

**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, JULY 8, 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.

6/26/14, 7/3/14



Date of Council Meeting: July 8, 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: Jeanette Irby, Town Attorney
Barbara Notar, Deputy Town Attorney
Irish Grandfield, Senior Planner

Recommendation: The Town Council should enact an Ordinance of Vacation authorizing the vacation 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”. 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 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 Planning Commission opened the public hearing on the MacDowell rezoning case (TLZM-2013-0005) at their June 19, 2014, meeting. Three members of the public spoke--all expressing concern about the impact of the proposal on their neighboring properties. The Planning Commission asked a number of questions of staff and the applicant, and then voted to keep the public hearing opening and further discuss the proposal at

their July 17, 2014 meeting. Additionally, a commission permit was approved by the Planning Commission as required under the state code when a public street may be vacated.

In regard to the ROW, the applicant 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.) On or about June 20, 2014, the Town Manager notified MacDowell that he had violated the terms of the MOU by installing plants and fencing in the ROW without authorization from the Town.

Finally, MacDowell filed an application pursuant to Code of Virginia §15.2-2006, for the town council to vacate the ROW after a public hearing. In response to the application, the Director of Public Works determined (and will advise the Town Council) that the ROW is surplus and is neither needed now nor in the future for public use. A plat has been prepared by the applicant to allow the ROW to be conveyed by deed should the town council decide to vacate 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”**. 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, public hearing advertisements and application fee 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: July 8, 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, 1996, 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; and

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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

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

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 agreed purchase price by the applicant;

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2. The vacation is conditioned upon the applicant acquiring an approved rezoning of the abutting property (TLZM 2013-0005) within 3 months;
3. 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 agreed purchase price as set forth by the Town Council shall be paid by the applicant to the Town as a condition for the vacation and conveyance of the right-of-way; and
5. 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.

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PASSED this ____ day of _____, 2014.

Kristen C. Umstattd, 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. Umstattd 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: