



Rouss City Hall
15 North Cameron Street
Winchester, Virginia 22601
www.winchesterva.gov

Telephone: (540) 667-1815
FAX: (540) 722-3618
TDD: (540) 722-0782

**BOARD OF ZONING APPEALS
AGENDA
March 9, 2016 - 4:00 P.M.
Council Chambers - Rouss City Hall**

1. POINTS OF ORDER

- A. Roll Call
- B. Approval of Minutes – September 9, 2015
- C. Reading of Correspondence
- D. Election of Officers

2. PUBLIC HEARINGS

BZA-16-038 Request of Mario Katrandjiyski for variances of the Winchester Zoning Ordinance, Sections 5.1-3-3, 5.1-4-2 and 5.1-6-1.2 pertaining to required lot area, lot width and side yard setback at 355 and 355 ½ National Avenue (*Map Number 174-01-K -31*) zoned Limited High Density Residential (HR-1) District. The request is to grant variances to a non-conforming structure to allow for it to be reused as a two-family dwelling.

BZA-16-095 Request of Stacie Smith Brown for variances of the Winchester Zoning Ordinance, Sections 10-3-1, 10-4-1, 10-5-1, 10-6-1 and 10-8-1 pertaining to minimum lot area and width, main building, side yard and corner yard setbacks at 574 North Loudoun Street (*Map Number 153-01-G-1*) zoned Commercial Industrial (CM-1) District. Variances are being requested to establish an extended stay use in a nonconforming structure.

3. NEW BUSINESS

4. OLD BUSINESS

5. ADJOURN

**BOARD OF ZONING APPEALS
MINUTES**

The Board of Zoning Appeals held its regularly scheduled meeting on Wednesday, September 9, 2015, at 4:00p.m. in Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

POINTS OF ORDER:

PRESENT: Chairman Pifer, Vice Chairman Crawford, Mr. Lewis, Mr. Whitacre, Ms. Anderson

ABSENT: Ms. Marchant

STAFF: Aaron Grisdale, Erick Moore, Carolyn Barrett

VISITORS: Richard Pifer Sr., Patrick Sowers, Michael Newlin

CONSENT AGENDA:

Chairman Pifer asked to designate Ms. Anderson as a voting member. Voice vote was taken and the designation was approved.

Approval of Minutes of August 12, 2015:

Chairman Pifer called for corrections or additions to the minutes. Vice Chairman Crawford made a motion to approve the minutes as submitted. Mr. Whitacre seconded the motion. Chairman Pifer called for a vote. Roll call vote was taken and the motion passed 5-0.

Vice Chairman Crawford – yes

Mr. Lewis - yes

Mr. Whitacre – yes

Ms. Anderson - yes

Chairman Pifer – yes

READING OF CORRESPONDENCE:

None.

PUBLIC HEARINGS:

BZA-15-484 Request of Pennoni Associates, Inc. for a variance of the Winchester Zoning Ordinance Section 18-8-6.2.b.2 pertaining to maximum sign height at 1675 South Pleasant Valley Road (*Map Number 253-01- -9*) zoned Highway Commercial, B-2 District. The request is to grant a variance to increase the maximum height of a freestanding sign proposed along the property's Jubal Early Drive frontage from 20 feet to 35 feet.

Mr. Grisdale presented the case. No letters of support or opposition have been received.

Mr. Crawford asked if the existing zoning requirements were in existence when the K-Mart was built. Mr. Grisdale said they were established prior to the conversion that took place on the property.

Chairman Pifer Opened the Public Hearing

Patrick Sowers spoke on behalf of Pennoni Associates. Mr. Sowers explained the grade differential on the property. The elevation creates a hardship by making the proposed signage difficult to see.

The board members asked questions about the type of sign, height and the location.

Chairman Pifer Closed the Public Hearing

Mr. Crawford suggested changing the approval to read "twenty feet above grade at point of installation" and explained his reasoning. Mr. Grisdale clarified the suggestion and said the applicant was amenable to a twenty-seven foot tall sign. Michael Newlin, an engineer for Pennoni Associates, spoke about the placement of the sign and the area where it would be installed.

Hearing no further questions or discussion from the Board, Chairman Pifer called for a motion.

Mr. Crawford made a motion that the Board of Zoning Appeals approve a variance of the Winchester Zoning Ordinance Section 18-8-6.2.b.2 pertaining to maximum sign height at 1675 South Pleasant Valley Road (Map Number 253-01- -9) zoned Highway Commercial, B-2 District, with the following conditions:

- a. The variance applies only to the sign on the Jubal Early Drive frontage in the area specified on the site plan allowing for a maximum height of twenty-seven feet.*
- b. Should the sign ever be relocated or removed the variance shall expire.*
- c. The sign permitted on the Spring Street frontage shall be a monument style sign with a maximum height of fifteen feet.*

This variance is approved because:

- a. The strict application of this Ordinance would produce a clearly demonstrable hardship.*
- b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.*
- c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.*

Mr. Whitacre seconded the motion. Chairman Pifer asked for a roll call vote.

Mr. Crawford – yes

Mr. Lewis - yes

Mr. Whitacre – yes

Ms. Anderson – yes

Chairman Pifer – yes

Chairman Pifer stated the motion passed 5-0.

BZA-15-487 Request of DORI, LLC for a variance of the Winchester Zoning Ordinance Section 5.1-5-1 pertaining to a front yard setback at 4 East Southwerk Street (Map Number 212-01-Q-1) zoned Limited High Density Residential, HR-1 District. The request is to grant a variance of a required front yard setback that will result due to a subdivision of the property into two conforming single family lots.

Chairman Pifer recused himself. Vice Chairman Crawford presided over the case.

Mr. Grisdale reviewed the request from DORI, LLC. Some of the yard definitions will change if approved. Staff supports the request and believes the applicant is making a bare minimum request to have reasonable use of the property. The possible subdivision will result in two conforming lots. Staff has not received any letters of support or opposition to the request.

Mr. Crawford asked a question about the orientation of the house and yard. Ms. Anderson asked what size house would fit on the lot and what the parking situation would be. Mr. Grisdale said he did not have the dimensions but it would be possible to fit a house with off street parking on the lot.

Vice Chairman Crawford Opened the Public Hearing

Mr. Pifer gave some of the history of the house and how it was moved to the present location. Dividing the lot would bring it into conformance with the zoning ordinance. He was not sure what kind of house will be built.

Vice Chairman Crawford Closed the Public Hearing

Hearing no further questions or discussion from the Board, Vice Chairman Crawford called for a motion.

Mr. Whitacre made a motion to approve a variance of the Winchester Zoning Ordinance Section 5.1-5-1 pertaining to a front yard setback at 4 East Southwerk Street (Map Number 212-01-Q-1) zoned Limited High Density Residential, HR-1 District, with the following conditions:

- a. The variance applies to the current structure with its existing footprint and use as only a single family dwelling.*
- b. A complete application for the proposed subdivision must be submitted to the Subdivision Administrator within one year.*

This variance is approved because:

- a. The strict application of this Ordinance would produce a clearly demonstrable hardship.*
- b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.*
- c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.*

Mr. Lewis seconded the motion. Mr. Crawford asked for a roll call vote.

Vice Chairman Crawford – yes

Ms. Lewis – yes

Mr. Whitacre – yes

Ms. Anderson - yes

Vice Chairman Crawford stated the motion passed 4-0.

NEW BUSINESS:

None.

OLD BUSINESS:

None.

ADJOURN:

With no further business before the Board, the meeting was adjourned at 4:43pm .

DRAFT



CASE #: 16-038
 FEE AM'T: \$775.00
 DATE PAID: 1/20/16

Rouss City Hall
 15 North Cameron Street
 Winchester, VA 22601
 540-667-1815
 TDD 540-722-0782

APPLICATION FOR BOARD OF ZONING APPEALS

Please print or type all information

540-3130470
Telephone

MAURO KACEMANYSKI
Applicant

2860 Spence Sq
Street Address

MAURO.KACEMANYSKI@GMAIL.COM
E-mail address

Winchester VA 22601
City State Zip

[Signature]
OWNER'S SIGNATURE (use reverse to list additional owners)

540-3130470
Telephone

Visio Financial Services Inc
Owner Name (as appears in Land Records)

1905 Kramer Ln Suite B100
Street Address

AUSTIN TX 78750
City State Zip

REQUEST TYPE CODE - Please mark type of request and complete information
 KEY: V = Variance; AM = Administrative Modification; I = Interpretation

REQUEST TYPE	ORDINANCE SECTION	PERTAINING TO:
<input checked="" type="checkbox"/>	<u>5.1-3-3</u>	<u>Required Lot Area</u>
<input checked="" type="checkbox"/>	<u>5.1-4-2</u>	<u>Required Lot Width</u>
<input checked="" type="checkbox"/>	<u>5.1-6-1.2</u>	<u>Required Side Yard Setback</u>

APPLICATION FEE: \$500 for 1st code section; \$100 for each additional code section \$775.00
 Public hearing sign deposit fee: \$50

PROPERTY LOCATION
 Current Street Address(es) 355 & 355 1/2 National Ave. Zoning HR-1
 Tax Map Identification - (sections, blocks, lots) 174-01-K-31

REQUIRED MATERIALS LIST

- 1 copy of application (this form completed)
- 10 copies of letter explaining request and grounds for request
- 10 Copies of plans/or drawings, and surveys
- Fee (check made payable to the Treasurer, City of Winchester)
- List of adjacent property owners (public hearing items only). List must provide name and mailing address as appears in Land Records for owners of all properties within 300 feet of any portion of the subject site. If provided by staff, there is a \$25 fee.
- Disclosure of Real Parties in Interest (list all equitable owners)
- Public Hearing Sign Deposit Fee - \$50 (refundable upon return of sign)

All public hearing materials must be submitted at one time by 5:00 PM on the deadline date for the next regular meeting in order to be placed on the agenda. Only complete applications, which include the above materials, will be accepted.

I/we hereby certify that the above information is complete and correct and that public notification will be properly posted on the site not later than 14 days before the public hearing (if applicable) and that all delinquent real estate taxes have been paid per Section 23-9.

APPLICANT'S SIGNATURE [Signature] DATE 1/25/15

CASE #: _____
FEE AM'T: _____
DATE PAID: _____

NIVOLA CROBESADZINSKI 401 SUMIT AV
Additional Owner's Name Address

WINDHOLM VA 22601 540 550 2146
City, State, Zip Telephone


OWNER'S SIGNATURE

MARCO VASCONCELOS 2860 SREAGER ST
Additional Owner's Name Address

22601 WINDHOLM VA 22601 540-313-0470
City, State, Zip Telephone

OWNER'S SIGNATURE

Additional Owner's Name Address

City, State, Zip Telephone

OWNER'S SIGNATURE

Additional Owner's Name Address

City, State, Zip Telephone

OWNER'S SIGNATURE

To The Board of Zoning Appeals,

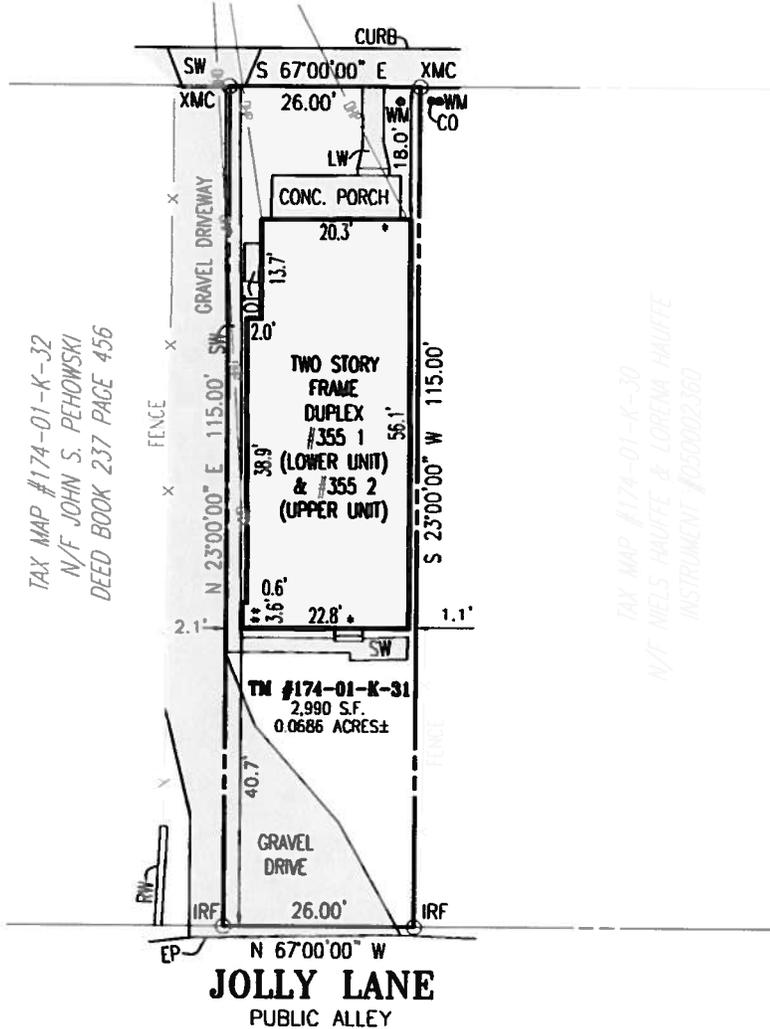
I, Mario Katrandjiyski, purchased a property at 355-1 & 355-2 at National Avenue, Winchester, Virginia. At the time I purchased it, the house was unoccupied and vandalized. It took me significant time to restore the two existing units on the two separate floors. Also, the property has two separate electric meters for the two units. It took me a significant amount of time for me to make the property livable again. During that time, I was advised by the city zoning department that I have to fill out an application for an unoccupied building, which I did and submitted. Not long ago, I discovered via a conversation with the director of zoning and inspection in Winchester, that the property has been unoccupied for 2.5 years which automatically makes it lose its privilege as a two-unit building. With this letter I present a survey of the property that proves that it has always been a two-story frame duplex.

Thank you,
Mario Katrandjiyski

NOTES
 THIS HOUSE LOCATION SURVEY HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT PURPORT TO REFLECT ALL EASEMENTS, ENCUMBRANCES OR OTHER CIRCUMSTANCE AFFECTING THE TITLE TO THIS PROPERTY.
 THIS SURVEY IS NOT INTENDED TO BE USED AS AN AID FOR THE CONSTRUCTION OF FENCES OR OTHER IMPROVEMENTS.
 AUTHORIZED REPRODUCTIONS OF THIS SURVEY ARE AFFIXED WITH AN ORIGINAL SEAL AND SIGNATURE. THOSE REPRODUCTIONS NOT BEARING AN ORIGINAL SEAL AND SIGNATURE ARE NOT THE PRODUCTS OF THE UNDERSIGNED LAND SURVEYOR AND NO CONSIDERATION SHOULD BE GIVEN TO THE INFORMATION CONTAINED HEREIN.

DEED RECORD NORTH
 DEED BOOK 273 PAGE 880

NATIONAL AVENUE
 EXISTING VARIABLE WIDTH PUBLIC RIGHT OF WAY



TAX MAP #174-01-K-32
 N/F JOHN S. PEHOWSKI
 DEED BOOK 237 PAGE 456

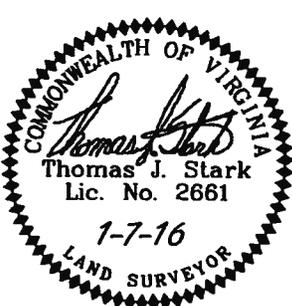
TAX MAP #174-01-K-30
 N/F MELS HAUFFE & LORENA HAUFFE
 INSTRUMENT #050002360

FLOOD NOTE:
 SUBJECT PROPERTY LIES WITHIN "OTHER AREAS" ZONE "X", AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, AS SHOWN ON FLOOD INSURANCE RATE MAP NUMBER 51069C0216D, EFFECTIVE DATE SEPTEMBER 2, 2009.

LEGEND

CO	SANITARY CLEANOUT
EP	EDGE OF PAVEMENT
IRF	IRON ROD FOUND
LW	CONC. LEADWALK
OT	OIL TANK
RW	RETAINING WALL
SW	CONC. SIDEWALK
WM	WATER METER
XMC	"X" MARK ON CONC.
*	LOWER UNIT ACCESS
**	UPPER UNIT ACCESS
—DP—	OVERHEAD UTILITY LINE

HOUSE LOCATION SURVEY
 ON THE LAND OF
VISIO FINANCIAL SERVICES, INC.
 355 1 & 355 2
NATIONAL AVENUE
 TAX MAP #174-01-K-31
 CITY OF WINCHESTER, VIRGINIA



Urban, Ltd.
 133 S. Braddock Street
 Winchester, VA 22601
 Tel. 540.450.0211
 www.urban-ltd.com

WALLCHECK DATE: N/A	SCALE: 1"=20'	DRAWN: FHLS-DS
FINAL DATE: JANUARY 6, 2016 AW	CONTOUR INTERVAL = N/A	CHK'D:
INSTRUMENT #150001988 & DB 223 PG 513	TAX ASSESSMENT MAP NUMBER: 174-01-K-31	



**WINCHESTER BOARD OF ZONING APPEALS
STAFF REPORT AND RECOMMENDATION**

ISSUE/BACKGROUND

Case: BZA-16-038

Applicant: Mario Katrandjiyski (on behalf of Visio Financial Services Inc, property owner)

Location: 355 and 355 ½ National Avenue

Zoning: Limited High Density Residential (HR-1) District

Future Land Use: Residential.

Legal Notice: The request for variance was advertised in the *Winchester Star* on February 24, 2016, and March 2, 2016. The property was required to be posted with a public hearing sign and notices were mailed to property owners within 300' of the subject property.

Applicant's Request: Request of Mario Katrandjiyski for variances of the Winchester Zoning Ordinance, Sections 5.1-3-3, 5.1-4-2 and 5.1-6-1.2 pertaining to required lot area, lot width and side yard setback at 355 and 355 ½ National Avenue (Map Number 174-01-K -31) zoned Limited High Density Residential, HR-1 District. The request is to grant variances to a non-conforming structure to allow for it to be reused as a two-family dwelling.

BACKGROUND

The subject property is located on the south side of National Avenue and is zoned Limited High Density Residential (HR-1) district. The immediately surrounding properties on all sides are similarly zoned and consist of a mix of single family and two-family residential uses.



Exhibit A - Vicinity Map

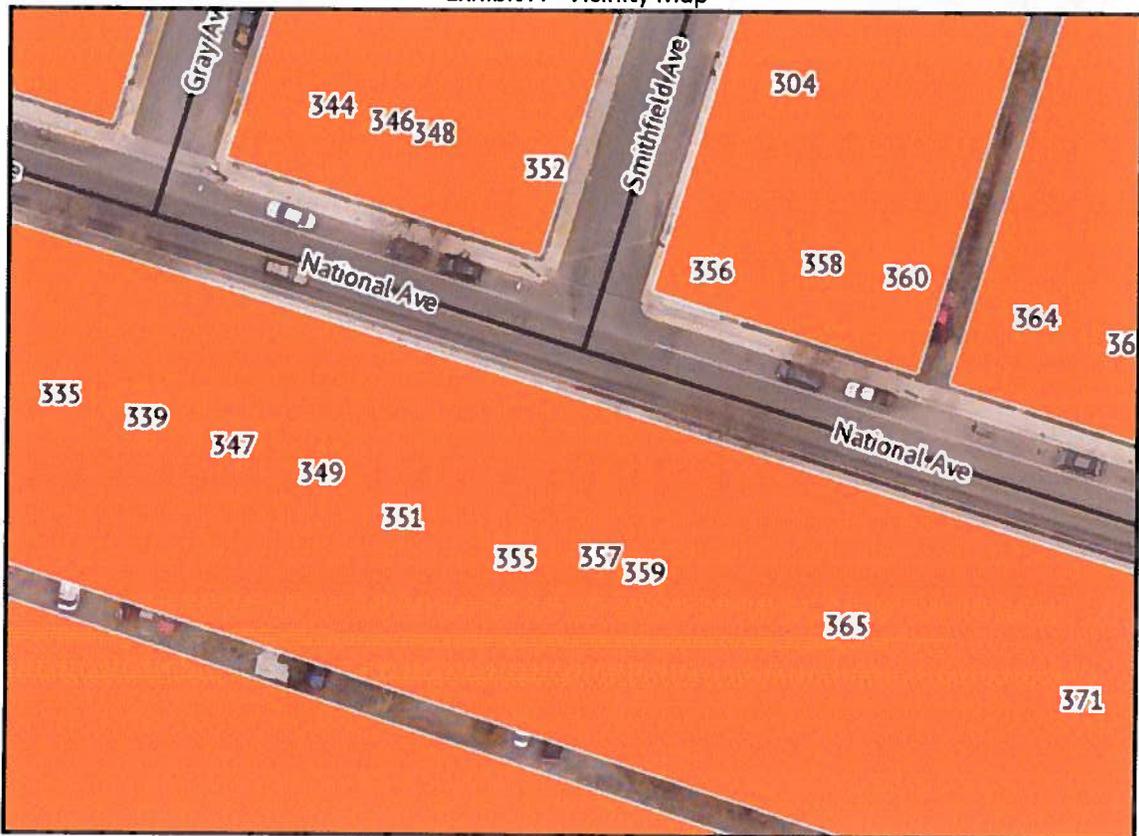


Exhibit B - Vicinity Zoning Map

The property's most recent use was a two family dwelling, which was a legal nonconforming use in the HR-1 district. Two family dwellings are presently permitted with a conditional use permit in the HR-1 district. The previous two-family dwelling use was established prior to the change of the zoning designation for the property from High Density Residential (HR) to Limited High Density Residential (HR-1) in 1997. Upon the change in zoning designation of HR to HR-1, the use provisions changed and a two-family dwelling was no longer permitted by-right but rather with a conditional use permit (CUP) from City Council.

In 2015, during discussions with the property owner it was determined that this property had been vacant for approximately 2.5 years. The Zoning Ordinance provides that any nonconforming use shall expire if the property remains vacant for more than two years. As a result of this vacancy the previous legal nonconformities expired.

In addition to the previous two-family residential use being nonconforming, there are numerous minimum development requirements in which the property is deficient of Zoning Ordinance requirements. This includes the following:

<u>Requirements for Two Family Dwelling Use</u>			
	<u>Minimum Requirement</u>	<u>Provided on Site</u>	<u>Variance Needed</u>
Lot Area	2,800 square feet per unit for two-family residential (5,600 sq. ft. total)	2,990 square feet	2,700 square feet
Lot Width	20 feet per unit (40 feet total)	26 feet	14 feet
Side Yard Setback	6 feet	1.1 feet (east side yard) 2.1 feet (west side yard)	4.9 feet (east side yard) 2.9 feet (west side yard)
<u>Requirements for Single Family Dwelling Use</u>			
Lot Area	3,000 square feet per unit	2,990 square feet	10 square feet
Lot Width	30 feet	26 feet	4 feet
Side Yard Setback	4 feet	1.1 feet (east side yard) 2.1 feet (west side yard)	2.9 feet (east side yard) 1.9 feet (west side yard)

Prior to the establishment of a new use at this property, each of the deficiencies listed above must be remedied by a variance.

The property owner has requested that a two-family dwelling use be permitted at the property, to resemble the previous use of the property. This use requires a conditional use permit from City Council. Furthermore, prior to the establishment of a new use on the property, a site plan may be required with the Planning Department.

STAFF ANALYSIS & CONCLUSION

There are several evaluation criteria that the Board must use to evaluate a variance request to determine if it may be granted:

The Zoning Ordinance requires that with variance requests, the burden of proof shall be on the applicant to prove by a preponderance of the evidence that his application meets the standard for a variance.

A variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition related to the property or improvements thereon at the time of the effective date of the ordinance, and the request must satisfy all of the following:

- A. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
- B. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- C. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
- D. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and,
- E. The relief or remedy sought by the variance application is not available through a special exception process or the process of an administrative modification at the time of the filing of the variance application.

If the Board believes that the request does not satisfy each of the above considerations, then a variance cannot be issued.

Overall, staff believes a hardship that exists in this situation; however, the question exists about what is the proper way to bring the property into compliance with ordinance requirements. Alternatives exist that could be considered to provide for reasonable use of the property, such as use of the property as a single family dwelling rather than the higher intensity two-family dwelling use. As noted in the table above, the dimensional requirements for a single family use are much less cumbersome and any variances granted would need to be for significantly less amounts as compared to a two-family dwelling.

Staff believes that some of the aforementioned requirements have been met with the request; however, some of the required evaluation parameters are less clear:

Criterion	Staff Analysis
The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance	Staff believes the proposal is consistent with this criterion.

The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area	In this neighborhood and surrounding neighborhoods off-street parking is limited. The parking requirement is one off-street space per dwelling unit; but in reality each dwelling unit has more than one vehicle in many instances.
The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance	Many of the immediately surrounding properties are in a similar set of circumstances. Most of the lots in the immediate vicinity share the same lot area and lot width requirements, and many of the uses are limited to single family dwellings that could not be permitted to be converted to a more intensive use.
The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property	Staff believes the proposal is consistent with this criterion.
The relief or remedy sought by the variance application is not available through a special exception process or the process of an administrative modification at the time of the filing of the variance application	Staff believes the proposal is consistent with this criterion.

Staff believes that it is appropriate to grant variances to allow for a reasonable use of the property. The main question is what types of uses constitute the allowance for reasonable use of the property. While the property may have previously been used as a two-family dwelling and was grandfathered in with that use, the current zoning ordinance designation is designed to be oriented primarily to high density single family dwellings. Staff believes that the granting of variances to allow for the re-establishment of a residential use should be limited to one dwelling unit.

If the Board is inclined to support the full variance requests in allowing for a two-family dwelling use, staff recommends that the variances be conditioned.

Note: Staff has not received any letters of support or opposition for this application.

POSSIBLE MOTION(S)

[Approve the variance] OPTION A (Only allow for Single Family Dwelling)

1. **MOVE**, that the Board of Zoning Appeals **approve** variances of the Winchester Zoning Ordinance, Sections 5.1-3-3, 5.1-4-2 and 5.1-6-1.2 pertaining to required lot area, lot width and side yard setback at 355 and 355 ½ National Avenue (Map Number 174-01-K -31) zoned Limited High Density Residential, HR-1 District, with the following conditions:
 - a. The variances are granted to allow for the use of the structure as only single-family dwelling;

- b. The variances are granted only for the current footprint of the structure. Any future alteration to the structure's footprint will only be permitted in such a way as nonconforming setbacks are reduced;
- c. The variances will expire if the property ceases to be used for a two year period.

The variances are approved because the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property:

- 1) *The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;*
- 2) *The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;*
- 3) *The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;*
- 4) *The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and,*
- 5) *The relief or remedy sought by the variance application is not available through a special exception process or the process of an administrative modification at the time of the filing of the variance application.*

[Approve the variance] OPTION B (Allow for Single Family Dwelling or Two Family Dwelling)

- 2. **MOVE**, that the Board of Zoning Appeals **approve** variances of the Winchester Zoning Ordinance, Sections 5.1-3-3, 5.1-4-2 and 5.1-6-1.2 pertaining to required lot area, lot width and side yard setback at 355 and 355 ½ National Avenue (Map Number 174-01-K -31) zoned Limited High Density Residential, HR-1 District, with the following conditions:
 - a. The variances are granted to allow for the use of the structure as either a single-family dwelling or two-family dwelling;
 - b. The variances are granted only for the current footprint of the structure. Any future alteration to the structure's footprint will only be permitted in such a way as nonconforming setbacks are reduced;
 - c. A site plan shall be required to ensure that required off-street parking is provided on-site.
 - d. The variances will expire if the property ceases to be used for a two year period.

The variances are approved because the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property:

- 1) *The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;*
- 2) *The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;*
- 3) *The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;*
- 4) *The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and,*
- 5) *The relief or remedy sought by the variance application is not available through a special exception process or the process of an administrative modification at the time of the filing of the variance application.*

[Deny the variance]

3. **MOVE**, that the Board of Zoning Appeals **deny** variances of the Winchester Zoning Ordinance, Sections 5.1-3-3, 5.1-4-2 and 5.1-6-1.2 pertaining to required lot area, lot width and side yard setback at 355 and 355 ½ National Avenue (Map Number 174-01-K -31) zoned Limited High Density Residential, HR-1 District, for the following reasons:

- a. *The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property*
- b. *(List any additional reasons)*

Report prepared by:



Aaron M. Grisdale, CZA
Director of Zoning and Inspections

March 3, 2016

CASE #: 16-095
 FEE AM'T: _____
 DATE PAID: _____



Rouss City Hall
 15 North Cameron Street
 Winchester, VA 22601
 540-667-1815
 TDD 540-722-0782

APPLICATION FOR BOARD OF ZONING APPEALS

Please print or type all information

434-760-3766 Telephone
 stacie.brown03@gmail.com E-mail address

Stacie Smith Brown Applicant
 101 Christa Ct Street Address
 Charlottesville VA 22903
 City State Zip

OWNER'S SIGNATURE (use reverse to list additional owners)
 Telephone
 stacie.brown03@gmail.com E-mail address

Stacie Smith Brown Owner Name (as appears in Land Records)
 101 Christa Ct Street Address
 Charlottesville VA 22903
 City State Zip

REQUEST TYPE CODE - Please mark type of request and complete information
 KEY: V = Variance; AM = Administrative Modification; I = Interpretation

REQUEST TYPE	ORDINANCE SECTION	PERTAINING TO:
<input type="checkbox"/> V	10-3-1	minimum lot area
<input type="checkbox"/> V	10-4-1	minimum lot width
<input type="checkbox"/> V	10-5-1	main building setback
<input type="checkbox"/> V	10-6-1	side yard setback
<input type="checkbox"/> V	10-8-1	corner yard setback

APPLICATION FEE: \$500 for 1st code section; \$100 for each additional code section
 Public hearing sign deposit fee: \$50

PROPERTY LOCATION
 Current Street Address(es) 574 N. Loudoun Street, Winchester, VA Zoning CM1
 Tax Map Identification - (sections, blocks, lots) 153-01-G-1

REQUIRED MATERIALS LIST

- 1 copy of application (this form completed)
- 10 copies of letter explaining request and grounds for request
- 10 Copies of plans/or drawings and surveys
- Fee (check made payable to the **Treasurer, City of Winchester**)
- List of adjacent property owners (public hearing items only). List must provide name and mailing address as appears in Land Records for owners of all properties within 300 feet of any portion of the subject site. If provided by staff, there is a \$25 fee.
- Disclosure of Real Parties in Interest (list all equitable owners)
- Public Hearing Sign Deposit Fee - \$50 (refundable upon return of sign)

All public hearing materials must be submitted at one time by 5:00 PM on the deadline date for the next regular meeting in order to be placed on the agenda. Only complete applications, which include the above materials, will be accepted.

I/we hereby certify that the above information is complete and correct and that public notification will be properly posted on the site not later than 14 days before the public hearing (if applicable) and that all delinquent real estate taxes have been paid per Section 23-9.

APPLICANT'S SIGNATURE Stacie Smith Brown DATE 2/12/16

CASE #: _____
FEE AM'T: _____
DATE PAID: _____

Additional Owner's Name _____ Address _____
101 Christa Ct.
City, State, Zip _____ Telephone _____
Charlottesville, VA 22903 434-760-3766
OWNER'S SIGNATURE _____
Stacie Smith Brun

Additional Owner's Name _____ Address _____
City, State, Zip _____ Telephone _____
OWNER'S SIGNATURE _____

Additional Owner's Name _____ Address _____
City, State, Zip _____ Telephone _____
OWNER'S SIGNATURE _____

Additional Owner's Name _____ Address _____
City, State, Zip _____ Telephone _____
OWNER'S SIGNATURE _____

February 11, 2016

City of Winchester – Planning & Zoning
15 N. Cameron Street
Winchester, VA 22601

RE: Variances for 574 North Loudoun Street, Winchester

Dear Sir and Madam,

Thank you for your consideration of the variances required at this property to put it back into functioning use;

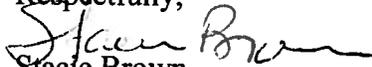
After obtaining the necessary variances as I've been instructed, I will reapply for the Conditional Use Permit for extended stay lodging. I intend to utilize the space for two executive-level extended stay units which will include janitorial services as may be required.

The property has remained vacant and unusable for the past 2+ years; I am looking forward to putting the property back into service after the variances and CUP processes are completed.

Rather than continuing with a vacant building, it could probably be agreed, having it occupied by professionals and operated as a business will contribute to a safer community in this area and positive tax revenue to the City.

Thank you again for your consideration;

Respectfully,



Stacie Brown

434-760-3766

Google Maps N Loudoun St

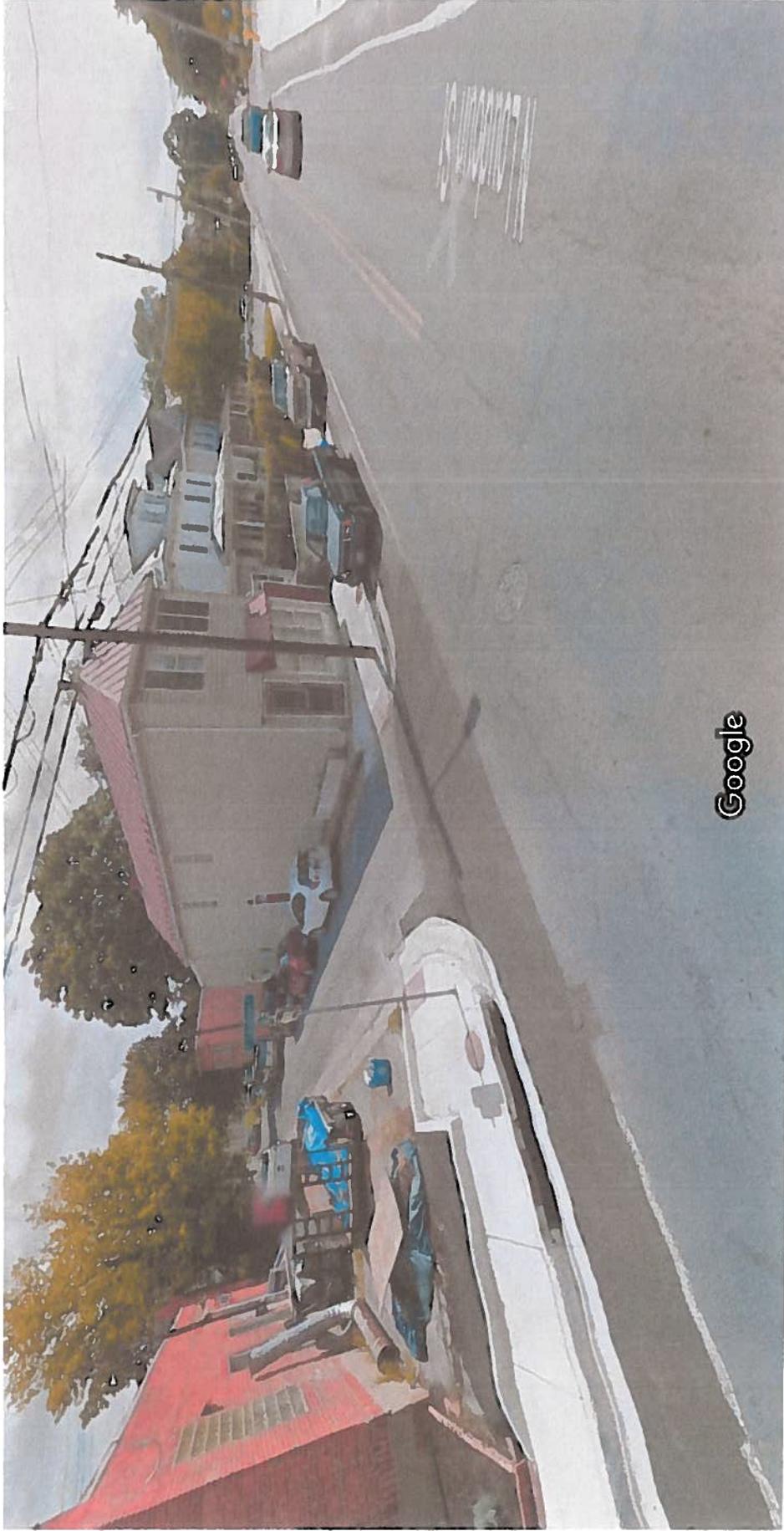


Image capture: Sep 2014 © 2015 Google

Winchester, Virginia

Street View - Sep 2014



<https://www.google.com/maps/@39.1936481,-78.1619869,3a,75y,146.83h,71.87t/data=!3m1!1e1!3m1!1sqM5XPOHJusLwC8jSp8g!2e0!7!1331218i6656i6m1!1e1>

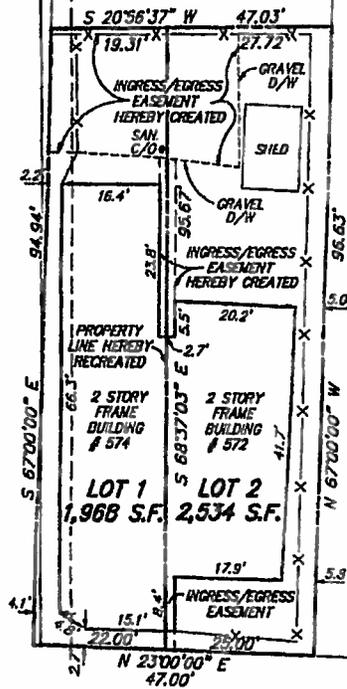
BK 286 PG 0716

POSSIBLE PRESCRIPTIVE
EASEMENT LINE FOR GIBBENS
STREET

N/F
GLADYS PEYTON

GIBBENS STREET

N/F ELIA P. LUTRELL



N. LOUDOUN STREET

RECREATION OF PROPERTY LINE
& CREATION OF EASEMENTS

ON
THE PROPERTY OF
HATTIE E. PORTER
BEING

572 & 574 N. LOUDOUN STREET

DEED BOOK 218 PAGE 602
& DEED BOOK 283 PAGE 1370
CITY OF WINCHESTER, VIRGINIA

THIS IS TO CERTIFY THAT ON DECEMBER 3, 1997
I MADE AN ACCURATE SURVEY OF THE PREMISES
SHOWN HEREON, AND THAT THERE ARE NO EASE-
MENTS OR ENCROACHMENTS VISIBLE ON THE
GROUND OTHER THAN THOSE SHOWN HEREON.

NOTES:

1. TAX ASSESSMENT MAP NO. 15J-1-G-1 & 2
2. CURRENT INSTRUMENT IN CHAIN OF TITLE IS DEED BOOK 283 PAGE 1370

SHEET 2 OF 3

THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT
AND DOES NOT NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.

DATE: DECEMBER 3, 1997

SCALE: 1" = 20'

OWNER: HATTIE E. PORTER

W.O. # 97395

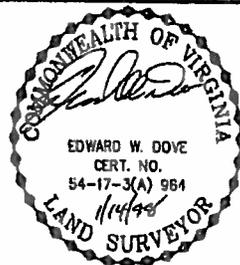
FLOOD NOTE -

ZONE: C COMMUNITY NO: 510173 PANEL: 0005 B DATE: 11-15-78

DOVE
& ASSOCIATES

ARCHITECTS
ENGINEERS
PLANNERS
SURVEYORS

3078 SHAWNEE DRIVE
P.O. BOX 2033
WINCHESTER, VIRGINIA 22601
(540)667-1103





**WINCHESTER BOARD OF ZONING APPEALS
STAFF REPORT AND RECOMMENDATION**

ISSUE/BACKGROUND

Case: BZA-16-095

Applicant: Stacie Smith Brown (property owner)

Location: 574 N Loudoun Street

Zoning: Commercial Industrial (CM-1) District

Future Land Use: Commercial/Industrial.

Legal Notice: The request for variance was advertised in the *Winchester Star* on February 24, 2016, and March 2, 2016. The property was required to be posted with a public hearing sign and notices were mailed to property owners within 300' of the subject property.

Applicant's Request: Request of Stacie Smith Brown for variances of the Winchester Zoning Ordinance, Sections 10-3-1, 10-4-1, 10-5-1, 10-6-1 and 10-8-1 pertaining to minimum lot area and width, main building, side yard and corner yard setbacks at 574 North Loudoun Street (Map Number 153-01-G-1) zoned Commercial Industrial (CM-1) District. Variances are being requested to establish an extended stay use in a nonconforming structure.

BACKGROUND

The subject property is located on the southeast corner of North Loudoun Street and Gibbens Street and is zoned Commercial Industrial (CM-1) district. The properties to the north, east, and south are similarly zoned and consist of a mix of nonconforming residential uses, and light industrial uses. Properties to the west are zoned Limited Industrial (M-1) district and consist of a cold-storage facility.

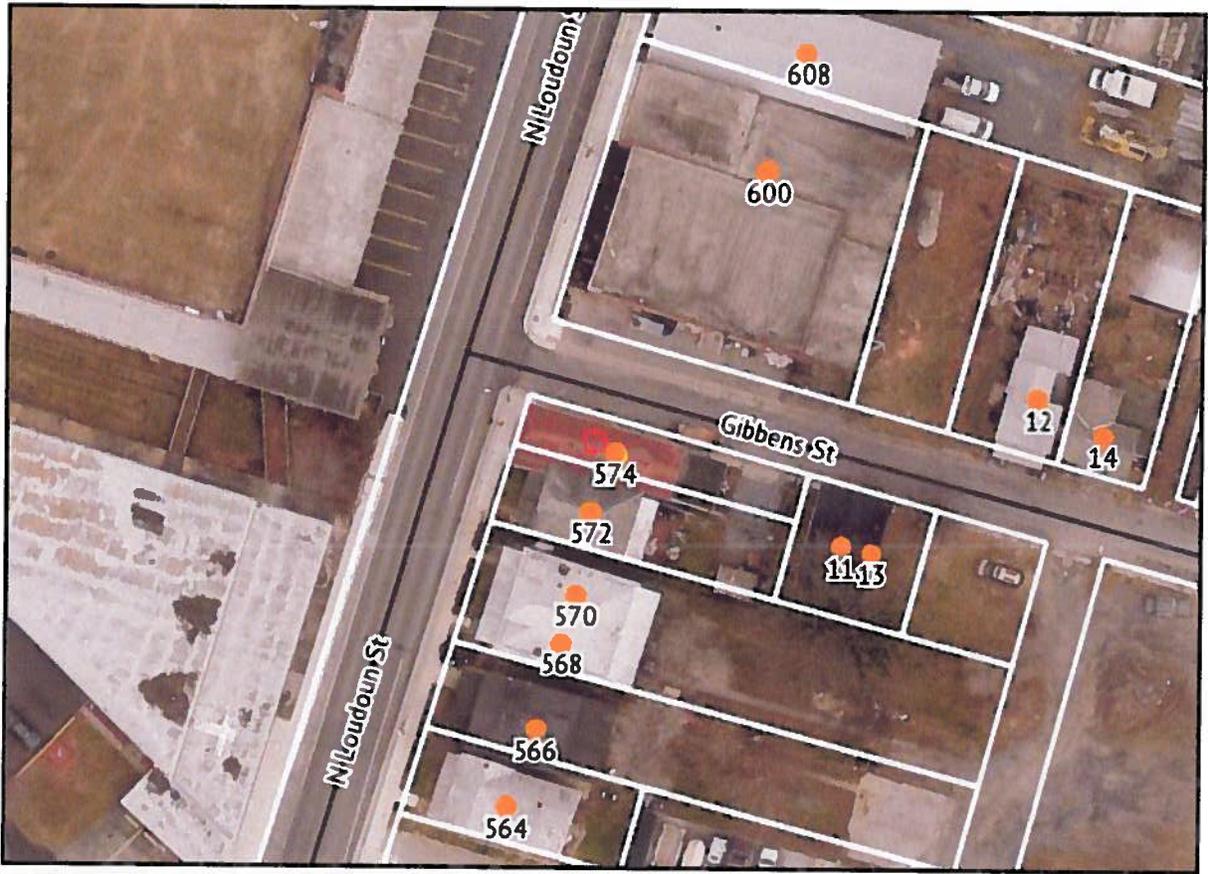


Exhibit A - Vicinity Map

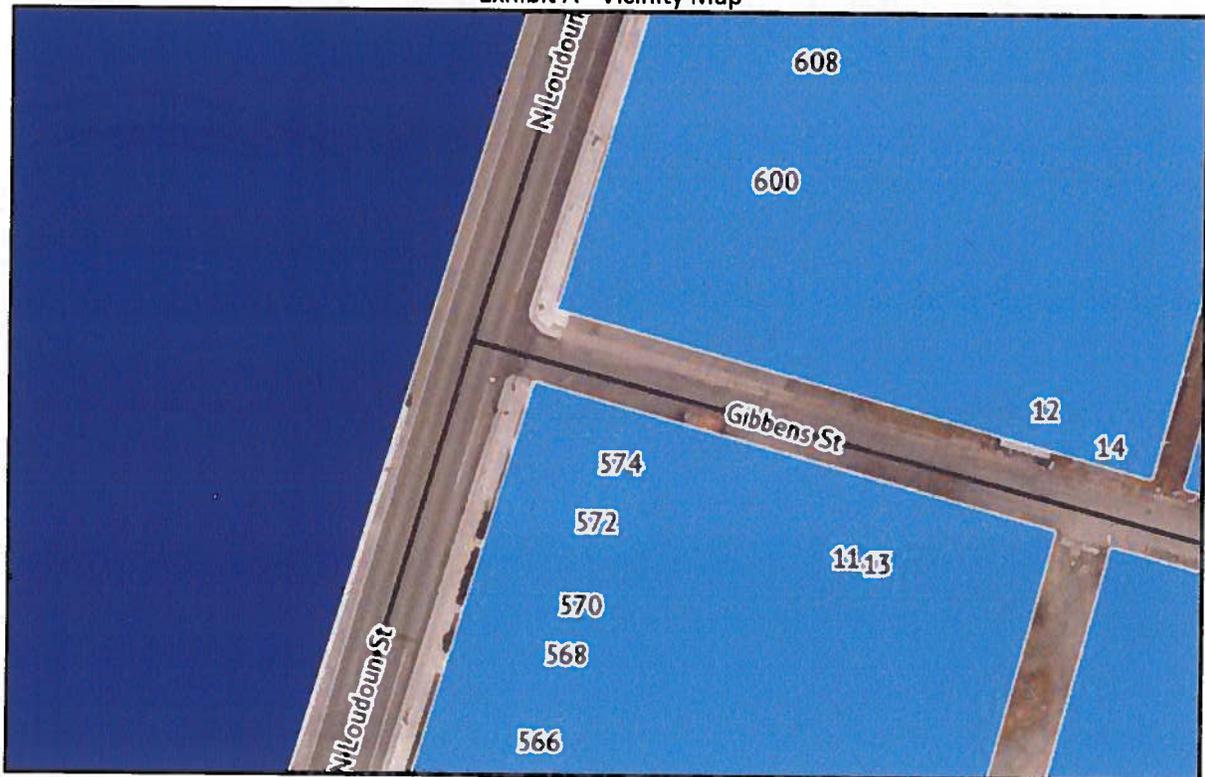


Exhibit B - Vicinity Zoning Map

The property's most recent use was a two family dwelling, which was a legal nonconforming use in the CM-1 district. However, in 2013 it was discovered by staff during a conversation with a previous property owner that the structure had been vacant for approximately five years. The Zoning Ordinance provides that a nonconformity shall expire when a use ceases for a period of two years or more. Due to the length of time that the property remained vacant, the nonconformity expired and a zoning determination to that effect was provided to the then property owner in November 2013. Not long after the zoning determination, the property was sold to the current property owner and applicant of the variances before the Board. Furthermore, since the previous residential two-family use is not permitted in the CM-1 district, and the nonconformity has expired, the use may never be reinstated.

In addition to the previous two-family residential use being nonconforming, there are numerous minimum development requirements for which the property is deficient of Zoning Ordinance requirements. This includes the following:

	<u>Minimum Requirement</u>	<u>Provided on Site</u>	<u>Variance Needed</u>
Lot Area	20,000 square feet	1,968 square feet	18,032 square feet
Lot Width	125 feet	22 feet	103 feet
Front Yard Setback	35 feet	2.7 feet	32.3 feet
Corner Side Yard Setback	35 feet	2.2 feet	32.8 feet
Side Yard Setback	10 feet	0 feet	10 feet

Prior to the establishment of a new use at this property, each of the deficiencies listed above must be remedied by a variance. Variances of lot area and lot width would be required for any reuse of the property. Variances of setbacks are needed to support reuse of the existing two-story structure on the lot.

The property owner has requested that an extended stay lodging use be permitted at the property, consisting of two units. This use requires a conditional use permit from City Council, and the owner has applied for the CUP request. The item is currently under review with Council. Furthermore, prior to the establishment of a new use on the property, a site plan may be required with the Planning Department.

STAFF ANALYSIS & CONCLUSION

There are several evaluation criteria that the Board must use to evaluate a variance request to determine if it may be granted:

The Zoning Ordinance requires that with variance requests, the burden of proof shall be on the applicant to prove by a preponderance of the evidence that his application meets the standard for a variance.

A variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition related to the property or improvements thereon at the time of the effective date of the ordinance, and the request must satisfy all of the following:

- A. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
- B. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- C. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
- D. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and,
- E. The relief or remedy sought by the variance application is not available through a special exception process or the process of an administrative modification at the time of the filing of the variance application.

If the Board believes that the request does not satisfy each of the above considerations, then a variance cannot be issued.

Overall, staff believes a hardship exists in this situation; however, the question exists about what is the proper way to bring the property into compliance with ordinance requirements. Alternatives exist that could be considered to help alleviate several of the nonconforming features of the property, such as the acquisition of adjoining properties and consolidating the adjoining lots to create a more conforming lot. Furthermore, less intensive uses such as utilization of the lot for off-street parking for adjacent properties could be considered.

Staff believes that some of the aforementioned requirements have been met with the request; however, some of the required evaluation parameters are less clear:

Criterion	Staff Analysis
The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance	Staff is unable to determine conformity with this requirement. The previous property owner was notified of the expired nonconformities. The applicant will need to clarify to the Board if the property was purchased with knowledge of the deficiencies.
The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area	Should variances be approved conditioned upon the allowance of only minor intensity uses in the zoning district, staff then believes that that this criterion could potentially be satisfied. There exists an ingress/egress easement across the rear of the property for benefit of the next lot to the south (572 N Loudoun Street). Intensified use could impair the adjoining property owner's ability to enjoy use of this easement if the variances cause reuse of the parking area encumbered by this easement.
The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably	Many of the immediately surrounding properties are in a similar set of circumstances. Many are nonconforming

practicable the formulation of a general regulation to be adopted as an amendment to the ordinance	residential uses on very small lots, with the difference being that most of the surrounding uses still have maintained their legal nonconforming status.
The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property	Staff believes the proposal is consistent with this criterion.
The relief or remedy sought by the variance application is not available through a special exception process or the process of an administrative modification at the time of the filing of the variance application	Staff believes the proposal is consistent with this criterion.

If the Board is inclined to support the variance requests, staff recommends that the variances be conditioned to allow for a narrow reuse of the property, rather than allowing every permitted and conditional use in the district. Specifically, staff believes that due to the space limitations with the current property configuration, any future use should be limited to one that will have minimal impact on the surrounding uses and properties, namely with regard to required off-street parking. Any permitted use should be limited to a use that will create an off-street parking requirement of no more than three parking spaces. Lastly, staff recommends that the variances should expire if use of the property ceases for a period of two years or more.

Note: Staff has not received any letters of support or opposition for this application.

POSSIBLE MOTION(S)

[Approve the variance] OPTION A:

1. **MOVE**, that the Board of Zoning Appeals **approve** variances of the Winchester Zoning Ordinance, Sections 10-3-1 and 10-4-1 pertaining to minimum lot area and lot width, at 574 North Loudoun Street (Map Number 153-01-G-1) zoned Commercial Industrial (CM-1) District, with the following condition:
 - a. The variances expire if the property ceases to be used for a two year period and applies only to the lot as it is currently situated as of the date of this decision. Any future alteration to the lot dimensions shall cause the variances to expire.

2. **MOVE**, that the Board of Zoning Appeals **approve** variances of the Winchester Zoning Ordinance, Sections 10-5-1, 10-6-1 and 10-8-1 pertaining to minimum main building front yard, side yard and corner yard setbacks for the existing 2-story structure at 574 North Loudoun Street (Map Number 153-01-G-1) zoned Commercial Industrial (CM-1) District, with the following conditions:
 - a. Only the following uses permitted in the CM-1 district shall be permitted:
 - I. *Parking lot (Section 10-1-19)*
 - II. *Off-street parking areas (10-1-36)*

- III. *Convenience Service Establishment (10-1-9)*
 - IV. *Government Offices (10-1-12)*
 - V. *Offices, business and professional (10-1-18)*
 - VI. *Repair services or business (10-1-25)*
 - VII. *Extended Stay Lodging (10-2-12);*
- b. Uses III through VII in subsection (a) above may be permitted to the degree that three (3) or fewer parking spaces are required per Section 18-6 of the Zoning Ordinance;
 - c. The variances of Sections 10-5-1, 10-6-1, and 10-8-1 apply only to a reduced footprint of the current structure such that at least the rear approximately 14' addition to the structure is removed at least on the ground level to provide unencumbered area for 2 off-street parking spaces. Any future alteration to the building footprint which does not further reduce the footprint shall cause the variances to expire; and,
 - d. The variances will expire if the property ceases to be used for a two year period.

The variances are approved because the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property:

- 1) *The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;*
- 2) *The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;*
- 3) *The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;*
- 4) *The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and,*
- 5) *The relief or remedy sought by the variance application is not available through a special exception process or the process of an administrative modification at the time of the filing of the variance application.*

[Approve the variance] OPTION B:

- 1. **MOVE**, that the Board of Zoning Appeals **approve** variances of the Winchester Zoning Ordinance, Sections 10-3-1, 10-4-1, 10-5-1, 10-6-1 and 10-8-1 pertaining to minimum lot area and width, main

building, side yard and corner yard setbacks at 574 North Loudoun Street (Map Number 153-01-G-1) zoned Commercial Industrial (CM-1) District, with the following conditions:

- a. Only the following uses permitted in the CM-1 district shall be permitted: *Convenience Service Establishment (Section 10-1-9), Government Offices (10-1-12), Offices, business and professional (10-1-18), Parking lot (10-1-19), Repair services or business (10-1-25), Off-street parking areas (10-1-36), Extended Stay Lodging (10-2-12);*
- b. Any use permitted in subsection (a) above may be permitted to the degree that three (3) parking spaces are required per Section 18-6 of the Zoning Ordinance;
- c. The variance applies only the current structure and lot as they are currently situated as of the date of this decision. Any future alteration to the lot dimensions or building footprint shall cause the variances to expire; and,
- d. The variances will expire if the property ceases to be used for a two year period.

The variances are approved because the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property:

- 1) *The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;*
- 2) *The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;*
- 3) *The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;*
- 4) *The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and,*
- 5) *The relief or remedy sought by the variance application is not available through a special exception process or the process of an administrative modification at the time of the filing of the variance application.*

[Deny the variance]

1. **MOVE**, that the Board of Zoning Appeals **deny** variances of the Winchester Zoning Ordinance, Sections 10-3-1, 10-4-1, 10-5-1, 10-6-1 and 10-8-1 pertaining to minimum lot area and width, main building, side yard and corner yard setbacks at 574 North Loudoun Street (Map Number 153-01-G-1) zoned Commercial Industrial (CM-1) District, for the following reasons:

- a. *The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property*
- b. *(List any additional reasons)*

Report prepared by:

A handwritten signature in black ink, appearing to read "Aaron M. Grisdale". The signature is fluid and cursive, with the first name "Aaron" and the last name "Grisdale" clearly visible.

Aaron M. Grisdale, CZA
Director of Zoning and Inspections

March 3, 2016