

PLANNING COMMISSION
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, May 15, 2007 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Planning Commissioners: Adams, Masters, Weber, Talley, Willingham, Sublett, Shore, Griffin

Ex Officio & Staff: Moore, Youmans, Diem, Deskins, Jackson

Frederick County Liaison: Triplett

ABSENT:

VISITORS: Maureen Worrell, Kenisha Bridgemahan, Milton Johnson, Krista Farris, Mary Ellen “Micker” Madden, Jen Green Flynt, Mike Madden, Phil Orndorff, Holly Beth Thatch, Richard Bell, Patrick Farris, Capt. Kelly Rice, Bob Bartley, Lisa Wadley, Carl Rinker Jr., David Burns, Ben Butler, Evan Wyatt

Chairman Masters called the meeting to order at 3:00 pm.

MINUTES

Mr. Weber had one correction to the minutes of the last he meeting. The line reading “30 ft driveway spacing exception” should be changed to “300 ft driveway spacing exception”.

Mr. Weber, seconded by, Mr. Adams moved to approve the minutes of the April 17, 2007 meeting, as corrected. The motion passed unanimously.

CORRESPONDENCE

There was a revised agenda which included additional information regarding **CU-07-04**.

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON

Chairman Masters welcomed Mr. Triplett. Mr. Triplett stated that he did not have any information to present today.

PUBLIC HEARINGS

CU-07-04 Request of Milton M.J. Johnson and Carlton Vaughan for a conditional use permit for a neighborhood convenience establishment at 501 North Loudoun Street zoned Limited High Density Residential, HR-1 District with Historic Winchester, HW overlay.

ACTION: Forwarded to Council recommending disapproval of the request

Mr. Youmans presented the staff report and revisions. He stated that request was for a neighborhood convenience establishment in the former Kremer Oil gas station at 501 N Loudoun Street. The structure was most recently used as a convenience store; however; it has been vacant for more than two years and, as such, has lost its grandfathering as a legally non-conforming use. Mr. Youmans stated that such use is permitted with a conditional use permit in the HR-1 District.

Mr. Youmans presented the comments from the Planning Department. He stated that the applicants are proposing a neighborhood convenience establishment to sell prepared, Caribbean-style food for carry out, as well as a variety of typical convenience store items.

He further went on to say that the site has been intermittently used as a convenience establishment and deli (including a brief use as a tropical seafood business) since the gas station ceased use in the early 1980's. Mr. Youmans said that as the site has now been vacant for more than two years, the grandfathering of the previous non-conforming use has been lost. Along with the use, the non-conforming status of the rear yard has also expired; however, the applicants have applied to the BZA for consideration of a variance of the rear yard equipment.

Mr. Youmans said that because food preparation, in this case seafood, could result in odorous food wastes, the provisions for daily removal of such trash should be a condition of approval. Daily trash removal would address the odors and/or possible attraction of rodents and other animals. Mr. Youmans said that the applicants have indicated that daily trash removal is planned. Mr. Youmans informed the Commission that the applicants have not yet decided if they will pursue an ABC license for the sale of beer/wine. Staff has suggested that the applicant not pursue the sale of beer/wine..

Mr. Youmans added that an updated letter was prepared by the applicant clarifying the hours of operation for weekdays and weekends. Mr. Youmans suggested that the Commission consider the 10:00 pm and 11:00pm closing times given the location within a residential neighborhood.

Mr. Youmans gave an overview of the preliminary site plan depicting a number of proposed improvements to the site. City staff had made a number of recommendations to improve off-street vehicular parking and circulation as well as some landscaping standards for commercial development.

Chairman Masters opened the public hearing.

Chairman Masters asked if there way anyone wishing to speak on behalf of the applicant.

Maureen Worrell of 212 Bluebird Lane was the previous owner of the convenience store. She felt that the continued vacancy of the building would encourage loitering.

Kenisha Bridgemahan of 908 Allen Drive stated that the proposal was beneficial to the neighborhood because many Caribbean people live in this area. She added that there are already people hanging out there, even though it is vacant.

Mr. Milton Johnson, of 215 Tudor Drive, who is one of the applicants and stepson of the owner of the property, stated that the property was a convenience store before, not a restaurant. He would offer carry out breakfast, lunch and dinner. He added that he understood the concern because of the location in a residential area.

Chairman Masters asked if there was anyone who wished to speak against this issue.

Krista Farris of 505 N Loudoun Street (the property next to the proposed convenience store) presented a letter she had composed to the Commission. She stated that using 501 as a convenience store and carry out food establishment would pose an immediate threat to the safety and peace of the North Loudoun Street neighborhood, which is supposed to be a residential district. She added that it would increase loitering, traffic, noise pollution, littering, and light pollution in an already all too hectic and sometimes dangerous residential environment. She said that adding a convenience store would only make it legal for these people to loiter literally up against their house. In addition, she said there house could not be shielded from the intense nighttime lighting a convenience store would require. Also, the noise generated by customers, employees and idling cars, car doors slamming and delivery and garbage trucks would cause a great disturbance to their household. The proposed fence would do nothing to mitigate the added light and noise pollution generated by the business. Additionally, she said there would be little buffer space between their home and the proposed garbage site and driveway for the business.

Mary Ellen “Micker” Madden of 16 West North Avenue stated that she lived directly behind the convenience store. The garbage pickup would greatly disturb her daily life. Her family has four to six cars depending on if their daughters are at school, and parking is currently at a minimum due to the abundance of apartments.

Jen Green Flynt of 434 North Loudoun Street echoed the concerns of the previous speakers. She stated that they are trying to reestablish a community feel. The convenience store would bring increased traffic, noise pollution and loitering.

Mike Madden, also of 16 West North Avenue, echoed what his wife said. He was hoping that this part of the street could be agents of positive change. He added that he is not anti-business; however, a business that adds to the quality of life in the area would be better.

Phil Orndorff of 20 W North Avenue was present at the meeting. He stated that something must be done with the property. However, at this time there is very limited parking coupled with vandalism of cars and the area just doesn't need the added foot traffic.

Holly Beth Thatch of 440 N Loudoun Street stated that they already have to deal with transients from the boarding house. She said if the neighborhood was better, this might be a good fit. However, this just isn't the time for that kind of business in that location.

Richard Bell owner of 445 N Loudoun Street stated that he feels like this is a time of transitional change for the neighborhood. He added that a convenience store would be a good at an appropriate time, however, now is not the time.

Patrick Farris of 505 N Loudoun Street presented a letter he had written to the Planning Commission. He asked that the conditional use permit request be denied. He stated that the permit would abrogate the already compromised level of safety and security his family currently feels. He said that the property in question has been zoned Limited High Density Residential and was allowed in the past to operate as a convenience store through the exercise of a grandfather clause which was voluntarily allowed to lapse by the owners of the property. In addition, he said that this conditional use permit application is also seeking permission to sell carry out food and potentially alcoholic beverages which would further aggravate what is already intolerable living conditions for the neighbors. He said that in the past the Planning Department has not supported commercial usage within residential districts.

Capt. Kelly Rice of the Winchester Police Department stated that she had a discussion with Police Chief Varnau and Mr. Farris in reference to the proposed convenience store. She stated that it would cause additional problems for the neighborhood because transients would get easy access to loiter which would increase the number of complaints. Also, alcohol would increase the number of calls to that area.

Chairman Masters asked Mr. Deskins if this project followed the concept of New Urbanism. Mr. Deskins replied that the neighborhood is in transition and should be composed of single family homes. A store would be a deterrent to this. If the store was in a different neighborhood, the situation would be different.

Chairman Masters asked Mr. Diem to define the term "grandfathered." He stated that he did not have a copy of the Virginia Code and that the City Code does not include a formal definition. Mr. Diem recited provisions of Article 17 of the Zoning Ordinance pertaining to nonconforming uses which provide a definition of grandfathering.

Chairman Masters asked if the area was parking exempt. Mr. Diem stated that it was not parking exempt and therefore had to be provided for as in Article 18 and depending on the use parking is based on the ratio of one space for each 200 square feet of floor area.

Chairman Masters closed the public hearing.

Chairman Masters asked when the store had closed. Mr. Youmans stated that it ceased operation as a gas station in the 1980's and ceased retail use in 1996. He also clarified that garbage pickup would only be once a day.

Chairman Masters reminded the Commission that they could only look at this specific piece of property, not the boarding houses.

Mr. Weber asked Mr. Farris if the code section he spoke on that discussed grandfathered usage was his opinion. Mr. Farris said that he based that on his discussion with City staff and that it was not his opinion.

Mr. Adams stated that the standard is clear in the motion. The Commission should ask if this store would affect the health, safety of the neighborhood. He said there are no concrete plans for trash; the issue of lighting isn't addressed. He said that there was nothing from the applicant to address the neighborhood issues and there are still boarding houses everywhere.

Chairman Masters likened this issue to that of a nightclub. She said that a nightclub must receive a conditional use permit to operate; however, if they fail their business license is revoked. She added that when this goes to City Council the applicant will need to prove that the establishment will not have an adverse effect on the neighborhood.

Mr. Weber said that he would like to compliment all the people who came to speak for not attacking the business. He said that if there are already issues in the neighborhood the Commission should not approve it. He added that the report from Chief Varnau reinforce the issues.

Mr. Willingham said that he fully supported entrepreneurs but it is the wrong location for this type of business.

Mr. Shore, seconded by, Mr. Weber moved to forward CU-07-04 to City Council recommending disapproval because the use would adversely affect the health, safety, or welfare of the residents and workers in the neighborhood and be injurious to adjacent properties or improvements in the neighborhood.

Mr. Talley stated that he was impressed by the property owners attempts to do something with their property and he felt that if something was there it would be better. He said that the owners should be given a chance as opposed to speculating that by them being there it would make it worse.

Mr. Sublett added that the dumpster itself will cause adverse issues.

Mr. Adams said that the uses are limited and that maybe the city should reexamine what uses there could be for that location.

Chairman Masters agreed with Mr. Adams because there has to be something done to the property.

Mr. Weber added that he thought the comments that Mr. Madden made were very appropriate.

Mr. Shore, seconded by, Mr. Weber moved to forward CU-07-04 to City Council recommending disapproval because the use would adversely affect the health, safety, or welfare of the residents and workers in the neighborhood and be injurious to adjacent properties or improvements in the neighborhood. The motion passed on a vote of 6-1-0, with Mr. Talley voting in the negative.

CU-07-05 Request of First Loudoun Street Corporation, LLC for a conditional use permit for multifamily dwellings within an existing structure at 200 North Cameron Street zoned Central Business, B-1 District with Historic Winchester, HW overlay.

ACTION: Forwarded to Council recommending approval of the request

Mr. Youmans presented the request. He stated that the request is to establish multi-family dwelling use in conjunction with a planned redevelopment of the existing Winchester Towers at 200 N. Cameron Street. Mr. Youmans presented the comments from the Planning Department. He stated that the applicant proposes extensive redevelopment of the existing four-story structure to accommodate ground-floor commercial space and six floors of residential units. He added that the Conditional Use requirement is invoked due to some existing fourth floor space having been used most recently as professional engineering and survey offices.

Chairman Masters opened the public hearing.

Chairman Masters asked if there was anyone wishing to speak on behalf of the applicant.

Mr. Ben Butler, attorney for First Loudoun LLC was present. He stated that felt what was planned will be a keystone for redevelopment downtown.

Chairman Masters asked if anyone else wished to speak

Chairman Masters closed the public hearing.

Mr. Weber stated the Conditional Use Permit is such a small aspect, however, he agrees with the whole project.

Mr. Weber, seconded by, Mr. Willingham moved that the Commission forward the Conditional Use Permit request **CU-07-05** to City Council recommending approval as depicted on the submitted floor plans because the use should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The approval is subject to the following: 1) The applicant obtaining right-of-way vacation, conveyance and consolidation necessary to accommodate additional building elements; 2) The applicant securing a waiver of Green Area from the BAR; 3) Approval of the related site plan (SP-07-12); 4) The applicant providing a document identifying occupancy limitations and lease restrictions; 5) The applicant indicating provisions

for trash storage/collection and maintenance of common areas; and, 6) The applicant obtaining BAR approval as needed for exterior changes. The motion passed on a vote of 7-0-0.

Mr. Talley added that the City might be missing out by giving a waiver to the Green Space Requirements. Chairman Masters said that they must address the issue of Green Space in Old town because there is a lack of it, but it is difficult to tell someone who is already paying high taxes to pay the city to put a planter out.

Mr. Weber said that this was a BAR recommendation and not a Planning Commission recommendation.

RZ-07-05 AN ORDINANCE TO CONVENTIONALLY REZONE A 0.2279 ACRE PORTION OF LAND FROM INTENSIVE INDUSTRIAL, M-2 DISTRICT TO HIGHWAY COMMERCIAL, B-2 DISTRICT AT 2150 SOUTH LOUDOUN STREET ZONED INTENSIVE INDUSTRIAL, M-2 DISTRICT.

ACTION: Forwarded to Council recommending approval of the request

Mr. Youmans presented the request. He stated that request is to conventionally rezone (without proffers) a portion of the KVC, L.C property containing the H.N. Funkhouser bulk fuel plant from M-2 to B-2. The rezoning of this uphill portion of the site would support legally establishing additional parking for the Papermill Place Restaurant that adjoins it.

Mr. Youmans presented a description of the area. He presented the comments from the Planning Department. He said that the Comprehensive Plan generally calls for scaling back the extent of heavy industrial zoning and use in the City, especially where it is adjacent to residential zoning or use. Mr. Youmans referred to the rezoning exhibit depicting the portion of land of KVC, L.C. to be rezoned. He stated that the area of rezoning is 9, 929 square feet in size and a somewhat rectangular area. A number of years ago, fill material was hauled in and unauthorized parking was established on the subject area, when this zoning violation was brought to the City's attention, staff recommended they should allow parking to be legally established.

Mr. Youmans stated that the intent is for the subject area to be sold off and assembled in with the Hockman property housing the PaperMill Place Restaurant. The restaurant is being impacted by the Loudoun Street and PaperMill Road widening project now underway. Mr. Youmans added that a minor subdivision plat will need to be administratively approved. In addition a site plan will need to be prepared and approved for a parking area that meets zoning standards including paving, curbing, landscaping and lighting.

Chairman Masters opened the public hearing.

Chairman Masters asked if there was anyone wishing to speak in reference to the request.

Evan Wyatt of Greenway Engineering was present at the meeting. Mr. Wyatt stated that Mr. Hockman approached the Claytors to obtain parking. He said that Greenway had already

prepared an adjusted plat and that the Hockmans are proposing less than 500 square feet restaurant building addition in the future.

Chairman Masters asked if there was anyone else who wished to speak in reference to the request.

Chairman Masters closed the public hearing.

Mr. Talley asked if in the rezoning the Hockman's gained property. Mr. Youmans replied that it is the intent to assemble the rezoned area in with the Hockman land, but the rezoning alone does not change the boundary line.

Mr. Willingham, seconded by, Mr. Weber moved, that the Commission forward Rezoning **RZ-07-05** to City Council recommending approval because the scaling back of industrial zoning is consistent with the Comprehensive Plan and the proposed B-2 zoning supports economic sustainability by ensuring adequate parking for the adjoining restaurant. The motion passed on a vote of 7-0-0.

New Business

SV-07-02 AN ORDINANCE TO VACATE PORTIONS OF PAPERMILL ROAD RIGHT OF WAY AND CONVEY IT TO THE OWNER OF THE ADJACENT PROPERTIES AT 2900 PAPERMILL ROAD AND 3217 SHAWNEE DRIVE

ACTION: Forwarded to Council recommending approval of the request

Mr. Youmans presented the request. He stated that the request proposes to swap unneeded public right of way in the area of the lower segment of PaperMill Road near I-81 in return for needed public right of way along Shawnee Drive, particularly near its intersection with PaperMill Road as depicted on the dedication and boundary line adjustment plat.

Mr. Youmans presented the comments from the Planning Department. He stated that the requested area of vacation and conveyance is in the area of Old PaperMill Road that was terminated when I-81 was constructed to facilitate the overpass. The only need for the subject portion of public right of way was to serve as vehicular access to an existing dwelling on a separately platted lot at 3217 PaperMill Road situated at the base of the abutment of the I-81/Papermill Road Bridge. He added that the residential structures on the two parcels will be demolished and that activity should be a condition of the vacation and conveyance ordinance.

Mr. Youmans said that the area of vacation does not include the portion closest to I-81 where additional right of way will most likely be needed at some point in the future to support interstate widening. Also, preserving the right of way may also be beneficial if the City is successful in getting a relocated overpass to align with Battaile Drive along with a Collector-Distributor Roadway along the west side of I-81.

Mr. Youmans presented an exhibit entitled "Plat Showing Dedication and Boundary Line Adjustment, Land of Z L Metz Contracting LLC" that calls for the City to vacate and convey at

6,305 square foot portion of Papermill Road in return for the applicant dedicating to the City a 6,389 square foot area along Shawnee Drive. He said that the area of dedication is generally an 11 foot wide strip that would be added to the deficient variable width existing Shawnee Drive right of way. The dedicated right of way also includes a wider area at the intersection of Shawnee Drive and PaperMill Road to support a more perpendicular alignment of the two streets in great conformity with intersection standards. As a result the public street frontages would be improved with pavement widening, curb and gutter and sidewalk at the time of a site plan for commercial development of the resulting 2.4 acre site after the consolidation and land swap is recorded. Additionally, easements would be needed to cover existing public utilities in the Old Papermill Road right of way.

Mr. Adams, seconded by, Mr. Weber moved to forward the vacation and conveyance request **SV-07-02** to City Council recommending approval conditioned upon the demolition of the residential structures on the two parcels and the easements that would be needed to cover existing public utilizes in the Old Papermill Road right of way and because it is consistent with the Comprehensive Plan. The motion passed on a vote of 7-0-0.

SV-07-03 AN ORDINANCE TO VACATE PORTIONS OF LAKE DRIVE RIGHT OF WAY AND CONVEY IT TO THE OWNER OF THE ADJACENT PROPERTY AT 2705 VALLEY AVENUE

ACTION: Forwarded to Council recommending approval of the request

Mr. Adams and Mr. Sublett abstained from discussion.

Mr. Youmans presented the request. He stated that Jim Stutzman would like the City to consider vacating and conveying some unneeded Lake Drive right of way adjacent to his used car lot on the west side of Valley just south of Lake Drive so that he can assemble it in with the redevelopment land he is purchasing. In return, he would propose undertaking some very significant improvements to Valley Avenue (including installation of public sidewalk and possible under grounding of overhead utilities) at his expense.

Mr. Youmans presented the comments from the Planning Department. He stated that in conjunction with the Valley Avenue widening, a signalized intersection at Lake Drive is being designed such that it will be situated slightly north of its present location. He said that this work is already underway and will allow for relocation of vehicular access to and from the Stutzman site on the east side thus forming a four way intersection. The northward shift frees up existing right of way along the south side of Lake Drive across from Popeye's. He added that Mr. Stutzman is currently leasing the lot adjacent to the Lake Drive right of way as a used car lot and he intends to purchase it.

Mr. Youmans added that, consistent with the City's driveway spacing provisions, Mr. Stutzman is agreeing to close off at least two of the existing driveway openings connecting directly to Valley Avenue in return for a new driveway connection to Lake Drive opposite of Popeye's driveway, at a private expense. Mr. Youmans said that in addition the applicant is committing to installing extensive Valley Avenue sidewalk along his frontages and installing a retaining

wall with landscaping. Mr. Stutzman also intends to place existing overhead utilities underground at his expense if he can get Allegheny Power and Verizon to agree to do so.

Mr. Weber, seconded by, Mr. Talley moved to forward the vacation and conveyance request **SV-07-03** to City Council recommending approval because it represents good planning practice. The motion passed on a vote of 5-0-2 with Mr. Adams and Mr. Sublett abstaining.

Motion to Initiate **TA-07-03** and advertise a public hearing for June 19, 2007 on: AN ORDINANCE AMENDING ARTICLE 14.2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO STANDARDS AND GUIDELINES AND DEVELOPMENT INCENTIVES IN THE CORRIDOR ENHANCEMENT DISTRICT.

Mr. Youmans presented the draft resolution.

Mr. Willingham stated that in the future we should look at how we as a City use green space. Mr. Youmans said that providing an incentive for less parking could provide for less pavement. However, he added that this is not an end-all amendment to the CE.

Mr. Adams said that he was initially against the relaxing of standards; however, this has benefited residential areas.

Mr. Adams, seconded by, Mr. Weber moved to adopt the resolution initiating text amendment TA-07-03 pertaining to standards and guidelines and development incentives in the Corridor Enhancement District. The motion passed on a vote of 7-0-0.

Motion to Initiate **TA-07-02** and advertise a public hearing for June 19, 2007 on: AN ORDINANCE AMENDING ARTICLES 1-2, 3-1, 4-1, 5-1, 5.1-1, 6-1, 7-1, 8-2, 9-1, AND 13-1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITIONS OF ADULT CARE RESIDENCE, ALCOHOL TREATMENT CENTERS, DRUG TREATMENT CENTERS, FAMILY, FAMILY CARE HOME, AND GROUP HOME.

Mr. Diem presented the request. He stated that Winchester Code is inconsistent with Virginia Code. Our current ordinance addresses spacing between protected population residences. The text amendment will eliminate redundancy and redefine family. He added that he had spoken with the City Attorney and he was happy with family being defined as two unrelated adults and any children related to either one or both adults by blood, marriage, legal guardianship or adoption, including foster children. He added that he could also consolidate similar definitions and put into one draft.

Mr. Shore asked if the eight unrelated persons discussed in the fourth definition would include clients or patients and staff. Mr. Diem replied that it would allow for the staff residing there.

Mr. Diem stated that by including a revised definition of group home the City can enforce the same occupancy standards of residential houses.

Mr. Adams asked if you have eight mentally ill individuals and additional counselors, how many people would state code allow to reside there. Mr. Diem replied that it would protect the

health and safety of the individuals residing there. He said he has spoken with mental health and substance abuse counselors and they said that they have to receive a Certificate of Occupancy to get funding from the state. Mr. Adams stated that he would like to see the state licensure requirements.

Mr. Diem suggested deferring the proposal and will provide the Commission with more information and other options.

Mr. Talley asked if a halfway house was different than a group home and Mr. Diem replied that it was.

Administrative Authorization

SP-07-17 Weaver Building Apartments, 1-3 South Loudoun Street- green space waiver

At the May 8, 2007 Work Session, Mr. Willingham, seconded by, Mr. Weber moved to authorize administrative approval. The motion passed on a vote of 5-0-0.

OTHER DISCUSSION

ADJOURN

With no further business to discuss, the meeting was adjourned at 5:30 pm.

Susan Masters, Chairman