

PLANNING COMMISSION  
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, June 19, 2007 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**PRESENT:**        Planning Commissioners: Willingham, Shore, Weber, Masters, and Adams

Ex Officio & Staff: Griffin, Moore, Youmans, Diem, Williams, Van Diest,  
                         Jackson

Frederick County Liaison: Chris Mohn

**ABSENT:**        Talley and Sublett

**VISITORS:**       Kay Whitworth, Tim Painter, Johnny Lanzetta, Vincenzo Lanzetta, Ed  
                         Farrell, Ben Montgomery, Ron Mislowsky

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

Chairman Masters welcomed the new Planning Department secretary, Kari Van Diest, the new reporter from the Winchester Star, Ed Farrell, and the Frederick County Liaison, Chris Mohn. Mrs. Masters expressed the Commission's appreciation to Ed Daley for his service as City Manager for the City of Winchester and to the Planning Commission.

Mr. Weber requested the minutes from the May 15, 2007 meeting be corrected to reflect Mr. Adams making a comment about the Conditional Use Permit in the second to the last paragraph instead of himself.

Mr. Weber, seconded by Mr. Adams, moved to approve the minutes of the May 15, 2007 meeting with the correction. The motion passed 5-0-0.

**CORRESPONDENCE**

Mr. Youmans presented a revised agenda and staff report to include additional information for CU-07-06.

**CITIZEN COMMENTS**

None

**REPORT OF FREDERICK COUNTY LIAISON**

Mr. Mohn reported the Frederick County Planning Meeting will be tomorrow night, June 20, 2007. If there is any interest in the County's developments, the planning staff would be happy to share information.

## **PUBLIC HEARINGS**

**RZ-07-06** AN ORDINANCE TO AMEND A ZONING PROFFER PERTAINING TO THE SITE LAYOUT PLAN ASSOCIATED WITH A CONDITIONAL REZONING OF 1800-1850 HARVEST DRIVE (*Section 230, Double Circle 4, Lots 1 and 8*) CONDITIONALLY ZONED HIGHWAY COMMERCIAL, B-2 DISTRICT

Mr. Youmans presented the request. He stated the request is to change one of the proffers on a previously approved rezoning of 4 parcels of land located on W. Jubal Early Dr and Harvest Dr from PC to Conditional B-2. He described the location of the property and properties surrounding the area. This revision will only apply to 2 of the 4 parcels originally rezoned in May 2005.

Mr. Youmans stated the original rezoning request included a plan for the use of 1800-1850 Harvest Drive. The applicant is presenting a revised plan entitled “Conceptual Exhibit #1” to include 2 three-story medical office buildings instead of the 3 buildings that were previously approved. No changes to the access arrangement to the public streets are proposed in the revised plan.

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

Tim Painter of Painter-Lewis PLC stated the changes in the plan provide for more attention to the project and more green space around the building and the parking area. Painter-Lewis plans to do some special things in the parking area to allow the penetration of the storm water.

Chairman Masters opened the public hearing.

None

Chairman Masters closed the public hearing.

Chairman Masters asked Mr. Youmans how the increase in square footage of the buildings will fit in with the environment of the other buildings in the area. Mr. Youmans stated there is a 3 story office building across the street and a number of 2 story buildings. He did not think it would be out of character.

Mr. Adams stated that 5000 square feet of space is being added since the previous plan was approved, however an additional building is being eliminated as a result.

Mr. Adams, seconded by Mr. Weber, motioned that the Commission forward Rezoning **RZ-07-06** to City Council recommending approval of the revision to the proffered layout as depicted on an exhibit dated May 7, 2007 and entitled “Conceptual Exhibit #1, Site Layout Plan with Original Flood Plain Information” because the revision represents good planning practice.

The motion passed 5-0-0.

**CU-07-06** Request of Milano's LLC for a conditional use permit for a nightclub at 107 West Boscawen Street (*Section 192, Double Circle 1, Block O, Lot 12*) zoned Central Business, B-1 District with Historic Winchester, HW overlay.

Mr. Youmans informed the Commission that Mr. Moore will present the request.

Mr. Moore stated that the application is for a nightclub at 107 W Boscawen Street. The property was previously occupied by Old Town Bar & Grill and was Sweet Caroline's before that. In the Zoning Ordinance, a nightclub is defined as a establishment that provides live amplified music, Karaoke, DJs, and/or dancing between the hours of 10 pm and 6 am. The current business has been at this location since February of 2006. The Zoning staff was notified that nightclub use was taking place at the location without the necessary conditional use permit. He added that the owner of the business was under the impression that the use was permitted as a continuation of the previous uses. Although Sweet Caroline's had an approved CUP (CU-0-01), it appears Old Town Bar & Grill had never applied for the necessary reapproval of the CUP.

Mr. Moore stated a letter from the applicant included in the original packet of information was discussed at the work session last week in respects to getting detailed information regarding the nights of the week and hours of operation. Two representatives for the applicant were present at the work session. A meeting was held with Ms. Brenna Hott, manager of the establishment, on Friday, June 15, 2007, to further discuss details to be addressed in a revised proposal letter. He added Ms. Hott indicated a revised letter would be provided to staff on Monday, June 18, 2007. The revised letter had not been received as of 12:00 pm on Tuesday, June 19, 2007.

Mr. Moore stated that on Monday, June 18, 2007, staff did receive a letter from Rouss Fire Company who owns the subject property. The item was a cover letter addressed to city staff and signed by Mr. Vernon Clark, president of Rouss Fire Co. The cover letter indicated the Rouss Fire Company was not aware of the CUP application. Mr. Moore added that the application was signed by John W. Hawse, vice-president of Rouss Fire Co. A letter addressed to Milano's was attached to the cover letter received by city staff stating that the membership of the fire company voted to not support the CUP application and requested that the owner withdraw the CUP application. We are now in the situation where we have the owner of the property indicating to city staff that they are not in support of the application.

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

Johnny Lanzetta of Milano's stated that as of yesterday, he and his father received the letter from the fire company not supporting the application for the CUP. They had talked with Mr. Moore last week in reference to the revised request letter and intended to do submit that, but with the current circumstances, they did not want to cause more turmoil with the landlord. Mr. Lanzetta asked for more time so that the situation could be worked out with the landlord.

Chairman Masters opened the public hearing.

None

Chairman Masters closed the public hearing.

Mr. Weber stated that we are in a bit of a predicament with the owner of the property not approving of the application and the use being prohibited in the lease. The current tenant needs to have some discussion with the fire company to see where they go from here. If they are opposed to this, it is difficult for us to look at the CUP with the lease prohibiting it.

Mr. Adams stated that the owner has to support the CUP to make it work. Mr. Adams added that he is concerned about the number of police calls that have occurred since the applicant took over in March. He is also concerned that it is apparent from the fire company meeting on June 7, 2007, the fire company does not want the CUP and they want the lease to be followed. Mr. Adams is not sure tabling the request so things can be worked out with Rouss Fire Company will change anything. Mr Adams would have liked to have representatives from Rouss Fire Company at the meeting to answer questions. Mr. Adams stated that at this point, he is inclined to disapprove the application because the lease is being violated.

Chairman Masters agreed with Mr. Adams but reminded the Commission that any time an item is sent forward recommending disapproval, it brings a second time to discuss the situation.

Mr. Willingham agreed with tabling the request. He also added that he would like to see the issues worked out between the owner of the property and the tenant.

Mr. Willingham, seconded by Mr. Shore, moved to table CU-07-06 until the July 17<sup>th</sup> Commission meeting so that the applicant can provide sufficient information for the Commission to evaluate the proposed use and to give the applicant the opportunity to resolve the proposed use with the property owner.

Mr. Adams asked that someone from Rouss Fire Company be present to answer any questions.

Mr. Shore asked Mr. Youmans if the nightclub operations that have been conducted need to cease while this is going on. Mr. Youmans referred the question to Mr. Diem who stated the Zoning Department initiated enforcement action. Upon their application, a stay was placed on further enforcement. Mr. Diem added that staff can send a revised letter to them reminding them that until a CUP is received they are not permitted to engage in that type of activity.

Chairman Masters stated that it is very clear the landlord says no. The applicant needs to get it worked out with the landlord and then the city. The issue to be decided on is what to do with the application.

Mr. Adams stated he agrees with Mr. Shore in that the applicant was not prepared to address this today and should not get reprieve from following ordinances. Mr. Adams added that maybe the motion should include a directive to the applicant that he is not to operate as a nightclub pending a decision made by the Planning Commission. If the landlord wants to pursue his or her own means concerning the lease, that's fine. Mr. Adams stated he did not think that just because they have been operating in violation of the ordinance they should be permitted to go ahead and continue because they have filed an application. They are not prepared to go forward.

Mr. Willingham asked if an amendment was needed to address the violations of the ordinances.

Mr. Adams stated he would prefer the motion be amended to make sure it is clear where the Commission stands for them to continue operations or not.

Mr. Moore reminded the Commission that the motion on the floor is to table, and that such a motion is not open to discussion or amendment.

Chairman Masters stated we do have a motion to table on the floor and that there is Zoning on the books which takes care of the issue which has suddenly come up to debate.

The motion passed 4-1-0, with Mr. Weber voting in the negative.

Chairman Masters stated to the applicant that they should get the issues with the landlord worked out and come back next month.

**TA-07-03 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 text amendment. He stated that the outcome of this is to change mandatory standards that shall or shall not be done to more informative guidelines that we are encouraging or discouraging, such as the orientation of drive-thrus, the pitch of roofs, the length of unbroken roof planes, etc. If the owner chooses to do the things according to certain guidelines, they will then be offered development incentives such as the reduction in required parking or an increase in residential dwelling density in a mixed use property.

Chairman Masters opened the public hearing.

None

Chairman Masters closed the public hearing.

Mr. Weber, seconded by Mr. Willingham, motioned to forward Text Amendment **TA-07-03** to City Council recommending approval because it represents good planning practice and is in the interest of the City to provide incentives for property owners to protect and promote the aesthetic character and functionality of major tourist access corridors leading into the Historic District.

The motion passed 5-0-0.

**TA-07-04 AN ORDINANCE AMENDING SECTION 8-2 OF THE WINCHESTER ZONING ORDINANCE TO ESTABLISH MOTOR VEHICLE PAINTING, UPHOLSTERING, AND BODY AND FENDER WORK AS A CONDITIONAL USE IN THE HIGHWAY COMMERCIAL, B-2 DISTRICT**

**Mr. Adams abstained from the discussion.**

Mr. Youmans presented the text amendment. He stated the text amendment is to introduce auto body shops to the B-2 district through a Conditional Use Permit as compared to a CM-1 district. The amendment will also mimic the language in the CM-1 district with the requirement that no entrance to individual service bays be oriented to any public street or toward a residential district.

Chairman Masters opened the public hearing.

None

Chairman Masters closed the public hearing.

Mr. Willingham, seconded by Mr. Weber, moved to forward **TA-07-04** to City Council recommending approval as contained in the attached “Draft 1”, dated 05/15/07 because the amendment supports economic development.

The motion passed 4-0-1, with Mr. Adams abstaining.

**OLD BUSINESS**

Motion to Initiate **TA-07-02** and advertise a public hearing for July 17, 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, 13-1, 15-1, 15.1-1, 16.1-2, 18-4, 21-2, 21-3(A), and 21-3(A)(3) OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITIONS OF ADULT CARE RESIDENCE, ALCOHOL TREATMENT CENTERS, DRUG TREATMENT CENTERS, FAMILY, FAMILY CARE HOME, GROUP HOME, PROTECTED POPULATION RESIDENCE, AND SINGLE HOUSEKEEPING UNIT; AND, PERTAINING TO USE AND OCCUPANCY OF DWELLING UNITS; AND, PERTAINING TO VIOLATIONS AND PENALTIES

Mr. Diem presented the Text Amendment (TA). He stated that this draft of the TA is following an earlier attempt that was tabled for more clarification. Since then, it has become a more comprehensive TA that is specifically related to revising and adding to the current definitions, distinguishing the difference between use and occupancy of a dwelling unit, and amending violation and penalty provisions pertaining to residential overcrowding as authorized by the Code of Virginia.

Mr. Diem stated that citizen complaints regarding the location and potential placement of group homes within residentially-zoned neighborhoods received during November and December of 2006 triggered staff looking into this amendment.

Mr. Diem stated that research of the Code of Virginia resulted in identifying 15.2-2291 that further defines group homes and permits them to be included within Zoning Ordinances offering additional protections. He added that this code conflicts with section 3-1-11.1 of the Zoning Ordinance which prevents a protected population residence being located closer than

300 feet from any other protected population residence. The need to re-define *family* and to provide reasonable accommodations for persons with disabilities residing together in a dwelling unit was identified. The proposal within this Text Amendment is to eliminate the redundancy of definitions such as *adult care residence*, *alcohol treatment centers*, *drug treatment centers*, *family care home*, *group home*, and *protected population residence* and provide for one, all-inclusive definition of *group home*.

Mr. Diem stated that currently the term *single housekeeping unit* is not defined within the Winchester Zoning Ordinance. However, it would be instrumental in the overcrowding enforcement effort by characterizing identifiable standards. He added that the standards would get to some of the problems that are experienced and communicated to the Zoning & Inspections Department as single family homes have looked like they are being used commercially within the city.

Mr. Diem stated that at the Planning Commission Public Hearing on May 15, 2007, questions were raised pertaining to the initial draft of **TA-07-02**. The first question was “what is the required ratio of counselors to patients/residents in a group home.” Mr. Diem stated that the licensing and operation of group homes is identified within 12 VAC 305; and, specifically 12 VAC 305-590 pertains to staffing. There does not appear to be a set schedule or requirement for staffing; and, it would appear as though the staffing requirements are strictly dependent upon the types of services provided and number of persons served. The second question was “what is the applicability of Section 1-2-31, which limits maximum occupancy of a dwelling unit to no more than twelve (12) persons.” Mr. Diem stated that on the second sentence of section 1-2-3.1 of the Winchester Zoning Ordinance, the maximum occupancy of any single-family dwelling unit within the City of Winchester is limited to no more than 12 people, regardless of familial status, protected class, square footage, and number of bedrooms.

Mr. Diem states that the proposed definition of *family* is what is commonly accepted within municipalities throughout the Commonwealth of Virginia. Mr. Diem provided the definitions from various counties and the city of Richmond in the staff report.

Mr. Diem stated that the purpose of this Text Amendment is also intended to further distinguish the difference between protecting public health and safety through the establishment of maximum occupancy limitations for dwelling units, and preserving quality of life in single-family residential neighborhoods through permitted use standards, by creating two separate ordinances, each dealing with one particular requirement. He added that the City of Winchester will benefit from recent amendments to the Code of Virginia, pertaining to civil penalty fine amounts and criminal prosecution of violations relating to overcrowding in single-family residential dwellings.

Mr. Diem stated that he is respectfully requesting that the Planning Commission review, consider, and advertise for public hearing this Zoning Ordinance text amendment pertaining to the current definitions that have been referred to and also to consider and advertise for public hearing the revisions to use and occupancy of dwelling units, and violations and penalties resulting from residential overcrowding. Mr. Diem informed the Commission that Mr. Williams was present for any questions they may have.

Chairman Masters asked Mr. Williams if he had any comments. Mr. Williams stated that he feels this is a fairly conservative ordinance that will not expose the City to any potential legal claim but will provide a much needed tool for overcrowding issues. He feels very comfortable with what is in the amendment in terms of legality and protecting us from potential exposure from Mr. Diem's enforcement activities.

Mr. Adams stated that the second draft is better than the first. He agreed that it required a lot of work to get it into operation but that the way it was done now was a successful way of doing it.

Mr. Willingham, seconded by Mr. Adams, moved to initiate and advertise a public hearing in July for TA-07-02 PERTAINING TO THE DEFINITIONS OF ADULT CARE RESIDENCE, ALCOHOL TREATMENT CENTERS, DRUG TREATMENT CENTERS, FAMILY, FAMILY CARE HOME, GROUP HOME, PROTECTED POPULATION RESIDENCE, AND SINGLE HOUSEKEEPING UNIT; AND, PERTAINING TO USE AND OCCUPANCY OF DWELLING UNITS; AND, PERTAINING TO VIOLATIONS AND PENALTIES

The motion passed 5-0-0.

### **NEW BUSINESS**

**SV-07-04** AN ORDINANCE TO VACATE A 600 SQUARE FOOT PORTION OF WOOLEN MILL LANE PUBLIC ALLEY RIGHT OF WAY AND ASSEMBLE IT IN WITH THE ADJACENT TIMBROOK PARK PROPERTY AT 305 E PICCADILLY ST AND 314 WOODSTOCK LANE

Mr. Moore presented the street vacation. He stated the request is to vacate and convey the property directly to the south of 305 E. Piccadilly, a house to be used by the Parks and Recreation Department for office and community meeting space. The rezoning for this property to EIP zoning was approved at the June 13, 2007, Board of Zoning Appeals Meeting. He added the connection to the alley to Timbrook Park is currently chained off to prevent cut through traffic where children would be playing. The chains would be moved to the termination point of the alley as a part of this change.

Mr. Moore stated the residents along Piccadilly will still have the same rear access to their properties as before.

Mr. Shore, seconded by Mr. Weber, moved to forward the vacation and conveyance request **SV-07-04** to City Council recommending approval because it represents good planning practice.

The motion passed 5-0-0.

### **Administrative Authorizations**

**SP-06-56** Jenkins-Cooper / 2944-2950 Valley Ave  
Mr. Youmans presented the plan.

Mr. Weber, seconded by Mr. Adams, moved to authorize administrative approval. The motion passed 5-0-0.

**SP-07-18 Walgreens / 645 E. Jubal Early Drive**

Mr. Youmans presented the plan.

Mr. Weber, seconded by Mr. Shore, moved to authorize administrative approval. The motion passed 5-0-0.

**SP-07-19 BSW Investments / 2264 Papermill Road**

**Mr. Adams abstained from the discussion.**

Mr. Youmans presented the plan.

Mr. Shore, seconded by Mr. Weber, moved to authorize administrative approval. The motion passed 4-0-1. with Mr. Adams abstaining.

**SP-07-20 Berryville Square / 714-716 Berryville Avenue**

Mr. Youmans presented the plan.

A discussion was held on whether or not this should have a public hearing. Mr. Shore asked if it is a 'by right' situation, and what the neighbors might have to say. Chairman Masters stated that since the screening fence is currently in place, there is no change. A public hearing would slow it up. Mr. Weber stated he is inclined to have a public hearing. Mr. Weber, seconded by Mr. Adams, moved that a public hearing be held. The motion failed on a vote of 2-3-0, with Mr. Shore, Mr. Willingham and Chairman Masters voting in the negative. Mr. Willingham, seconded by Mr. Shore, then moved to authorize administrative approval. The motion passed on a vote of 3-2-0, with Mr. Weber and Mr. Adams voting in the negative.

**SP-07-24 Virginia Coffee Company / 550 N. Cameron Street**

Mr. Youmans presented the plan.

Mr. Willingham stated that he is working to get this area in the Historic Winchester district which might change the zoning for the applicant. As of today, Mr. Willingham has not been engaged by Mr. Justice. Chairman Masters stated that this is an example of the chaos that needs to be brought to order. She also asked if the applicant is going to give the Commission a comprehensive plan for the site. Mr. Moore stated the applicant is working toward a full plan with a local engineer and has submitted a BZA application to work toward getting the parking issues solved. Mr. Weber asked if this is an individual coffee shop. Mr. Youmans did not know if it was a franchise or not.

Mr. Adams, seconded by Mr. Willingham, moved to authorize administrative approval. The motion passed 5-0-0.

**SP-07-25 Omps Funeral home Revision / 1600 Amherst Street**

Mr. Youmans presented the plan.

Mr. Weber, seconded by Mr. Adams, moved to authorize administrative approval. The motion passed 5-0-0.

## **OTHER DISCUSSION**

Mr. Willingham asked if the money for the new comp plan was approved. Mr. Youmans stated that the budget has not been adopted by the Council, but so far the \$30,000.00 for FY08 and the \$50,000.00 for FY09 is in the proposed budget. The Finance Committee did authorize the hiring of a consultant. They want to review the RFP in terms of what the work will be. Mr. Youmans added that the challenge is if we hire a consultant soon, we only have \$30,000.00 until July 1, 2008. Then, the \$50,000.00 becomes available. This will cause the need to structure the contract with the consultant over a 2 year period with the understanding that there is only so much work that can be compensated for in the first year. We are putting together a step level project proposal to give to the Commission using existing staff in conjunction with a consultant. There may be some additional funds available through grants that can be used. A lot of the preliminary work can be done by the city staff.

Mr. Adams asked if the City can enter into a contract with someone when billing is deferred to the second fiscal year. Mr. Youmans did not know the answer but knows who to ask the question.

Mr. Adams stated we have been spinning our wheels for about a year and a half now because of a money issue. Mr. Youmans stated that councilors had requested a cost effectiveness analysis during a Planning & Development Committee meeting. Staff prepared and presented a cost effectiveness analysis to Planning & Development and later to the Finance Committee during the budget preparation process. Mr. Youmans mentioned that Fredrick County has a yearly budget of around \$50,000.00 for the Planning staff to have a consultant for various services. The County Planning Commission is aware of the value to have a continual funding stream to use.

## **ADJOURN**

With no further business to discuss, the meeting was adjourned at 4:46 pm.

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Susan Masters, Chairman