THE COMMON COUNCIL

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I, Kerri A. Mellott, Deputy Clerk of the Common Council, hereby certify on this 25 day of January 2024 that the following Ordinance is a true and exact copy of one and the same adopted by the Common Council of the City of Winchester, assembled in regular session on the 23 day of January 2024.

TA-23-704 ZONING ORDINANCE AMENDMENT AN ORDINANCE TO AMEND 1-2-58.1, 1-2-69, 1-2-95.1, 17-1, 17-3-1, 17-6, 18-5, 18-6-1.6, 18-6-2.3, 18-6-2.5, 18-8-2, 18-8-5(C)(2), 18-9-3.2, 18-10-1, 18-10-2.1 AND 18-12-1; AND ENACT SECTIONS 1-2-96.1, 1-2-96.2, 18-5-2(D) AND (E), 18-6-2.3.1, 18-6-2.5.1, 18-6-3.5.1(D), 18-8-5(B)(9), 18-9-3.2.1, 21-3(A)(7.1), (9.1) AND (10.1), AND 23-3(G); AND TO REPEAL SECTIONS 18-5-3, 18-6-2.5.A, AND 18-28 OF THE CITY OF WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS, NONCONFORMITIES, STORAGE OF RECREATIONAL VEHICLES, PARKING STANDARDS, SIGNS, FENCES, AND ACCESSORY STRUCTURES

WHEREAS, as provided in § 15.2-2283 of the Code of Virginia, it is in the interest of the City to promote the health, safety and welfare of the community and furthermore protect and promote a convenient, attractive and harmonious community; and

WHEREAS, the City of Winchester has an adopted Zoning Ordinance; and,

WHEREAS, Zoning Ordinances should be reviewed periodically to ensure the regulations are reflective of good planning practice and generally align with and/or promote the goals of the City as identified in the adopted Comprehensive Plan; and

WHEREAS, Zoning Staff of the City of Winchester has identified specific sections of the Zoning Ordinance that should be amended to reflect good planning practice, promote the goals of the Comprehensive Plan, and to correct clerical errors; and

WHEREAS, pursuant to Section 22-1-1 of the Zoning Ordinance the Ordinance amendment was initiated by Resolution of Planning Commission on September 19, 2023, and after a duly-noticed public hearing was held, recommended approval of the Ordinance on October 17, 2023; and

WHEREAS, a duly-noticed public hearing was held by the City Council on January 23, 2024.

NOW, THEREFORE BE IT ORDAINED that the Common Council of the City of Winchester, Virginia hereby adopts this Ordinance to:

1. Amend sections 1-2-58.1, 1-2-69, 1-2-95.1, 17-1, 17-3-1, 17-6, 18-5, 18-6-1.6, 18-6-2.3, 18-6-2.5, 18-8-2, 18-8-5(C)(2), 18-9-3.2, 18-10-1, 18-10-2.1 and 18-12-1;

2. Enact sections 1-2-96.1, 1-2-96.2, 18-5-2(d) and (e), 18-6-2.3.1, 18-6-2.5.1, 18-6-3.5.1(d), 18-8-5(B)(9), 18-9-3.2.1, 21-3(A)(7.1), (9.1) and (10.1), and 23-3(g); and

3. Repeal sections 18-5-3, 18-6-2.5.a, and 18-28 of the City of Winchester Zoning Ordinance as follows:

1-2-58.1 *Lot, Double-Frontage*: A lot with two street frontages wherein the two streets do not intersect. Each street frontage shall serve as a front yard. The primary front yard shall be determined to be the front yard in which the building entrance is oriented or the Zoning Administrator determines functionally serves as the principal frontage. A non-primary front yard shall be the front yard opposite the primary front yard between the closest point or plane of the main building (excluding steps) and the non-primary front yard lot line, and extending across the full width of the lot, parallel or concentric to the street line.

1-2-69 *Nonconforming Use (Activity):* The otherwise legal use of a building, structure, or of a tract of land that does not conform to the use regulations of this Ordinance for the district(s) in which it is located and has not been discontinued for more than two years.

1-2-95.1 *Yard, Corner Side*: A yard between the corner side lot line (as defined for Corner Lots) and the closest point or plane of the main building (excluding steps) and extending from the front yard to the rear lot line. For multi-corner lots with two front yards, the corner side yard shall extend between the two front yards.

1-2-96.1 *Yard, Non-Required Corner Side*: A yard between the corner side yard requirement (as defined for Corner Lots) and the closest point or plane of the main building (excluding steps) and extending from the front yard to the rear lot line. For multi-corner lots with two front yards, the non-required corner side yard shall extend between the two front yards.

1-2-96.2 *Yard, Non-Required Front*: A yard between the closest plane or point of the building (excluding steps) and the required set back line from the front property line, and extending across the full width of the lot, parallel or concentric to the required set back line.

Sec. 17-1. - Nonconforming categories and definitions.

Three categories of nonconformities are covered within this Article:

17-1-1 *Nonconforming use:* refer to Sec. 1-2-69.

17-1-2 *Nonconforming structure:* refer to Sec. 1-2-71.

17-1-3 *Nonconforming lot:* refer to 1-2-70.

The following term is hereby defined as follows:

17-1-4 *Discontinued:* The intentional or unintentional absence, cessation, or termination of any activities that are associated with a nonconforming use.

17-3-1 A nonconforming use shall not (i) be expanded, enlarged, or extended beyond the size as it existed at the time that such use became nonconforming, or (ii) materially changed in character or intensity. Notwithstanding the foregoing, a nonconforming use may decrease in intensity, subject to the provisions of Section 17-3-2 below. When any use is regulated by this chapter in a quantifiable manner, including but not limited to limitations on the number of unrelated occupants permitted in a dwelling unit, limitations on the density of dwelling units, or measurement of the square footage of a use to determine parking requirements, any quantifiable increase shall constitute a prohibited material change in character or intensity.

Sec. 17-6. - Expansion of nonconforming structures.

This section is designed to allow for preservation, adaptability, and a continued use of nonconforming in the City of Winchester. Expansion of a nonconforming structure is allowed only so long as the portion of the then-existing footprint that is in conflict with setback or yard requirements is not expanded so as to increase the nonconformity. These regulations are designed to allow for expansions outside the setback or yard requirements and to allow for vertical expansions inside of setback or yard requirements provided that the supporting footprint is not increased. This section shall only apply to and allow for expansions of nonconforming structures that are used solely for conforming uses.

17-6-1 A structure which is nonconforming solely due to its failure to meet existing setback or yard requirements in this Ordinance may be structurally modified or added to in such a way so as to expand horizontally the footprint of the nonconforming structure outside of the setback or yard requirements. Such expansion shall be allowed only if it complies with all other provisions of the zoning ordinance.

17-6-2 Existing unfinished interior space in a nonconforming structure may be finished provided that such work does not further expand the footprint of the existing nonconforming structure.

17-6-3 A nonconforming structure may be expanded vertically only if the existing portion of the structure's footprint, in conflict with setback or yard requirements, is not expanded to occupy a greater area of the setback or yard requirements than was occupied at the time the structure became nonconforming. A vertical expansion over an existing footprint must conform to all other provisions of this Ordinance. The vertical expansion that takes place in conflict with the setback or yard requirements shall be confined to two stories in height and no higher than 35 feet from grade.

17-6-4 Renovations or additions that take place inside the current setback or yard requirements must not exceed fifty (50) percent the present assessed value of the property in any one-year period. Renovations or additions that take place outside of the setback or yard requirements are not bound by any assessed value cap. Square footage of nonconforming areas may be pro-rated to determine the value of construction materials used for any renovations or additions that occur inside the setback or yard requirements. Renovations or additions that exceed 50 percent of the present assessed value, as described in this section, shall require the approval of a conditional use permit by City Council prior to the work commencing.

17-6-5 An architectural overhang of thirty (30) inches outside of the underlying building footprint shall be allowed to provide for functional drainage and aesthetics. Any existing nonconforming architectural overhang in excess of thirty (30) inches from the underlying nonconforming building footprint may be replaced so long as the projection is not increased to an extent that is greater than the existing nonconformity. An architectural overhang, as described in this section, may project over property lines. An architectural overhang may project into the public right of way in accordance with the regulations found under Section 18-18 of the zoning ordinance.

17-6-6 An existing carport that is nonconforming to setback or yard requirements but devoted to a conforming use may be enclosed, provided that such addition does not compound the existing dimensional nonconformity and is used solely for the creation of garage space. If enclosing the carport creates a public safety problem or additional habitable space, such enclosure shall not be allowed. New concrete footers and floors may be poured so long as the footers are not dimensionally enlarged to occupy a greater volume than was present at the time that the carport became nonconforming.

Sec. 18-5. Use and storage of recreational ~~equipment~~ vehicles.

18-5-1 No ~~major~~ recreational vehicle (RV), as defined in Sec. 1-2-77, shall be used for living, sleeping, or other occupancy when parked and/or stored on ~~a residential lot, or in any other location not approved for such use~~ any property within the City.

18-5-2 Recreational vehicles owned, leased, or otherwise kept by owners and/or occupants of a property may be parked and/or stored on private property , provided that the property has an approved residential use, in accordance with the following requirements:

a. For Single-Family Detached and Two-Family Dwellings, recreational vehicles exceeding an average height of eighty-four inches (84") shall be parked on an improved surface behind the front and corner-side yard lines of the main building and shall not exceed two recreational vehicles per dwelling. Recreational vehicles that do not exceed an average height of eighty-four inches (84") may be parked in a required front or corner-side yard, in accordance with the provisions of Section 18-6-3.5.

b. Recreational vehicles that exceed an average height of eighty-four inches (84”) may be parked on an improved surface within the front or corner-side yard of the main

building for a period not exceeding 48 hours within a 30 continuous day period for maintenance, loading, and unloading purposes, provided that such recreational vehicles shall:

(i) Be licensed for the current year; and

(ii) Conform to the regulations found in sections 18-12 regarding visual obstruction.

The 30-day period shall begin once the recreational vehicle is parked on the property and continues until the 30-day period ends or the max of 48 hours has been reached.

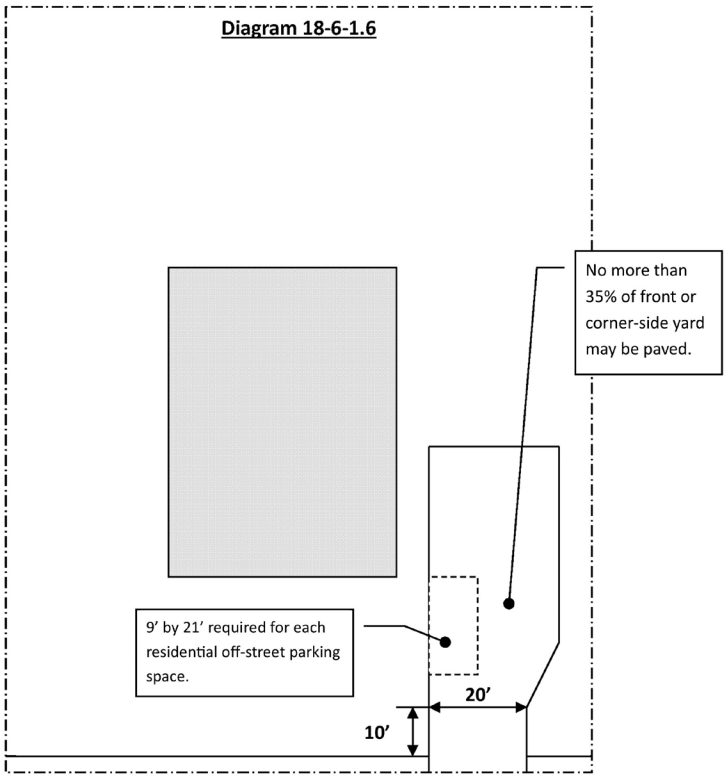
c. For Townhouse developments and Multiple-Family Dwellings, recreational vehicles shall be parked on an improved surface behind the front and corner-side yard setback lines and within a clearly designated area noted on the site plan as approved by the Director of Planning. The maximum number of recreational vehicles per dwelling unit shall be equivalent to no more than one such vehicle per five dwelling units. When there are less than five (5) dwelling units, the total number of recreational vehicles permitted on the property shall not exceed one.

d. Recreational vehicles that are openly stored on the property shall conform to the regulations found within Section 18-6-10, regarding storage of inoperable vehicles.

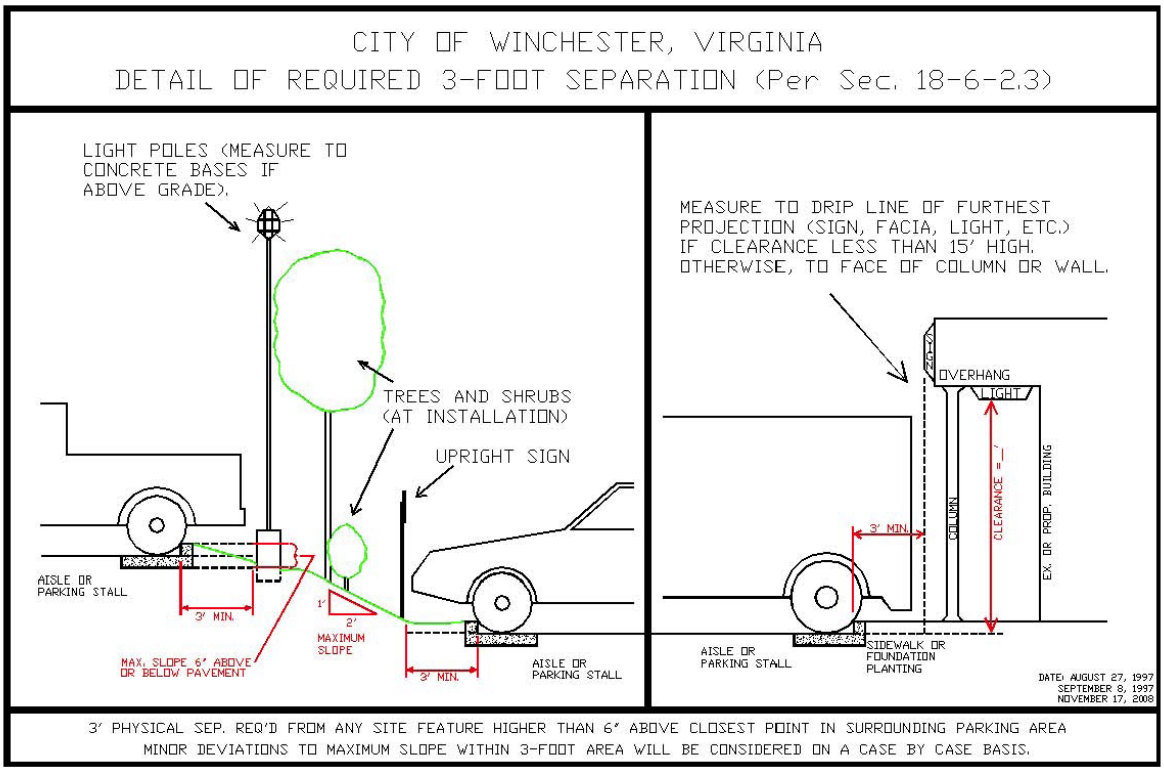
e. This section shall not apply to commercial sales of recreational vehicles or service repair shops where an RV is awaiting repair. The commercial storage and sale of recreational vehicles shall adhere to the provisions within sections 18-20.

~~18-5-3 Recreational equipment consisting of tents, shelters, lean-to's, or similar accessory structures shall not be used for permanent or transient occupancy on any residential property, or in any other location not approved for such use.~~ RESERVED.

18-6-1.6 Off-street parking for single-family detached dwellings shall be exempt from all provisions of this Article except for Sections 18-6-3.5 and 18-6-5. Required off-street parking spaces for single-family detached dwellings shall be at least nine (9) feet wide and twenty-one (21) feet in length. Driveways in front and corner-side yards of lots improved with single family detached dwellings shall not exceed twenty (20) feet in width for the first ten (10) feet adjacent to the front lot line and shall not encumber more than thirty-five (35) percent of said yard, except that any lot improved with a single-family detached dwelling may, at a minimum, provide a nine (9)foot wide by twenty-one (21) foot long off-street parking area in said yard unless otherwise approved by a PUD or conditional zoning. *See diagram 18-6-1.6.*



18-6-2.3 *Off-Street Parking Area.* An area of land other than within a public right-of-way required or provided to accommodate parking spaces, standing spaces, vehicular display or storage spaces, loading spaces, and necessary access drives, aisles and islands which are wholly segregated from any other portion of the site by continuous curbing except for ingress or egress connections, loading bays, areas where a sidewalk provides a sufficient raised edge, or places providing required handicap access. A separation of at least three feet from any site feature more than six inches above or below the elevation of the closest point in the parking area shall be provided, except as provided for in sections 18-6-2.3.1 and 18-6-2.5. The Director of Planning may permit a reduction of up to two feet in the paved length of required spaces, where such spaces are adjacent to a planting island or other physical separation, excluding accessible routes (main building ingress/egress areas and sidewalks), that permits the overhanging of vehicles parked in such spaces. Parking areas may be surface lots or within structures. Curbing and separation standards herein may be waived by the Director of Planning when it can be demonstrated that the waiver(s) will not encourage undesirable nor unsafe vehicle encroachment. Portions of structures allocated to parking shall not be subject to the provisions of Section 18-6-4.



18-6-2.3.1 *Use of bollards generally*. Where the minimum three-foot separation as required in Section 18-6-2.3 cannot be satisfied, but separation is not otherwise required by the Uniform Statewide Building Code, bollards may be used based on the following criteria:

a. Constructed of steel not less than four (4) inches in diameter;

b. Spaced not more than four (4) feet between posts on center;

c. Set no less than three (3) feet deep in a concrete footing of not less than fifteen (15) inches diameter;

d. Set with the top of the posts not less than three (3) feet above finished grade; and

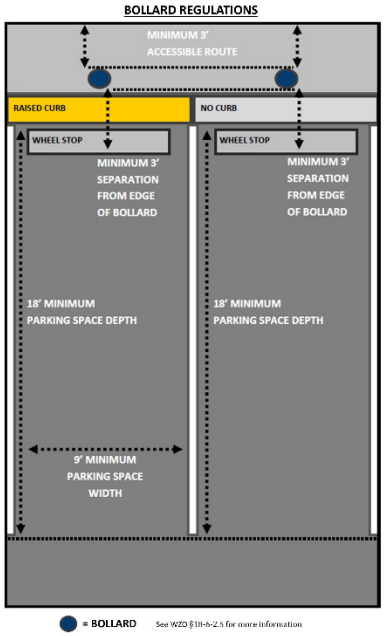
e. Located no less than three (3) feet from any protected object.

18-6-2.5 *Main Building Ingress/Egress Area*. The space lying between a main building and immediately adjacent perpendicular parking areas, used primarily for pedestrian access from parking areas to building access point(s) and which is less than eighteen (18) feet wide and is defined by curbing that is a minimum of six-inches above immediately adjacent parking surface grade. The ingress/egress areas may also contain outdoor seating and/or display of materials and supplies for sale which do not obstruct pedestrian access.

RESERVED.

18-6-2.5.1 *Use of bollards in lieu of curbing for main building ingress/egress areas*. Bollards may be used in lieu of curbing for delineating and separating parking and ingress/egress areas provided the following:

a. The ingress/egress area surface shall be a distinctly different color than the parking surface set along the edge of the parking area at a minimum width of 60 inches; and,
b. Bollards shall be placed at the head of each parking space using any one of the design standards shown in the diagram below



18-6-3.5.1 *Residential Off-Street Parking Area Requirements.* In addition to those provisions outlined in Section 18-6-3.5, the following shall apply to off-street parking areas within residential properties:

d. For properties and sites containing multifamily and townhouse dwelling residential uses with three (3) or more bedrooms, an attached or detached garage bay may be counted as one (1) required off-street parking space if:

(i) The garage bay provides an unobstructed parking surface at a minimum of eleven (11) feet wide by twenty-one (21) feet in length (depth);

(ii) The garage be on the same property or site as the dwelling it serves; The detached garage is not a parking facility owned and/or maintained by the City of Winchester or other City-appointed entity; and

(iii) At least one (1) additional parking space that meets off-street parking site plan standards is provided either on-site on the same property or on-site in a shared off-street parking area.

18-8-2 *Definitions.*

Mural means a sign that is hand produced or machine graphic applied or affixed to the exterior of a building wall or to any other structure through the application of paint, canvas, tile, metals panels, or other mediums generally so that the wall and/or structure becomes the background surface or platform for the graphic, generally for the purpose of decoration, artistic expression, and/or commercial messaging. Murals that do not display, allude to, or refer to commercial messaging, will not be counted towards signage allocations.

18-8-5 *Prohibited signs*.

In addition to signs prohibited elsewhere in this Code or by applicable state or federal law, the following signs are prohibited:

B. *Prohibitions based on materials.*

9) Temporary signs, as defined, being used or intended to be used as a permanent sign.

C. *Prohibitions based on location.*

2) Signs erected on public land other than those placed or installed by an authorized City official for an official governmental or public purpose, required by law without such approval, or permitted under Virginia Code § 24.2-310 E. Any sign not so authorized is subject to immediate removal and disposal by any authorized City official. Removal of the sign under this provision does not preclude prosecution of the person responsible for the sign.

18-9-3.2 Fences shall be subject to the following requirements pertaining to height, opacity, minimum setback, and special provisions~~, except as per Section 18-12 of this Ordinance~~.

Yard Type	Maximum Height	Opacity	Setback	Special Provisions

Front Yard	Four feet	Minimum 25% open (e.g., picket, chain link, rail, etc.)	None	Sections 18-9-3.3, 18-9-3.4, and 18-12-1 apply.
Non-Required Front Yard (See Sec. 1-2-96.2)	Five feet	100% solid permitted, if installed perpendicular to front property line.	None	Section 18-9-3.3 applies.
Non-Primary Front Yard (See Sec.~~ion~~ 1-2-58.1)	Six feet	100% solid permitted	Minimum 3 feet, plus 1 foot for each additional foot of fence height above 3 feet	Sections 18-9-3.3, 18-9-3.4, 18-9-3.2.1, and 18-12-1 apply.
Side Yard	Eight feet	100% solid permitted	None	Section 18-9-3.3 applies.
Corner Side Yard	Four feet	100% Solid permitted	None	Sections 18-9-3.3 ~~and~~, 18-9-3.4, 18-9-3.2.1, and 18-12-1 apply.
Non-Required Corner Side Yard (See Sec. 1-2-96.1)	Five feet	100% solid permitted	None	Section 18-9-3.3 applies.
Rear Yard	Eight feet	100% solid permitted	None	Section 18-9-3.3 applies.

18-9-3.2.1 Fences in a non-primary front yard or corner side yard, may have a zero-foot setback from the corresponding property line, provided that the fence is no greater than four-feet (4') in height and has a minimum of 25% openness (e.g., picket, chain link, rail, etc.).

18-10-1 In all districts, accessory buildings or structures shall not be located in a front, ~~or~~ side, or corner side yard, unless specifically provided for elsewhere by the provisions of this Ordinance.

18-10-2.1 Exceptions to the permitted building height of accessory structures located within the required side and/or rear yard areas shall only apply to residential properties improved with single-family detached dwelling units which were constructed seventy-five (75) years ago or prior thereto, and are located within the Winchester Historic Overlay District, as defined in Section 14-1 of this Ordinance. In these cases, appropriate building heights for accessory structures shall be determines by the Board of Architectural Review through the Certificate of Appropriateness process outlined in this Ordinance. The Zoning Administrator may allow heights of accessory structures to extend to maximum height of 18 feet when the following findings can be made in writing:

a. The additional height is necessary to allow architectural integrity and harmony between the accessory structure and the principle structure, as determined by the Board of Architectural Review;

b. An Accessory Structure height of 18 feet will not result in adverse conditions to adjoining properties nor will it prove injurious to public health or safety; and

c. All other requirements of the Zoning Ordinance and the Uniform Statewide Building Code have and will be met.

18-12-1 On a corner lot in any district other than the Central Business District, B-1, no obstructions between 2½ feet and eight feet above the street grade level shall be maintained in the area bounded by the curb line, or edge of pavement, where there are no curbs, adjacent to such corner lots, and a line joining points along said lines 25 feet from the point of intersection. This section shall not apply to tree trunks (not including foliage or branches), light poles, utility poles, or sign poles.

- RESERVED.

Sec. 21-3 - Civil penalties.

A. Any violation of the following provisions of this Ordinance shall be subject to a civil penalty of $200.00 for the first violation, and a civil penalty of $500.00 for each subsequent violation arising out of the same set of operative facts. Any person, firm, or corporation, whether as principal, agent, employed, or otherwise who receives more than three civil penalties of the same nature but with different operative facts, the violation may be criminally prosecuted under Section 21-2 of this Ordinance.

7.1) Any violation of Section 18-10.1 pertaining to solar energy systems.

9.1) Any violation of Section 18-17.1 pertaining to vertical farming uses in industrialized containers.

10.1) Any violation of Section 18-29 pertaining to the regulations for homeshares and short-term rentals.

Sec. 23-3. - Administrative approval of modification of development standards.

Upon application by the property owner, the Administrator may grant a modification to reduce the following development standards to the extent listed for each of the standards:

g. Permit trash and recycling receptacles and required enclosures in front, side, and/or corner-side yards due to irregularly shaped properties, size-constricted properties, or a site nonconformity that precludes the reasonable and practical placement and access of said enclosures elsewhere on the property, provided the following:

1. The height of the enclosure shall be no greater than one-foot above the receptacle height, up to a maximum height of eight-feet;

2. The enclosure material(s) shall consist of, or a combination of, decorative masonry stone, brick, decorative metal panels (excluding panels with openings), wood and/or engineered wood, or other architectural opaque product. In no case, shall said enclosure materials consist of chain-link fencing or vinyl; and

3. The enclosure be setback no less than ten-feet (10') from any front or corner-side property line and complies with Section 18-9-2.6 of this Ordinance.

Ordinance No. O-2023-35

ADOPTED by the Common Council of the City of Winchester on this 23 day of January 2024.

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



Kerri A. Mellott
Deputy Clerk of the Common Council