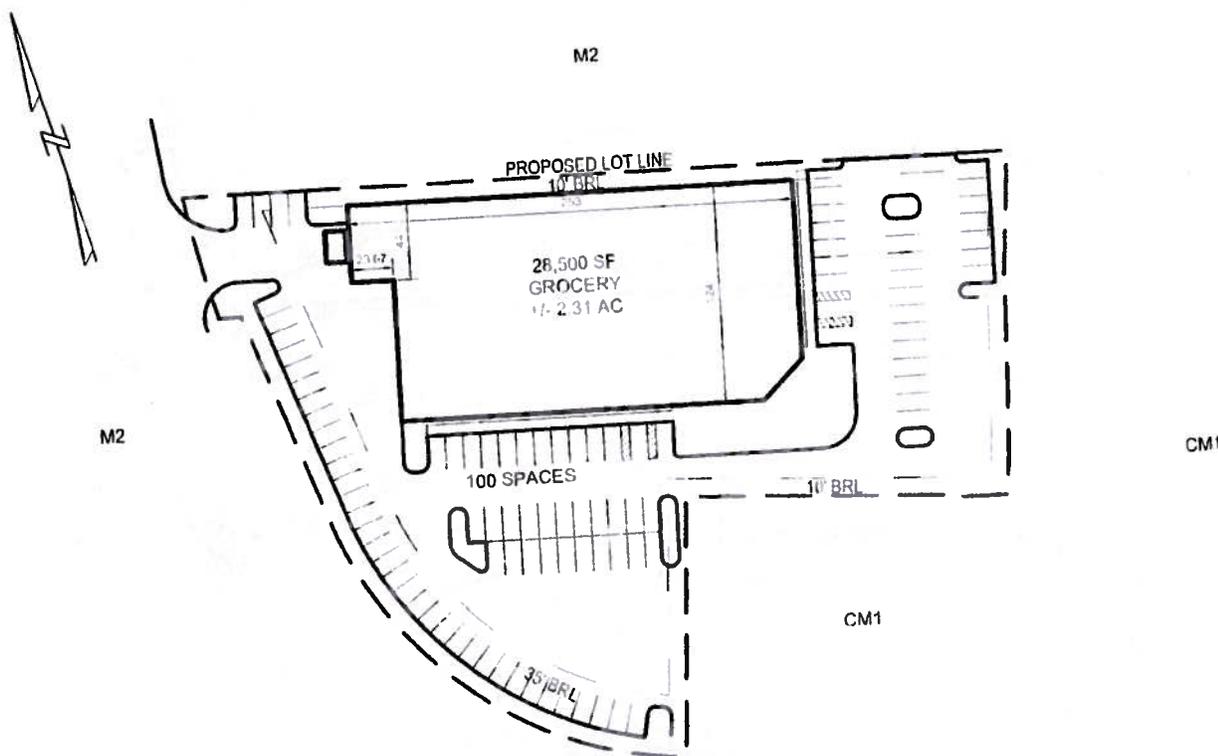


Tyron S Powers  
Project Manager

Enclosures: Rezoning Application  
List of adjacent property owners  
ALTA Survey  
Concept Site Plan  
Application Fee (\$1,600)

Copy to: Victor Guerrero, MGP  
Richie Wilkins  
AECOM  
Correspondence File

**RZ-14-639**

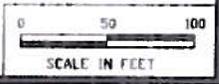


BRL = BUILDING RESTRICTION LINE  
 SWM = STORMWATER MANAGEMENT  
 TO CONSIST OF AN UNDERGROUND  
 PIPE STORAGE SYSTEM

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



**RZ-14-639**



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

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

**October 14, 2014**

**Property Information**

The undersigned applicant hereby proffers that in the event the Common Council of Winchester (Council) shall approve the rezoning of ± 0.736 acres of 2508 Papermill Road, Winchester, VA 22601 from M-2 into CM-1, then development of the subject property shall be done in conformity with the terms and conditions as set forth herein, except to the extent that such terms and conditions may be subsequently amended or revised by the applicant and such be approved by the Council in accordance with Virginia law. In the event that such rezoning is not granted, then these proffers shall be deemed withdrawn and have no effect whatsoever. These proffers shall be binding upon the applicant and their legal successor or assigns.

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

**Site Plan Improvements**

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

1. **Proposed Use:**
  - If this rezoning is accepted, the proposed use shall be limited to retail development.
2. **The proposed rezoning of the approximately 0.736 acres of Tax Parcel 291-3-1 from M-2 into CM-1 shall only be considered valid upon the acceptance and recordation of a minor subdivision (boundary line adjustment) plat showing the combination of the 0.736 acres and Tax Parcel 291-5-3.**

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

Respectfully submitted,

PROPERTY OWNER

By: [Signature] Date: 1/10/14

STATE OF VIRGINIA, AT LARGE

COUNTY/CITY OF Winchester, To Wit:

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

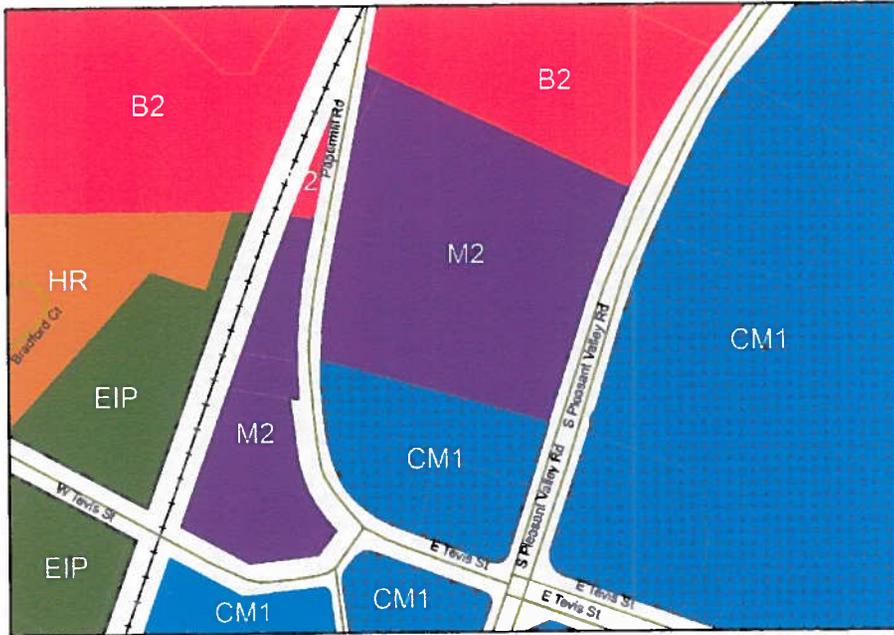
My Commission expires Mar 30, 2017

Notary Public Cindy Grove

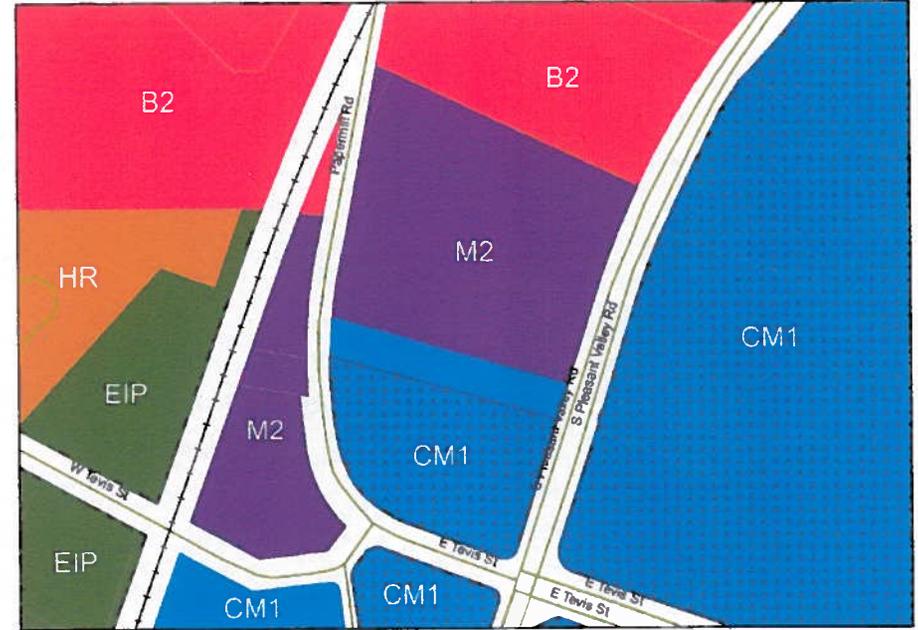
**CINDY GROVE**  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #184054

**RZ-14-639**

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



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



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



**Zoning Overlay**  
**Overlay**  
 Conditional  
 Railroad

**Zoning**  
**MZONE**

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

**CITY OF WINCHESTER, VIRGINIA**

**PROPOSED CITY COUNCIL AGENDA ITEM**

**CITY COUNCIL MEETING OF:** 11/25/14 (work session)      **CUT OFF DATE:** 11/19/14  
12/09/14 (regular mtg)

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

**ITEM TITLE:**

**CU-14-637** Request of Ben Pelletier on behalf of Verizon Wireless for a conditional use permit for modifications to a telecommunication antennas at 1955 Valley Avenue (Map Number 251-01- - 5) zoned Limited Industrial (M-1).

**STAFF RECOMMENDATION:**

Approval with conditions.

**PUBLIC NOTICE AND HEARING:**

Public hearing for 12/09/14 Council mtg

**ADVISORY BOARD RECOMMENDATION:**

Planning Commission recommended approval with conditions

**FUNDING DATA:** N/A

**INSURANCE:** N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Zoning & Inspections	<u>AMG</u>	_____	<u>11/19/14</u>
2. City Attorney	<u>[Signature]</u>	_____	<u>11/19/2014</u>
3. City Manager	<u>[Signature]</u>	_____	<u>19 NOV 2014</u>
4. Clerk of Council	_____	_____	_____
	_____	_____	_____

Initiating Department Director's Signature:  
(Planning Dept)

[Signature]

11/19/14



**APPROVED AS TO FORM:**

[Signature]  
**CITY ATTORNEY**

11/19/2014

# CITY COUNCIL ACTION MEMO

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

**From:** Tim Youmans, Planning Director

**Date:** November 19, 2014

**Re:** **CU-14-637** Request of Ben Pelletier on behalf of Verizon Wireless for a conditional use permit for modifications to a telecommunication antennas at 1955 Valley Avenue (Map Number 251-01-5) zoned Limited Industrial (M-1).

---

**THE ISSUE:** The applicant is proposing to remove twelve (12) of the existing (15) antennas and replace with twelve (12) new antennas as part of an upgrade of existing rooftop telecommunications facilities at 1955 Valley Avenue.

**RELATIONSHIP TO STRATEGIC PLAN:**

Goal 1: Grow the Economy (ensure adequate cellular service to businesses and residents)

**BACKGROUND:**

See attached staff report

**BUDGET IMPACT:**

N/A

**OPTIONS:**

1. Approve with conditions as recommended by Planning Commission
2. Approve with modified conditions
3. Deny

**RECOMMENDATIONS:**

Recommend Option 1

City Council Work Session  
November 25, 2014

**CU-14-637** Request of Ben Pelletier on behalf of Verizon Wireless for a conditional use permit for modifications to a telecommunication antennas at 1955 Valley Avenue (Map Number 251-01- - 5) zoned Limited Industrial (M-1).

---

#### REQUEST DESCRIPTION

The applicant is proposing to remove twelve (12) of the existing (15) antennas and replace with twelve (12) new antennas as part of an upgrade of existing rooftop telecommunications facilities at 1955 Valley Avenue.

#### AREA DESCRIPTION

The majority of the subject property, located on the west side of Valley Ave, is zoned M-1. A vacant portion between the warehouse and Valley Ave is zoned B-2. A portion is also located in the Valley Ave CE overlay District, including the front portion of the warehouse structure. Property to the north and northeast on both sides of Valley Ave is zoned B-2 and consists of commercial uses. Directly to the east is the O'Sullivan industrial property, primarily zoned M-2 with a front portion in B-2. To the south of the warehouse is B-2 zoning including the Elms extended stay lodging and office uses. To the west is single-family residential use in the MR-zoned Park Place subdivision. To the northwest is HR/PUD zoning including the Stuart Hill apartment complex.



#### STAFF COMMENTS

The applicant originally applied for a conditional use permit to install a rooftop telecommunication facility at the subject property in 2011. That application was recommended for approval by the Planning Commission and subsequently approved by City Council on May 10, 2011. In the applicant most recent request, outlined in the attached letter received on September 17, 2014 and in the related site plan and elevations dated 8/20/14, a total of 12 of the original 15 panel antennas would be removed and replaced with antennas of similar or smaller sized. The antennas are proposed to be painted to match the brick building as they were originally. Both the existing and proposed antennas will be flush mounted to the existing penthouse in accordance with the prior approval.

The proposal continues to meet Ordinance 18-2-1.2 intent to utilize existing towers, buildings, or other structures as a primary option rather than construction of a new tower. While all proposed improvements are outside (to the rear) of the portion of the warehouse that is within the CE overlay District, the applicant has proposed a number of measures to minimize potential visual impacts on the surrounding area, as they have done in their previous conditional use permit.

## RECOMMENDATION

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

At the 11/18/14 meeting, the Planning Commission forwarded **CU-14-637** to Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommended approval is subject to the following conditions:

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

September 17, 2014

City of Winchester  
Department of Zoning and Inspections  
15 N. Cameron St  
Winchester, Virginia 22601

**RE:** Conditional Use Permit  
1955 Valley Ave  
Winchester, VA 22601

**Site Name:** Jubal Early

**Applicant:**

Verizon Wireless  
9000 Junction Drive  
Annapolis Junction, MD 20701

**Applicant's Agent:**

Benjamin Pelletier  
6095 Marshalee Drive, Ste 300  
Elkridge, MD 21075

**Description of Intent**

Per Section 18-2-1 of the Zoning Ordinance modifications to a previously approved telecommunications site located within an M-1, or Limited Industrial District, would require the approval of a Conditional Use Permit. Verizon Wireless is an FCC licensed provider of wireless services that is proposing to replace existing antennas with newer models. This replacement will improve Verizon Wireless existing coverage within the City of Winchester.

**Proposed Scope of Work**

Twelve (12) of the existing (15) antennas shall be removed and replaced with twelve (12) new antennas of similar or smaller size. Both the existing and proposed antennas shall be flush mounted to the existing penthouse in accordance with the prior approval. No cabinet or ground work is proposed for this site.

## **18-2-1 CONDITIONAL USE PERMIT**

**18-2-1.** Conditional use permits may be granted by the City Council for any of the uses for which a permit is required by the provisions of this Ordinance. In granting any such use permit, the City Council may impose any such conditions in connection therewith as will assure that it will conform with the requirements contained herein and will continue to do so, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. A conditional use permit shall not be issued unless the City Council shall find that:

- a.** The proposal as submitted or as modified will not affect adversely the health, safety, or welfare of persons residing or working in the neighborhood of the proposed use; and will not be detrimental to public welfare or injurious to the property or improvements in the neighborhood. Among matters to be considered in this connection are traffic congestion, noise, lights, dust, odor, fumes, and vibration, with due regard for timing of operation, screening, and other matters which might be regulated to mitigate adverse impact.

*Proposal is consistent.*

- b.** The proposal as submitted or modified will conform to the Comprehensive Plan, or to specific elements of such plan, and the official policies adopted in relation thereto, including the purposes and the expressed intent of this Ordinance.

*Proposal is consistent.*

**18-2-1.2** Proposals for transmitting and receiving facilities and towers for cellular communications systems and similar communications systems shall demonstrate the following:

- a.** All possible means for sharing space on existing towers or on existing buildings or other structures have been exhausted and no alternative other than constructing a new tower exists, and if a new tower is proposed, the applicant has executed a Letter of Intent to share space on their tower and negotiate in good faith with other interested parties.

*Existing site is located on an existing building.*

**CU-14-637**

- b.** The height of any tower is no more than the minimum to accomplish required coverage and any new tower is separated from property lines in a residential district by not less than the height of the tower. In no case shall any tower exceed 75 feet in height in a LR, MR, HR, RO-1, RB-1 or HS Districts, nor 100 feet in the B-1, B-2, CM-1, PC, MC or HE-1 Districts, nor 200 feet in the M-1 or M-2 Districts.

*Existing building is 67'-3" and will not be extended. Proposal is consistent.*

- c.** The tower construction is of a design which minimizes the visual impact and the tower and other facilities have been camouflaged and/or screened from adjacent properties and rights of way to the maximum extent practicable. To this end, the proposal must provide for retention of existing stands of trees and the installation of screening where existing trees do not mitigate the visual impact of the facility. Such screening must, at a minimum, meet the requirements of Section 19-5-6.4d of this Ordinance. The Planning Commission may recommend and the City Council may require additional trees and screening when the minimum provisions do not mitigate adverse visual impacts of the facility.

*Existing site utilizes an existing building, proposal is consistent.*

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

*Proposal is consistent.*

**18-2-3 PROCEDURES.**

- 18-2-3.1** The procedures governing the application for and the granting of conditional use permit where required by this Ordinance shall be as follows:

- 18-2-3.2** The applicant, who shall be a record owner, or contract owner with written approval of the owner, of the land involved (if a contract owner, copy of said contract shall be filed with and made a part of application), shall make application for the use permit to the Administrator on the form provided for

**18-2-3.8** **Expiration.** Notwithstanding any specific provision of any condition imposed by City Council in conjunction with the granting of a Conditional Use Permit which may conflict with this general provision, a Conditional Use Permit shall expire immediately upon any of the following occurrences: a) the use does not commence within one year of approval; b) the use ceases for more than one year; or, c) the use changes to another use allowed in the district. In cases where government action impedes reasonable operation of the use, these provisions shall not include the duration of such restrictions. Where permits are granted for portions of a site and/or structure, the expiration shall apply to just that portion of the site and/or structure.

*Verizon Wireless understands and agrees to conditions.*

**18-2-3.9** **Revocation By City Council.** If the applicant or successor fails to comply with any conditions imposed by City Council per Section 18-2-1.1, City Council may, in accordance with §15.2-2286, Code of Virginia, et seq., either amend or revoke the Conditional Use Permit upon notification from the Administrator of such failure to comply. No such amendment or revocation shall be considered by City Council until a public hearing has been held per Section 23-7-1 of this Ordinance.

*Verizon Wireless understands and agrees to conditions.*

If you have any questions or need further information, please contact me at (757) 784-3671 or [bpelletier@nbcllc.com](mailto:bpelletier@nbcllc.com)

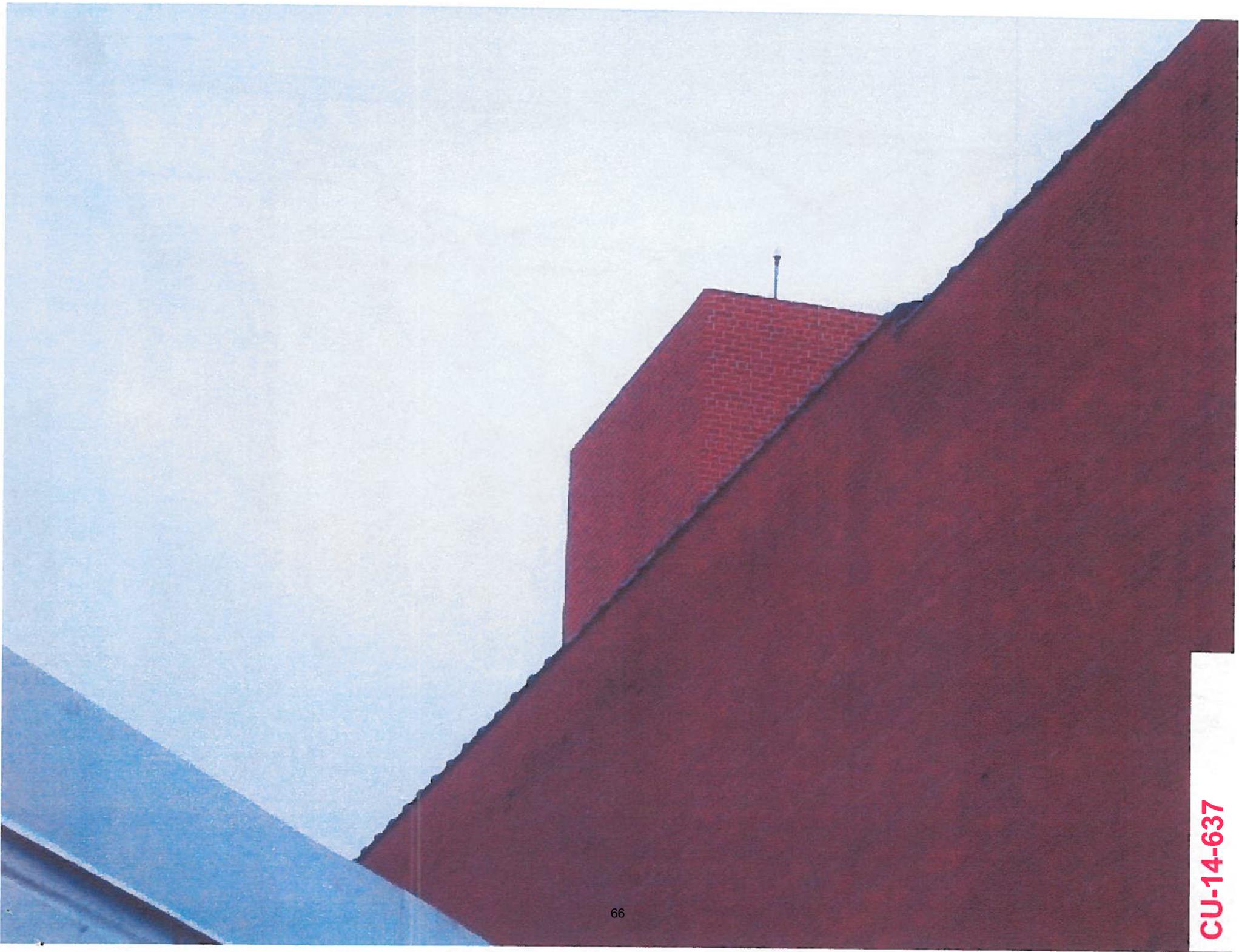


Most Respectfully,

Benjamin Pelletier  
Consultant for Verizon Wireless  
Network Building & Consulting, LLC







CU-14-637

















**CITY OF WINCHESTER, VIRGINIA**

**PROPOSED CITY COUNCIL AGENDA ITEM**

**CITY COUNCIL MEETING OF:** 11/25/14 (work session)      **CUT OFF DATE:** 11/19/14  
12/09/14 (regular mtg)

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

**ITEM TITLE:**

**CU-14-638** Request of James Testa of Testa, Inc. for a conditional use permit single family detached dwelling at 2905 Shawnee Drive (Map Number 332-03- - 89) zoned Highway Commercial District (B-2).

**STAFF RECOMMENDATION:**

Approval with conditions.

**PUBLIC NOTICE AND HEARING:**

Public hearing for 12/09/14 Council mtg

**ADVISORY BOARD RECOMMENDATION:**

Planning Commission recommended approval with conditions

**FUNDING DATA:** N/A

**INSURANCE:** N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Zoning & Inspections	<u>AMG</u>	_____	<u>11/19/14</u>
2. City Attorney	<u>[Signature]</u>	_____	<u>11/19/2014</u>
3. City Manager	<u>[Signature]</u>	_____	<u>19 NOV 2014</u>
4. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: [Signature]      11/19/14  
(Planning Dept)



**APPROVED AS TO FORM:**

[Signature]      11/19/2014  
CITY ATTORNEY

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Tim Youmans, Planning Director  
**Date:** November 19, 2014  
**Re:** **CU-14-638** Request of James Testa of Testa, Inc. for a conditional use permit single family detached dwelling at 2905 Shawnee Drive (Map Number 332-03- - 89) zoned Highway Commercial District (B-2).

---

**THE ISSUE:**

The applicant is requesting a conditional use permit (CUP) to allow for the use of a single-family detached dwelling at 2905 Shawnee Drive.

**RELATIONSHIP TO STRATEGIC PLAN:**

Create a More Livable City for All

**BACKGROUND:**

See attached staff report

**BUDGET IMPACT:**

N/A

**OPTIONS:**

1. Approve with conditions as recommended by Planning Commission
2. Approve with modified conditions
3. Deny

**RECOMMENDATIONS:**

Recommend Option 1

**CU-14-638** Request of James Testa of Testa, Inc. for a conditional use permit single family detached dwelling at 2905 Shawnee Drive (Map Number 332-03- - 89) zoned Highway Commercial District (B-2).

---

**REQUEST DESCRIPTION**

The request is for a conditional use permit (CUP) for a single-family detached dwelling on the subject property.

**AREA DESCRIPTION**

The subject property is located east of the intersection of Shawnee Drive and Papermill Road. An existing single family detached dwelling has existed on the property. The property is zoned B-2. Surrounding zoning includes Medium Density Residential (MR), Limited Industrial (M-1) and B-2. Surrounding Uses include residential dwellings, industrial, and a religious institution.



**STAFF COMMENTS**

As stated in the applicant’s letter dated October 6, 2014, the property has been zoned B-2 since his purchase of the existing residence and property in 2011. The applicant had originally planned to develop the subject property into a commercial use and demolish the existing dwelling. The applicant now wishes to utilize the existing dwelling as a residential rental property. The proposed use as a single-family detached dwelling requires a CUP within the B-2 District under section 8-2-11 of the Zoning Ordinance. There will be no upgrades or modifications to this property associated with this CUP.

**RECOMMENDATION:**

In order for a CUP to be issued, a finding must be made that the proposal as submitted or modified will not adversely affect the health, safety or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood.

At the 11/18/14 meeting, the Planning Commission forwarded **CU-14-638** to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood.

**CUP-14-638**

**Testa Inc  
4 Weems Lane #286  
Winchester, VA 22601**

**October 6, 2014**

**City of Winchester  
Planning & Zoning Committee  
Rouss City Hall  
15 N Cameron Street  
Winchester, VA 22601**

**To whom it may Concern:**

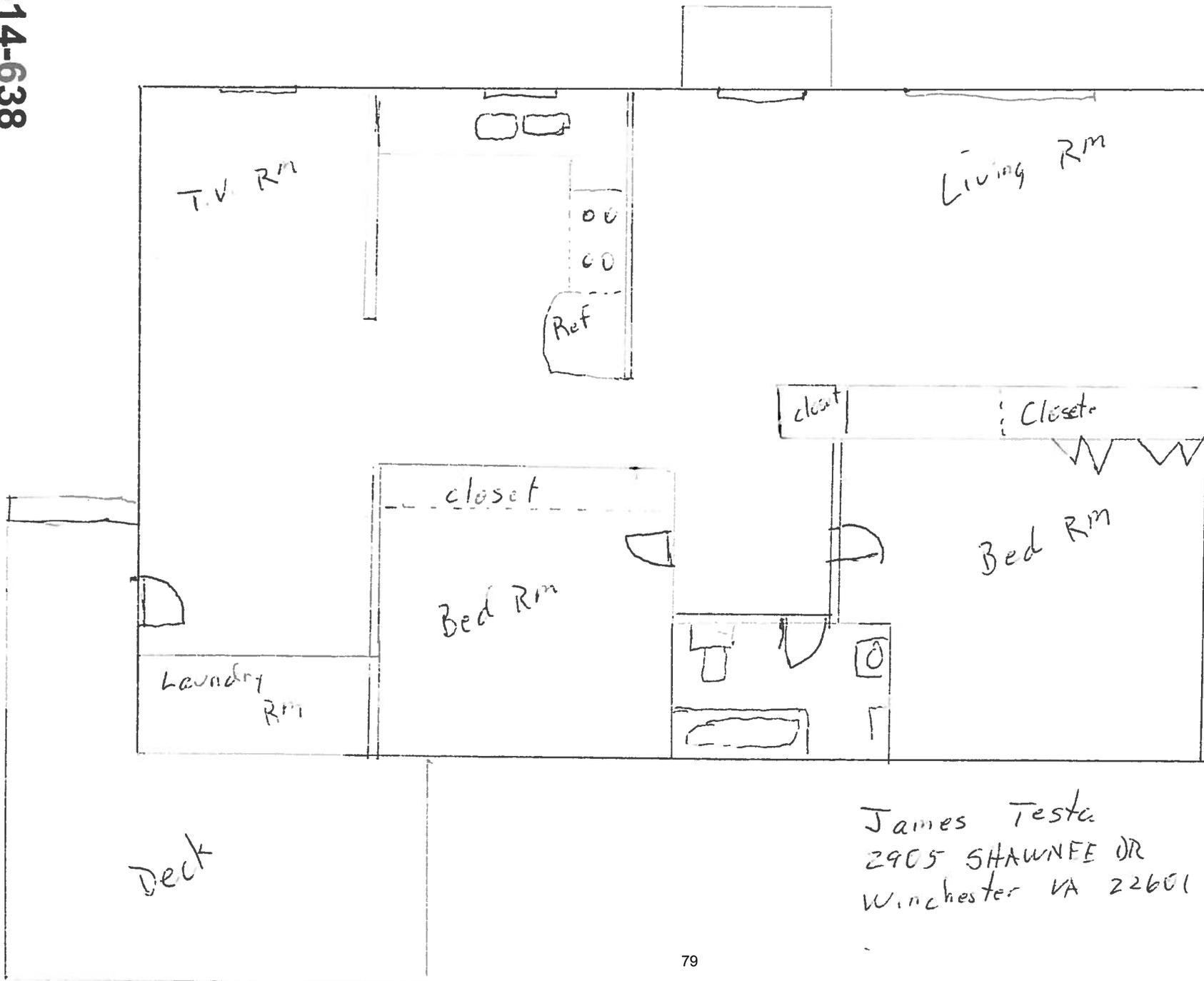
**The conditional use application enclosed for the property located at 2905 Shawnee Drive, Winchester VA will comply with section 18-2 of the city ordinance. There will be no need for upgrades, changes or modifications to comply with section 18-2 of the city ordinance.**

**Currently the property is zoned B-2 and was zoned as B-2 when I purchased the residence/property. The house has approximately 900 square feet, two bedrooms and one full bath.**

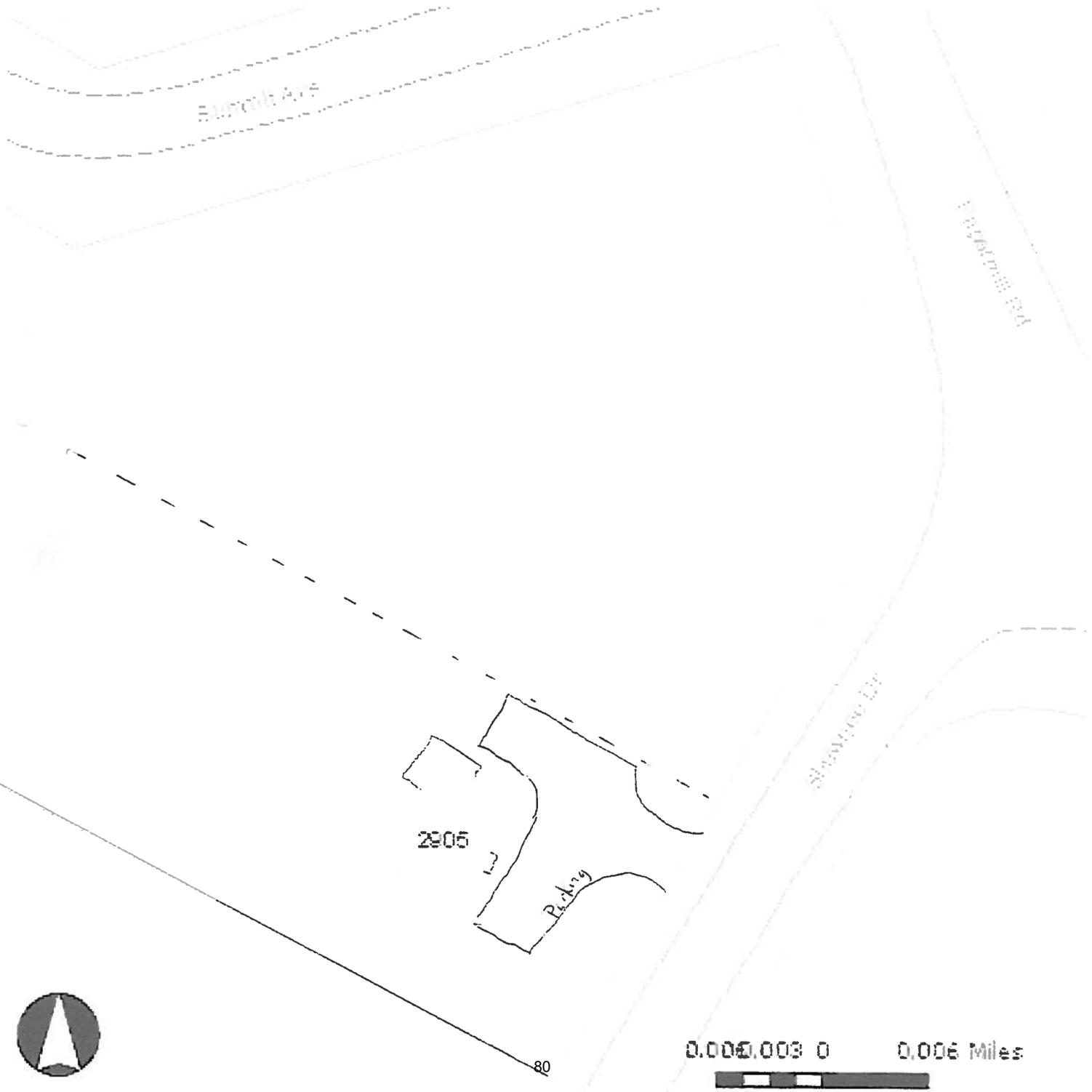
**The property was purchased while it was occupied as a residence. No changes were made to this property as I was going to demolish the house for space required to put in my commercial project. Since this project has never materialized, I would like to rent out this house to help offset the expenses of the taxes and insurance paid on this non-income producing property. The property will be kept neat and manicured as a residential property and always in compliance with city codes.**

**Sincerely,**

  
**James Testa**



James Testa  
2905 SHAWNEE DR  
Winchester VA 22601



0.000 0.003 0 0.006 Miles

CUP-14-638









**CUP-14-638**