

**PLANNING COMMISSION  
WORK SESSION AGENDA  
JULY 7, 2015 - 3:00 PM  
Fourth Floor Exhibit Hall  
Rouss City Hall**

1. Review agenda for July 21, 2015 regular meeting
2. Committee reports
3. Status of projects pending Council approval
4. Discussion of Proposed National Ave Corridor Enhancement District (**Youmans**)
5. Announcements

**PLANNING COMMISSION  
AGENDA  
JULY 21, 2015 - 3:00 PM  
Council Chambers - Rouss City Hall**

**1. POINTS OF ORDER**

- A. Roll Call
- B. Approval of Minutes
- C. Correspondence
- D. Citizen Comments
- E. Report of Frederick Co Planning Commission Liaison

**2. PUBLIC HEARINGS – New Business**

- A. **TA-15-289** AN ORDINANCE AMENDING SECTION 8-2-19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO GROUND FLOOR RESIDENTIAL CONVERSION OF EXISTING STRUCTURES WITH A CONDITIONAL USE PERMIT. **(Mr. Crump)**
- B. **TA-15-322** AN ORDINANCE AMENDING ARTICLE 1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITIONS OF HOTEL, MOTEL, AND TRANSIENT. **(Mr. Grisdale)**
- C. **TA-15-323** AN ORDINANCE AMENDING SECTION 13-1-5 PUD OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO BONUS INCENTIVES TO INCREASE ALLOWABLE RESIDENTIAL DENSITY FOR PLANNED UNIT DEVELOPMENTS. **(Mr. Grisdale)**

**3. PUBLIC HEARINGS – Continued**

**4. NEW BUSINESS**

- A. **TA-15-376** AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 17, 18, AND 21 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS; NONCONFORMING STRUCTURES; PERMIT REQUIREMENTS FOR FAMILY DAY HOMES; POWERS, PROCEDURES AND EX PARTE COMMUNICATIONS OF THE BOARD OF ZONING APPEALS; AND VIOLATIONS AND PENALTY.

**5. OLD BUSINESS**

**6. OTHER BUSINESS (Crump)**

**A. CE Report**

- 1) **CE-15-305** 2291 Valley Ave - Exterior Renovation- Dairy Queen
- 2) **CE-15-331** 710 Berryville Ave - Exterior Renovation- Bear Trading Post

**B. Minor Subdivision Report**

- 1) **MS-15-204** 2705 & 2725 S. Pleasant Valley Rd- Dixie Beverage Boundary Line Adjustment
- 2) **MS-15-206** 16 W. Bond St & 1004 Valley Ave- Handley Crossing Boundary Line Adjustment
- 3) **MS-15-266** 420 Meadow Branch Ave- Ridgewood Orchard Boundary Line Adjustment
- 4) **MS-15-311** 801 & 901 Amherst St- Glass-Glen Burnie Foundation Lot Consolidation

**7. ADJOURN**

**TA-15-289 AN ORDINANCE AMENDING SECTION 8-2-19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO GROUND FLOOR RESIDENTIAL CONVERSION OF EXISTING STRUCTURES**

---

REQUEST DESCRIPTION

This is a publicly initiated Zoning Ordinance text amendment to allow for limited ground floor residential dwelling units in the B-2 district. Presently the B-2, Highway Commercial district, allows for the establishment of multifamily dwelling units with a conditional use permit, provided: 1) the development is part of a quality mixed use project, 2) there are no more than two (2) bedrooms, and 3) the dwelling units are not on the ground floor.

Staff has received inquiries from the development community about whether there would be City interest in modifying the Zoning Ordinance to allow for limited opportunities for establishment of multifamily dwelling units on the ground floor. These units would only be allowed with approval of a conditional use permit and if the project meets the following characteristics:

- 1) A determination is made that the proposed multifamily use is as suitable as or preferable to other permitted uses on the ground floor.
- 2) No units are situated facing a major commercial street as determined by the Planning Director.
- 3) The dwelling units are proposed as part of a redevelopment of an existing structure.

As demonstrated at recent projects, such as the Coca Cola Plant rehabilitation, it is possible to establish ground floor residential by-right in the B-2 district, with a rezoning action establishing a PUD overlay. During the rezoning review there are qualitative checks on the proposal including the submittal of a development plan and building elevations. This proposal of allowing ground floor residential with a CUP in the B-2 district will still have qualitative checks on any proposal. Such applications would need to explain how any potential negative impacts are being mitigated, its conformance with the Comprehensive Plan, as well as including building elevations and floor plans of the proposal. With this additional information the Planning Commission and City Council can make more informed decisions about the quality of the proposed request and better evaluate potential impacts.

STAFF COMMENTS

Staff believes that this proposal is consistent with good planning practice and will provide opportunities of redevelopment of existing structures when the proposal is part of a quality mixed use development.

RECOMMENDATION

Staff supports this amendment as proposed.

A potential motion could read:

**MOVE** that the Planning Commission forward **TA-15-289** to City Council with a favorable recommendation because the amendment, as proposed, represents good planning practice by providing for expanded residential opportunities consistent with Council's Strategic Plan and the City's Comprehensive Plan.

RESOLUTION INITIATING AN ORDINANCE AMENDING SECTION 8-2-19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO GROUND FLOOR RESIDENTIAL CONVERSION OF EXISTING STRUCTURES

**TA-15-289**

WHEREAS, the Highway Commercial district presently allows for multifamily dwelling units with a conditional use permit when the units are not located on the ground level; and,

WHEREAS, the City's Comprehensive Plan encourages quality mixed use developments, including the establishment of opportunities for new mixed-income and mixed dwelling type residential uses that incorporate the quality design principles of New Urbanism; and,

WHEREAS, it is the interest of the City to provide additional opportunities for property owners and developers to craft creative adaptive reuse scenarios of existing structures, which may include the conversion of existing ground floor spaces to residential dwelling units on a limited basis;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby initiates the following text amendment:

AN ORDINANCE AMENDING SECTION 8-2-19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO GROUND FLOOR RESIDENTIAL CONVERSION OF EXISTING STRUCTURES

**TA-15-289**

Draft 1 – 5/19/2015

Ed. Note: The following text represents an excerpt of Article 8 of the Zoning Ordinance that is 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 8**

**HIGHWAY COMMERCIAL DISTRICT B-2**

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

8-2-19 Multifamily and Condominium dwellings, subject to the following: (9/13/05, Case TA-05-02, Ord. No. 025-2005; 2/10/09, Case TA-08-13, Ord. No. 2009-05)

The intent of this provision is to encourage quality mixed use development, particularly in areas served by public transportation. In this case, permitted B-2 commercial uses shall be limited to the following: Banks and financial uses, convenience and services establishments, laundromats, dry cleaners where dry cleaning is done off premises, repair services or businesses excluding auto or truck repair, art galleries, retail stores, general and medical offices, physical fitness and martial arts establishments, bakeries, and restaurants, excluding nightclub use.

- a. A maximum of eight dwelling units per building, however, any two buildings may be connected by a common elevator;
- b. No dwellings shall have more than two (2) bedrooms ~~nor be situated on the ground level;~~
- c. Building entrances and off-street parking areas serving dwelling units should be oriented to the side or rear of the property;
- d. Density shall not exceed one (1) dwelling unit for each 3500 square feet of the Total Project Area, except where dwelling units are certified by the standards outlined in the United States Green Building Council LEED® for Homes program; and, with each dwelling unit having no more than two (2) bedrooms, the following Density Adjustment shall be applied: (3/11/09, Case No.TA-08-12, Ord. No. 2009-10)

| <u>Level of Certification</u> | <u>Bonus Factor</u> |
|-------------------------------|---------------------|
| Certified                     | .05                 |
| Silver                        | .10                 |
| Gold                          | .15                 |
| Platinum                      | .20                 |

- e. The absolute minimum floor area per dwelling unit in each building used for this purpose shall be as follows: seven hundred (700) square feet for efficiency & one (1) bedroom units; and nine hundred (900) square feet for two (2) or more bedrooms.
- f. **No dwelling units shall be located on the ground floor unless:**
  - 1) **City Council makes a determination that multifamily use is as suitable as or preferable to other permitted uses on the ground floor,**
  - 2) **No units are situated facing a major commercial street as determined by the Planning Director, and**
  - 3) **The dwelling units are proposed as part of a redevelopment of an existing structure. Ground floor dwelling units shall not be permitted in new structures.**

**TA-15-322 AN ORDINANCE AMENDING ARTICLE 1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITIONS OF HOTEL, MOTEL, AND TRANSIENT.**

---

REQUEST DESCRIPTION

This is a publicly initiated Zoning Ordinance text amendment to update the definitions of *Hotel*, *Motel*, and *Transient* in Article 1 of the Zoning Ordinance. In 2003, City Council adopted a zoning ordinance amendment modifying the definitions of *Motels* and *Hotels* and established a new definition of *Extended Stay Lodging*. At that time the intent was to distinguish between the more transient occupancy uses of motels/hotels wherein occupants would typically stay at such a facility for no more than 30 consecutive days. Facilities where occupants are offered housing for more than 30 days and which cater to business travelers could be classified as *Extended Stay Lodging* and required a conditional use permit from Council for the districts in which the use is permitted.

Over time, however, some facilities have gradually changed their operations from catering to the typical tourists, travelers, and other transient occupants and presently operate more as unofficial apartments. Some individuals achieve this by skirting the length of occupancy limitations by residing at a facility for a short duration of time, such as 4 weeks (28 days), leaving the facility for a day or week and then coming back to the facility to reside for another month.

STAFF COMMENTS

This proposed ordinance will correct this deficiency in the Zoning Ordinance. The proposed ordinance will limit occupancy at a facility for 30 days in a 60 day period. Staff believes this proposal will be one tool in addressing these use and occupancy issues. A companion City Code amendment, which has been drafted by the Community Response Team, will be forthcoming to City Council for their consideration to provide additional standards for recordkeeping, occupancy, and compliance requirements at *Motels* and *Hotels*, to accompany this Zoning Ordinance text amendment.

RECOMMENDATION

Staff recommends a favorable recommendation.

A possible motion could read:

**MOVE**, the Planning Commission forward **TA-15-322** recommending approval because the amendment as proposed is consistent with good planning practice and will provide reasonable provisions to ensure that hotel and motel facilities maintain the envisioned type of occupancy.

RESOLUTION INITIATING AN ORDINANCE AMENDING ARTICLE 1 OF THE WINCHESTER ZONING  
ORDINANCE PERTAINING TO THE DEFINITIONS OF HOTEL, MOTEL, AND TRANSIENT.

**TA-15-322**

WHEREAS, the Zoning Ordinance presently includes definitions for the uses of *Motel* and *Hotel* and what constitutes a *Transient*; and,

WHEREAS, the intent of the current Zoning Ordinance definitions is to limit the use and occupancy of *Hotels* and *Motels* to primarily transient occupancy and not evolve into de facto apartments; and,

WHEREAS, the proposed text amendment further clarifies the definitions of *Motels* and *Hotels* and the intent of the Zoning Ordinance as establishments that primarily provide temporary lodging for transient occupancy;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby initiates the following text amendment:

**AN ORDINANCE AMENDING ARTICLE 1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITIONS OF HOTEL, MOTEL, AND TRANSIENT.**

**15-322**

Draft 1 – (06/02/2015)

*Ed. Note: The following text represents an excerpt of Article 1 of the Zoning Ordinance that is subject to change. Words with strikethrough are proposed for repeal. Words that are boldfaced and underlined are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.*

**ARTICLE 1**

**DEFINITIONS**

**SECTION 1-2 DEFINITIONS.**

- 1-2-51 HOTEL: A building designed and occupied as the temporary abiding place for fourteen (14) or more individuals who are, for compensation, lodged, for a maximum of thirty (30) ~~consecutive days~~ **in a sixty (60) day period**, with or without meals, and in which provision is not generally made for cooking in the individual rooms or suites. No more than 10 % of the total number of units may be occupied by individuals that exceed the 30 ~~consecutive day maximum~~ occupancy limit up to a maximum of nine (9) consecutive months. (8/12/03, Case TA-03-01, Ord. No. 031-2003)
- 1-2-67 MOTEL: One (1) or more buildings containing individual sleeping rooms, designed for and used temporarily by tourists or transients for a maximum of thirty (30) ~~consecutive days~~ **in a sixty (60) day period**, with garage or parking space conveniently located to each unit. Cooking facilities may be provided for each unit. No more than 10 % of the total number of units may be occupied by individuals that exceed the 30 ~~consecutive day maximum~~ occupancy limit up to a maximum of nine (9) consecutive months. (8/12/03, Case TA-03-01, Ord. No. 031-2003)
- 1-2-93.1 TRANSIENT: Any person who, for any period of not more than thirty (30) consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any space in any **hotel**, motel or boarding house as hereinabove defined, for which lodging or use of space, a charge is made. (2/27/07, Case TA-06-06, Ord. No. 2007-04)

**TA-15-323 AN ORDINANCE AMENDING SECTION 13-1-5 PUD OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO BONUS INCENTIVES TO INCREASE ALLOWABLE RESIDENTIAL DENSITY FOR PLANNED UNIT DEVELOPMENTS.**

**REQUEST DESCRIPTION**

This is a privately sponsored zoning ordinance text amendment to amend the Planned Unit Development provisions in Article 13 and include density bonuses if projects meet certain desired development criteria. The provisions are fashioned similar to the density bonus provisions available for multifamily development in the B-1 (Central Business) district, mainly situated in Old Town.

The proposed bonuses include:

| <u>Development Standard</u>  | <u>Possible Bonus</u>  |
|--|--|
| LEED, Earthcraft, and other Green Building certifications as provided in the Code of Virginia.   | .15 bonus if Certified   |
| Economic Impact (including a percentage dedicated to nonresidential use).  | .15 bonus – 25% of floor area is nonresidential<br>.25 bonus – 50% of floor area is nonresidential |
| Residential Amenities - Where at least 5% of the resulting residential floor area in a multifamily project is committed to common amenities.   | .15 bonus  |
| Off-street parking Structure - Where off-street parking is offered in the form of an above ground or below ground structure.   | .15 bonus  |
| Accessibility - Where all of the upper story dwelling units in a multifamily project are accessible by passenger elevator.   | .10 bonus  |
| Where a multifamily project is developed using quality design principles of New Urbanism, is near and/or oriented towards college/university/medical campuses in higher density housing areas, is oriented to students and/or medical professionals and possibly includes some mixed uses. | .50 bonus  |
| Transit Oriented Development - Where a multifamily project is developed in a location that is within 300 feet of a City transit stop or within 300 feet of the Green Circle Trail.   | .15 bonus  |

The amendment would allow for a developer when requesting a rezoning for Planned Unit Development Overlay to include within their proposal a request for the above density bonuses. Only the highest quality and most desirable projects that are consistent with the bonus standards should be considered

for density bonuses. Council would retain discretion of whether such bonuses should be granted during the rezoning process as part of the project's evaluation of potential impacts, consideration of the Comprehensive Plan, etc.

The proposal includes bonuses that could potential increase the density up to 150% of the maximum density of the PUD district. The existing ordinance language allows for a maximum of up to eighteen (18) dwelling units per acre, and this proposal would allow for certain projects to go up to twenty-seven (27) dwelling units per acre. The PUD density standards were amended in 2011 to change the maximum density from 10 units up to 18 units per acre and to allow up to 55% nonresidential use where it was previously capped at 5% of the development.

In the application materials, the applicant contends that these opportunities to earn additional density bonuses in the PUD district for multifamily projects will lead to an increase in student and young professionals housing for the various areas of Winchester, specifically including around Shenandoah University.

#### STAFF COMMENTS

After several discussions and revisions to the proposal, the applicant has modified the bonuses to reflect qualities of a development that are desirable from the new urbanism design perspective and qualities mentioned in the Comprehensive Plan. The bonuses are cumulative; however, they are capped at a maximum of 150% of the density of the PUD district.

The Green Building and LEED certifications are simplified from the previous bonuses included in the zoning ordinance. Instead of a tiered system of bonuses based upon the levels of LEED certification, this amendment provides for one bonus on whether or not a project meets the certification criteria of the variety of programs mentioned in the Code of Virginia.

As noted above, additional possible bonuses include incorporating a mixed-use design into the proposal, including structured parking, residential amenities, ensuring upper residential units are designed to be accessible and for locating the development near a public transit stop.

One area of concern is the proposed 50% bonus for a project that incorporates New Urbanism principles and is oriented towards college/university/medical campuses. Staff believes this bonus is much too high at 50%; rather the appropriate bonus level should be around 10-15% maximum. However, there are additional concerns about the nature of this bonus. Many of the existing bonuses already incorporate principles of New Urbanism and mixed use, and it is not appropriate to include a redundant bonus. Additionally, the bonus is overly broad and subjective. If it is desired to keep the bonus, it would be best to include specific and unique standards that should be met in order to be considered for this bonus. Staff does not have issues with attempting to orient projects towards Shenandoah University and the Medical Center; however, there should be better definitions to this standard.

If this ordinance amendment is adopted, there should not be an immediate impact on the already approved PUD rezonings and development plans approved by Council, specifically pertaining to their allowable density on site. In order to qualify for the density bonuses, City Council would need to approve a revision to the development plan and zoning overlay and evaluate the proposal on the specific merits and evaluate potential impacts of the proposal and consistency with the Comprehensive Plan.

## RECOMMENDATION

The Planning Commission may recommend approval, denial or the tabling of the amendment:

### *Possible Favorable Motion:*

**MOVE**, the Planning Commission forward **TA-15-323** recommending approval because the amendment as proposed is consistent with good planning practice and will allow for increased densities in limited situations where the development incorporates desirable qualities of new urbanism and consistency with the Comprehensive Plan.

### *Possible Unfavorable Motion:*

**MOVE**, the Planning Commission forward **TA-15-323** recommending denial because the amendment as proposed is not consistent with good planning practice and because of  
(Include any reasons for negative recommendation)

### *Possible Table Motion:*

**MOVE**, the Planning Commission table **TA-15-323**, because of  
(Include any reasons for tabling)

**AN ORDINANCE AMENDING SECTION 13-1-5 PUD OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO BONUS INCENTIVES TO INCREASE ALLOWABLE RESIDENTIAL DENSITY FOR PLANNED UNIT DEVELOPMENTS.**

TA 15-323

Draft 1 – (07/02/15)

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

**ARTICLE 13**

**PLANNED UNIT DEVELOPMENT**

**SECTION 13-1 PLANNED UNIT DEVELOPMENT DISTRICT - PUD**

13-1-5 DENSITY. The density for a Planned Unit Development may be approved for up to eighteen (18) dwelling units per gross acre, except as provided for in Sections 13-1-5.1 ~~through 13-1-5.7~~ below. In determining the density to be allowed, the following shall be considered: anticipated population density; amount and type of open space provided; impact of the proposed density on surrounding residential areas; and the adequacy of the public streets providing access to the proposed development. **Density bonuses may be granted by Council as part of the establishment of a PUD district when such bonuses are incorporated within a development agreement.** (3/11/09, Case TA-08-12, Ord. No. 2009-10; 5/10/11, Case TA-11-66, Ord. No. 2011-10)

13-1-5.1 DENSITY ADJUSTMENT BASED UPON LEED® **OR OTHER RECOGNIZED GREEN BUILDING PROGRAMS, INCLUDING, BUT NOT LIMITED TO, EARTHCRAFT FOR HOMES CERTIFICATION.**

~~Where dwelling units are certified by the standards outlined in the United States Green Building Council LEED® for Homes program~~ **meet the classification of an energy-efficient building, as provided in Section 58.1-3221.2(B) or (C) of the Code of Virginia;** and, with each dwelling unit having no more than two (2) bedrooms, the following Density Adjustment shall be applied: (3/11/09, Case TA-08-12, Ord. No. 2009-10)

| <u>Level of Certification</u> | <u>Bonus Factor</u>              |
|-------------------------------|----------------------------------|
| Certified                     | <del>.15</del> <b><u>.20</u></b> |
| Silver                        | <del>.30</del>                   |
| Gold                          | <del>.40</del>                   |

**13-1-5.2 DENSITY ADJUSTMENT BASED UPON ECONOMIC IMPACT.**

The PUD district benefits from a vibrant and economically stable mix of retail, office, and residential uses. In order to achieve this, the following Density Adjustment shall be applied:

| <u>% of total floor area of site subject to the PUD district in nonresidential use</u> | <u>Bonus Factor</u> |
|--|---------------------|
| <u>25%</u>   | <u>.15</u>          |
| <u>50%</u>   | <u>.25</u>          |

**13-1-5.3 DENSITY ADJUSTMENT BASED UPON RESIDENTIAL AMENITIES.**

Where at least 5% of the resulting residential floor area in a multifamily project is committed to common amenities, as determined by the Planning Director, a Bonus Factor of .15 shall be applied. Tenant storage space shall not constitute greater than 40% of the required 5% necessary to take advantage of the amenity bonus.

**13-1-5.4 DENSITY ADJUSTMENT BASED UPON AVAILABILITY OF OFF-STREET PARKING.**

Where off-street parking is offered in the form of an above ground or below ground structure, a Bonus Factor of .15 shall be applied

**13-1-5.5 DENSITY ADJUSTMENT BASED UPON ACCESSIBILITY.**

Where all of the upper story dwelling units in a multifamily project are accessible by passenger elevator, a Bonus Factor of .10 shall be applied, and

**13-1-5.6 DENSITY BASED UPON NEW URBANISM DESIGN PRINCIPLES WHICH IS NEAR AND/OR IS ORIENTED TOWARDS COLLEGE/UNIVERSITY/MEDICAL CAMPUSES.**

Where a multifamily project is developed using quality design principles of New Urbanism, is near and/or oriented towards college/university/medical campuses in higher density housing areas, is oriented to students and/or medical professionals and possibly includes some mixed uses, a Bonus Factor of .50 shall be applied, and

**13-1-5.7 DENSITY BASED UPON TRANSIT ORIENTED DEVELOPMENT.**

Where a multifamily project is developed in a location that is within 300 feet of a City transit stop or within 300 feet of the Green Circle Trail, a Bonus Factor of .15 shall be applied.

**13-1-5.8**

**Density Bonuses may be cumulative, however, notwithstanding what is stated in Sections 13-1-5.1 through 13-1-5.7 above, the maximum Bonus Factor which can be applied shall not exceed one hundred fifty percent (150%) of the base density allowed with a PUD overlay zoning.**

# LAWSON AND SILEK, P.L.C.

120 EXETER DRIVE, SUITE 200  
POST OFFICE BOX 2740  
WINCHESTER, VA 22604  
TELEPHONE: (540) 665-0050  
FACSIMILE: (540) 722-4051

THOMAS MOORE LAWSON • [TLAWSON@LSPLC.COM](mailto:TLAWSON@LSPLC.COM)

June 15, 2015

Timothy Youmans, Planning Director  
City of Winchester  
Rouss City Hall  
15 North Cameron Street  
Winchester, VA 22601

Re: JDC Winchester LLC -  
Ordinance Amendment Application  
Our File No. 835.001

## VIA E-MAIL

Dear Tim:

Enclosed please find a revised ordinance that incorporates the changes we discussed in our meeting of June 5. You will note I do have some more details that relate to certain sections and which have resulted in some slightly revised language. For your convenience, I have highlighted this language in yellow. My reasoning for the same is set forth below. After you have reviewed this, please let me know when you have a minute to discuss these items in greater detail.

13-1-5.1: We added bonuses for programs in addition to LEED®, including EarthCraft, because after talking this through with my client, I learned that LEED® was primarily established as a building protocol for commercial properties, and EarthCraft was developed for residential. Additionally, VHDA uses EarthCraft standards for its projects. My client has advised they have also used EarthCraft and find it to be much more satisfactory than LEED®. Probably the biggest differential between the two is that EarthCraft uses its own inspectors to come out to the site to assure compliance with their programs. In advance of that they review and approve plans. This is markedly different from LEED® where a project is certified as a result of engaging an architect or other approved professional who then submit the compliance certification on behalf of their client. I would think that going forward using the EarthCraft system with its inspection protocol for residential construction would be more appropriate than using LEED®.

13-1-5.2: In our meeting, we discussed possibly having a different bonus if buildings were delivered with differing uses within the same building. I shared with you that I have reviewed some recent designs for developments in Loudoun and Fairfax Counties and was

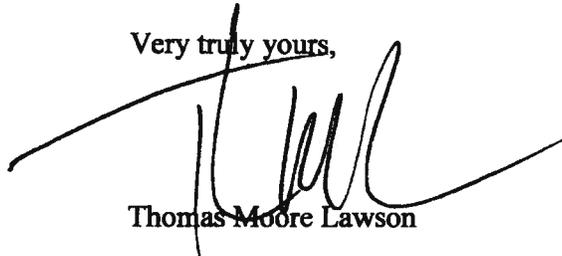
Timothy Youmans, Planning Director  
June 15, 2015  
Page 2

finding that differing uses were not being located in the same building, but rather were in separate buildings in close proximity to each other. My original thinking was that was because there were certain uses that although on paper may seem to make a great deal of sense to be located above or below one another, in practicality that is not the case (living above a restaurant, etc.). What I have also learned is that lenders are not as comfortable financing mixed-use projects in the same structure and it is for this reason primarily that more recent projects are mixed-use onsite but each building is a separate use. Accordingly, I recommend that we not have a City ordinance and incentivize a product type that is not currently encouraged from a financing perspective.

Finally, with regard to Universal Design and bonus factors for same, I shared this with my client and they advised me that Universal Design is typically a term that is used for elderly housing or aging in place housing. Further still, they advised me that what was yesterday's universal design is today's ADA requirement. Accordingly, to provide a bonus incentive for something that is in all likelihood going to be an ADA compliance requirement does not seem especially desirable for the City for the simple reason that the City will get these features anyway. My draft of the revised ordinance does not include any benefit for these.

Thank you for your assistance and cooperation. After you have reviewed this information, please give me a call to discuss.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Moore Lawson', written over a horizontal line.

Thomas Moore Lawson

TML:hes  
Enclosure  
cc: JDC Winchester LLC



June 15, 2015

Tim Youmans  
Planning Director  
City of Winchester  
Rouss City Hall  
15 North Cameron Street  
Winchester, VA 22601

Dear Mr. Youmans,

The intent of this letter is to introduce your office to the EarthCraft Multifamily Program (ECMF). ECMF is a regional green building program developed in 2004 by the Southface Energy Institute and Great Atlanta Home Builders Association. The program represents the first multifamily specific green building program in the country and is designed to address the unique building challenges present in Climate Zone 3 and 4a (mixed-humid). Since 2006, EarthCraft Virginia, a 501c3 non-profit, has been delivering the ECMF program to program participants in Virginia and Maryland in partnership with Southface Energy Institute and the Home Builders Association of Virginia. The program has 3<sup>rd</sup> party verified more than 200 projects representing 14,000 units in Virginia. The success and impact of the program and our development partners' efforts has been documented in a first of its kind study (attached) that reported an average energy savings of 40% per ECMF apartment when compared to standard new housing.

We commend the City of Winchester for promoting the use of 3<sup>rd</sup> party verified programs in their site condition requirements. Often we're asked to compare the differences of ECMF, LEED-H and/or Energy Star. As a mission based non-profit we support and provide services for all three programs, but have found the most success in meeting our mission "advancing sustainable, affordable, energy efficient construction through education and technical assistance" through the ECMF program. Should you have any questions regarding our organization, ECMF, or our 7+ year working relationship with Pinnacle Construction and Development Corporation, please do not hesitate to contact me directly - Philip.Agee@earthcraftvirginia.org.

Sincerely,

A handwritten signature in black ink, appearing to be "P Agee".

Philip Agee  
Green Building Technical Manager

A program of the Greater Atlanta Home Builders Association and Southface Energy Institute with EarthCraft Virginia and the Home Builders Association of Virginia •



# EARTH CRAFT HOUSE

## A HOLISTIC APPROACH TO GREEN BUILDING

### WHAT IS EARTH CRAFT HOUSE?

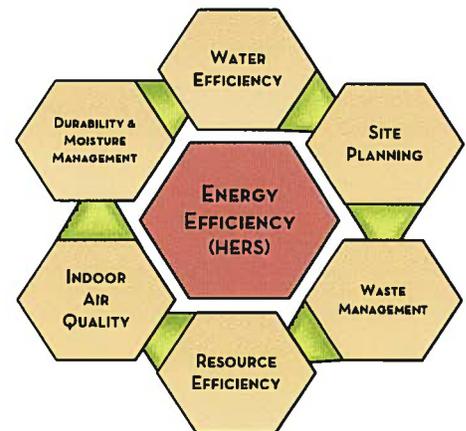
The EarthCraft House program provides a blueprint for healthy, comfortable homes that reduce utility bills and protect the environment. Comprehensive, third-party verification and diagnostic testing ensure that all EarthCraft homes are a cut above the norm. By incorporating energy and resource-efficient designs and systems, all EarthCraft certified homes demonstrate energy costs that are, on average, 30% below those of a typical new home, directly translating to monthly utility cost savings while lessening your impact on the environment.

### WHAT MAKES EARTH CRAFT HOUSE DIFFERENT?

The EarthCraft House program, developed in 1999 and recognized by the National Home Builders Association, is the premier green building program in the Southeast with over 8,000 HOMES CERTIFIED. Unlike most green building programs, EarthCraft House takes a holistic approach to certification, requiring extensive testing and verification not only around energy efficiency but also in all other areas like durability, moisture management, site planning, and more.

With energy efficiency at its heart and the utilization of integral sustainability components, the EarthCraft House program delivers a high performance home that works as a system to create a healthy, durable and affordable home for the homeowner.

### HOLISTIC APPROACH



### WHAT DOES EARTH CRAFT HOUSE MEAN FOR A BUILDER?

**Quality Assurance:** Builders who certify their homes with EarthCraft House truly understand the value of high-performance homebuilding and the associated benefits that convey to their clients, builders who incorporate the EarthCraft House program in their homes bring in the expertise, guidance and support of EarthCraft Virginia, a non-profit organization that has been developing, fine-tuning and administering the EarthCraft program in the state for close to 10 years. Through the program's required third-party testing and verification, EarthCraft builders put their homeowners first by providing them with the documentation to protect their investment.

**Builder Friendly:** The EarthCraft House program was developed by building professionals for building professionals. Builders enjoy one-on-one support from their integrated technical advisor from the design phase all the way through to project completion, minimizing paperwork and cost.

**Competitive Advantage:** While real estate markets have always been driven by consumer preferences for low-cost, attractive homes and buildings, public concern about resource use and energy efficiency now influences the old equation, and consumers are increasingly interested in eco-friendly homes and workplaces. Builders stand out in a market of green impersonators by using a tried and true program to ensure the long-term health and performance of their homes, and consumers notice the well recognized and established brand.

### WHY SHOULD EARTH CRAFT HOUSE MATTER TO A HOMEOWNER?

EarthCraft homeowners can expect more from their homes with EarthCraft – here's why.

**Peace of Mind:** In the "green age" that we live in, homeowners have to be weary of "greenwashing" and knock-off programs that promise a "green home" but have very little science or documentation to back them up\*. The only way to be sure that you are getting a high-performance, efficient, sustainable home is through third-party testing, verification and EarthCraft certification. Owning a home that was built and certified with EarthCraft House means that the house has been designed, tested and verified to ensure its energy efficiency and sustainability, giving the homeowner confidence that his or her home is built with all of the various green building techniques working together to deliver a high performance home.

**Affordable and Better for the Environment:** By incorporating energy and resource-efficient designs and systems, EarthCraft certified homes are at least 30% more efficient than standard code built homes. With lowered energy usage and utility bills often cut in half, EarthCraft homeowners feel great not only about the extra cash in their wallets but also about the minimal impact their home has on the environment.

\*See back side for details on common green certification programs

# EARTH CRAFT HOUSE AND OTHER CERTIFICATION PROGRAMS

|   | EARTH CRAFT HOUSE   | HERS* INDEX SCORE  | ENERGY STAR CERTIFIED  | ENERGY STAR PARTNER   |
|---|---|--|--|---|
| <b>OVERVIEW</b>   | Holistic rating system that addresses all aspects of the home as a system; designed specifically for homebuilding in the Southeast US | RESNET Energy Smart Program that projects a home's energy efficiency; no program requirements or design criteria | National rating system, similar to EarthCraft House but focuses on energy efficiency, not on any green features              | <b>Builder Partner:</b><br>Construct minimum of 1 new ENERGY STAR certified home/year<br><b>Small Biz Partner:</b><br>Pledge to buy ENERGY STAR equipment and upgrade energy efficiency whenever financially viable |
| <b>REQUIRES A HERS* INDEX SCORE?</b>  |    |                                 |   |   |
| <b>THIRD-PARTY VERIFIED</b>   |    |                                 |   |   |
| <b>TIERED RATING SYSTEM</b>   | <br>(Certified, Gold, Platinum)                      |  | One level of certification   |   |
| <b>INFILTRATION REQUIREMENT (ACH50*)</b>  |   |  |    |   |
| <b>SITE PLANNING</b>  |    |  | Minimal  |   |
| <b>FOCUS ON:<br/>WASTE MANAGEMENT<br/>WATER EFFICIENCY<br/>EDUCATION<br/>INNOVATION</b> |    |  |  |   |
| <b>CERTIFICATES, LABELS, LOGOS</b>  | Certificate, Home Label, HERC* for every home   | HERC* (not required for every home, often per model)   | Certificate, Home Label, HERC* for every home  | Partner sign or sticker (does not mean certified)   |
| <b>RATER(S)</b>   | Assigned an EarthCraft Technical Advisor based on specific location to become part of project team                                    | Depending on provider – could have various raters  | Depending on provider – could have various raters  |   |
| <b>MECHANICAL SYSTEMS</b>   | Right-sized heating and cooling systems with basic testing required (higher testing at higher tiers)                                  |  | Right-sized heating and cooling systems with stringent testing required and performed by credentialed ENERGY STAR contractor |   |
| <b>NOTES</b>  | Regional program so EarthCraft can be more supportive/flexible (marketing, attending events, trainings)                               | Only projects energy usage; doesn't account for durability, air quality, moisture management, etc                | Nationally known with stringent requirements and no tiered option; only focused on energy usage                              | Inappropriate use of logo is often used to mislead consumers  |

\*HERS—Home Energy Rating System

\*ACH50—Measurement of air changes/hour @ a pressure difference of 50 Pascals

\*HERC—Home Energy Report Certificate



## NEWS RELEASE

Contact: Stuart Raper, EarthCraft Virginia

[Stuart.raper@earthcraftvirginia.org](mailto:Stuart.raper@earthcraftvirginia.org)

804-212-1943

FOR IMMEDIATE RELEASE

### **New Study Finds EarthCraft Multifamily Residents Save Over \$600/Year on Electricity Bills**

**Sustainable Housing in Virginia Results in Significant Cost Savings and Environmental Impact**

Richmond, VA – February 19, 2015 – EarthCraft Virginia partnered with Housing Virginia and the Virginia Tech Center for Housing Research on a first-of-its-kind study that demonstrates the impact of energy efficient incentives in the construction of affordable rental housing. The new report, *The Impact of Energy Efficient Design and Construction on LIHTC Housing in Virginia*, was released by Housing Virginia last week. It shows that the average EarthCraft Multifamily apartment reduces monthly energy consumption by 464 kilowatt hours saving \$54/month on electricity, which amounts to annual savings of \$648 and 5,568 kilowatt hours.

The study is one of the first in the nation to evaluate unit-level electricity consumption in apartments built to exceed efficiency standards. Beginning in 2007, Virginia Housing Development Authority (VHDA) implemented a set of incentives in the Low-Income Housing Tax Credit (LIHTC) program that encouraged developers and builders to use a recognized third party standard, including EarthCraft Virginia's EarthCraft Multifamily program. This successful partnership resulted in over 196 developments representing more than 13,500 certified apartments in Virginia. With savings reported in this study at over \$600 a year on average, these EarthCraft multifamily dwellings have the potential to save residents almost \$9 million in 2015 alone.

"When VHDA made changes to its tax credit program several years ago to encourage green building construction techniques, it created a very positive effect on affordable housing developments in Virginia," said VHDA Executive Director Susan Dewey. "One of the best results from these changes is that utility bills have been significantly lowered for tenants, thereby improving their quality of life. I am pleased that this study confirms that we are on the right track."

Virginia was one of the first states to provide these types of incentives in the LIHTC program and has been recognized as a leader by Global Green USA's annual national performance ranking for green building practices in LIHTC programs scoring an "A-" and leading the Southeast in 2013's analysis. The effectiveness of energy efficiency and green building achieved by the affordable housing industry demonstrates that high performance housing is within reach for the entire industry.

Bob Adams, the Executive Director of Housing Virginia, noted, "This research definitively proves the value to residents of well-designed and administered standards for highly energy efficient construction. The impact on affordability for lower income families is substantial. Living in one of these apartments means a 10% increase in affordability for a household at 30% of area median income."



The year-long study conducted by Housing Virginia and the Virginia Tech Center for Housing Research also finds that apartments designed, built and certified with the EarthCraft Multifamily green building program, which includes third party testing and inspection, outperform standard new housing by more than 40% with respect to energy consumption and provide benefits to residents including increased comfort and improved indoor air quality. Developers benefit from third party oversight to ensure field construction meets design specifications, resulting in a building with improved durability and increased occupancy rates.

“From a lenders’, investors’ or property owners’ perspective, investing in durable materials and energy efficiency is great business, whether the utilities are being paid by the resident or the property,” said Bob Newman, President and CEO of Virginia Community Development Corporation. “The reassurance of knowing that a third party is testing and certifying the effectiveness of the energy improvements is a great benefit to the builders, owners and financiers that are taking advantage of these cutting edge technologies, materials and equipment.”

The reduced energy consumption reported in this study also translates to environmental savings; according to U.S. Department of Energy, buildings consume 41% of U.S. energy and 73% of U.S. electricity. This study documents an average monthly savings of 464 kWh per unit, which expanded to account for the 13,536 multifamily dwelling units certified to date, converts to 75 gigawatt hours saved annually. The environmental impact of these potential savings is equivalent to installing 14 wind turbines or providing energy needs for 4,742 homes (according to EPA Equivalencies Calculator).

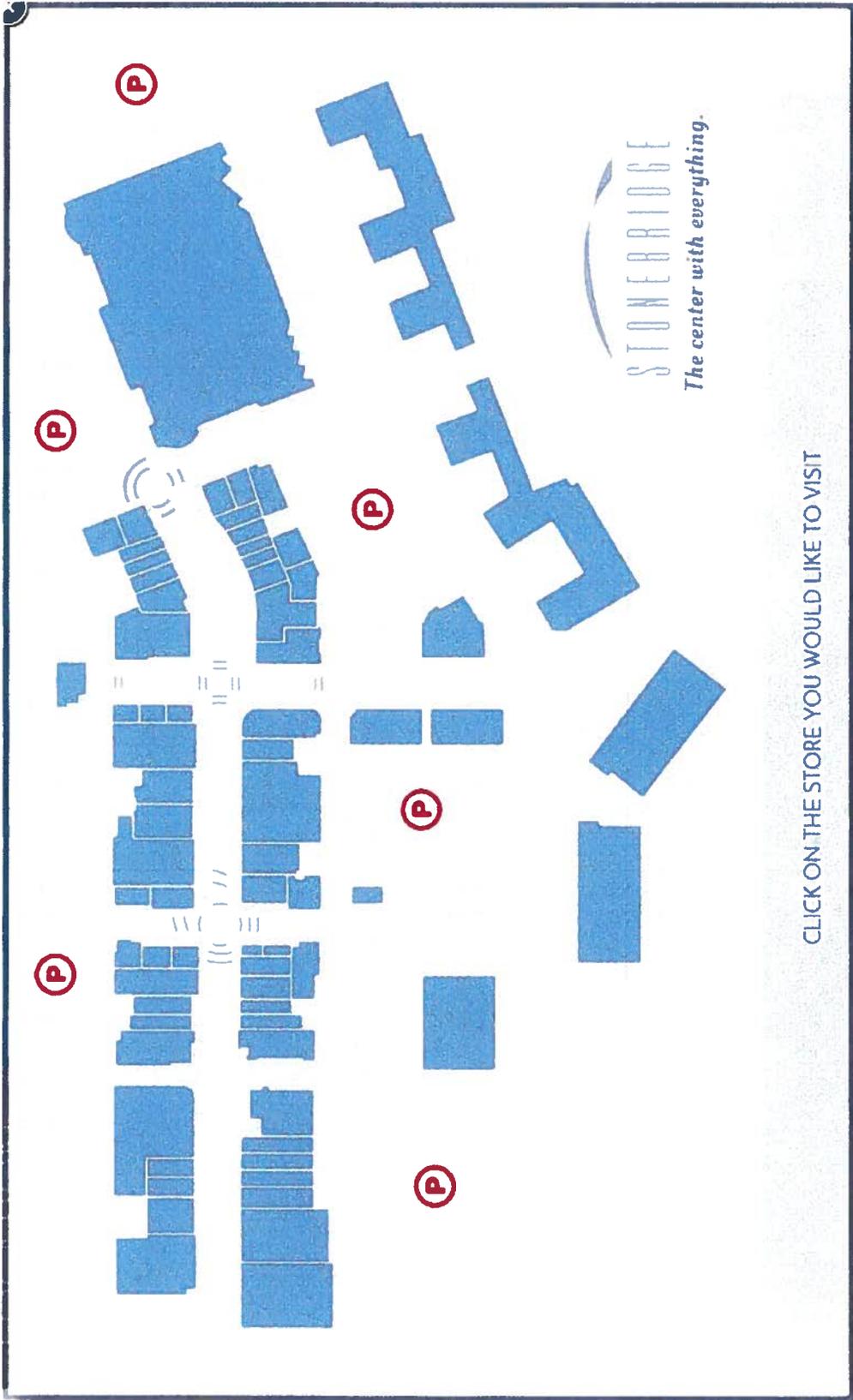
“This study demonstrates the value of green building implementation through public-private partnerships to achieve monthly utility savings for residents, maximize equity investments, and support sustainable communities,” said K.C. Bleile, Executive Director at EarthCraft Virginia. “Given these results, we can all feel confident about implementing sustainable solutions and the future of housing.”

### About EarthCraft Virginia

EarthCraft Virginia, a 501c3 non-profit, was established in 2006 in partnership with the Home Builders Association of Virginia and Southface Energy Institute with assistance from the Virginia Community Development Corporation. The EarthCraft program, originally founded in 1999 by non-profit Southface and the Greater Atlanta Home Builders Association, serves as a blueprint for energy and resource efficient homes built in the Southeast. Throughout the Southeast, the program has certified over 8,000 homes and 25,000 multifamily dwelling units (with 13,500 of these multifamily units in Virginia alone). For more information on EarthCraft or EarthCraft Virginia, please visit [www.earthcraftvirginia.org](http://www.earthcraftvirginia.org).

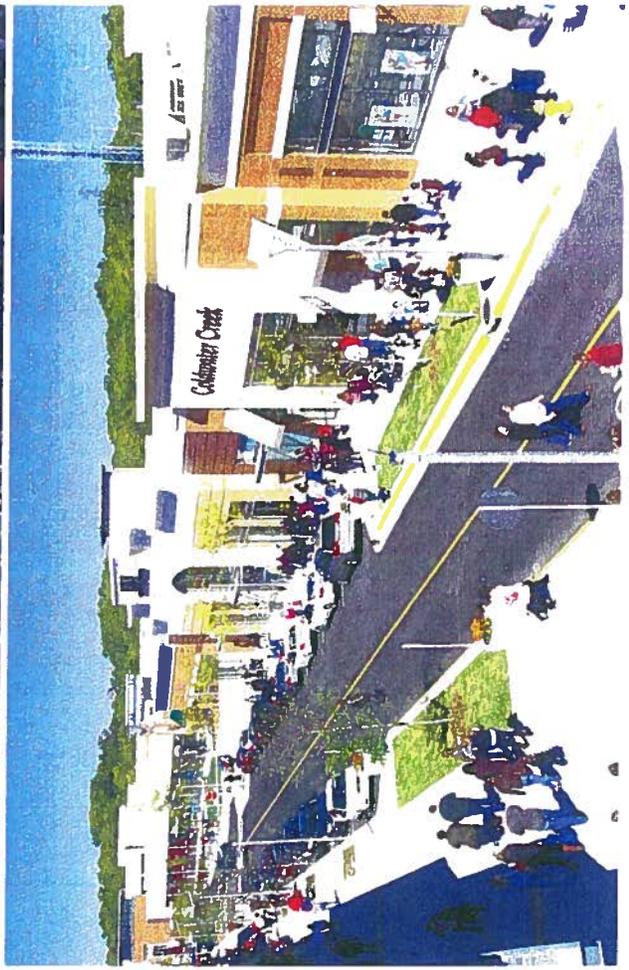
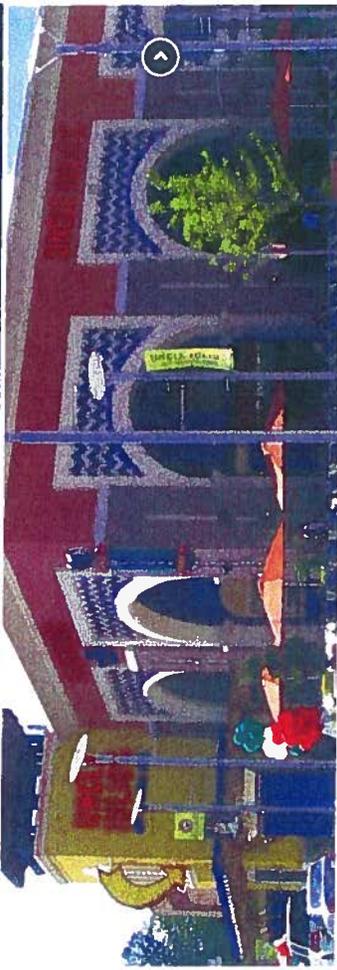
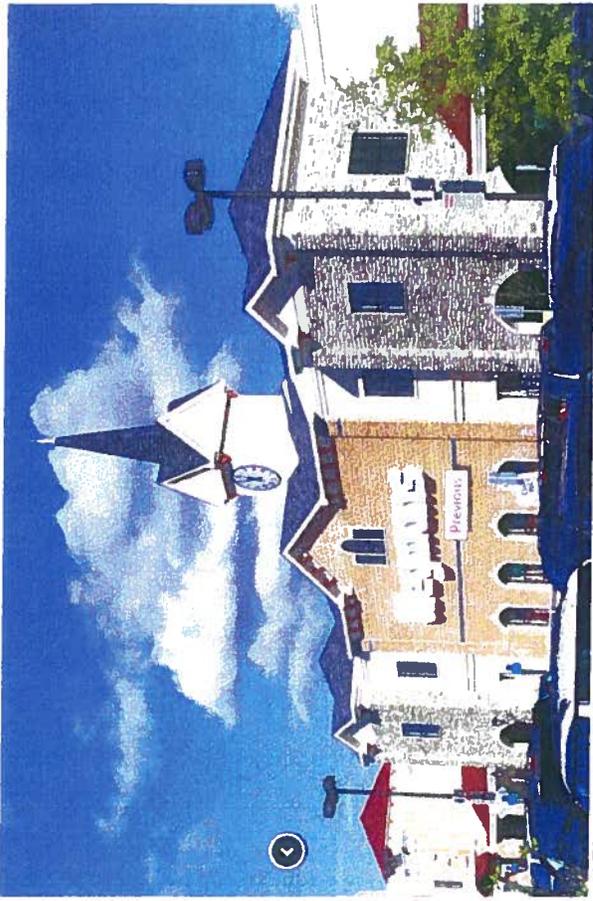
EarthCraft Virginia’s partners include Southface Energy Institute, the Home Builders Association of Virginia, Habitat for Humanity of Virginia, and Virginia Housing Development Authority.

###



CLICK ON THE STORE YOU WOULD LIKE TO VISIT





**TA-15-376** AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 17, 18, AND 21 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS; NONCONFORMING STRUCTURES; PERMIT REQUIREMENTS FOR FAMILY DAY HOMES; POWERS, PROCEDURES AND EX PARTE COMMUNICATIONS OF THE BOARD OF ZONING APPEALS; AND VIOLATIONS AND PENALTY.

---

#### REQUEST DESCRIPTION

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

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

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

#### RECOMMENDATION

As these are updates to the enabling legislation in the Code of Virginia, Staff recommends initiation.

A possible motion could read:

**MOVE** the Planning Commission initiate TA-15-376 per the attached resolution.

RESOLUTION INITIATING TA-15-376 - AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 17, 18, AND 21 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS; NONCONFORMING STRUCTURES; PERMIT REQUIREMENTS FOR FAMILY DAY HOMES; POWERS, PROCEDURES AND EX PARTE COMMUNICATIONS OF THE BOARD OF ZONING APPEALS; AND VIOLATIONS AND PENALTY.

WHEREAS, during the 2015 Legislative Session, the Virginia General Assembly passed several updates to the Code of Virginia with impacts on local land use ordinances; and,

WHEREAS, the proposed Zoning Ordinance amendment will incorporate the adopted changes within the enabling legislation pertaining to Boards of Zoning Appeals and Family Day Homes; and,

WHEREAS, it is the interest of the City to ensure that the Zoning Ordinance is consistent with any updates to the Code of Virginia by the General Assembly;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby initiates the following text amendment:

**AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 17, 18, AND 21 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS; NONCONFORMING STRUCTURES; PERMIT REQUIREMENTS FOR FAMILY DAY HOMES; POWERS, PROCEDURES AND EX PARTE COMMUNICATIONS OF THE BOARD OF ZONING APPEALS; AND VIOLATIONS AND PENALTY.**

TA 15-376

Draft 1 – (07/02/15)

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

## **ARTICLE 1**

### **DEFINITIONS**

**1-2-94.2** **VARIANCE: A reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided**

**such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**

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

## ARTICLE 17

### NONCONFORMITIES

#### SECTION 17-2 NONCONFORMING STRUCTURES

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

- A. Any lawfully constructed structure which existed at the time of this Ordinance or any amendments thereto may continue in its legally nonconforming status so long as the structure does not violate other legal provisions and otherwise complies with the provisions of this Article.
- B. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.
- C. A nonconforming structure may be used for any use allowed in the underlying zoning district, subject to all applicable use standards.
- D. ~~If a variance is approved from otherwise applicable zoning district dimensional standards, the subject structure still shall be deemed nonconforming.~~ **Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.**

## ARTICLE 18

### GENERAL PROVISIONS

**SECTION 18-19. HOME OCCUPATIONS.**

18-19-3 The operation of a family day home may occur as an accessory and subordinate use to a residence provided the following:

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

- D. A family day home where the children in care are all ~~grandchildren of the provider~~ **related to the provider by blood or marriage** shall not be required to be licensed or obligated to obtain a Certificate of Home Occupation.

## ARTICLE 20

### BOARD OF ZONING APPEALS

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

- 20-2-1 The Board of Zoning Appeals shall have the following powers and duties:
- 20-2-2 To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this Article or of any ordinance pursuant thereto. **The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this Article.**
- 20-2-3 To authorize **grant** upon appeal **or original application** in specific cases such a variance from the terms of the ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the Ordinance shall be observed and substantial justice done, as follows: **the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance, provided below:**
- 20-2-3.1 ~~When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the~~

applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance.

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

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

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

20-2-3.2 ~~No such variance shall be authorized by the Board unless it finds:~~**Repealed.**

- ~~a. That the strict application of this Ordinance would produce a clearly demonstrable hardship. (9/13/05, Case TA-05-03, Ord. No. 026-2005)~~
- ~~b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.~~
- ~~c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.~~

20-2-3.3 Repealed. (10/13/92, Case TA-92-02, Ord. No. 016-92)

20-2-3.4 ~~No variance shall be authorized unless the Board finds that the condition or situation of the property is not of so general or recurring a nature as to make~~

~~reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance. **Repealed.**~~

- 20-2-3.5 In ~~authorizing~~**granting** a variance the Board may impose such conditions regarding the location, character, and other features of the proposed structure ~~for~~**or** use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
- 20-2-4 To hear and decide appeals from the decision of the Zoning Administrator **after notice and hearing as provided in this Article.** (10/13/92, Case TA-92-02, Ord. No. 016-92)
- 20-2-5 Repealed. (9/13/05, Case TA-05-03-05, Ord. No. 026-2005)
- 20-2-6 To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, **and after public hearing with notice,** the Board ~~shall~~ **may** interpret the map **in such way as to carry out the intent and purpose of the ordinance for** ~~in~~ the particular section or district in question. The Board shall not have the power to change substantially the locations of district boundaries as established by the Ordinance. (3/15/88, Case TA-87-17, Ord. No. 014-88; 10/13/92, Case TA-92-02, Ord. No. 016-92)
- 20-2-7** **No provisions of this Article shall be construed as granting the board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.**

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

- 20-3-1 An application or appeal to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the locality affected by any decision of the Administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this Ordinance, or any modification of zoning requirements pursuant to §15.2-2286 of the Code of Virginia, as amended. Notwithstanding any charter provision to the contrary **and violations provided in Section 20-2-3,** any written notice of a zoning violation or a written order of the Administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with §15.2-2311 of the Code of Virginia, as

amended, and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given. A written notice of a zoning violation or a written order of the Administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section. The application or appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator, and with the Board, a notice of appeal specifying the grounds thereof.

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

20-3-2

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

- a. An appeal period of ten (10) days shall be provided for violations of this Ordinance pertaining to maximum occupancy of residential dwellings.
- b. **Any violation of Sections 18-8-12.1 through 18-8-12.3, pertaining to temporary signs.**
- c. **Any violation of Sections 18-9-5 through 18-9-5.4, pertaining to yard sales.**
- d. **Any violation of Section 18-12, pertaining to visual obstructions.**
- e. **Any violation of Section 18-17, pertaining to mobile storage units and temporary events.**

**20-4                    EX PARTE COMMUNICATIONS**

**20-4-1**                    **The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.**

**20-4-2**                    **Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314 of the Code of Virginia, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704 of the Code of Virginia. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.**

**20-4-3**                    **For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542 of the Code of Virginia. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.**

**ARTICLE 21**

**VIOLATION AND PENALTY**

**21-2-2**                    **The appeal period for violations of this Ordinance pertaining to the following uses shall be ten (10) days, pursuant to §15.2-2286 (12/10/13, Case TA-13-138, Ord. No. 2013-14):**

- a.**                    **Any violation of Sections 18-8-12.1 through 18-8-12.3, pertaining to temporary signs.**
- b.**                    **Any violation of Sections 18-9-5 through 18-9-5.4, pertaining to yard sales.**

- c. ~~Any violation of Section 18-12, pertaining to visual obstructions.~~
- d. ~~Any violation of Section 18-17, pertaining to mobile storage units and temporary events.~~