

**TOWN OF LEESBURG
NOTICE OF PLANNING COMMISSION PUBLIC HEARING
TO CONSIDER TLZM-2013-0005 MACDOWELL**

Pursuant to Sections 15.2-1427, 15.2-2204, 15.2-2205 and 15.2-2285 of the Code of Virginia, 1950, as amended, the **Leesburg Town Council** will hold a public hearing on **Tuesday, September 9, 2014 at 7:30 p.m.** in the Town Council Chambers, 25 West Market Street, Leesburg, Virginia, 20176 to consider Rezoning Application TLZM-2013-0005, a request by Mr. Gordon MacDowell to rezone one parcel of land and amend the proffers of a second parcel to B-1, "Community (Downtown) Business District", to permit specified commercial uses.

This rezoning application applies to two separate properties. The first is located at 204 South Street, Leesburg, Virginia 20175 on an existing 0.23 acre lot that is currently zoned RHD, "Residential Historic District." The property is further described as Loudoun County Parcel Identification Number (PIN) 231-28-9476 and Loudoun County Tax Map Number /48/A/37///1A. The second property is located at 203 Royal Street, Leesburg, Virginia 20175 on an existing 0.13 acre lot that is currently zoned RHD, Residential Historic District but administered as B-1, "Community (Downtown) Business District" in accordance with the proffers of #ZM-75 approved in 1986. The property is further described as Loudoun County Parcel Identification Number (PIN) 231-29-0382 and Loudoun County Tax Map Number /48/A/37///2A. The Town Plan designates both of these properties as "Downtown" on the Land Use Policy Map which permits commercial or residential uses but provides no specific density guidance.

Rezoning Application TLZM-2013-0005 is a request to rezone the two properties subject to the criteria of Section 3.3.15 of the Zoning Ordinance to allow limited commercial uses on the subject property, including outdoor restaurant seating and office use (in the existing structure) on the lot at 204 South Street. Applicant is also seeking an amendment to approved rezoning #ZM-75 to permit proposed commercial uses to utilize the parking spaces at 203 Royal Street. A Floor Area Ratio (FAR) of approximately 0.19 is proposed.

Additional information and copies of this application are available at the Department of Planning and Zoning located on the second floor of the Leesburg Town Hall, 25 West Market Street, Leesburg, Virginia 20176 during normal business hours (Monday-Friday, 8:30 a.m. to 5:00 p.m.), or by contacting Irish Grandfield, Senior Planner at 703-771-2766 or igrandfield@leesburgva.gov.)

At these hearings, all persons desiring to express their views concerning these matters will be heard. Persons requiring special accommodations at the Town Council meeting 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.

Run: 8/21 & 8/28



Date of Council Meeting: September 9, 2014

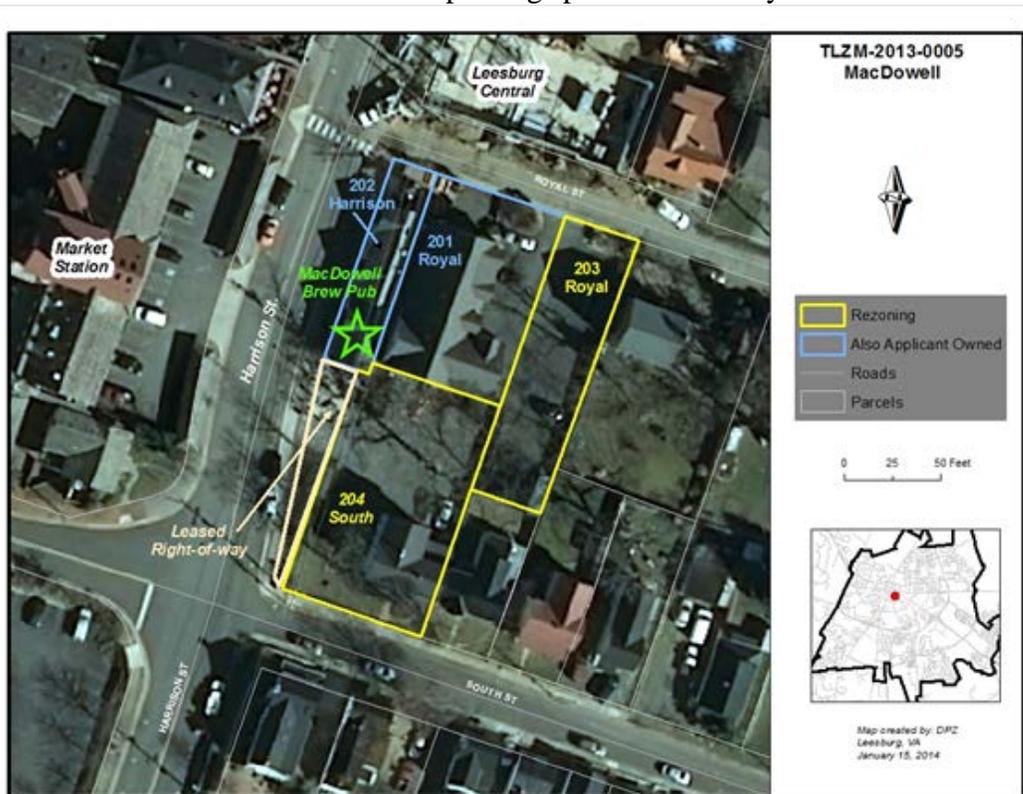
**TOWN OF LEESBURG
TOWN COUNCIL PUBLIC HEARING MEETING**

Subject: TLZM-2013-0005, MacDowell - an application to rezone 204 South Street from RHD to B-1 and to amend the existing proffers of a second parcel already zoned B-1 at 203 Royal Street.

Staff Contacts: Irish Grandfield, AICP, Senior Planner, Dept. of Planning & Zoning

Recommendation: Staff recommends **approval** of the proposed rezoning.

Issue: Should Town Council approve a rezoning to allow outdoor restaurant seating and offices uses at 204 South Street and amend existing proffers for rezoning #ZM-75 to permit the proposed commercial uses to utilize the parking spaces at 203 Royal Street?



Vicinity Map

Fiscal Analysis: Approval of this application will generate additional revenue to the Town based on expected increase in real estate taxes and business taxes through food sales from the restaurant use on the site.

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 or occupancy 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.

Subsequently, the applicant entered into a lease agreement with the Town to use the ROW and submitted this rezoning application in order to correct the zoning deficiencies. The applicant Gordon MacDowell is requesting approval of a rezoning from RHD, Historic Residential District to B-1, Community (Downtown) Business District to allow outdoor restaurant seating and office use at 204 South Street. The applicant is also seeking an amendment to the approved rezoning case #ZM-75 to amend existing proffers to permit the proposed commercial uses to utilize the parking spaces at 203 Royal Street.

The applicant owns 4 contiguous parcels fronting Harrison, South, and Royal Streets (see map on page 1). Two of these parcels are completely developed and not subject to this rezoning request. The excluded parcels include 202 S. Harrison Street (housing the Döner Bistro and MacDowell Brew Kitchen) and 201 Royal Street (an office building). The two parcels included in the rezoning are located at 204 South Street and 203 Royal Street. The specific requests and proposed improvements include the following:

- Outdoor restaurant use in the side and rear yards of 204 South Street for up to 75 seats;
- Conversion of the existing 1,954 square foot residence at 204 South Street for office space;
- Associated site improvements such as pedestrian pathways, dumpster enclosures, screening and walls/noise mitigation; and
- Parking for the outdoor restaurant use on 203 Royal Street.

On July 8, 2104, Town Council approved vacation of 1,120 square feet of surplus Harrison Street right-of-way adjacent to a parcel that is a part of this application. Approval of this rezoning would result in the sale of that surplus right-of-way to the Applicant.

If Council chooses to approve the rezoning there are still several actions required of the applicant to resolve the zoning violations. These include installation of the proffered use mitigation measures to protect adjacent residential areas. Therefore, the applicant needs to diligently pursue approval of a development plan and develop the site in conformance with the approved development plan in order to obtain an occupancy permit. As well, the applicant will need to obtain a Certificate of Appropriateness from the Board of Architectural Review.

In light of the need to bring the subject property into conformance with the zoning requirements as quickly as possible, staff recommends that the term “diligent pursuit” in this case means the applicant will do the following:

1. Submit a development plan application for all of the use mitigation site improvements (all walls and fences, signs, parking lot improvements, onsite walkways, the dumpster pad and enclosure, sand containment system, proffered offsite parking striping/signage, and landscaping) meeting the minimum submission requirements within 60 days after approval of the rezoning (note: the applicant has proffered to submit a development plan for only the sidewalk improvements within 4 months of rezoning approval).
2. Submit revised plans fully addressing staff comments following receipt of the first Town development plan review comments within 30 days and secure development plan approval as soon as possible.
3. Prior to initial development plan submission or concurrently with the initial development plan submission update the pending application for a Certificate of Appropriateness from the BAR to show compliance with the Old and Historic District Design Guidelines.
4. Submit a construction plan application prior to or within 2 days of development plan approval and obtain approval within 45 days of development plan approval.
5. Begin construction of all of the use mitigation site improvements (all walls and fences, onsite signs, parking lot improvements, onsite walkways, the dumpster pad and enclosure, sand containment system, proffered offsite parking striping and signage, and landscaping) within 30 days of construction plan approval and complete all site improvements and obtain an occupancy permit within 120 days of construction plan approval subject to adjustments for weather or other unforeseen delays.

Planning Commission Public Hearing and Recommendation: The Planning Commission opened the public hearing on this case at their June 19, 2014 meeting and closed the public hearing following their discussion at their July 17, 2014 meeting. At the June 19 meeting, three members of the public spoke and each expressed concern about the impact of the proposal on their neighboring properties and questioned the compatibility of the use with the adjacent neighborhood. At the July 17 meeting, one member of the public spoke again about concerns as a neighbor to the site, particularly with regard to noise generated by patrons using the parking lot at 203 Royal Street. During the months of June, July, and August the applicant responded to a number of requests by the Planning Commission resulting in revisions to the concept plan and proffers.

At their September 4, 2014 meeting, Planning Commission discussion continued to focus on mitigating visual and noise impacts on the adjacent residential neighborhood. The Commission then acted on the application following the applicant agreeing to a Planning Commissioner request to construct an additional seven-foot high solid masonry wall between the parking lot at 203 Royal Street and the backyard of the proposed office at 204 South Street.

Planning Commission Recommendations: On September 4, 2014 the Planning Commission voted 4-0-3 (Commissioners Harper, Hoovler, and Kidder, absent) to recommend approval of the rezoning case subject to the following:

- The July 7, 2014 Concept Plan being updated to include a solid masonry wall between the parking lot at 203 Royal Street and the backyard of 204 South Street.

- Proffer #13 being updated to clarify that the applicant will encourage patrons to use on-street parking elsewhere than on Royal Street.
- Proffer #17 being updated to add the phrase “planning and” before the word construction in reference to the applicant coordinating fence construction with his neighbor at 205 Royal Street.

The applicant expressed their agreement to these requests and the attached proffers reflect the agreements. The applicant is finishing work on a revised Concept Plan incorporating agreed upon changes. The revised Concept Plan will be forwarded to Council on Monday September 8.

Staff Analysis: Staff finds the rezoning meets the approval criteria of TLZO Sec. 3.3.15 as discussed on page 4 of the September 4, 2014 Planning Commission Staff Report.

Attachments

1. Planning Commission Staff Report dated June 19, 2014
2. Planning Commission Staff Report dated September 4, 2014
3. Concept Plan dated July 3, 2014 (*NOTE: Update Concept Plan to be forwarded to Council on Monday September 8th*)
4. Proffers dated September 5, 2014
5. Ordinance

**AMENDED PROFFER STATEMENT
MACDOWELL REZONING**

**September 19, 2013
Revised through September 5, 2014**

This application is submitted by Gordon MacDowell hereafter referred to as the “Applicant”. Pursuant to Section 15.2-2303 of the Code of Virginia, as amended, and Section 3.3.16 of the Zoning Ordinance of the Town of Leesburg, the Applicant submits these Proffers (the “Proffers”). The properties subject to this application are located at 204 South Street, SE and identified as Tax Map /48/A//37///1A (PIN: 231-28-9476-000) containing 0.19 acre and zoned RH-D. The second parcel located at 203 Royal Street, SE and identified as Tax Map 48/A//37///2A (PIN: 231-29-0382). The Property is zoned B-1 but administered as Town B-2 with Proffers per ZM-1986-0075. Both of these properties are hereinafter referred to collectively as the “Property”.

The parcels described herein as “the Property” are depicted on the Plan entitled “MacDowell Rezoning TLZM 2013-0005” prepared by Mark W. Jeffries, P.E. dated September, 2013, and revised through July 3, 2014, hereinafter referred to as “the Concept Plan.”

Applicant now desires to replace the existing Proffers on the parcel at 203 Royal Street, SE and to proffer certain items in regard to the rezoning of the parcel at 204 South Street, SE.

On behalf of himself, his successors and assigns, Applicant hereby proffers that if the Town of Leesburg Town Council approves the rezoning of the Property, and this

PROFFER STATEMENT
MACDOWELL REZONING
September 19, 2013
Revised through September 5, 2014

Proffer Statement, the development of the Property shall substantially conform to and be subject to the following terms and conditions proffered herein.

1. The Applicant agrees to restrict nighttime customer parking on the subject property after its brewpub/restaurant closes by controlling access to the lot by signage, chaining and/or landscaping. These improvements shall be installed in a fashion agreeable to the Town and the Applicant. No parking shall be allowed in the parking lot at night after the business hours of the brewpub/restaurant.

2. The Applicant will provide on-site recycling to meet the needs of the proposed uses.

3. The Applicant will make a cash contribution to the Town for off-site transportation improvements in the amount of \$7,852.00. In addition, the Applicant construct offsite brick sidewalk improvements along Harrison Street as shown on the concept plan in lieu of additional off-site transportation contributions.

4. Only the following uses will be permitted on the property: Brewpub, Eating establishment or Office. All other uses otherwise permitted in the B-1 Zoning District are hereby prohibited. The use of the building at 204 South Street shall be limited to office use.

5. At the time of the initial site plan submission, the Applicant shall submit a Tree Management Report consistent with the Town of Leesburg Design and Construction Standards Manual for the mature shade tree behind the proposed dumpster site at 203 Royal Street. Should the Management Report advise saving the tree the Applicant shall implement such measures to do so as identified in the Tree Management Report.

6. At the time of the initial site plan submission, the Applicant shall submit a Tree Management Report consistent with the Town of Leesburg Design and Construction Standards Manual for the maple tree located west of the house at 204 South Street. Should the Management Report advise saving the tree the Applicant shall implement such measures to do so as identified in the Tree Management Report.

7. Applicant shall submit and diligently pursue a site plan to construct the sidewalk improvements as shown on the Concept Plan, Sheet 3, dated September 13, 2013 and revised through July 3, 2014, no later than four (4) months following approval

PROFFER STATEMENT
MACDOWELL REZONING
September 19, 2013
Revised through September 5, 2014

of the rezoning application and shall construct such sidewalk improvements within one (1) year of site plan approval.

8. To control odors and pests associated with trash and waste oil the owner shall use best available and financially viable technologies for managing the trash collection containers and waste oil containers such as:

a. Ensuring all trash is placed in commercial grade bags that are fully closed prior to being placed in collection containers.

b. Ensuring that any lids and/or doors on collection containers are always closed.

c. Use of a self-contained dumpster or other device for refuse collection to prevent leachate from reaching the dumpster pad.

d. Immediate clean-up of any noticeable grease or waste spills onsite with appropriate disinfectant and odor control agents.

e. If needed, a regular application of dumpster biodegradable odor-control granules, mists, or similar products.

f. Other appropriate technologies and measures that would result in the equivalent or better odor control than the measures listed above.

9. Applicant will install sand containment measures agreeable to the Town to prevent sand from escaping, washing or eroding onto sidewalks and into the storm drainage system.

10. Applicant will provide bollard or other lighting to and from restrooms.

11. Applicant will limit the height of all lighting fixtures to a maximum of twelve feet (12') and such fixtures shall be shielded from adjoining residential properties.

12. Applicant will inform all patrons of the restaurant through various methods that parking in the Market Station parking lots and on private property on Royal Street is prohibited. The methods shall include posted notices and signage in clearly visible locations inside and outside of the restaurant, reminders on its menus and in patron seating areas, a statement on its website and in other published advertising.

13. Applicant will encourage his patrons to park their vehicles in his parking lot, in the available on-street parking on Harrison Street and in the nearby County parking structure. The Applicant will consider offering valet parking during peak evening and weekend hours.

PROFFER STATEMENT
MACDOWELL REZONING
September 19, 2013
Revised through September 5, 2014

14. Applicant will provide lighting in the parking lot at 203 Royal Street fully shielded from the adjoining residential properties. Applicant will provide signage discouraging noise and loitering and will have an employee of the brewpub/restaurant hourly patrol the parking lot to eliminate noise or other disturbances after 9:00 PM.

15. At time of initial site plan, Applicant will provide a lighting plan that meets Town requirements.

16. Applicant will provide signage and pavement striping to restrict parking in front of the property located at 205 Royal Street at the time of site plan approval.

17. Applicant will coordinate with the owner of 205 Royal Street during planning and construction of the solid wood fence on the Applicant's property including removal of the existing fence on 205 Royal Street at no cost to the owner of 205 Royal Street.

18. Applicant accepts the terms of sale of the vacated portion of the Harrison Street right-of-way as set forth in Ordinance 2014-O-022 adopted July 8, 2014.

19. **Substantial Conformance Concept Plan.** The Applicant, or his successors-in-interest, shall develop the Property in substantial conformance with the Plan entitled MacDowell Rezoning TLZM 2013-0005, Sheets 1-4, dated September 13, 2013, and revised through July 3, 2014. This Concept Plan shall control the use, layout and configuration of the Property, with reasonable allowances to be made for engineering and design alterations to meet Town zoning, subdivision and land development regulations, and the standards of the Board of Architectural Review. The Applicant acknowledge that the Concept Plan approval does not express or imply any waiver or modification of the requirements set forth in the Zoning Ordinance, except as specifically cited by ordinance section and paragraph in the motion for approval of this rezoning.

20. **Public Safety.** Applicant, or its successors-in-interest, shall pay to the Town of Leesburg the sum of \$0.15 per square foot of total building area as a one-time non-refundable contribution to the Leesburg fire and rescue companies, prior to the issuance of the applicable occupancy permit, allocated and to be made on a building-by-building basis.

21. **Escalator Clause.** All monetary contributions stated in these proffers shall be subject to adjustment at a rate equal to any fluctuations in the Consumer Price Index (CPI) from the date of final rezoning approval.

PROFFER STATEMENT
MACDOWELL REZONING
September 19, 2013
Revised through September 5, 2014

22. **Invalidity.** In the event any portions of these Proffers are subsequently determined to be illegal or unenforceable, the remaining Proffers shall continue in full force and effect.

23. **Exclusion of Public Property From Proffers.** Any portion of the Property which may hereafter be dedicated for public street purposes (or otherwise conveyed to a public entity) shall, upon such dedication, be excluded from the terms and conditions of these Proffers, and the remainder of the Property shall continue to be subject to the full force and effect of these Proffers.

24. **Binding Effect.** These Proffers run with the land and shall be binding upon all heirs, executors, administrators, assigns and successors in interest of the Applicant. These Proffers shall affect the owner of the Property at the time each individual Proffer becomes effective. Unless a Proffer is in default, conveyance of the Property or Properties shall transfer the personal obligation for performance of the Proffers to the new owner.

Miscellaneous

These proffers are filed in accordance with Section 15.2-2303 of the Code of Virginia, as amended, and Section 3.3.16 of the Zoning Ordinance of Leesburg, Loudoun County, Virginia.

The Applicant agrees that approval of the Concept Plan and this Proffer Statement does not express or imply any waiver or modification of the requirements set forth in the Subdivision and Land Development Regulations, the Zoning Ordinance, or the Design and Construction Standards Manual, and that final plats, development plans, and construction drawings for development on the Property is subject to the applicable Town regulations.

PROFFER STATEMENT
MACDOWELL REZONING
September 19, 2013
Revised through September 5, 2014

The Applicant and owner of the Property has signed this Proffer Statement, that he has full authority to bind the Property to these conditions, and that he has voluntarily subjected the Property to these proffer conditions.

(SIGNATURES ON FOLLOWING PAGES)

PROFFER STATEMENT
MACDOWELL REZONING
September 19, 2013
Revised through September 5, 2014

By: _____
Name: Gordon K. MacDowell, Owner

STATE OF VIRGINIA,
COUNTY OF LOUDOUN, to-wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Gordon K. MacDowell, whose name is signed to the foregoing and hereunto annexed Proffer Statement, bearing date of September 19, 2013, and revised through, July 24, 2014, has this day acknowledged the same before me in the jurisdiction aforesaid.

GIVEN under my hand this ____ day of _____, 2014.

Notary Public

My Commission expires: _____
Registration Number: _____



Date of Meeting: September 4, 2014

**TOWN OF LEESBURG
PLANNING COMMISSION WORK SESSION**

SUBJECT: TLZM-2013-0005, MacDowell

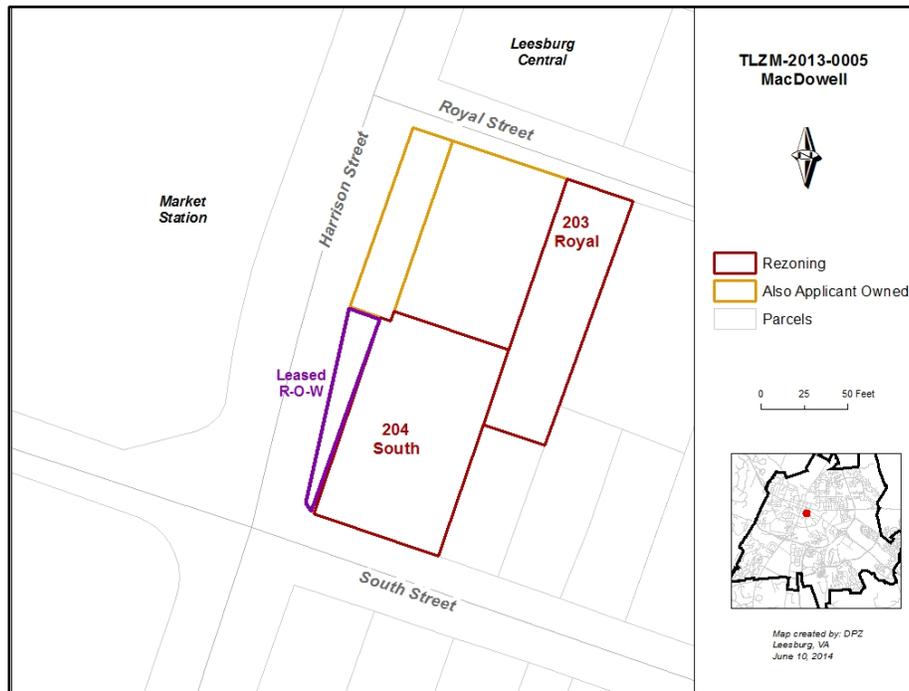
STAFF CONTACT: Irish Grandfield, AICP, Senior Planner, DPZ

APPLICANT: Gordon MacDowell, Owner

PROPOSAL: An application to rezone two parcels from RHD to B-1 to allow commercial development including outdoor restaurant seating for the MacDowell Brew Pub and office uses in a former residential structure.

PLANNING COMMISSION CRITICAL ACTION: September 17, 2014

RECOMMENDATION: Approval



Current Property Information	
Address: 204 South/203 Royal	Zoning: RHD/H-1
PIN#: 231-28-9476 & 231-29-0382	Permitted Density: One (1) DU per 4,000s.f.
Size: 0.19/0.13 acres	Planned Land Use: Downtown

I. APPLICATION SUMMARY: The Applicant, Gordon MacDowell, is requesting approval of a rezoning from RHD, Historic Residential District to B-1, Community (Downtown) Business District to allow outdoor restaurant seating and offices uses at 204 South Street. Applicant is also seeking an amendment to approved rezoning #ZM-75 to amend existing proffers to permit the proposed commercial uses to utilize the parking spaces at 203 Royal Street. The rezoning application has been submitted in an effort to resolve a zoning ordinance violation for use of residential land for commercial purposes. The specific requests and proposed improvements include the following:

- Outdoor restaurant use in the side and rear yards of 204 South Street for up to 75 seats;
- Conversion of the existing 1,954 square foot residence at 204 South Street for office space;
- Associated site improvements such as pedestrian pathways, dumpster enclosures, screening and walls/noise mitigation; and
- Parking for the outdoor restaurant use on 203 Royal Street.

II. BACKGROUND: The Planning Commission opened the public hearing on this case at their June 19, 2014 meeting and closed the public hearing following their discussion at their July 17, 2014 meeting. At the June 19 meeting, three members of the public spoke and each expressed concern about the impact of the proposal on their neighboring properties and questioned the compatibility of the use with the adjacent neighborhood. At the July 17 meeting, one of the same three members of the public spoke again about concerns as a neighbor to the site.

The Planning Commission asked questions of staff and the Applicant then asked the applicant for further commitments. The project was then scheduled for August 7, 2014 Planning Commission work session. At that meeting Chairman Hoovler expressed his desire that the applicant effectively address tree save and sand containment issues. Commissioner Kidder requested the applicant provide a combination 8-foot brick fence/6-foot wooden fence along the property boundary adjacent to 205 Royal Street. See Section III below for a discussion of how Applicant has responded to Commission issues.

This case is scheduled for Town Council Public Hearing on September 9, 2104. Staff notes that the state mandated timeline for the Planning Commission to act is set to expire prior to their next meeting (September 18). Staff is requesting a recommendation of approval or denial from the Planning Commission at tonight's meeting.

III. ISSUES UPDATE: On August 18, 2014 staff forwarded the additional Planning Commission requests to Applicant's representative Mr. Robert Sevila. The Applicant submitted revised proffers dated August 7, 2014 that address many of the issues identified by the Commission. This review is based on the most recently submitted proffers dated August 7, 2014 (Attachment 1). The Concept

Plan included in your July 17th packet has not changed. The following describe applicant responses to issues identified by the Planning Commission and staff:

1. **Sand Containment System** – Proffer #9 now commits to sand containment in a form that would be approvable by the Town. *Issue resolved.*
2. **Maple Tree West of the House at 204 South Street** – Proffer #6 now includes a commitment to provide Tree Management Report consistent with the Town of Leesburg Design and Constructions Standards Manual and implement tree preservation measures if warranted. *Issue resolved.*
3. **Shade Tree Behind Dumpster** – Proffer #5 now includes a commitment to provide Tree Management Report consistent with the Town of Leesburg Design and Constructions Standards Manual and implement tree preservation measures if warranted. *Issue resolved.*
4. **Information about Parking to Patrons** – Proffer #12 commits the applicant to inform patrons of the restaurant about not parking on private property on Royal Street and at Market Station. *Issue resolved.*
5. **Limit Night Parking** – The applicant was requested to proffer measures to limit nighttime parking lot use at 201 and 203 Royal Street to minimize impacts on the adjacent residential neighborhood. Proffer #1 addresses after-hours parking and proffer #14 provides policing of parking lot. There is nothing in the proffers that would limit parking during business hours. *Issue partially addressed.*
6. **Policing the Parking Lot** – Proffer #14 now includes specifics related to monitoring the parking lot hourly from 9:00 pm onward to eliminate disturbances. *Issue resolved.*
7. **Lighting Plan** – As requested, Proffer #15 requires the Applicant to provide a Lighting Plan meeting Town regulations at the time of initial submission of a site plan application. *Issue resolved.*
8. **Striping and Signage for Private Parking** – Proffer #16 commits applicant to identify private parking space at 205 Royal Street. *Issue resolved.*
9. **Fence Removal** – Proffer #17 commits applicant to coordinate with land owner to remove existing fence along property boundary between 203 and 205 Royal Street. *Issue resolved.*
10. **Brick Wall Request Adjacent to 205 Royal Street** – Current plans call for an 8-foot high solid wood fence from the rear corner of the house at 205 Royal Street on around to where the dumpster is proposed. Commissioner Kidder asked staff to meet with the owner of 205 Royal and discuss the

possibility of other screening in lieu of the fence (such as a brick wall). Staff met with the owner on Friday August 22 and noted that a brick wall would cause significant disturbance of the root zone of mature trees along the property line potentially endangering the health of those trees. The owner expressed a desire not to endanger the existing trees thus dropping the request for consideration of a brick wall along this property line. **Issue resolved.**

11. **Valet Parking** – The Commission requested the applicant consider offering valet parking. Staff asked the applicant for a measurable commitment for valet parking rather than the previously proffered language that the “applicant will consider use of valet parking for his patrons.” The applicant has stricken the sentence but is not proffering anything related to valet parking. **Issue remains.**
12. **Off-site Transportation Improvements** – In Proffer #3 staff recommends the reference to the approximate value of \$90,000 for the brick sidewalk be stricken. The proffer is sufficient as follows: *“The applicant will make a cash contribution to the Town for off-site transportation improvements in the amount of \$7,852.00. In addition, the applicant shall construct offsite brick sidewalk improvements along Harrison Street as shown on the concept plan in lieu of additional off-site transportation contributions.”*

IV. ANALYSIS AND STAFF RECOMENDATION:

Staff recommends approval of the application based on the findings listed below.

V. FINDINGS FOR APPROVAL:

1. The rezoning application is in general conformance with the policies of the Town Plan.
2. The approval criteria of Zoning Ordinance Section 3.3.15 have been satisfied for TLZM-2013-0003.
3. The measures proposed by proffer and on the Concept Development Plan mitigate impacts on the neighborhood.
4. During site plan review, the Board of Architectural Review will ensure that the design of the site is consistent with the standards of the H-1 Old and Historic District.
5. The proposal will have a positive fiscal impact for the Town generating additional real estate assessment tax as well as food and beverage tax revenue.
6. The proposal would serve the public necessity, convenience, general welfare and good zoning practice.

VI. SAMPLE DRAFT MOTIONS:

Approval

I move that rezoning application TLZM 2013-0005, MacDowell, be forwarded to the Town Council with a recommendation of approval subject to the Concept Plan dated July 3, 2014 and Proffer Statement dated August 7, 2014 as amended as follows _____ on the basis that the Approval Criteria of Zoning

Ordinance Section 3.3.15 have been satisfied and that the proposal would serve the public necessity, convenience, general welfare and good zoning practice.

Denial

I move that rezoning application TLZM 2013-0005, MacDowell, be forwarded to the Town Council with a recommendation of denial on the basis that the Approval Criteria of Zoning Ordinance Section 3.3.15 have not been satisfied due to the following reasons_____.

ATTACHMENTS:

1. Proffers dated August 7, 2104



NOTE: THIS STAFF REPORT WAS PREPARED BASED ON PLANS AND PROFFERS DATED MARCH 12, 2014. REVISED PLANS (DATED JUNE 12, 2014) AND PROFFERS (DATED MAY 15, 2014) PROVIDED BY APPLICANT AND ATTACHED TO THIS REPORT WERE RECEIVED ON THE DAY OF PACKET DISTRIBUTION AND HAVE NOT BEEN EVALUATED HEREIN

Date of Meeting: June 19, 2014

**TOWN OF LEESBURG
PLANNING COMMISSION PUBLIC HEARING**

SUBJECT: TLZM-2013-0005, MacDowell

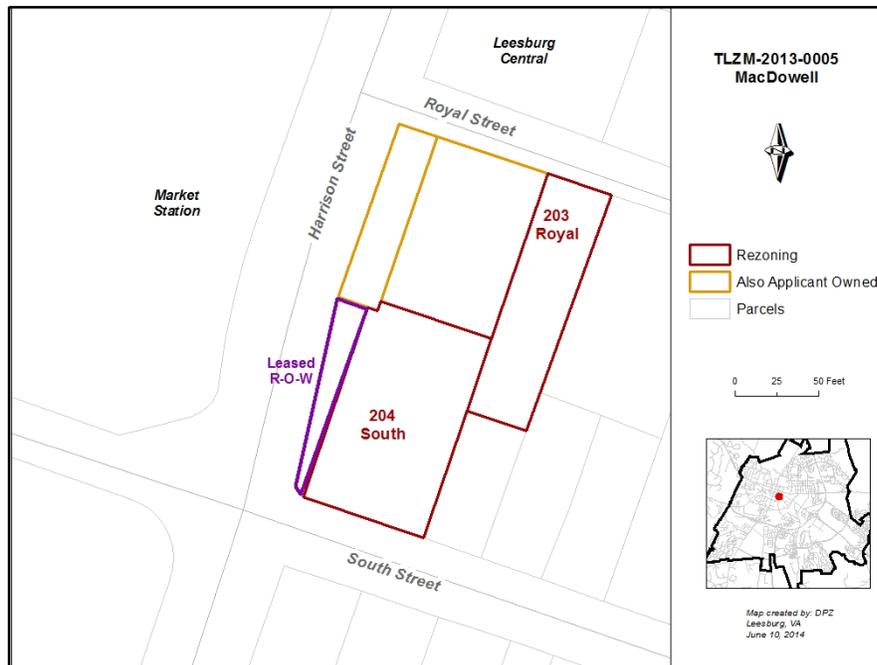
STAFF CONTACT: Irish Grandfield, AICP, Senior Planner, DPZ

APPLICANT: Gordon MacDowell, Owner

PROPOSAL: An application to rezone two parcels from RHD to B-1 to allow commercial development including outdoor restaurant seating for the MacDowell Brew Pub and office uses in a former residential structure.

PLANNING COMMISSION CRITICAL ACTION: September 17, 2014

RECOMMENDATION: Staff recommends the rezoning application be referred to a future work session for further discussion.



Current Property Information	
Address: 204 South/203 Royal	Zoning: RHD/H-1
PIN#: 231-28-9476 & 231-29-0382	Permitted Density: One (1) DU per 4,000s.f.
Size: 0.19/0.13 acres	Planned Land Use: Downtown

I. APPLICATION SUMMARY: The Applicant, Gordon MacDowell, is requesting approval of a rezoning from RHD, Historic Residential District to B-1, Community (Downtown) Business District to allow outdoor restaurant seating, offices, and personal services uses at 204 South St. Applicant is also seeking an amendment to approved rezoning #ZM-75 to amend existing proffers to permit the proposed commercial uses to utilize the parking spaces at 203 Royal Street. A plat (Attachment 1), Statement of Justification (Attachment 2), and proffers (Attachment 3) have been submitted in support of the application.

Proposed uses of the site are shown on the proposed Concept Development Plan (see Attachment 1) and in Figure 3 below and include:

- Outdoor restaurant use in the side and rear yards of 204 South Street for up to 75 seats;
- Conversion of the existing 1,954 square foot residence at 204 South Street for office space;
- Associated site improvements such as pedestrian pathways, dumpster enclosures, screening and walls/noise mitigation;
- No new buildings or enclosed structures are proposed other than two future restrooms; and
- Parking for the outdoor restaurant use on 203 Royal Street.
- Hours are not restricted but must conform with other applicable Town and State regulations.

As part of this proposal the Applicant has proffered several cash proffers and several physical improvements, including construction of an expanded sidewalk along Harrison Street (see Concept Development Plan Sheet 3 and Proffer #6). Staff has several issues with the language of these proffers as noted below.

Summary of Major Proffers		
Type of Contribution	Amount	Total
Transportation	\$7,852 per Town Plan	\$7,852
Fire and Rescue	\$0.15/s.f. x 2,000 s.f.	\$ 300
Total Proffered Contributions		\$8,152
Other		
Harrison Street Sidewalk	Construct 300 linear feet of new brick sidewalk	
Use Limitation	Office and outdoor restaurant uses only	

The applicant owns 4 contiguous parcels (see Figure 1) fronting Harrison, South, and Royal Streets. Two of these parcels are completely developed and not subject to this rezoning request. The excluded parcels include 202 S. Harrison Street (housing the Döner Bistro and MacDowell Brew Kitchen) and 201 Royal Street (an office building). The two parcels included in the rezoning are located at 204 South Street and 203 Royal Street.

Vacation Request: Applicant has requested that the Town vacate 1,120.51 square feet of right-of-way zoned B-1 that Applicant hopes to add to the parcel of 204 South Street via a Boundary Line Adjustment. On June 5, 2014, the Planning Commission approved TLCP 2014-0001, Harrison Street Right-of-Way (R-O-W) vacation indicating that the proposed surplus R-O-W vacation was consistent with the Town Plan. Town Council is required by the Virginia Code (1950) as amended, Section 15.2-2006 **Alteration and vacation of public rights-of-way** to hold a public hearing on the right-of-way vacation and shall make a decision at an upcoming meeting. If the Council decides to vacate the R-O-W, the Council has may dispose of the vacated land through a variety of means, including sale to a private entity. In the Statement of Justification for the Commission Permit, Mr. MacDowell indicates his intention to purchase the land. Because the rezoning Concept Development Plan indicates the use of this parcel for outdoor seating and indicates a fence to be built on the area, and further because failure to obtain this area will alter access from the existing restaurant to 204 South Street, this rezoning will be impacted by Council's decision on the R-O-W vacation. The Planning Commission must therefore refrain from acting on the rezoning request until the vacation issue is resolved.

Zoning Violations: This rezoning application has been submitted in an effort to resolve a series of activities that were initiated by the applicant without proper approvals. These include the following:

- **Use of Residential land for Commercial Purposes:** Sometime in 2012 the applicant expanded the Brew Kitchen Restaurant, an indoor restaurant/pub use, from 202B Harrison Street (zoned B-1) onto the residentially-zoned property at 204 South Street (zoned RHD). The RHD, Historic Residential District is the most restrictive residential district in the Zoning Ordinance and does not permit commercial restaurant use in Sec. 5.6.2 Use Regulations. This action violated Zoning Ordinance Sec. 9.2.3 which states that a *“use is not allowed in the respective zoning district, unless it is otherwise expressly allowed by other regulations of this Zoning Ordinance.”* In this case there are no other regulations that permit the use.
- **Failure to obtain Certificate of Appropriateness for alterations in the H-1, Overlay, Old and Historic District:** Zoning Ordinance Sec. 7.5.5 states that *“Within the H-1 Overlay District, no building or structure (defined for purposes of this section as anything man-made, including but not limited to outbuildings, fences, walls, lamp posts, light fixtures, signs, signposts, driveways, walkways and paving) shall be altered in any of the following ways unless a Certificate of Appropriateness has been issued by the Board of Architectural Review”* In 2012 and thereafter structures such as a stage and a service bar were erected on the property, the area was covered in sand and a fence was erected on the property without the required BAR review, nor was any application made for a Certificate of Appropriateness before the alterations were made.

- **Use of Property in Violation of Proffered Conditions:** A further zoning violation involves use of the lot at 203 Royal Street for nighttime parking of Brew Kitchen patrons. This property was rezoned in 1986 to commercial use but includes a proffer that specifically prohibits nighttime parking on the lot due to the proximity of residential uses adjacent to the parking lot.

A Notice of Zoning Violation (case #: TLVN-2013-0081) for the first two infractions was issued on June 26, 2013 to inform Mr. MacDowell that residentially zoned land at 204 South Street could not be used for the commercial outdoor restaurant/pub seating. The notice was not appealed within the specified 30-day time frame. To remedy the two use violations, Applicant has submitted this rezoning application in an effort to obtain proper commercial zoning for the use. Applicant has also applied to the BAR for the necessary Certificate of Appropriateness which must await the decision on this rezoning request. In some cases, zoning permits will also be necessary from the Town once BAR approval is obtained.

Other Violations: The use has other issues that, while not constituting a zoning violation, conflict with other Town ordinances:

- **Use of Public Land for Commercial Purposes without Authorization:** A portion of public R-O-W belonging to the Town of Leesburg (approximately 1,850 square feet of the Harrison Street right of way) (see Figure 2 below) was used as part of an outdoor expansion of the Brew Kitchen Restaurant, and included a large area of sand with tables, chairs, a stage, a service bar in a shed, boat, and multiple pieces of nautically themed outdoor appurtenance (lawn ornamentation). The area has come to be commonly referred to as the “MacDowell Beach.”
- **Failure to obtain Site Plan approval:** A site plan waiver is required prior to adding tons of sand to a site to determine how the sand will be contained to negate any negative impact on the public stormwater drainage system. No site plan of any kind was submitted in this case.

Mr. MacDowell was informed that he could not use Town property (the Harrison Street right-of-way) for private commercial use and that a site plan in accordance with the Subdivision and Land Development Regulations and the Design and Construction Standards Manual will be required.

Following the zoning violation notice, the Town and the applicant agreed to a Memorandum of Understanding (MOU) for the use of the portion of the Harrison Street R-O-W by Mr. MacDowell on August 30, 2013. This MOU will expire on August 30, 2014.

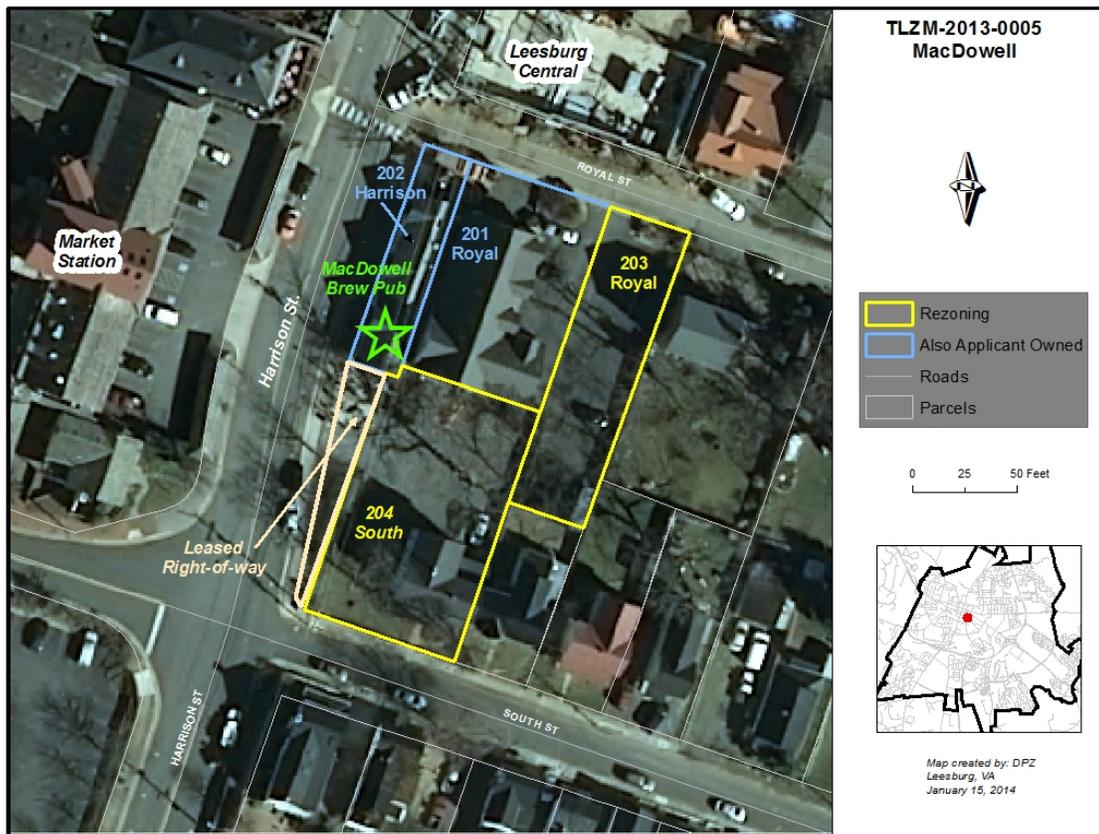


Figure 2. Context

II. CURRENT SITE CONDITIONS: This application includes two separate properties. The first is 204 South Street, an existing 0.19 acre lot. The second property is located at 203 Royal Street, an existing 0.13 acre lot that is currently zoned RHD, Residential Historic District but administered as B-1 (“Community (Downtown) Business District”). The property is further described as Loudoun County Parcel Identification Number (PIN) 231-29-0382 and Loudoun County Tax Map Number /48/A//37///2A. The Town Plan designates both these properties as “Downtown” on the Land Use Policy Map.

Current site conditions for 204 South Street are depicted in Figure 3 and include a house, shed, two performance stages and a large area of sand and outdoor seating with tables, chairs, barrels, and various other decorative lawn pieces (also see photos below). 203 Royal Street houses a parking lot, office shed, and six-foot high wooden fence.

MacDowell Existing Conditions

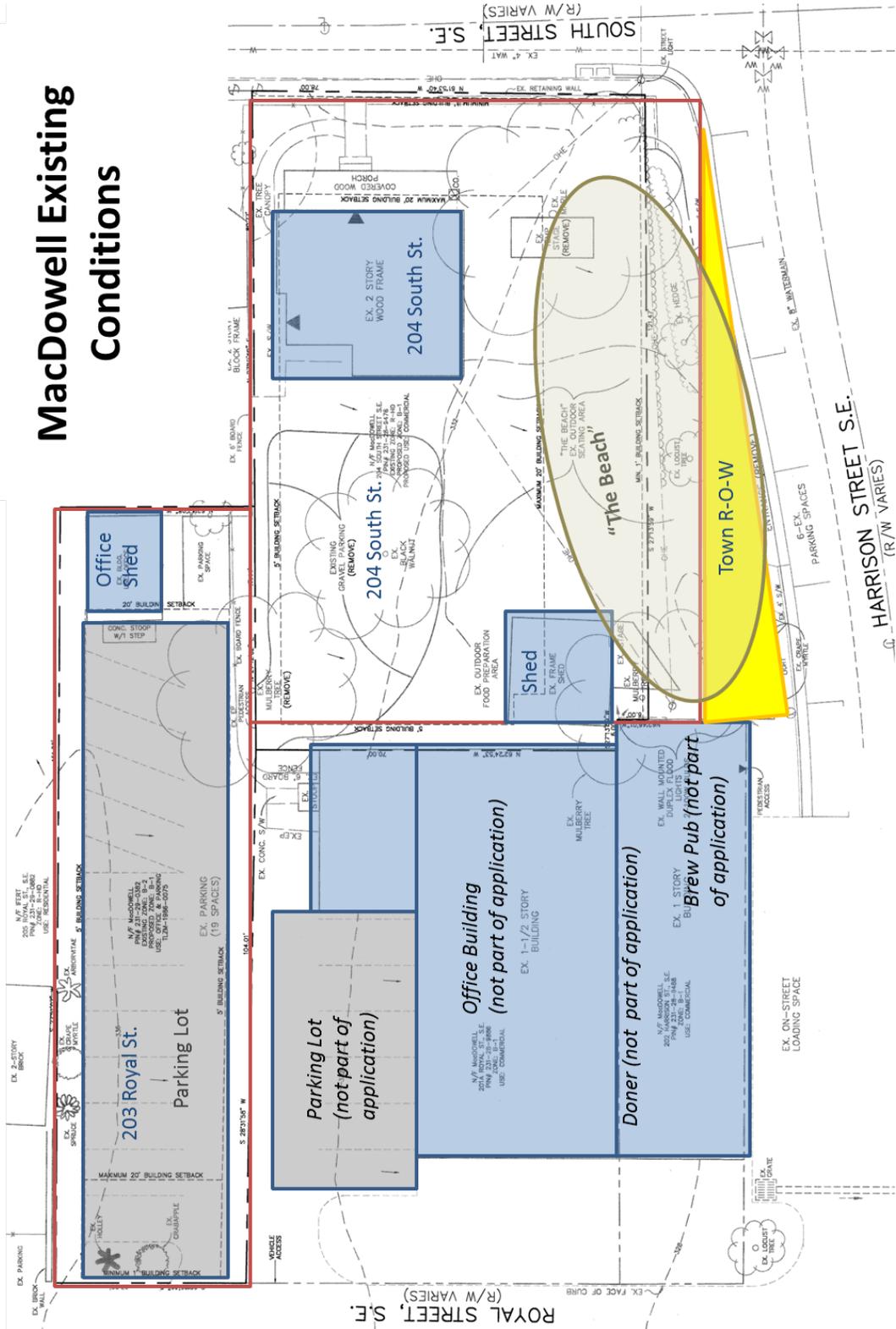


Figure 3. Existing Conditions



Figure 4. Looking northeast at side yard of 204 South Street from Harrison Street



Figure 5. Looking west through the site back toward Harrison Street

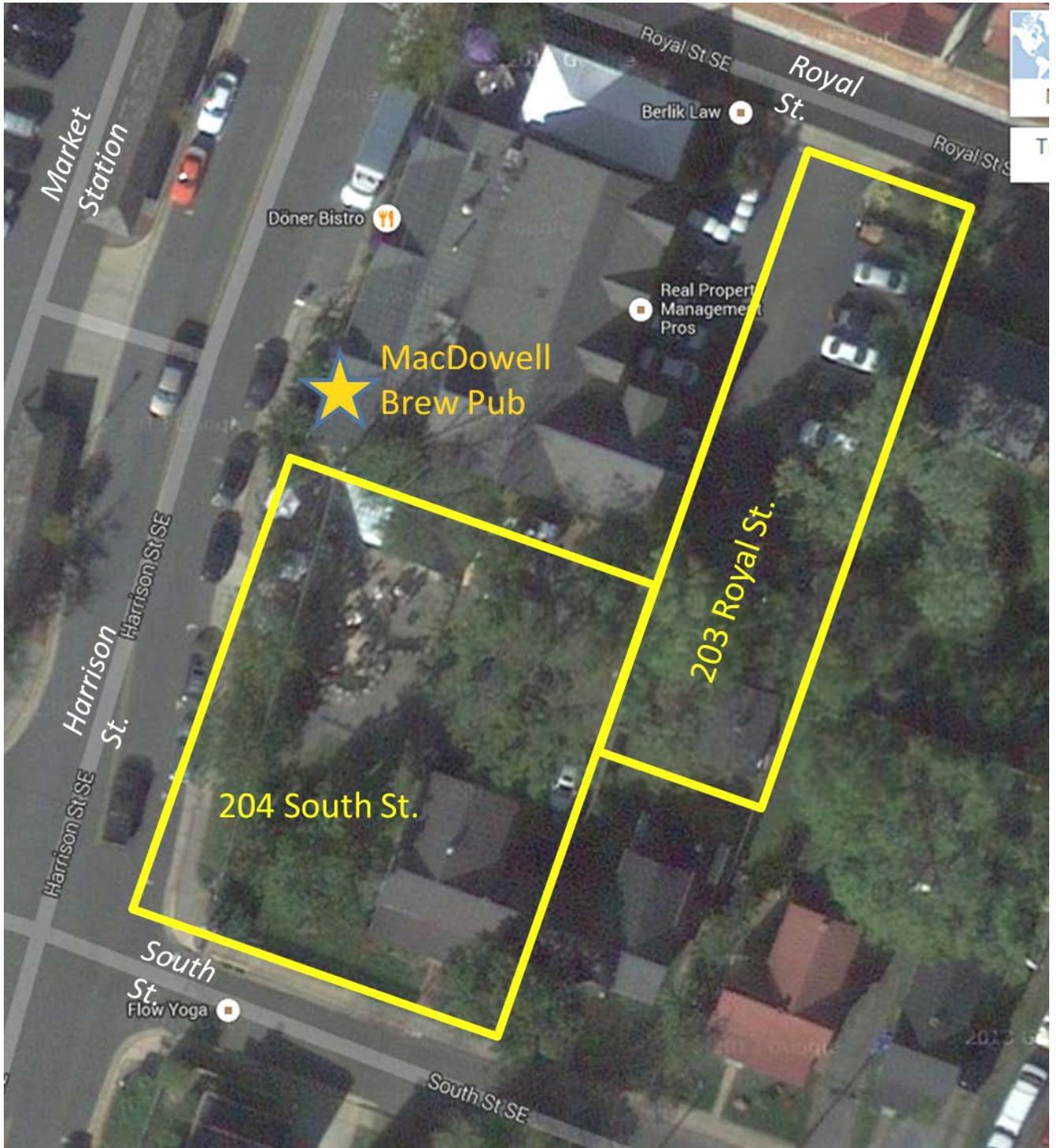


Figure 6. Aerial

III. **ZONING HISTORY:** This application includes two separate properties, and both are inside the H-1 Overlay District. The first is 204 South Street, an existing 0.19 acre lot that is currently zoned RHD, “Residential Historic District.” The second property is located at 203 Royal Street, an existing 0.13 acre lot that is currently zoned RHD but administered as B-1 (“Community (Downtown) Business District”). This property was rezoned on July 23, 1986 with proffers per #ZM-75 (see Attachment 4 for existing proffers). The proffers, in particular Proffer #5, currently restrict nighttime parking. The applicant is amending this proffer to allow use of the parking lot in the evenings to support the outdoor eating establishment use.

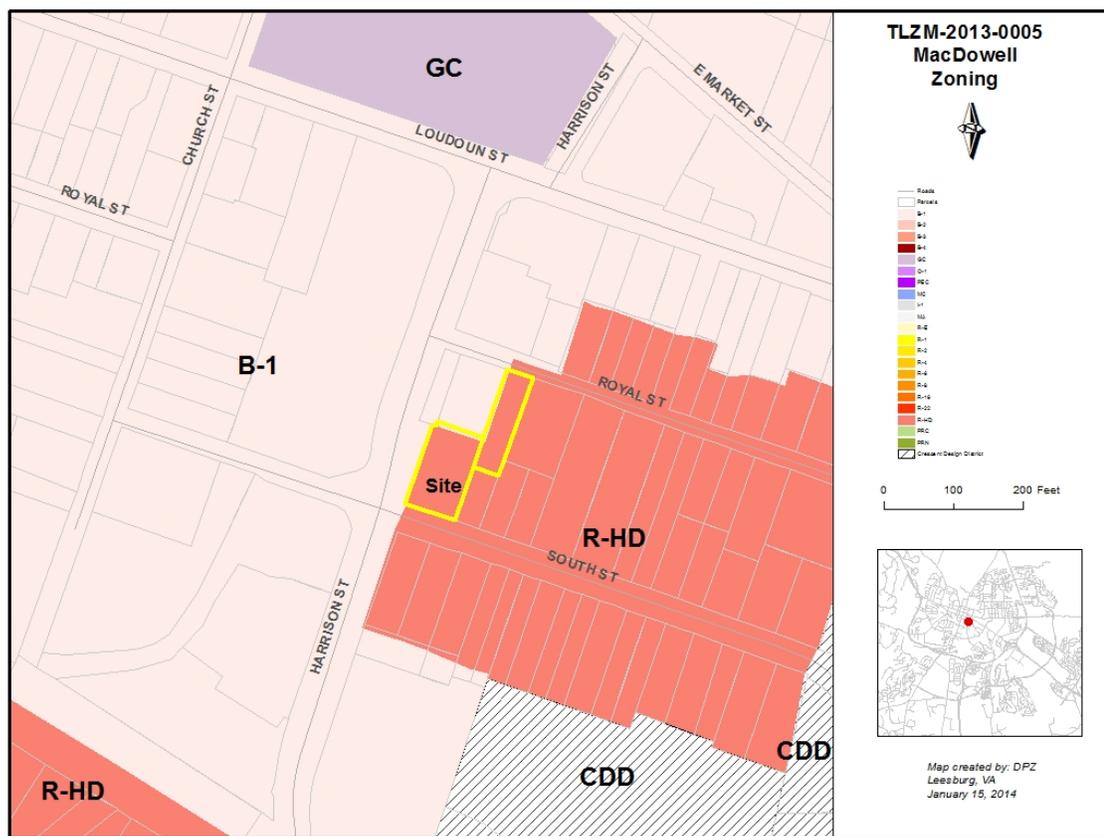


Figure 7. Zoning

Modifications/Waivers: Three Zoning Ordinance modifications and one Zoning Ordinance waiver have been requested by the Applicant. Two of the modifications and one waiver have been granted by either the Director of Planning and Zoning or the Zoning Administrator pursuant to ordinance standards. The third modification, for shared parking, has been reviewed but needs revision prior to action. The modifications and waiver are discussed below.

1. ***Screening and Buffering- Waiver Granted:*** TLZO Sec. 12.8.3 Buffer Yard Matrix specifies that “Commercial Use Less Than 10,000 square feet” adjacent to “Residential Use, Single family Detached and Duplexes” shall provide a 25-foot wide buffer with S3 screening. TLZO Sec. 12.8.5.A Properties in the H-1, Overlay, Old and Historic District permits the Director of Planning and Zoning to consider a reduced buffer. In lieu of the standard requirement, the proposed MacDowell rezoning Concept Development Plan dated September 2013 and revised through March 12, 2014 proposes an 8-foot high solid masonry wall augmented by a five-foot wide planted buffer for a portion of the buffer yard and a 7-foot high combination solid fence atop an existing masonry wall for the remainder of the buffer area (see Sheet 3) adjacent to the residential uses east of the site. The Director of Planning and Zoning granted a modification based on the finding that the proposed eight-foot (8’) high solid masonry wall and seven-foot (7’) high combination solid masonry wall/fence will provide a better screen of both visual and noise impacts from the proposed outdoor restaurant use on adjacent residential properties than the required S3 vegetative plantings.
2. ***Dumpster Setback – Waiver Granted:*** TLZO Sec. 12.8.8.B Setbacks requires a 25-foot setback for a dumpster enclosure from a residential zoning district. Here, Applicant is proposing to locate a dumpster enclosure eight feet (8’) from the RHD residential district as shown on Sheet 3 of the Concept Development Plan. Per TLZO Sec. 12.8.8.B the Zoning Administrator granted a modification to the 25-foot setback requirement based on the fact that the dumpster pad could not be reasonably accommodated elsewhere onsite and the fact that sufficient screening is provided by an 8-foot solid masonry wall to the rear adjacent to the residential district, six foot high solid masonry walls along the sides, and a five-foot tall solid gate.
3. ***Loading Space – Waiver Granted:*** TLZO Sec. 11.9 Number of Off-Street Loading Spaces Required specifies that “Eating Establishments” shall supply on-site “One standard loading space for the first 10,000 square feet of gross floor area, plus one space for each additional 25,000 square feet.” The square footage of the MacDowell Brew Kitchen is 2,376 resulting in the need for one standard loading space. The proposed Concept Development Plan indicates that no loading space is proposed on-site. Per TLZO Sec. 11.10.2 Waiver/Modification of Loading Space Requirements the Zoning Administrator granted a modification based on the following reasons: There is an existing off-site loading space in the public right-of-way directly in front of the MacDowell Brew Kitchen at 202 Harrison Street. This loading space is appropriately sized and serves the need for deliveries such that an off-street loading space is not needed. In addition, it appears unlikely that an on-site space would be used from a practical standpoint even if constructed due to the ease of use and convenience of the on-street loading space, and the difficulty of maneuver into and out of the site from adjacent streets. Finally, a loading space on-site would take up an inordinate amount of land area given the small lot sizes.

4. **Alternative Parking – Under Consideration:** The increase of 75 outdoor seats at 204 South Street for the MacDowell Brew Kitchen requires provision of 19 parking spaces per TLZO Sec. 11.3 at a rate of one (1) space for every four outdoor seats. The applicant proposes to provide eleven (11) of those spaces on his property at 203 Royal Street and seven (7) additional spaces on adjoining applicant-owned property at 201 Royal Street. These seven parking spaces currently provide parking for the office use at 201 Royal Street. Note, however, that because 201 and 203 Royal Street are within 500 feet of the County parking garage, per TLZO Sec. 11.4.4.A no parking spaces are required to be provided on-site for the uses. The applicant’s proposal considers the eleven spaces at 203 Royal Street as dedicated to the Brew Pub and requests approval of a shared parking agreement per TLZO Sec. 11.4.2 for the seven spaces at 201 Royal Street. In this way 18 of the required 19 parking spaces would be provided for the proposed new outdoor Brew Pub seating at 204 South Street. A payment in lieu per TLZO Sec. 11.4.3 will be provided for the one required parking space that cannot be accommodated onsite. To date, the shared parking agreement has not been approved and staff is awaiting the applicant to submit a revised agreement that addresses staff concerns regarding enforceability (see Unresolved Review Items/Outstanding Issues section below).

Subdivision and Land Development Regulations Variation: The applicant has applied for one “Variation” of the SLDR standards to forgo provision of sidewalk as a frontage improvement along Royal Street at 203 Royal. The Variation application is discussed in a separate Department of Plan Review staff report presented to the Planning Commission for consideration this evening.

- IV. **USES ON ADJACENT PROPERTY:** The applicant owns four contiguous properties rounding the corner from 204 South Street to 202 S. Harrison Street to 201 Royal Street and finally 203 Royal Street. Existing applicant-owned properties with office and restaurant uses are located to the north of 204 South St. and to the west of 203 Royal St. (see Figure 8 below). This area is zoned B-1 and designated in the Town Plan for “Downtown Use.” Single family detached residences are located to the east of 204 South St. and 203 Royal St. These properties are zoned RHD and designated in the Town Plan for “Downtown Use.” West of 204 South Street is Harrison Street with Market Station across the Street. North of 203 Royal Street is office uses of the Leesburg Central development.

Direction	Current Use
North	Commercial
East	Residential (SFD)
South	Residential (SFD)
West	Commercial



Figure 8. Surrounding Land Use

V. STAFF ANALYSIS

A. Review Summary:

i. ***Resolved Review Items:*** Two full reviews of the application were made and items discussed and resolved during the review included:

- Plat deficiencies
- Proffers
- Screening
- Fencing and walls
- Design to mitigate neighborhood impacts
- Landscaping
- Parking
- Loading Space
- Solid Waste
- Pedestrian Road Frontage Improvements
- Pedestrian connection between site and parking
- Site lighting
- Stormwater management

ii. ***Unresolved Review Items/Outstanding Issues:*** While significant progress has been made on a number of issues, staff believes the following items still need to be addressed before a recommendation of approval can be given:

1. Shared Parking Agreement: The applicant needs to secure Town approval of a shared parking agreement in order to count the parking spaces at 201 Royal Street toward the required parking total for the outdoor eating establishment use at 204 South Street. The applicant has submitted an agreement that needs to be updated as follows:

On page 3 in the last paragraph on the page, the Agreement gives the parties the right to amend the agreement. The only party to the agreement is the Owner, which means the Agreement could be extinguished by the Owner alone. The purpose of the Shared parking Agreement is to ensure the perpetual availability of the shared parking. Therefore, language must be added to state that the shared parking cannot be amended without the prior consent of the Town of Leesburg.

2. Use of 204 South Street: Proffer #4 needs to specifically prohibit the Brewpub and eating establishment uses in the house at 204 South Street.

3. Public Improvements: Proffer #6 requires a trigger mechanism to cause the sidewalk improvements to be built; otherwise there will be no

guarantee they will ever be constructed. The proffer should be revised to indicate a specific time when the Applicant will construct the sidewalk improvements. Staff recommends the following: *“The Applicant shall submit a site plan to construct the sidewalk improvements as shown on the Concept Plan no later than two (2) months following approval of the rezoning application and shall construct such sidewalk improvements within one (1) year of site plan approval.”*

4. **Fence:** Proffer #5 references a brick wall for the yard facing South Street. The rezoning plans show a proposed picket fence in this area. Since the BAR will have the final say and may well prefer the picket fence to a brick wall, the reference to a brick wall should be removed from the proffer. Staff recommends using the following phrase: “solid masonry wall or fence subject to BAR approval of design, height, and materials.”
5. **Zoning Reference:** On proffers’ page 1 in the 1st paragraph, the sentence “The property is zoned B-2” should be revised to read “The Property is zoned B-1 but administered as Town B-2 with proffers per TZM-1986-0075.”
6. **Property Addresses:** The official addresses for the applicant’s properties on Royal Street have recently been established as 201 and 203 Royal Street SE (not 201A and 201B) and need to be updated.
7. **Existing Proffers:** The Applicant needs to clarify that the remaining proffers of TLZM-1986-0075 will remain in full force and effect.

B. Town Plan Compliance:

- i. **Land Use Guidance:** The Town of Leesburg Zoning Ordinance (TLZO) Section 3.3.15 requires an assessment of how the proposed rezoning use will comply with applicable provisions of the *Town Plan*. The following elements of the *Town Plan* are applicable given the Applicant’s proposal.

The property is located in the *Town Plan’s* Central Policy area and is identified on the *Town Plan* Land Use Policy Map as “Downtown” (see Figure 5).

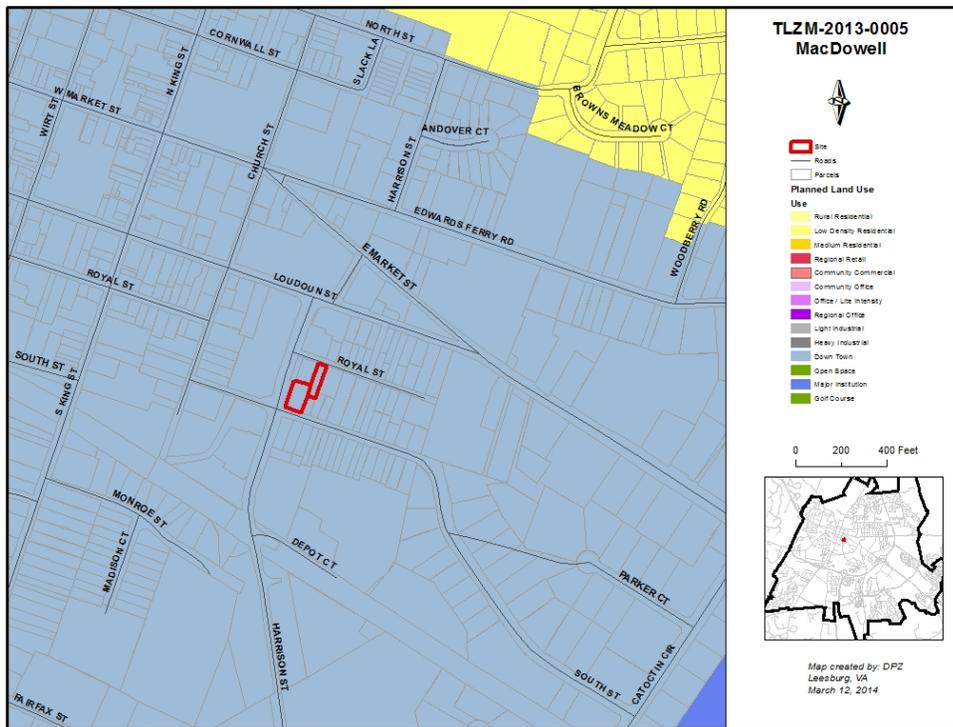


Figure 9. Town Plan Designated Land Use

Land Use objectives from the Town Plan for this area include the following:

- Residential areas should be protected from incompatible uses and buildings as well as aircraft and traffic noises (p. 6-5).
- All new development and redevelopment should reinforce the character of the Town (Objective 1, p. 6-11).
- Business and tourism-related opportunities should be encouraged and promoted in the original Old and Historic District. The intensity and architectural treatment of business uses should reflect the character of the district (Objective 14, p. 6-14).
- Business growth should enhance the quality of life, maintain the character of the Town, and be compatible with existing development (Objective 3, p. 8-3).

- ii. **Heritage Resources Guidance:** This site is located in the Old and Historic District between commercial and residential properties. The historic building on this site was built as a residence and is considered a contributing structure to the Old and Historic District, the National Register District and the streetscape of South Street.

There are several objectives in the Town Plan that give guidance for protection of Heritage Resources including the following:

- Identify and mitigate potential impacts to historic resources (Town Plan, Objective 3, p. 4-4).
- Preserve historic resources in context and protecting views of historic resources. (Town Plan, Heritage Resources Objective 3, pp. 4-4, 4-5).
- Provide a unified streetscape character (Town Plan, Objective 1, p.6-14).
- Ensure development occurs in a manner that protects Heritage Resources (Town Plan, Objective 11, p.6-14).

Staff Analysis: The proposed outdoor seating area for the restaurant has a nautical/beach theme not found elsewhere in the downtown. Because this area has such a different character than the adjoining residential neighborhood, a primary concern with the proposed rezoning is compatibility. This has three major components.

Visual Screening from Residential Uses: The proposal requires a physical barrier (walls and fences) for screening from the adjacent residential use. The barrier needs to be in a style consistent with Leesburg's downtown and the H-1 District (fence or solid masonry wall approved by the Board of Architectural Review (BAR)). Walls and fences are proposed as discussed elsewhere in this report.

In addition to barriers and fences, landscaping also can help to soften the impact of the differences in character between uses. Plantings will be provided along the limits of the outdoor seating facing South Street and street trees are proposed along both Harrison and South Streets.

Noise Attenuation from Residential Uses: The compatibility issue raises a major concern with the proposed use given the nighttime operation of the outdoor seating and entertainment use that conflicts with the expectations of peace and quiet in the adjacent residential neighborhood. Note that outdoor activity that generates noise is governed by the Town Code, which limits the hours during which amplified music (and other noise-making activities can be conducted) as well as provides for offenses for excessive noise that constitutes a public nuisance. *Any activity, business or commercial, must comply with these standards.*

The conversion of the existing house at 204 South Street to office use will provide a transition to the residential uses along the east of the subject properties, similar to what is found elsewhere in the Old and Historic District. For the outdoor restaurant use to be compatible, additional safeguards are necessary to protect the existing residents from the effects of issues such as noise, light and odors.

Design as a Tool to Screen Use from Residential Uses: On the positive side of preserving neighborhood character, the proposed project is compatible with the neighborhood in terms of building design, height, scale, and massing. Further no significant new construction is proposed. While the style of the “beach” is different from the more traditional look of commercial uses across the street at Market Street, the two uses at least share a common commercial character. Further, the 204 South Street property has significant road frontage along Harrison Street, a road that has more commercial uses than residential (see Figure 10 below). How design of the site can protect those residential neighbors directly adjacent to the use and further up both South Street and Royal Street was taken into account during review, and resulted in the changes identified below.



Figure 10. Commercial Properties

Compatibility Measures: Staff has identified and secured commitments from the Applicant to a series of design, screening, and landscaping measures described below to make the use as compatible as possible with the neighborhood. The measures put into place to address issues of land use compatibility and heritage resource protection include:

- Provision of an 8-foot solid masonry wall along the property boundary to the east where residential uses are closest to the site.
- Removal of an existing entertainment stage in the side yard of 204 South Street and limiting onsite entertainment to the small stage facing commercial uses on Harrison Street to protect the view and limit noise down South Street.
- Construction of a wall or fence along Harrison and South Streets to separate the outdoor restaurant seating use.
- Construction of a solid 8-foot masonry wall at the rear of the dumpster enclosure to help mitigate views and odors.
- Maintenance of residential front yard space facing South Street to help preserve the character of the residential neighborhood (the beach/outdoor seating area is limited to the side yard of 204 South Street and will not extend beyond the edge of the house).
- Provision of a 5-foot wide landscaped planting strip adjacent to the fence along the South Street front yard space further screening the outdoor restaurant seating use.
- Requiring upgrade of sight lighting to meet the Town's existing ordinance standards for full cutoff fixtures.
- Limiting through proffers any future outdoor pole lighting of the parking area to a height of 12 feet to maintain appropriate scale (no outdoor pole lighting is currently proposed and any future proposal would have to receive design approval from the BAR).

C. Traffic Analysis: Traffic counts are expected to change little with the rezoning as no new buildings are proposed. A traffic impact analysis waiver was granted based on the rezoning request being limited to an office use in the existing residence and additional outdoor seating as described. Staff notes that many patrons are expected to walk to the site and that other patrons will likely park at the existing nearby County parking garage. Objective 7 of the transportation chapter of the Town Plan calls for new development to provide "fair-share" contributions to offset impacts to the surrounding transportation network. Consistent with Appendix B of the Town Plan the Applicant has proffered to contribute \$7,852.00 toward offsite road improvements to comply with this policy.

D. Site Design: The basic layout of the site will remain as it is today. The residence at 204 South Street will be repurposed for office and personal service uses. The existing shed behind the residence will serve as a service area for the outdoor

restaurant/pub use. In front of the shed an existing small stage may be used for entertainment with the shed helping somewhat to block sound projection to the residential neighborhood to the east. The parking area on the 203 Royal Street lot will remain although re-striped to meet current design standards.

New features onsite include a walkway to link the existing parking lot at 203 Royal Street to the outdoor seating area and two small restrooms which may be built in the future at the rear of the shed. A new enclosed dumpster pad at the rear of the 203 Royal St. lot will replace the existing unscreened dumpster fronting Royal Street. New outdoor lighting meeting Zoning Ordinance standards will replace the older spot lights at the corners of the buildings. New walls and fences provide barriers and screening onsite and clearly separate the “beach” area from the adjacent right-of-way. Street trees and additional landscaping will also be provided.

E. Public Utilities: The site is served adequately by sewer and water.

F. Fiscal Impact: A Fiscal Impact Study waiver was granted based on the inherent positive income of the proposed use that will be generated for the Town. Should the site be rezoned from residential to commercial use the property value will increase resulting in additional property tax revenue. The Town can expect additional Business Professional Occupational Licenses (BPOL) tax and meals tax as well.

G. Proffers:

There are a number of outstanding proffer issues that need to be addressed as identified earlier in this report. Staff does note the following proffered contributions:

- The Town Plan recommended contribution for offsite transportation improvements.
- A contribution to Fire & Rescue at the rate of \$0.15 for square footage of the buildings onsite.
- Significant pedestrian road frontage improvements consisting of approximately 300 linear feet of new brick sidewalk of which approximately 100 linear feet are considered a non-required “offsite” improvement (the area is in front of 202 Harrison St.).

VI. Rezoning Approval Criteria:

A. *Consistency with the Town Plan, including but not limited to the Land Use Compatibility policies.* – As discussed in the Town Plan Compliance section of this report, staff finds the proposal consistent with the Town Plan.

- B. *Consistency with any binding agreements with Loudoun County, as amended, or any regional planning issues, as applicable.* - This criterion is not applicable.
- C. *Mitigation of traffic impacts, including adequate accommodation of anticipated motor vehicle traffic volumes and emergency vehicle access.* – Subject to the proffers staff finds that traffic impacts are appropriately mitigated.
- D. *Compatibility with surrounding neighborhood and uses.* – Subject to implementation of the proposed mitigation measures the use can be made to be compatible with the surrounding properties.
- E. *Provision of adequate public facilities.* - Adequate public facilities exist.

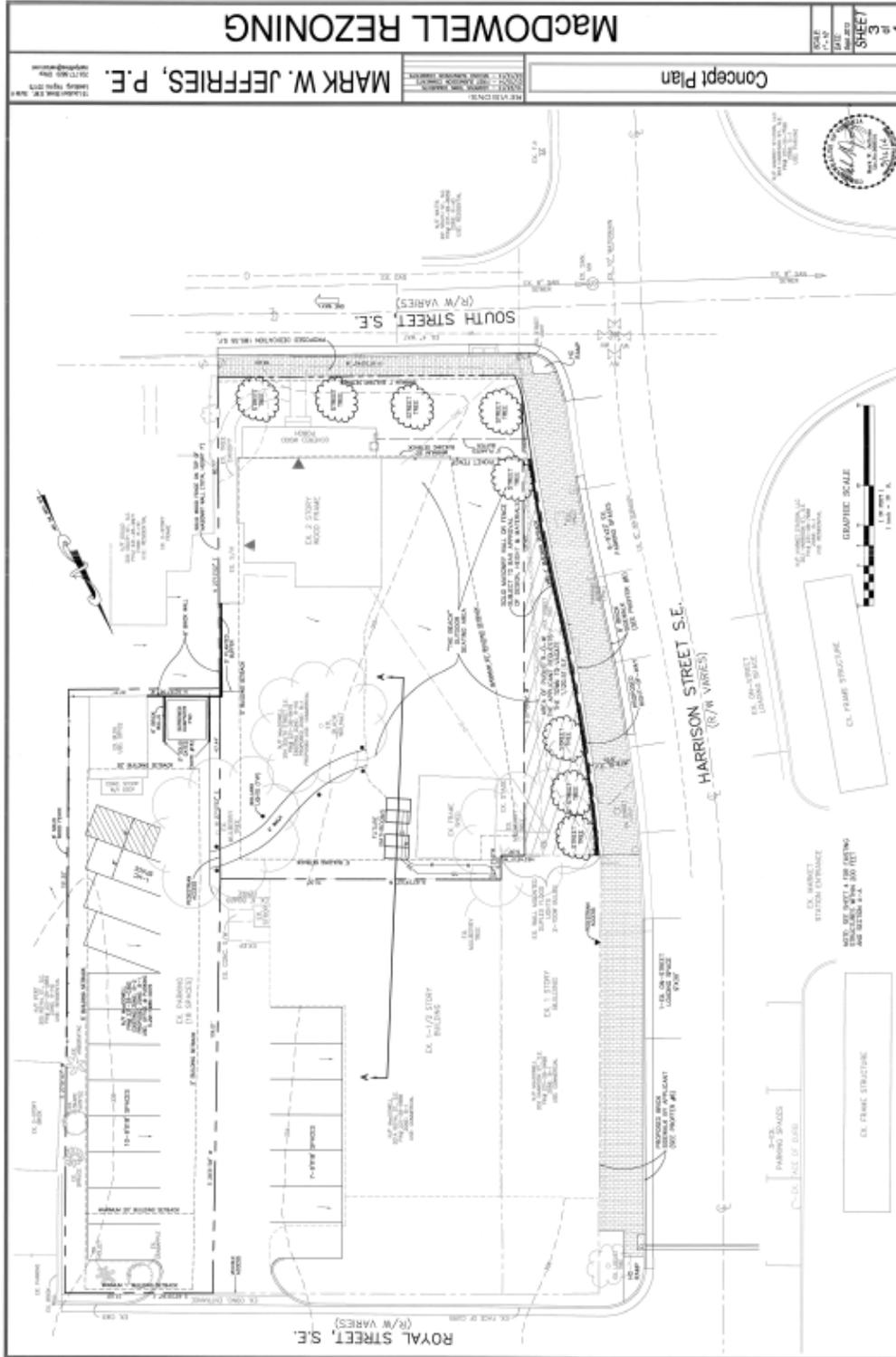
VII. SUMMARY AND STAFF RECOMENDATION:

There are substantial outstanding issues related to the proffers that need to be addressed (as noted in Section 5.A.ii “Staff Analysis”) and the Applicant should be afforded the opportunity to respond. In addition, since the rezoning Concept Development Plan may need to be revised depending on Council’s decision on the R-O-W vacation, the Planning Commission should refrain from acting on the rezoning request until the vacation issue is resolved. Staff recommends this application be forwarded to the next Planning Commission meeting for further discussion.

ATTACHMENTS:

1. Rezoning plat dated September, 2013 and revised through March 12, 2014
2. Statement of Justification dated September 19, 2013 and revised through January 10, 2014
3. Proffers dated September 19, 2013 and revised through March 12, 2014
4. #ZM-75 proffers dated July 23, 1986

Attachment 1: Concept Development Plan



Attachment 2: Statement of Justification

**MACDOWELL REZONING AND PROFFER AMENDMENT
STATEMENT OF JUSTIFICATION**

September 19, 2013
Revised through January 10, 2014

This Statement of Justification is submitted pursuant to Section 3.3 of the Town of Leesburg Zoning Ordinance (Zoning Ordinance) to rezone the parcels located at 204 South Street, SE, and a parcel identified as Tax Map 48/A//376///2A (PIN: 231-29-0382) having no address assigned (hereinafter referred to as “Parcel 2A”), from Historic Residential District, (R-HD) to B-1, Community (Downtown) Business District. The parcels are identified as Tax Map 48/A//37///1A (PIN: 231-28-9476-000), containing 0.22 acre located at 204 South Street, SE, and Tax Map /48//A//37///2A (PIN: 231-29-0382) containing .13 acre having no address assigned, (collectively the “Property”).

Gordon K. MacDowell, (the “Applicant”) is the owner of the properties and proposes to use the a portion of the Property for a dining area referred as “the beach” for outdoor seating and dining for the brewpub restaurant use located at 202 Harrison Street, SE, and parking. This innovative and unique use of the property has been widely popular with the residents and attracting residents and visitors to the downtown area after business hours and weekends.

The existing house on the property will be used for office use.

EXISTING STRUCTURES AND APPROVED USES. Currently the house located on the parcel located at 204 South Street is used for residential purposes and a portion of the

Property is used as a seating area for the brewpub restaurant business located at 202 Harrison Street, SE. Parcel 2A is used as parking for the brewpub.

LOCATION: The parcels are bounded by South Street, Harrison Street and Royal Street. The Property is bounded on the north by property used as an office building and zoned B-1. It is bounded on the south by residential property zoned R-HD. It is bounded on the east by residential property zoned R-HD and it is bounded on the west by commercial property zoned B-1.

ZONING AND USE: The Property is zoned Residential Historic District (R-HD) and is in the Old and Historic Overlay District (H-1). Currently a portion of the Property is used as a seating area for the brewpub restaurant business located at 202 Harrison Street, SE. The house located on the Property is used for a residence.

PROPOSED USES: The Applicant proposes to use 500 square feet of the Property as a seating area to serve the brewpub restaurant business located at 202 Harrison Street, SE. The Property has been landscaped and designed to create the feeling and appearance of a “tropical beach” area. The existing house will provide 1,954 square feet of office space.

The residential property immediately adjoining to the east is screened by the commercial use of the Property by a six foot (6’) high board fence. To further buffer the residential property, there is an existing 5,679.9 square foot parking lot adjacent to the fence. The existing house keeps customers and any noise generated by the business towards the front portion of the Property. Additional landscaping and screening is planned for a portion of the perimeter of the Property.

CRITERIA FOR REZONING: The Applicant meets the rezoning criteria set forth in Section 3.3.15 of the Zoning Ordinance as follows:

A. Consistency with the Town Plan:

Land Use: The Town Plan encourages development only if the land use pattern accommodates desired levels of population and employment growth; adequate community facilities exist; development complies with the transportation objectives and redevelopment shall be compatible with the Town's character in terms of land use and design. The Applicant's proposed use and vision for the Property will add to retail and office space available to sustain employment growth; adequate community facilities exist to support the use, i.e., sewer, water, existing roads and close to mass transit. Additionally, *The South & Harrison Street Charrett* states that preservation of neighborhoods by careful transition and to fill the need for office and retail space. The Applicant's proposed use for the Property help will fill the need for additional office and support the existing commercial restaurant business located adjacent to the Property and provide an appropriate transition from commercial property on Harrison Street to protect and insulate the existing neighborhood to the east and south of the Property. The proposed project is compatible with the neighborhood character in building height, scale, massing and buffers as well as access to the site. Conversion of the existing house to office use will provide a buffer between the existing residential neighborhood and the more intensive commercial uses on Harrison Street, protecting the neighborhood from light and noise that is incompatible with the residential uses. Additionally, Applicant's

the use of the Property is low intensity and is suitable as a transition use between commercial uses and adjoining residential uses.

Community Design Objectives: As stated in the Town Plan, “much can be done...to ensure that redevelopment [is] consistent with the Town character and to enhance the community’s aesthetics and functionality.” The “beach” adds interest, charm and character to the area. The design and landscaping of the “beach” blends with the commercial uses of Harrison Street and provides an appropriate transition to the adjoining residential uses on South Street.

Natural Resources Objectives: Applicant’s proposed uses will not produce any noise or light pollution. Specifically, (1) lighting on the site will be shielded to prevent light pollution emanating from the site; and (2) the office use in the existing residence on the site does not generate light or noise that would disturb the surrounding uses or the neighborhood. As shown on the Concept Plan, Applicant has added landscaping to the property to create a pleasing streetscape by including crepe myrtle flowering trees, maple tree and a hedge. Applicant further proposes to add three additional street trees along Harrison Street. Additionally, screening is provided by the six foot (6’) fence Applicant has installed along the property line to screen the parking area from the commercial use.

Heritage Resources: The Applicant’s vision for the Property is to accommodate the need for additional office in the downtown area while preserving the charm of the Town. Heritage Recourse Objective 3. states that “...potential impacts on heritage resources are identified and mitigated.” The renovation and preservation of the existing

residence will protect a historic resource. Landscaping, fencing and screening will help reduce the impacts of the use and ensure its compatibility with the existing uses.

B. Consistency with any binding agreements with Loudoun County, as amended, or any regional planning issues, as applicable.

Response: The Property is not located within the 1982 Annexation area of the Town and is not covered under the 1982 Annexation Area Development Policies (“AADP”) Agreement.

C. Mitigation of traffic impacts, including adequate accommodation of anticipated motor vehicle traffic volumes and emergency vehicle access.

Response: The proposed use will not generate any additional traffic that will impact the surrounding streets. The existing roadways are adequate to serve the proposed uses.

D. Compatibility with surrounding neighborhood and uses; and

Response: The Applicant’s Property has residential property on the south and east sides and is bounded by commercial property on the north and west sides. The proposed use for the Property is compatible with the surrounding neighborhood and uses and provides an aesthetically harmonious transition to the residential uses at the side and rear of the Property.

E. Provision of adequate public facilities.

Response: The property will be served by public sewer and water which will be adequate to serve the use and will not impact the ground water.

PROFFERS: The Applicant will comply with the general review criteria set forth in the Town of Leesburg Zoning Ordinance Section 3.3. The Applicant is in compliance with the Proffers, a copy of which is attached hereto as Exhibit A. The Applicant proposes to amend the existing Proffers to allow evening parking on Parcel 2A. The Applicant proposes to subject the Property to the Amended Proffer Statement submitted with this zoning application, a copy of which is attached hereto as Exhibit B.

MODIFICATIONS: The Applicant seeks a modification to the Screening and Buffer Yard requirement of Zoning Ordinance Section 12.8.3 for 25 feet of S-3 Screen. The proposed and existing landscaping and the six foot board fence adjacent to the neighboring residential use adequately screens the commercial uses from the residential uses. Applicant will exceed the Town's required Twenty-Year Tree Canopy requirements with proposed and existing landscaping. Additionally, Applicant will exceed the Street Tree requirement with the proposed and existing street trees.

COMPREHENSIVE PLAN: The Property is located in an area identified in the Town Plan as Residential Historic District and B-1. Abutting the Applicant's property to the north and across the street to the west is property zoned B-1. The proposed use of the Property is consistent with the zoning ordinances and all polices set forth in the Town Plan as outlined above.

TRANSPORTATION IMPROVEMENTS: The Property will be served by Harrison Street, SE and Royal Street. Harrison Street, S.E., is adequate to serve the use as stated in the Traffic Impact Letter submitted with this Application.

PARKING: There is existing parking on Parcel 2A, which serves the use. Many of the patrons walk to the site which reduces the parking needs of the use.

PUBLIC UTILITIES: The Property is adequately served by the Town of Leesburg municipal sewer and water systems.

CONCLUSION

The rezoning of the Property is permitted by Sections 3.3 of the 2003 Town of Leesburg Zoning Ordinance. The Applicant proposes to use the existing residence for office space and use a portion of the Property as seating for the Applicant's brewpub restaurant business. The "beach" adds to the charm at the area and adds to the employment base by adding needed office space in the downtown area. The proposed use will have no negative or harmful impact on the adjoining properties and is consistent with the Town Plan and the Town of Leesburg Zoning Ordinance. The Applicant respectfully requests that that the Town Council of the Town of Leesburg approves its rezoning application and the Proffer Amendment.

Respectfully Submitted,
GORDON K. MACDOWELL

By: Counsel

Attachment 3. Proffers

**AMENDED PROFFER STATEMENT
MACDOWELL REZONING**

**September 19, 2013
Revised through March 12, 2014**

This application is submitted by Gordon MacDowell hereafter referred to as the “Applicant”. Pursuant to Section 15.2-2303 of the Code of Virginia, as amended, and Section 3.3.16 of the Zoning Ordinance of the Town of Leesburg, the Applicant submits these Proffers (the “Proffers”). The properties subject to this application are located at 204 South Street, SE and identified as Tax Map /48/A//37///1A (PIN: 231-28-9476-000) containing 0.19 acre and zoned RH-D. The second parcel identified as Tax Map 48/A//37///2A (PIN: 231-29-0382), having no address assigned. The Property is zoned B-2. Both of these properties are hereinafter referred to collectively as the “Property”.

The parcels described herein as “the Property” are depicted on the Concept Development Plan prepared by Mark W. Jeffries, P.E. dated September, 2013, and revised through March 12, 2014, hereinafter referred to as “the Concept Plan.”

Applicant now desires to amend the existing Proffers on the parcel at 201A Royal Street, SE and to proffer certain items in regard to the rezoning of the parcel at 204 South Street, SE.

On behalf of himself, his successors and assigns, Applicant hereby proffers that if the Town of Leesburg Town Council approves the rezoning of the Property, and this Proffer Statement, the development of the Property shall substantially conform to and be

subject to the following terms and conditions proffered herein. Proffer 5 of ZM-75 approved July 23, 1986 shall be amended as follows:

The Applicant agrees to restrict nighttime parking on the subject property after its brewpub/restaurant closes by controlling access to the lot by fencing, chaining and/or landscaping. These improvements shall be installed in a fashion agreeable to the Town and the Applicant.

2. The Applicant will provide on-site recycling to meet the needs of the proposed uses.

3. The Applicant will make a cash contribution to the Town for off-site transportation improvements in the amount of \$7,852.00.

4. Only the following uses will be permitted on the property: Brewpub, Eating establishment, Office, or Personal Services. All other uses otherwise permitted in the B-1 Zoning District are hereby prohibited.

5. Applicant proposes to remove the existing maple tree in the front yard of Parcel 2A on the South Street side and to construct a brick wall as depicted on the Concept Plan.

6. Applicant shall build the sidewalk improvements as shown on the Concept Plan dated September 13, 2013 and revised through March 12, 2014.

7. **Substantial Conformance Concept Development Plan.** The Applicant, or his successors-in-interest, shall develop the Property in substantial conformance with the Concept Plan. This Concept Plan shall control the use, layout and configuration of the Property, with reasonable allowances to be made for engineering and design alterations to meet Town zoning, subdivision and land development regulations, and the standards of the Board of Architectural Review. The Applicants acknowledge that the Concept Plan approval does not express or imply any waiver or modification of the requirements set forth in the Zoning Ordinance, except as specifically cited by ordinance section and paragraph in the motion for approval of this rezoning.

8. **Public Safety.** Applicant, or its successors-in-interest, shall pay to the Town of Leesburg the sum of \$0.15 per square foot of total building area as a one-time non-refundable contribution to the Leesburg fire and rescue companies, prior to the issuance of the applicable occupancy permit, allocated and to be made on a building-by-building basis.

9. **Escalator Clause.** All monetary contributions stated in these proffers shall be subject to adjustment at a rate equal to any fluctuations in the Consumer Price Index (CPI) from the date of final rezoning approval.

10. **Invalidity.** In the event any portion of these Proffers are subsequently determined to be illegal or unenforceable, the remaining Proffers shall continue in full force and effect.

11. **Exclusion of Public Property From Proffers.** Any portion of the Property which may hereafter be dedicated for public street purposes (or otherwise conveyed to a public entity) shall, upon such dedication, be excluded from the terms and conditions of these Proffers, and the remainder of the Property shall continue to be subject to the full force and effect of these Proffers.

12. **Binding Effect.** These Proffers run with the land and shall be binding upon all heirs, executors, administrators, assigns and successors in interest of the Applicant. These Proffers shall affect the owner of the Property at the time each individual Proffer becomes effective. Unless a Proffer is in default, conveyance of the Property or Properties shall transfer the personal obligation for performance of the Proffers to the new owner.

Miscellaneous

These proffers are filed in accordance with Section 15.2-2303 of the Code of Virginia, as amended, and Section 3.3.16 of the Zoning Ordinance of Leesburg, Loudoun County, Virginia.

The Applicant agrees that approval of the Concept Plan and this Proffer Statement does not express or imply any waiver or modification of the requirements set forth in the Subdivision and Land Development Regulations, the Zoning Ordinance, or the Design and Construction Standards Manual, and that final plats, development plans, and construction drawings for development on the Property is subject to the applicable Town regulations.

The Applicant and owner of the Property has signed this Proffer Statement, that he has full authority to bind the Property to these conditions, and that he has voluntarily subjected the Property to these proffer conditions.

By: _____
Name: Gordon K. MacDowell, Owner

STATE OF VIRGINIA,
COUNTY OF LOUDOUN, to-wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Gordon K. MacDowell, whose name is signed to the foregoing and hereunto annexed Proffer Statement, bearing date of _____, 2014, has this day acknowledged the same before me in the jurisdiction aforesaid.

GIVEN under my hand this ____ day of _____, 2014.

Notary Public

My Commission expires: _____
Registration Number: _____

PRESENTED: September 9, 2014

ORDINANCE NO. _____

ADOPTED:

AN ORDINANCE: APPROVING TLZM 2013-0005 MACDOWELL, A REZONING OF 204 SOUTH STREET FROM RHD TO B-1 AND A PROFFER AMENDMENT TO #ZM-75, 203 ROYAL STREET

WHEREAS, a Rezoning Application has been filed by Gordon MacDowell to rezone property at 204 South Street from RHD to B-1 to allow outdoor restaurant seating and office uses and to amend the approved proffers for rezoning #ZM-75 to utilize the parking spaces at 203 Royal Street for the restaurant and office uses; and

WHEREAS, a duly advertised Planning Commission public hearing was held on June 16, 2014 and continued to July 17, 2014; and

WHEREAS, at their meeting on September 4, 2014, the Planning Commission recommended _____ of this application to the Town Council; and

WHEREAS, the Town Council held a duly advertised public hearing on this application on September 9, 2014; and

WHEREAS, the Council has concluded that the approval of the application would be in the public interest and in accordance with sound zoning and planning principles.

THEREFORE, ORDAINED by the Council of the Town of Leesburg in Virginia:

SECTION 1. Rezoning Application TLZM 2013-0005, for the property having the Loudoun County Parcel Identification Numbers (PINs) 231-28-9476 and 231-29-0382 is hereby approved subject to the proffers dated August 7, 2014; and

AN ORDINANCE: APPROVING TLZM 2013-0005 MACDOWELL, A REZONING OF 204 SOUTH STREET FROM RHD TO B-1 AND A PROFFER AMENDMENT TO #ZM-75, 203 ROYAL STREET

SECTION 2. The property shall be developed in substantial conformance with the concept development plan prepared by Mark Jeffries dated July 3, 2014; and

SECTION 3. Severability. If a court of competent jurisdiction declares any provision of this ordinance invalid, the decision shall not affect the validity of the ordinance as a whole or any remaining provisions of this ordinance.

SECTION 4. This ordinance shall be in effect upon its passage.

PASSED this ____ day of September 2014.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council