

**TOWN OF LEESBURG
NOTICE OF PUBLIC HEARING**

**TO CONSIDER AN APPLICATION TO VACATE AND DISCONTINUE APPROXIMATELY
1,120 SQ. FT. OF PUBLIC RIGHT OF WAY LOCATED AT HARRISON STREET, S.E.
BETWEEN ROYAL STREET AND SOUTH STREET**

The **LEESBURG TOWN COUNCIL** will hold a public hearing on **TUESDAY, JUNE 10, 2014, at 7:30 p.m.**, in the Council Chambers at Town Hall, 25 W. Market Street, Leesburg, Virginia, 20176, to consider an application to vacate and discontinue a portion of surplus public right- of-way, to wit: approximately 1,120 sq. ft. on the east side of Harrison Street, S.E., between Royal Street and South Street, pursuant to Code of Virginia of 1950, as amended, Section 15.2-2006 et seq. The application to vacate will be proposed to the Town Council by Gordon K. MacDowell, owner of 204 South St., S.E., which property is adjacent to the proposed surplus public right of way.

Copies of the proposed Ordinance of Vacation and associated Plat are available from the Town Clerk, located in Town Hall. Additional information regarding this proposed Ordinance is available in the Executive Department, located on the first floor of the Leesburg Town Hall, 25 West Market Street, Leesburg, Virginia, during normal business hours (Monday-Friday 8:30 a.m. to 5:00 p.m.), or by calling Lee Ann Green, Town Clerk, at 703-771-2733.

At this hearing, all persons desiring to express their views concerning this matter will be heard. Persons requiring special accommodations should contact the Clerk of Council at 703-771-2733, three days in advance of the meeting. For TTY/TDD service, use the Virginia Relay Center by dialing 711.

5/29/14, 6/5/14



Date of Council Meeting: June 10, 2014

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Application for Vacation of Public Right-of-Way (“ROW”) pursuant to Code of Virginia of 1950, as amended, sections 15.2-2006 through 15.2-2008.

Staff Contact: Barbara Notar, Deputy Town Attorney
Tom Mason, Director of Public Works

Recommendation: The Town Council should enact an Ordinance of Vacation authorizing the vacation and discontinuance of a portion of Harrison St., S.E., and convey the same to the abutting property owner (“applicant”) so long as several conditions are met by the applicant as outlined below.

Issue: Should the Town Council grant an application filed with the Town by the applicant and enact an Ordinance of Vacation vacating the ROW for eventual conveyance to the applicant so long as several conditions are met?

Fiscal Impact: The vacation and sale of the public right of way will have a positive fiscal impact on the Town budget. Code of Virginia, §15.2-2008 allows the town council to condition the vacation upon a purchase price paid by the applicant. Under this section, the purchase price “shall be no more than the fair market value or the contributory value to the abutting property, whichever is greater, or the amount agreed to by the parties”. Both the Town and the applicant have independently appraised the fair market value of the right-of-way to be vacated. At the time of this agenda memo, the parties have not yet agreed upon a purchase price. The cost of the public hearing advertisements, property survey and preparation of the plat to be used for the vacation and conveyance of the ROW will be paid by the applicant.

Background: Sometime in 2012, the applicant expanded an indoor restaurant/pub use from 202 Harrison Street onto two separate adjacent parcels to the south, one of which he owned (204 South Street) and the other belonging to the Town of Leesburg (the “ROW” which is approximately 1,120 square feet adjacent to Harrison Street). No zoning permit was obtained for the expanded use and on June 26, 2013, the Town notified the applicant that the residentially-zoned land at 204 South Street could not be used for the commercial outdoor restaurant/pub seating. The zoning violation noted not only that a commercial use is not permitted at 204 South Street because of the RHD (Residential – Historic District) zoning but also that structures erected on the site had not received the required Certificate of Appropriateness for development in the H-1 Old and Historic District. Furthermore, the applicant was informed that he could not use the ROW for private commercial use.

In order to cure the deficiencies, the applicant filed for a rezoning. The rezoning public hearing is currently scheduled for the June 19th Planning Commission Meeting. He also entered into a Memorandum of Understanding (“MOU”) with the Town which allows him to use the ROW under certain conditions and so long as he pays the town for the cost thereof. (The MOU that allows the applicant to operate on the ROW expires August 30, 2014.) Thereafter, he filed an application

pursuant to Code of Virginia §15.2-2006, for the town council to vacate the ROW after a public hearing. As a result of the application, the Director of Public Works has determined and will advise the Town Council that the ROW is surplus and is not needed now or in the future for public use. A plat has been prepared by the applicant to allow the ROW to be conveyed should the town council decide to vacate and convey it.

Under the state code, when a request for vacation is to accommodate expansion or development of a business, the town council may condition the vacation on commencement of the expansion or development within a specified period of time. Furthermore, under §15.2-2008, a condition of vacation may be that the applicant purchase the ROW and that the price “shall be no greater than the property’s fair market value or its contributory value to the abutting property, whichever is greater, or the amount agreed to by the parties”. Both the Town and the applicant have independently appraised the ROW but, at the time of this agenda memo, have not agreed upon a purchase price.

Final Recommendation: the Town Council should vacate and approve the conveyance of the ROW only under the following conditions:

1. The purchase price as determined by the town council, public hearing advertisements and all applicable fees are paid by the applicant;
2. The applicant obtains a rezoning of 204 South St.;
3. The applicant obtains the rezoning before a time certain.

Attachments: 1.) Draft Ordinance
2.) Plat depicting area of vacation of Harrison Street

PRESENTED: June 10, 2014

ORDINANCE NO. _____

ADOPTED: _____

AN ORDINANCE: VACATING A PORTION OF HARRISON STREET, SE, PURSUANT TO CODE OF VIRGINIA (1950) AS AMENDED, SECTIONS 15.2-2006 AND 15.2-2008 AND CONVEYING THE TOWN'S INTEREST IN THE VACATED RIGHT-OF-WAY TO THE ABUTTING PROPERTY OWNER

WHEREAS, the Town of Leesburg, Virginia ("Town") is the owner of certain right-of-way comprising of a portion of Harrison Street, SE, situate in the Town, containing 0.02571 acres (1,120 square feet) of land (hereinafter referred to as "right-of-way"), as shown on a plat attached hereto and incorporated herein by reference dated July 24, 2013, revised through May 22, 2014, entitled, "PLAT SHOWING VACATION OF A PORTION OF HARRISON STREET, CONVEYANCE AND BOUNDARY LINE ADJUSTMENT ON THE PROPERTY OF GORDON K. MACDOWELL" (the "Plat"), prepared by Pennoni Associates, Inc., of Leesburg, Virginia; the Town having acquired the right-of-way from Market Station, LLC, by Deed of Dedication dated August 16, 1966, recorded in Deed Book 1450 at Page 1720, among the Land Records of the Loudoun County Circuit Court; and

WHEREAS, the abutting property owner and owner of 204 South Street, SE, PIN 231-28-9476, (hereinafter the "applicant"), has filed an application with the Town to vacate the right-of-way, and once vacated, to acquire the right-of-way; and

WHEREAS, the applicant has requested the vacation to accommodate expansion and development of an existing business;

WHEREAS, the Town's Director of Public Works has determined that there is no public need for the Right-of-Way and that it is considered surplus property of the Town; and

WHEREAS, the Town's Land Acquisition Manager has appraised and determined the fair market value of the right-of-way; and

WHEREAS, after a duly noticed public hearing and pursuant to Section 15.2-2006 of the Code of Virginia of 1950, as amended, the Town Council is authorized, and so desires, to discontinue and vacate the right-of-way as depicted on the Plat; and

WHEREAS, pursuant to Section 15.2-2008 of the Code of Virginia of 1950, as amended, as a condition of the vacation, the Town Council may require the fractional portion of the right-of-way to be purchased by the applicant at a price no greater than property's fair market value or its contributory value to the abutting property, whichever is greater, or the amount agreed upon by the parties; and

WHEREAS, no persons appeared at the public hearing in opposition to the application to vacate the public right of way; and

WHEREAS, the Town Council has carefully considered the recommendations of the Town staff and the testimony at the public hearing.

THEREFORE, the Council of the Town of Leesburg in Virginia hereby ordains:

SECTION I. That portion of Harrison St., SE, containing approximately 0.02571 acres (1,120 square feet) and depicted on the Plat dated July 24, 2013, revised through May 22, 2014, entitled, "PLAT SHOWING VACATION OF A PORTION OF HARRISON STREET, CONVEYANCE AND BOUNDARY LINE ADJUSTMENT" (the "Plat"), and prepared by Pennoni Associates, Inc., of Leesburg, Virginia, is hereby vacated upon the following conditions:

1. The vacation is conditioned upon the payment of the purchase price, as determined by the Town Council, by the applicant;

2. The vacation is conditioned upon the applicant acquiring an approved rezoning of the abutting property (TLZM 2013-0005) within _____ days;
3. The Town's interest in the area of land vacated shall be conveyed by the Town to the applicant, by a quitclaim deed, prepared by the applicant, in a form approved by the Town Attorney;
4. The applicant shall pay all costs required as set forth in Code of Virginia, Section 15.2-2008, including costs of advertisements and the right-of-way vacation application fee;

SECTION II. The Mayor is authorized to sign and deliver any Deed or other ancillary legal instrument necessary to evidence or carry out the conveyance of right-of-way as described in this Ordinance, provided such Deed and/or legal instrument has been reviewed and approved by the Town Attorney.

SECTION III. This ordinance shall be effective upon its adoption.

SECTION IV. A certified copy of this ordinance of vacation shall be recorded among the Land Records of the Loudoun County Circuit Court, indexed in the name of the locality, no sooner than sixty (60) days following its adoption.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

PASSED this ____ day of _____, 2014.

Kristen C. Umstatt, Mayor
Town of Leesburg

ATTEST:

Clerk of Council

COMMONWEALTH OF VIRGINIA
COUNTY OF LOUDOUN, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Kristen C. Umstatt as Mayor of the Town of Leesburg, Virginia, whose name is signed to the foregoing Ordinance, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, 2014.

Notary Public _____

My commission expires:

NOTES:

1. THE PROPERTY SHOWN HEREON IS IDENTIFIED AS PIN #231-28-9476 AND IS IN THE NAME OF GORDON K. MACDOWELL, AS RECORDED IN INSTRUMENT NUMBER 200702270015018, AMONG THE LAND RECORDS OF LOUDOUN COUNTY, VIRGINIA.
2. THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT THEREFORE INDICATE ALL ENCUMBRANCES ON THE PROPERTY.
3. BOUNDARY INFORMATION SHOWN HEREON IS BASED ON AN IMPROVEMENT SURVEY BY WOLFORD & CHEN DATED OCTOBER 6, 2008. THIS PLAT DOES NOT CONSTITUTE A FIELD RUN BOUNDARY SURVEY. THE EXISTING BUILDINGS AS SHOWN ARE TAKEN FROM A TOPOGRAPHIC SURVEY BY PHR&A (A PENNONI COMPANY) DATED JULY 2008. OTHER IMPROVEMENTS EXIST BUT ARE NOT SHOWN ON THIS SURVEY.
4. PIN #231-28-9476 IS ZONED R-HD & HARRISON STREET, S.E. RIGHT-OF-WAY BEING VACATED IS ZONED B-1.
5. PROPERTY CORNERS ON NEW PROPERTY LINES WILL BE SET IN ACCORDANCE WITH LOCAL AND STATE STATUTES.
6. ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS AND OTHER INTERESTS OF THE TOWN REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN ON THIS PLAT.
7. THE PROPERTY BEING CONVEYED AS SHOWN IS CURRENTLY RIGHT-OF-WAY OWNED BY THE TOWN OF LEESBURG. SAID AREA IS TO BE CONVEYED TO GORDON K. MACDOWELL BY DEED AND PLAT.

IPS DENOTES: IRON PIPE SET
 □ DENOTES: FENCELINE
 □ DENOTES: CLEAN OUT

AREA TABULATION

ORIGINAL PIN# 231-28-9476 9,680 SQ. FT. OR 0.222222 AC.
 AREA TO BE TRANSFERRED 1,120 SQ. FT. OR 0.02571 AC.
 ADJUSTED PIN #231-28-9476 10,800 SQ. FT. OR 0.24793 AC.

HATCHED AREA DENOTES PORTION TO BE TRANSFERRED

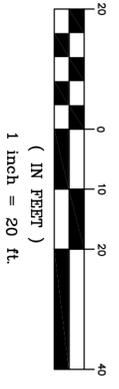
THE ADJUSTED LOTS CONFORM TO THE REQUIREMENTS OF THE TOWN OF LEESBURG ZONING ORDINANCE. APPROVED:

ZONING ADMINISTRATOR _____ DATE _____

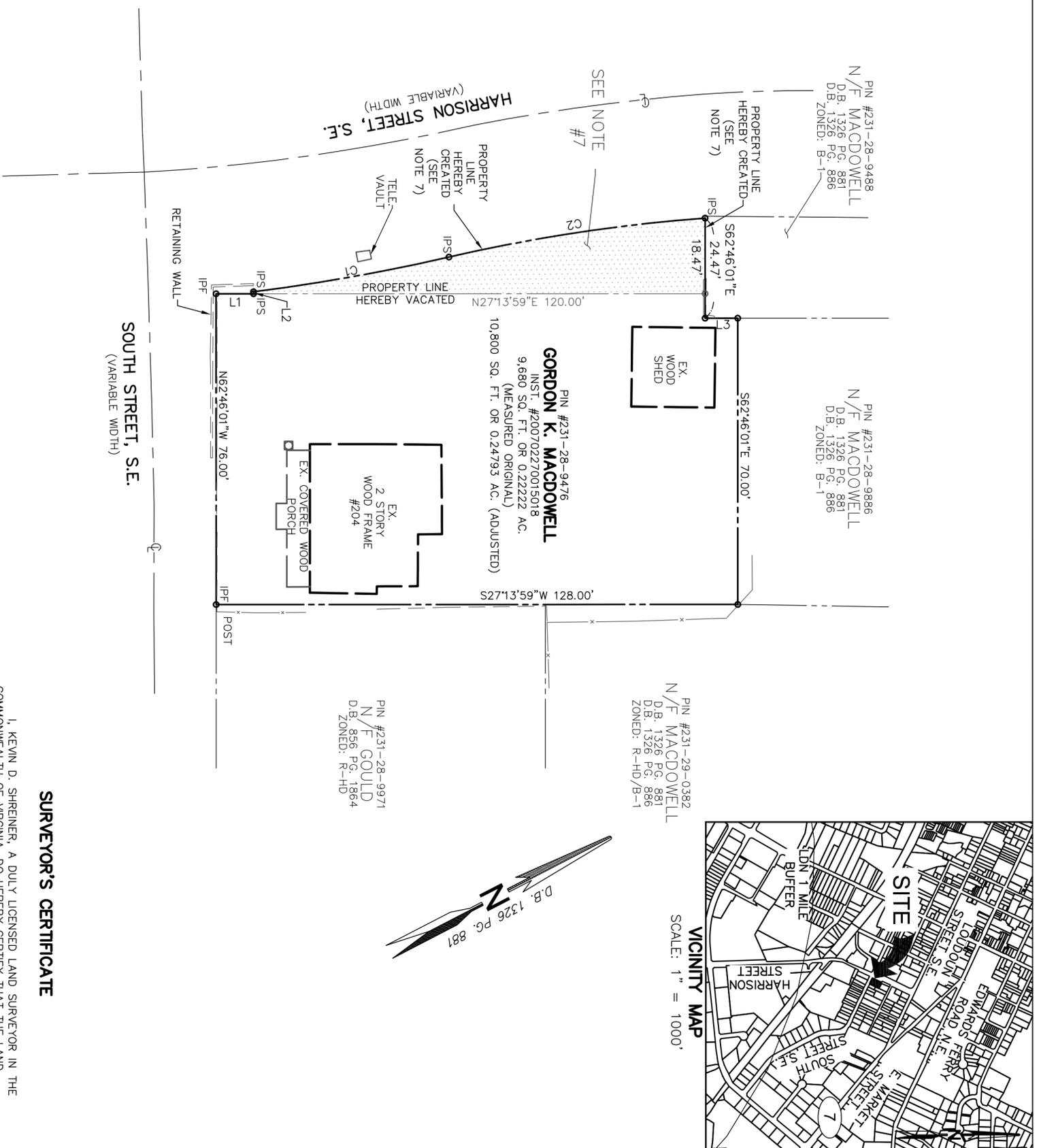
THE ADJUSTED LOTS CONFORM TO SECTION 2.04 OF THE TOWN OF LEESBURG SUBDIVISION AND LAND DEVELOPMENT REGULATIONS. APPROVED:

LAND DEVELOPMENT OFFICIAL _____ DATE _____

GRAPHIC SCALE



3	ADD CURRENT ZONE OF HARRISON STREET, S.E., RIGHT-OF-WAY	5/22/14
2	ADDRESS COMMENTS FROM TOWN	5/05/14
1	REVISED BOUNDARY LINE	4/18/14
NO.	REVISION	DATE

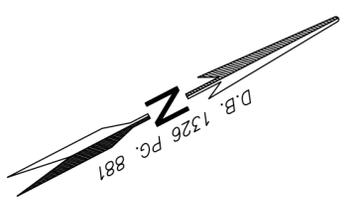
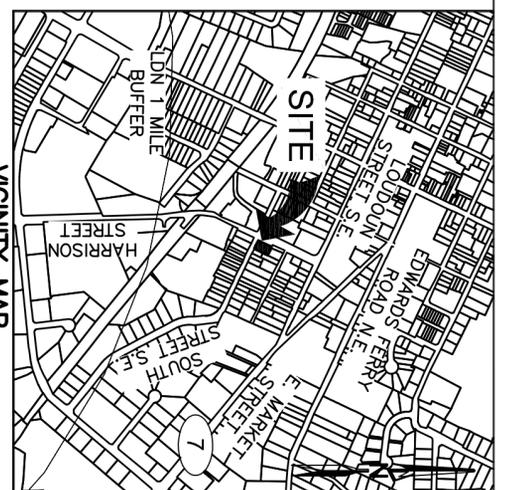


CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD
C1	48.72'	480.00'	5°48'55"	N17°12'51"E	48.70'
C2	63.63'	421.24'	8°39'17"	N18°38'02"E	63.57'

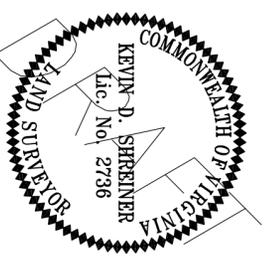
LINE TABLE

LINE	LENGTH	BEARING
L1	9.20'	N27°13'59"E
L2	0.49'	N63°28'17"W
L3	8.00'	N27°13'59"E



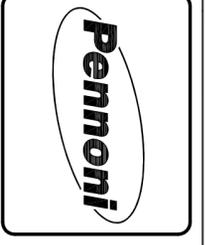
SURVEYOR'S CERTIFICATE

I, KEVIN D. SHREINER, A DULY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT THE LAND SHOWN ON THIS PLAT IS NOW IN THE NAME OF GORDON K. MACDOWELL AS RECORDED IN INSTRUMENT #200702270015018 AMONG THE LAND RECORDS OF LOUDOUN COUNTY, VIRGINIA; THAT THE PROPERTIES ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACTS, ACCURATELY DESCRIBED AND SHOWN ON THIS PLAT BY METES AND BOUNDS, COURSES AND DISTANCES AND THAT ALL NEW MONUMENTATION SET BY PENNONI ASSOCIATES, INC. WILL BE IN ACCORDANCE WITH THE SUBDIVISION AND LAND DEVELOPMENT REGULATIONS OF THE TOWN OF LEESBURG, GIVEN UNDER MY HAND THIS 18TH DAY OF APRIL, 2014.



PLAT SHOWING
 VACATION OF A PORTION OF
 HARRISON STREET,
 CONVEYANCE AND BOUNDARY LINE ADJUSTMENT
 ON THE PROPERTY OF
GORDON K. MACDOWELL
 TOWN OF LEESBURG
 LEESBURG ELECTION DISTRICT
 LOUDOUN COUNTY VIRGINIA

Pennoni Associates Inc.
 Engineers. Surveyors. Planners. Landscape Architects.
 208 Church Street SE Leesburg, VA 20175-3006
 T 703.777.3616 F 703.777.3725



DRAWN: SMB
 CHECKED: KDS
 DATE: 7/24/13
 SCALE: 1"=20'
 SHEET 1 OF 1
 FILE NO: MLEF1301