



TOWN OF WARRENTON

Community Development Department

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STAFF REPORT

October 18, 2022

Property Owner:	61 Winchester Street LLC
Applicant:	Keith Macdonald
Application #	BZA #2022-3
Location:	61 Winchester Street
PIN:	6985-34-7492-000
Acreage:	0.32
Zoning	Residential R-16
Comprehensive Plan Designation:	Central Business District / Old Town Mixed Use
Land Use:	Single Family Detached Residential
Request:	The Applicant is seeking to appeal a Zoning Determination made by the Zoning Administrator, rendered on August 9, 2022, as to the official zoning district for 61 Winchester Street.
Recommendation:	Staff recommends the Board of Zoning Appeals (BZA) deny BZA #2022-3 per the pattern motion for approval dated October 4, 2022.

REQUEST

The Applicant, Keith Macdonald, is requesting an appeal of a Zoning Administrator's letter of determination rendered on August 9, 2022, on the zoning district for 61 Winchester Street. The appeal is requesting that the BZA overturn the Zoning Administrator's decision and determine that the official zoning district for 61 Winchester Street be shown as Central Business District (CBD) on the entirety of the lot or as split-zoned Residential R-6/CBD, with the CBD line running diagonally across the lot from the centerline of Smith Street to the western corner of the Applicant's lot (GPIN: 6984-44-0404) adjacent to 71 Winchester Street. Both options presented by the Applicant are depicted on the plat submitted by the Applicant and attached herein. The letter of determination rendered by the Zoning Administrator noted the zoning district for 61 Winchester Street as R-6. The property owner of 61 Winchester Street is not a party to this appeal application.

BACKGROUND

The Applicant, Keith Macdonald, submitted a request for a zoning determination on 61 Winchester Street on June 21, 2022. The request included supporting documents with bullet

points to support the Applicant's request that the zoning district for 61 Winchester Street is incorrectly identified on official zoning maps. The Applicant requested that the zoning district for the subject property should be shown as entirely CBD or as split-zoned CBD/R-6. After reviewing the Applicant's request and Town records, the Zoning Administrator issued a letter of determination on August 9, 2022, noting that the official zoning district for 61 Winchester Street is R-6. The Applicant appealed this decision on September 7, 2022.

Under Article 11-1.1 of the Town of Warrenton Zoning Ordinance and §15.2-2286/§15.2-2299 of the Code of Virginia, the Zoning Administrator is responsible for administering and enforcing the Zoning Ordinance. Zoning Determinations made under these regulations may be appealed to the BZA under Article 11-3.12 of the Zoning Ordinance and §15.2-2309 of the Code of Virginia. This application is subject to the duties and powers of the BZA to hear/decide appeals and interpret the district map where there is uncertainty, as noted in the state code sections (15.2-2309) below.

1. *To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.*
4. *To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the Ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by Ordinance.*

The BZA does not have the power to substantially change the locations of district boundaries as that is a function of the governing body requiring review by the Planning Commission, public notice, and at least one public hearing.

ANALYSIS

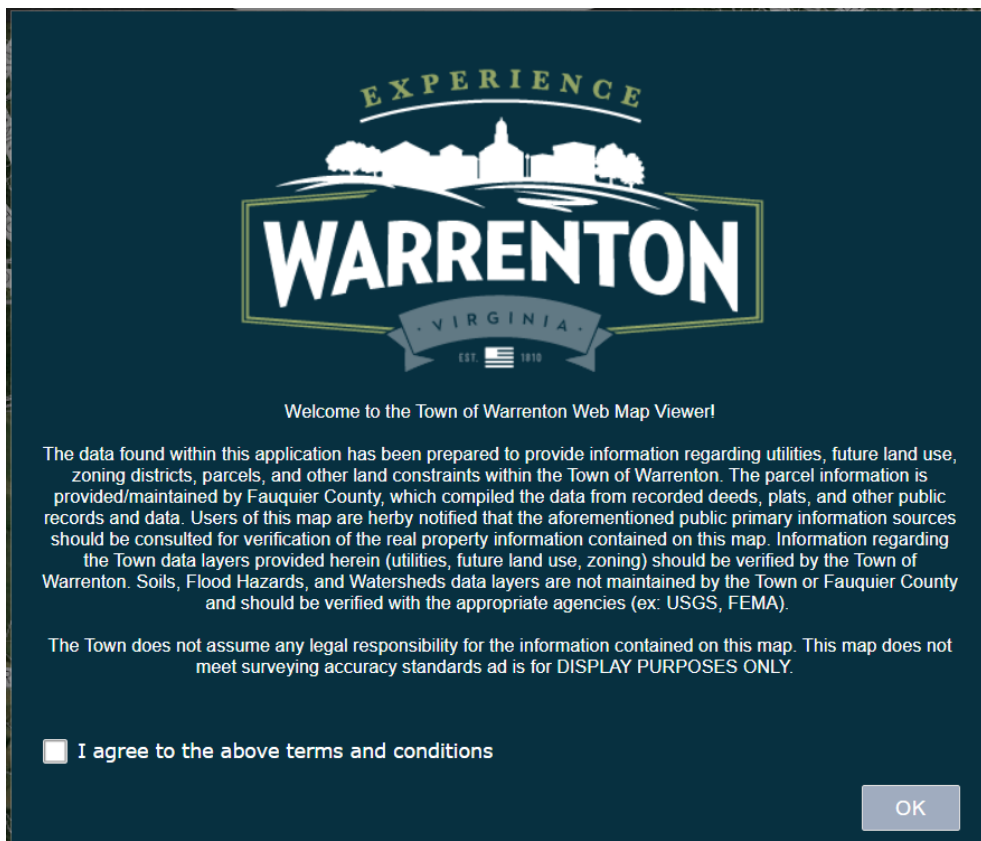
Under question is the official zoning district for 61 Winchester Street. The establishment of zoning district boundaries is guided by Article 3 of the Town of Warrenton Zoning Ordinance. Article 3-1 establishes the zoning districts, Article 3-2 incorporates the official zoning map, and Article 3-3 provides detailed rules for determining district boundaries where their location is uncertain on the official zoning map. The Applicant offered several reasons why the zoning district boundary is incorrect, detailed and analyzed below.

1. **"On and before April 28, 2016, the county and town records correctly identified 61 Winchester PIN 6984-34-7492-000 as CBD Central Business District; this is supported by the screenshot of the record taken on that date."**

As noted in the zoning determination, Fauquier County Real Estate Online Records are not to be utilized for determining zoning district boundaries for parcels in the Town as they are not considered official per the Town's Zoning Ordinance. Article 3 of the Town of Warrenton Zoning Ordinance establishes the official zoning districts for properties within the Town. It states that the boundaries of the districts are delineated on the Zoning Map. Fauquier County has no jurisdiction over the Town's Zoning Ordinance or Zoning Map. Nor does the Town of Warrenton maintain any of the Fauquier County Real Estate Records as it is a function of the county.

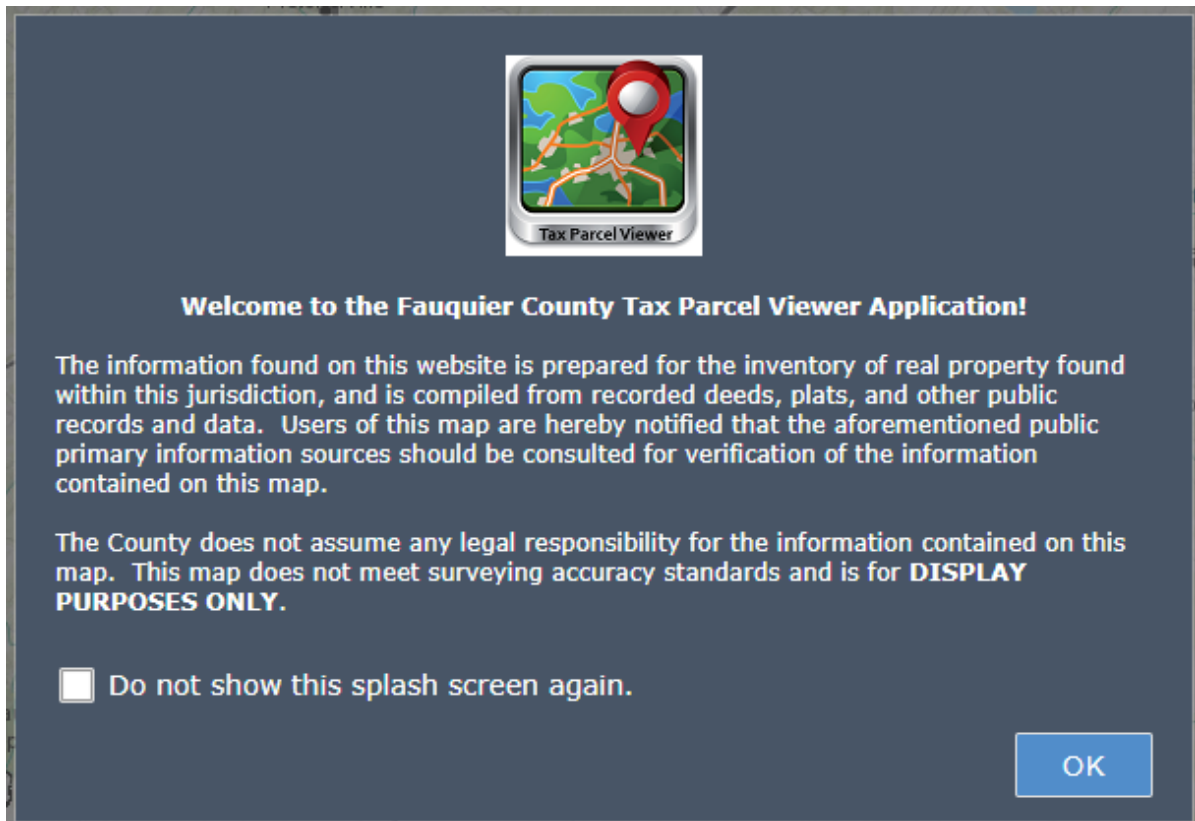
In addition, the Town and County both have disclaimers regarding the accuracy of the information contained in online maps and records. The Town and County do not assume any legal responsibility for decisions based on the information contained in said maps/records. These disclaimers are present because: these databases are known to have geographic errors due to projections, digitization errors, etc.; they are based on generalized information that is not always accurate on a fine-grain scale, and they are updated at different times. For example, there is a parcel in Town with the Zoning listed as Industrial/Limited in the Real Estate Online Records. However, the Industrial/Limited district has not existed since the adoption of the 2006 Zoning Ordinance (see below).

Town Map Disclaimer



The screenshot shows a dark blue background with the Town of Warrenton logo at the top. The logo features a white silhouette of a town skyline with the word "WARRENTON" in large white letters, "VIRGINIA" in a banner below it, and "EST. 1878" at the bottom. Above the skyline is the word "EXPERIENCE" in a curved banner. Below the logo, the text reads: "Welcome to the Town of Warrenton Web Map Viewer!". This is followed by a paragraph of disclaimer text: "The data found within this application has been prepared to provide information regarding utilities, future land use, zoning districts, parcels, and other land constraints within the Town of Warrenton. The parcel information is provided/maintained by Fauquier County, which compiled the data from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the real property information contained on this map. Information regarding the Town data layers provided herein (utilities, future land use, zoning) should be verified by the Town of Warrenton. Soils, Flood Hazards, and Watersheds data layers are not maintained by the Town or Fauquier County and should be verified with the appropriate agencies (ex: USGS, FEMA).". Below this is another paragraph: "The Town does not assume any legal responsibility for the information contained on this map. This map does not meet surveying accuracy standards and is for DISPLAY PURPOSES ONLY.". At the bottom left, there is a checkbox followed by the text "I agree to the above terms and conditions". At the bottom right, there is a grey button with the text "OK".

County Map Disclaimer



County Real Estate Online Records Disclaimer

Real Estate Online Records [↗](#)

ON LINE RECORDS DISCLAIMER

The information displayed on the Real Estate on-line pages are prepared from the inventory of real property found within this jurisdiction and is compiled from recorded deeds, plats, other public records and data.

Users of this service are hereby notified that the aforementioned public record information sources should be consulted for verification of the information contained on the associated screens. Due to production timing and other circumstances, this information may not necessarily reflect the current taxable record.

The county does not assume any legal responsibility for the information contained herein and makes no warranty as to the absolute accuracy of the elements displayed.

Online Record Example

Fauquier County Real Estate Online

Parcel Detail for PIN 6984-69-2419-000

Street Address:

Legal Description: BENNERS MEADOW 41.705AC

Current Assessment Summary

Improvements Value	Land Value	Deferment	Total Taxable Value
\$0	\$31,282,500	\$0	\$31,282,500

Parcel

Improvements

Land

Transfers

<p>Owners : AMAZON DATA SERVICES INC</p> <p>Subdivision :</p> <p>Map Sheet : 6984.07</p> <p>Landscape : AVERAGE</p> <p>Road Type : PAVED</p> <p>Topography : ON GRADE ROLLING</p> <p>Book/Page 1702/327 WARRANTY DEED</p> <p>& Instrument :</p> <p>Ancestors : 6984-69-2551-000</p>	<p>Mailing Address : PO BOX 80416 ATTN: REAL EST MGR (AWS) DCA62 SEATTLE, WA 98108--0416</p> <p>Neighborhood :</p> <p>Neighborhood Group : 0006</p> <p>Tax District : CENTER-WARRENTON</p> <p>Class : COMMERCIAL AND INDUSTRIAL</p> <p>Acreage : 41.7050</p> <p>Utilities : NO WATER NO SEWER View 1 more</p> <p>Zoning : INDUSTRIAL/LIMITED</p>
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2. **"61 Winchester is a sub-divide of the original larger lot of Britton Hall – The Britton Hall lot dates to the first layout of the Town of Warrenton. (File: DB 18 – PG468), The entire Britton Hall lot has had the same Zoning since Zoning was implemented in the Town."**

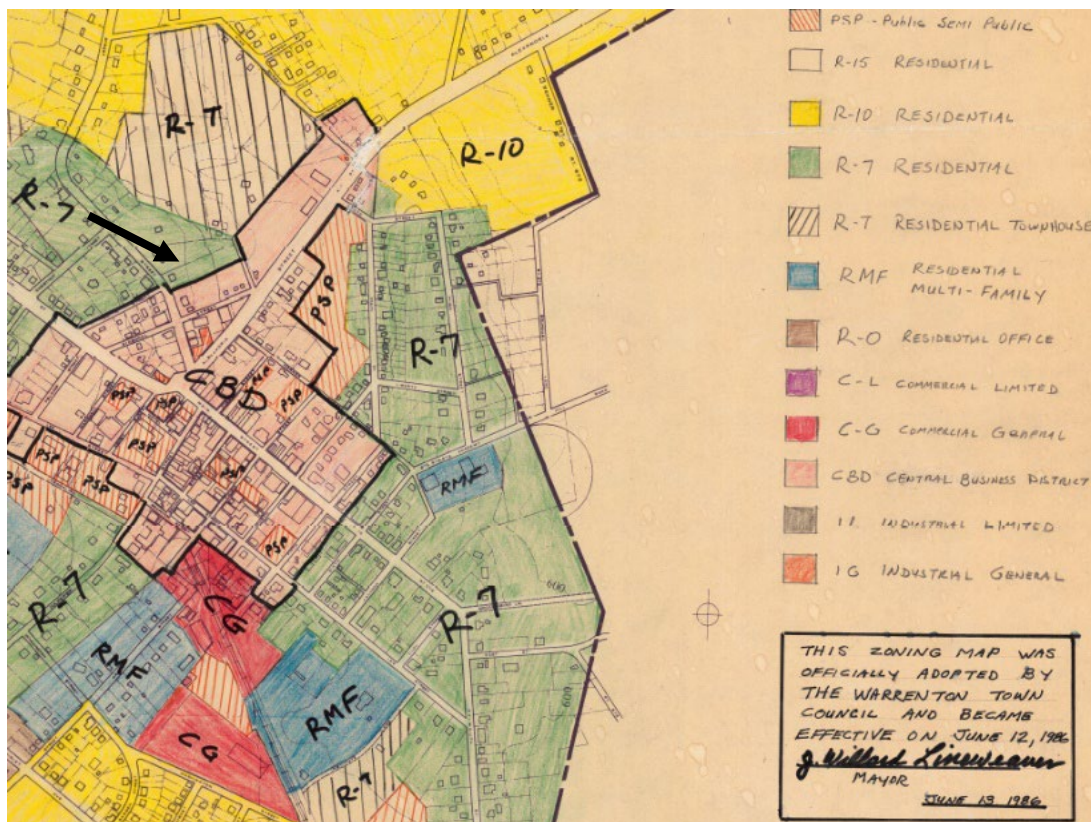
61 Winchester Street was subdivided off the lot known at Britton Hall in 1954, before the adoption of the first Zoning Ordinance within the Town of Warrenton in 1955. The exact district boundaries under the 1955 and 1959 Zoning Ordinances cannot be verified as those maps are unavailable. Neither the 1955 nor 1959 Zoning Ordinances contained a CBD District.

The oldest Zoning Map on file is from 1976 and was adopted with the 1976 Zoning Ordinance after the subdivision of 61 Winchester Street into two lots in 1970. This Zoning Map shows 61 Winchester Street and the lot referenced in DB 262-135 as within the R-7 Zoning District, with the remainder of Britton Hall within the CBD District. The 1986 Zoning Map did not affect any changes to 61 Winchester Street (shown as R-7)

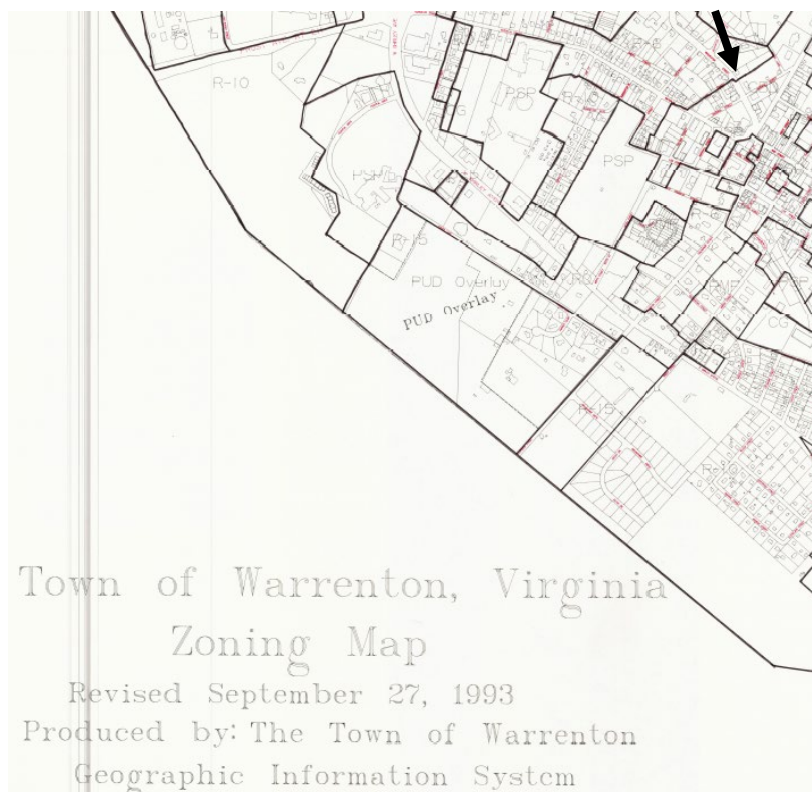
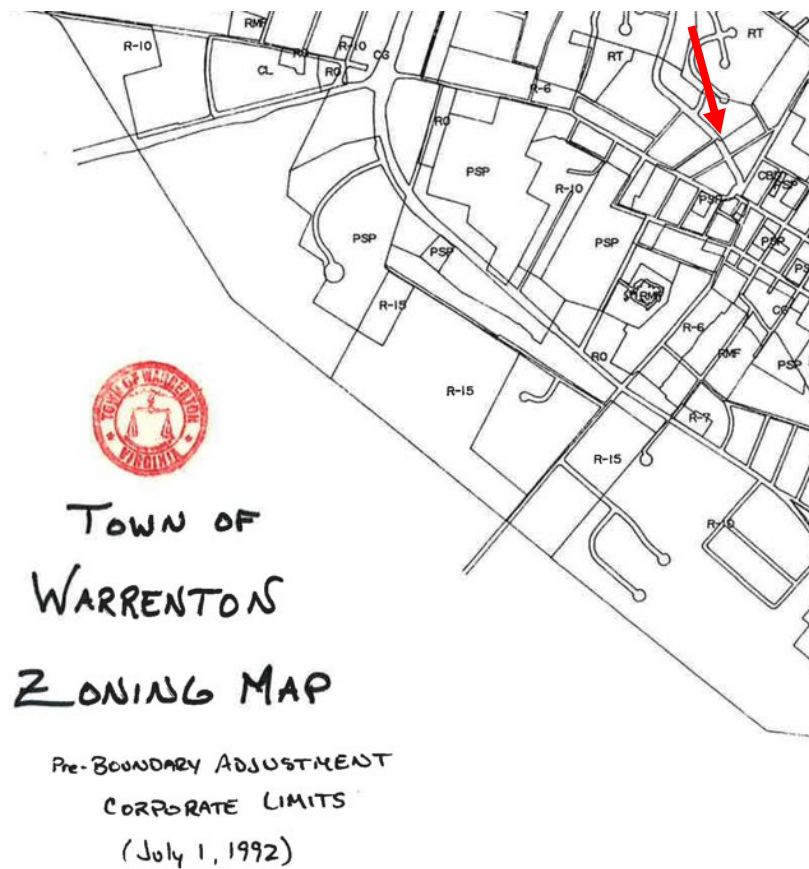
1976 Zoning Map

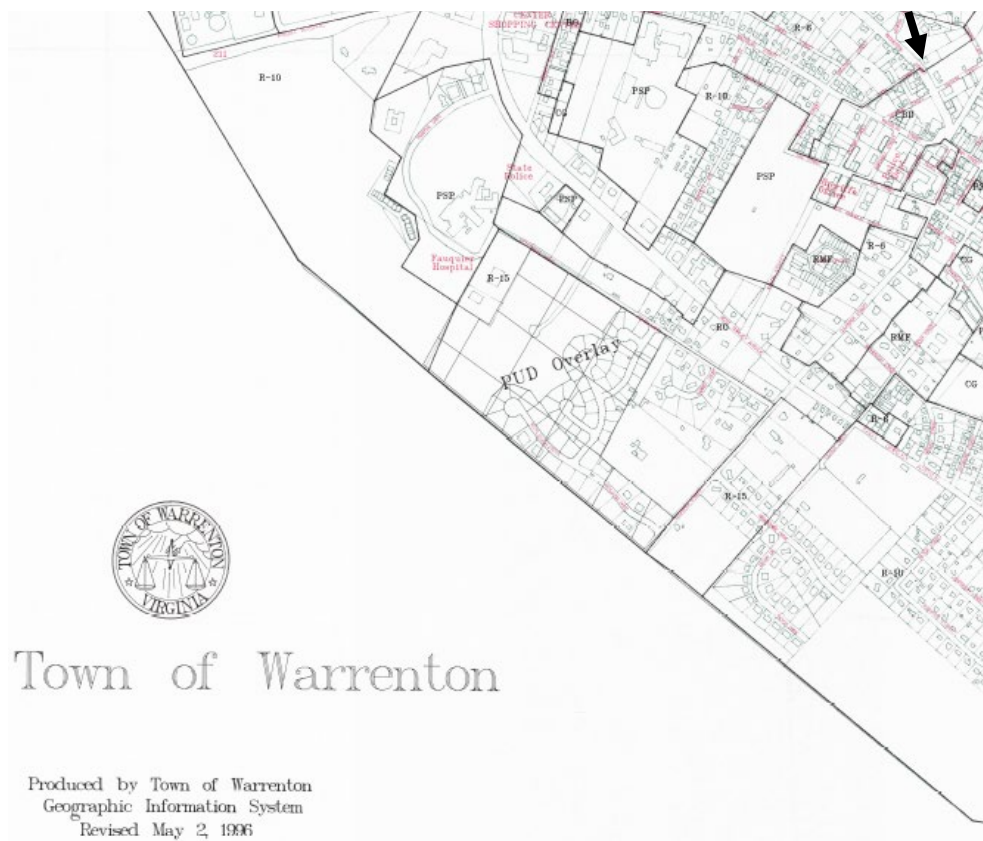
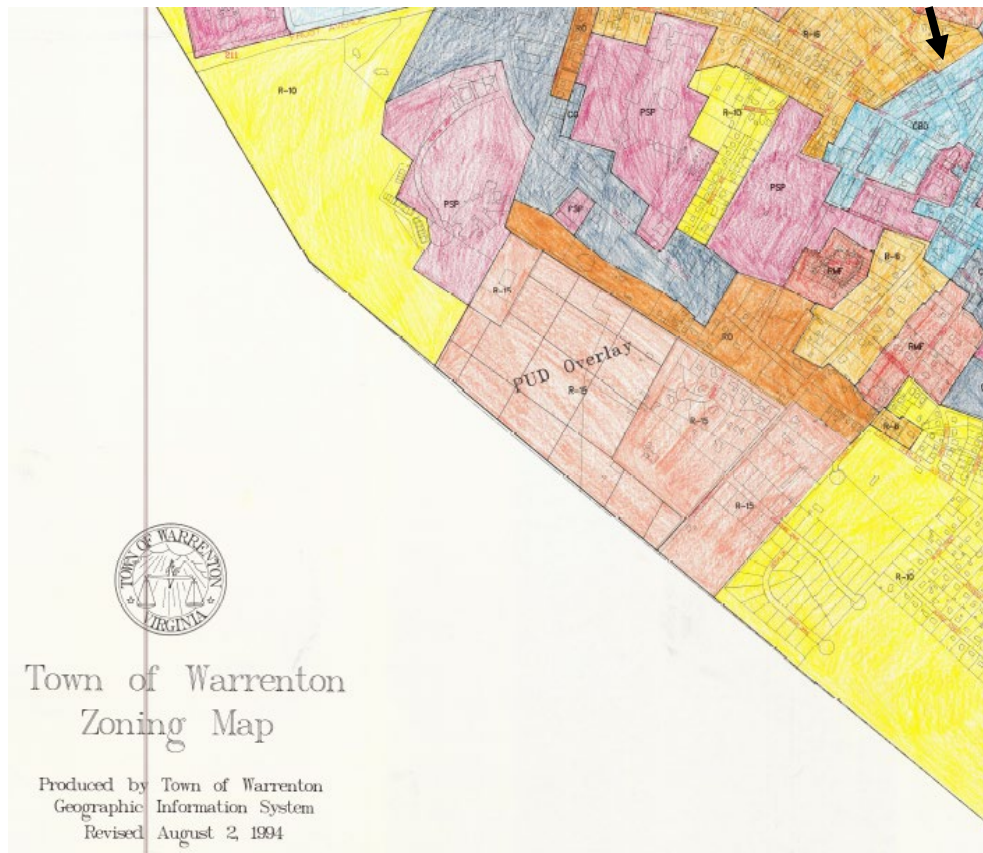


1986 Zoning Map

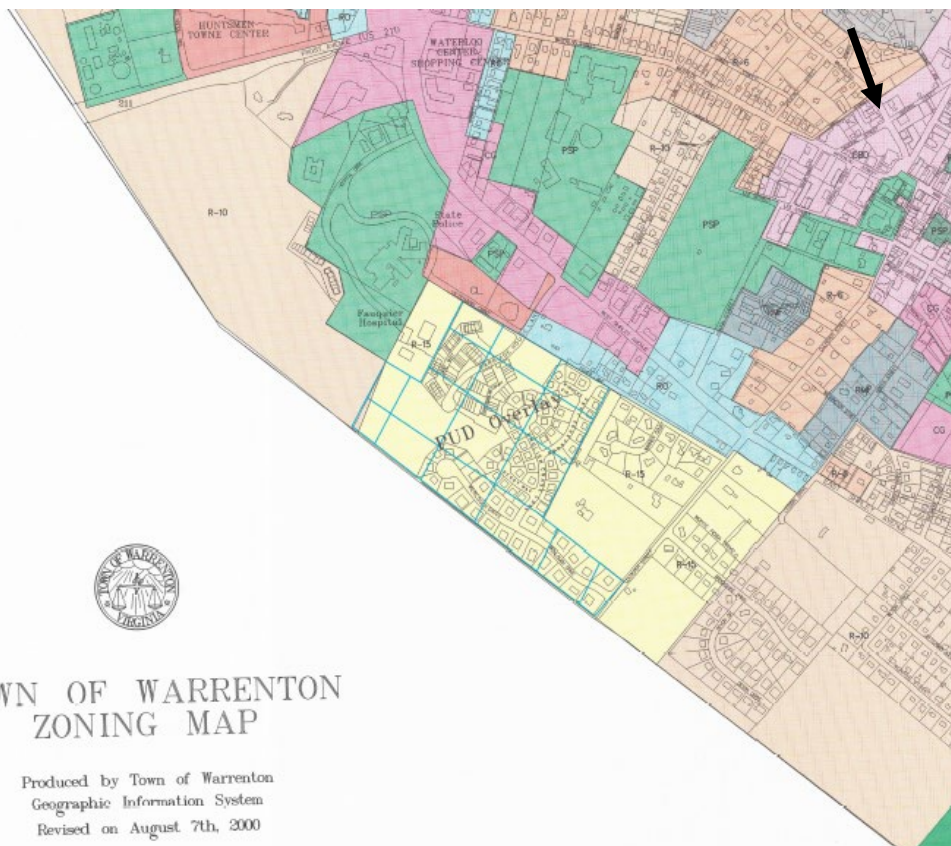


- Staff has not found any Zoning Determinations specifically regarding 61 Winchester Street. In addition, the only Zoning Map change seen in the record that altered the Zoning for 61 Winchester Street appears on the 1991 Zoning Map. The 1991 Zoning Ordinance/Zoning Map changed the R-7 zoning district classification to R-6, resulting in the reclassification of 61 Winchester Street to R-6. Each subsequent Zoning Map under the 1991 Ordinance shows 61 Winchester as within the R-6 zoning district, including maps dated 1991, 1992, 1993, 1994, 1996, 1998, and 2000. No Zoning Map Amendments on file include a change on 61 Winchester Street after adopting the 1991 Zoning Ordinance.





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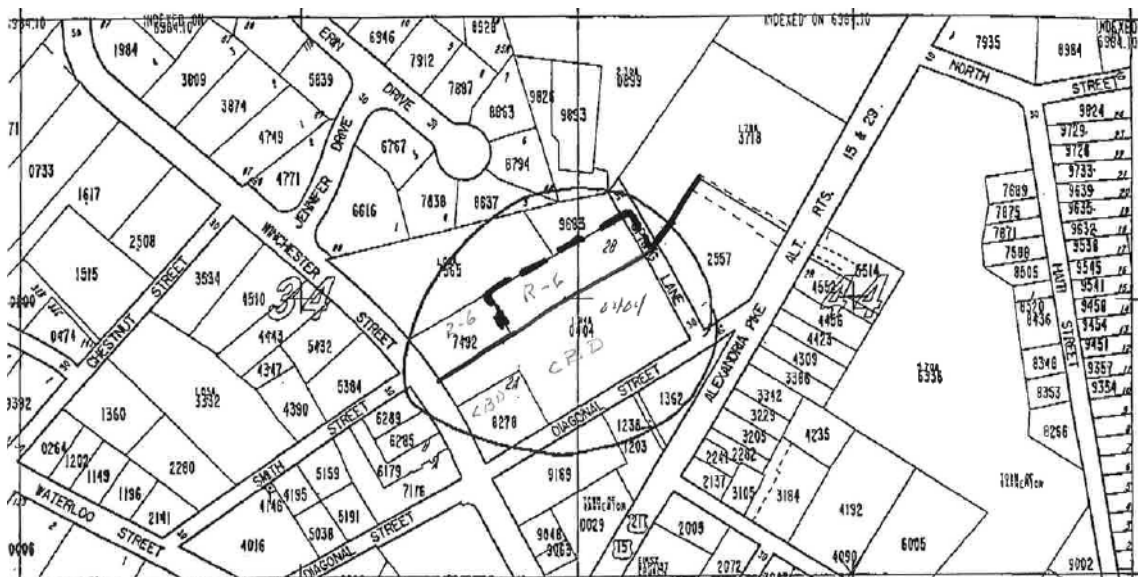


4. Sometime between 1998 and 2006, Mayor Fitch and his henchman McLawhon had the Zoning illegally changed in the Town and country records to show the portion of the Britton Hall lot that sits behind 61 Winchester Street to R6 Zoning and not the CBD Zoning as it was when purchased in 1998. After raising hell with the zoning board, which denied my appeal /argument at the time, they then "changed" it back quietly (to save face). What the map Proposed Zoning Map Revisions February 14, 2006 File: (2006.02.04 Proposed Map Changes) documents is the changing back to the original Zoning and the undoing of the mayor and Town's manager's illegal actions.

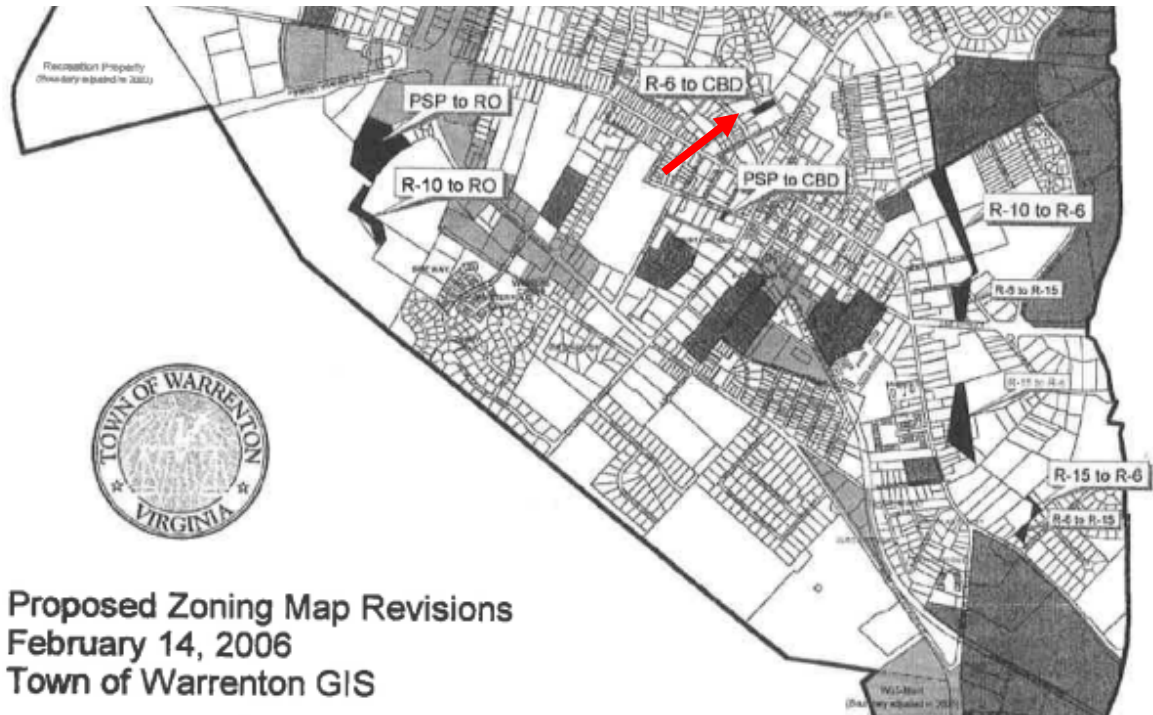
A Zoning Determination dated January 27, 2003, is on file for GPIN: 6984-44-0404, which includes the portion of Britton Hall behind 61 Winchester Street. This determination noted Mr. Macdonald's property as split-zoned CBD/R-6, with the part of the lot behind 61 Winchester Street as R-6. This determination describes the CBD District Boundary as following the centerline of Smith Street, then turning south along the centerline of Winchester Street to the shared property line between 61 Winchester Street and GPIN: 6984-44-0404. The district boundary then follows the southern property line of 61 Winchester Street and continues straight across GPIN: 6984-44-0404 to Spring Lane. This determination was appealed (BZA #03-04), and the BZA voted to deny the appeal on April 1, 2003, upholding the decision made by Mr. Mothersead. The staff report for the appeal described GPIN 6984-44-0404 as having split Zoning for over 25 years [in 2003]. It does not appear that the BZA's decision was appealed to the circuit court.

On February 14, 2006, the Zoning Map was updated with the adoption of Zoning Map Amendment #05-02 (ZMA) and Zoning Ordinance Text Amendment #05-02 (ZOTA), adopting the 2006 Zoning Ordinance and Map. This ZMA removed split Zoning on several parcels and realigned zoning districts to reflect existing development. This ZMA changed the Zoning District on the portion of GPIN 6984-44-0404-000 located behind 61 Winchester Street from R-6 to CBD to match the Zoning on the other half of the lot. This rezoning is shown on the map dated February 14, 2006, included in the determination request. ZMA #05-02 did not affect any changes to 61 Winchester Street.

BZA 03-04 Zoning Map



2006 Zoning Map (ZMA 05-02)



5. A critical reading 3-3 Zone District Boundaries clearly shows 61 Winchester falls into the CBD and not R6. A) Running a line from the intersecting - center lines of Winchester & Smith to the nearest endpoint of the nearest boundary (CBD) bisects about 7/8 of the 61 Winchester Lot (see: Out-Lot Plat Topo - 01 - Showing 61 Winchester Zoning Boundaries). B) The center of Smith Street is beyond the middle of the 61 Winchester lot

Per Article 3-2 of the Zoning Ordinance, district boundaries are delineated on the Zoning Map. Where uncertainty exists regarding the exact location of district boundaries shown on the Zoning Map, Article 3-3 provides rules to help interpret the Zoning Map. On the Town's official Zoning Maps, 61 Winchester Street appears to be R-7 or R-6, depending on the age of the map. None of the official Zoning Maps show the entirety of 61 Winchester Street as CBD. As such, there does not appear to be uncertainty regarding the zoning district for 61 Winchester Street. However, due to geographic errors in the GIS data, staff reviewed the original Zoning Maps and Article 3-3 to verify the district boundaries conform with the boundary location rules.

3-3.1 Where a district boundary is indicated as approximately following the center line of a lake or watercourse, or the right-of-way of a street, lane, power line or other public utility, the center line or right-of-way boundary shall be construed to be the district boundary.

Per Article 3-1.1, the official district boundary for the CBD District follows the centerline of Smith Street to the centerline of Winchester Street. It then follows the centerline of Winchester Street south.

3-3.2 Where a district boundary is indicated as approximately following a lot line or other property line, such lot line or property line shall be considered the district boundary.

Per Article 3-3.2, from the centerline of Winchester Street, the district boundary turns and follows the property lines for 61 Winchester Street and GPIN: 6984-44-0404-000 west and north to the corner of 71 Winchester Street, 61 Winchester Street, and GPIN: 6984-44-0404-000. The district boundary then follows the property line between 71 Winchester Street and GPIN: 6984-44-0404-000 to the corner of GPIN 6984-34-9683-00 and thence along the property line between GPIN: 6984-44-0404-000 and GPIN: 6984-44-0404-000 to the centerline of Spring Lane.

3-3.3 Where a district boundary divides a lot or runs through individual property, the location of such boundary, unless otherwise specified by figures on the Zoning Map, shall be determined by the use of the scale appearing on the Zoning Map.

Per Article 3-3.3, if the Zoning Map shows split-zoning dividing a lot, the scale on the Zoning Map would be utilized to measure the approximate distance of the districts. The Zoning Map does not show 61 Winchester Street as split-zoned in the plat provided by Mr. Macdonald. As such, this section is not required to interpret the district boundary for 61 Winchester Street.

3-3.4 Where figures are shown on the Zoning Map between a street and a district boundary, they shall indicate that the district boundary runs parallel to the street line at a distance therefrom equivalent to the number of feet so indicated, unless specified. In the event scale distances do not agree with such figures, the figures shall control.

Article 3-3.4 would not apply to 61 Winchester Street as the district boundary already meets the requirements noted under Articles 3-3.1 and 3-3.2.

Both district boundaries proposed by the Applicant appear to show significant changes to the district boundary on 61 Winchester Street, rezoning in Zoning Map Amendment. A Zoning Map Amendment cannot be done without due process as required by state code and local law. Nor can the BZA substantially change a district boundary under state code. Only Town Council has the authority to affect a Zoning Map Amendment for the Town of Warrenton.

Current Zoning

61 Winchester Street Zoning



STAFF RECOMMENDATION

The letter of determination on 61 Winchester Street is attached as provided to Mr. Macdonald. It coincides with the official Zoning Map and is in accordance with the ordinance provisions for district delineation and interpretation. This staff report also provides an analysis of the information provided by the Applicant.

The Zoning Map is the source of delineation of zoning district boundaries per the Zoning Ordinance. The visual depiction of the boundaries as they relate to the subject property is quite clear, making it easy to determine that the parcel is not zoned CBD or split-zoned CBD/R-6. Any deviation from the lines depicted on the map would therefore constitute a rezoning of the district boundary. Rezoning can only be accomplished by proper application to the Town, including property owner's permission for said application, review by the Planning Commission, public notices, public hearings, and Town Council approval.

Staff recommended that the Board of Zoning Appeals affirm the Zoning Administrator's decision regarding the official zoning district designation on 61 Winchester Street as R-6.

ATTACHMENTS

Staff Report, Board of Zoning Appeals

BZA #2022-1

October 18, 2022

- A. Proposed Motion of Approval / Proposed Motion for Denial
- B. August 9, 2022, Zoning Determination
- C. Appeal Application Materials
- D. BZA #03-05
- E. REO Disclaimer