

PLANNING COMMISSION  
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, December 18, 2007 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

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

Ex Officio & Staff: Youmans, Moore, Van Diest, Walsh, Griffin, Lewis, and Diem

Frederick County Liaison: Absent

**ABSENT:**

**VISITORS:**        Hunter Hurt, Mark Campbell, Jim Funk, Joe Knectel and Janette Hooper

**CALL TO ORDER:** Chairman Masters called the meeting to order at 3:00pm, introducing Angela Walsh as the new Planning and Zoning Secretary.

**APPROVAL OF MINUTES:**

Chairman Masters noted changes made to the minutes. Mr. Weber pointed out the changes to the motion on page 8 for RZ-07-08.

Mr. Weber, seconded by, Mr. Talley moved to approve the amended minutes of the November 20, 2007 meeting. The motion passed unanimously by voice vote.

**CORRESPONDENCE**

There was a revised agenda to include:

1. Conditional Use Permit letter associated with item 2B CU-07-12, the Virginia Brewing Company
2. Letter associated with Rezoning #RZ-07-12, N. Cameron Street
3. Staff Reports for items 2D and 2E for TA-07-07 and TA-07-08
4. Added a 2<sup>nd</sup> site plan for consideration under Administrative Authorizations

**CITIZEN COMMENTS**

None

**REPORT OF FREDERICK COUNTY LIAISON**

None

**PUBLIC HEARINGS**

**CU-07-11** Request of Lafayette Plaza LLC for a Conditional Use Permit for 30 multifamily dwellings within an existing structure at 119-129 North Loudoun Street zoned Central Business, B-1 District with Historic Winchester, HW overlay.

Mr. Youmans presented the plans for Conditional Use Permit (CUP) approval to establish thirty (30) residential condos occupying approximately 34,306 sq. ft. on the upper floors of the former Taylor Hotel/Colonial Theater Building on the Old Town Mall. Newly proposed commercial uses on the ground floor totaling about 11, 799 sq. ft. are allowed by right. A landscaped pedestrian plaza will replace the area of the one-story former McCrory's Dept Store that is currently being demolished.

Mr. Youmans explained the density bonuses allowed with this project. The Density bonuses add up to 0.85. When the bonus density is added to the Base Density, the total adjusted density equals 30.69 units. Therefore, the 30 units proposed are within the permitted range.

Mr. Youmans also explained that while an attractive pedestrian plaza is included, the application does not appear to meet true "Green" Area provision for the percentage of the development being converted to residential use. The landscaped pedestrian plaza provides an "on-site" open space even though it is not predominantly green. Staff supports the applicant seeking a recommendation from the BAR to have the Planning Commission approve a lesser amount of Green Area in return for the open area provided with the plaza.

Mr. Hunter Hurt, Project Architect, 112 N. Cameron St stated that this is a very dynamic project that would do a lot for the downtown area. He hopes that it's approved.

Chairman Masters opened the public hearing and asked if there was anyone wishing to speak in reference to the request.

Seeing none, Chairman Masters closed the public hearing.

Mr. Talley stated that the site plans look nice. He asked if there should be a stoop leading out onto Indian Alley for safety. Mr. Youmans stated that there wouldn't be an entrance out onto the alley; therefore a stoop wouldn't be needed.

Mr. Talley inquired about retail deliveries being made on the mall. Mr. Youmans stated that there may be some small deliveries made to the mall entrance, however large deliveries would be made in the back in the alley.

Mr. Talley asked if delivery times needed to be limited. Mr. Youmans stated that it's not something that has been done in the past.

Chairman Masters stated that she is very happy to see that something that the Commission had requested to be put into action and subsequently approved by Council in regards to the densities is working so well for the city.

Mr. Weber had a question regarding the pedestrian walkway and how it would interface with the plaza and what would be between them. Mr. Youmans noted that there is about 4 ½ foot of grade change. Mr. Hurt continued to explain that there are steps and ramps that go from the walkway to the plaza.

Mr. Weber also asked about the safety of the pedestrians coming out of the retail stores. Mr. Hurt explained there are brick barriers between the path and the plaza that would provide protection.

Chairman Masters stated that it appears to be inviting and gives a much more expansive entrance into Old Town.

*Mr Shore, seconded by Mr. Weber, moved to approve CU-07-11 subject to the following:*

- 1) a site plan waiver of Green Area based upon the provision of plaza open space;*
- 2) a copy of the restrictive covenants and restrictions identifying occupancy limitations and lease restrictions pertaining to residential use; and, provisions for trash storage/collection and maintenance of common areas.*

*The motion was then unanimously approved by voice-vote.*

**CU-07-12** Request of Virginia Brewing Company for a Conditional Use Permit for a nightclub at 560 N. Cameron Street zoned Commercial Industrial, CM-1 District.

Mr. Youmans presented the site plan requesting up to 5,329 square feet of night club use in the existing ZeroPak building along the east side of N. Cameron Street. The proposed live amplified music venues would be housed in the proposed Engine Room Theater, the Beer Hall Assembly Area and the Restaurant.

Mr. Youmans stated that there shouldn't be any noise impact on residences.

Mr Youmans discussed the proposed parking areas along with the proposed crosswalk. This would require customers to cross a two-lane, one-way truck route in order to get to and from the parking areas. Staff is recommending some form of traffic control be required such as a flashing yellow crosswalk signal noted as Option A.

Mr Youmans mentioned that the applicant has not provided a hard-and-fast layout in terms of the interior wall layout and how they're segregating industrial and assembly uses.

Mr Youmans stated that there appears to be no plan to change the exterior of the building other than signage and a possible bump-out. They intend to remove the aerial crossings (old ammonia system) crossing over N. Cameron St.

Janette Hooper, part owner, 536 N Cameron St wanted to alert the commissioners to Option B concerning the crosswalk, which is to leave the crosswalk as it is and make it the handicap entrance and add a railing, but have the main entrance at the more northern end of the building. This would be safer for large groups of people entering or exiting the building. There is a ramp at the northern entrance, however its current slope probably would not meet the ADA regulations for handicap access.

Chairman Masters opened the public hearing and asked if there was anyone wishing to speak in reference to the request.

Mark Campbell, 552 N. Loudoun St stated that he is an owner in the area. He is not against business however he is against a nightclub coming into his neighborhood. He has a 7 month old child. He feels that the noise coming from such a venue is unacceptable. He is also concerned about the impact on the value of the residential properties in the vicinity. He can see the building from his back window, and feels that when he tries to sell he will lose a lot of the equity he has in his home. He is concerned with the small children playing in the area. People will be looking for places to park and he feels this will spill over into the residential neighborhoods. His last concern is security. He wants to know how the drunk and disorderly will be handled.

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

Seeing none, Chairman Masters closed the public hearing.

Mr. Willingham asked if there would be any visual notification that there is a pedestrian crossing before a car reaches the crosswalk. Mr. Youmans stated that the staff just received that option and would like to take it to the police department, public works, and environmental division and have them give some input before it is looked at by Planning and Development Committee. He feels it would make sense to have a sign or a flashing yellow sign further south before the crosswalk.

Mr. Willingham suggested that instead of having the flashing yellow light active when there are more than 200 people present for any venue, that it be active anytime they are in operation, for as much safety as possible.

Mr. Shore asked what the occupancy limits are for the two venues being proposed. Mr. Youmans stated that building code establishes the occupancy limit and is based on square footage.

Mr. Adams wanted to address some of the issues raised by Mr. Campbell. He stated that with the Conditional Use Permit, the applicant is asked to take into consideration the concerns with all the neighbors as they arise. He continued by saying that it's up to the community to let the applicant and the local authorities know if there are any issues. After one year the Conditional Use Permit comes up for review and those recorded issues will be taken into account at that time. Mr. Adams went on to say that his concern is with the proposed handicap entrance due to safety concerns. He feels that using the northwest point of the building would make much more sense.

Mr. Sublett agreed with Mr. Adams saying that the northwest point would be better. He also wanted to say that after touring the facility he couldn't imagine a more soundproof building than this one.

Chairman Masters thanked Mr. Campbell for coming. She stated that she too toured the building and feels that it has natural soundproofing. She agreed with Mr. Adams comments any issues that come up need to be reported. She also spoke about the property values, that having an empty building is never positive for any neighborhood. Having it occupied would have a more positive impact on the neighborhood. Chairman Masters went on to say that she is concerned with the proposal. There are key plans (e.g. elevations) missing in order to proceed. She suggests tabling the issue until all documents are presented.

Mr. Weber spoke regarding the safety of the entrance being proposed. He agrees that it's a concern. He agrees with Mr. Youmans that there has to be notification before a car reaches the crosswalk. He would like to see what the police would suggest before they move forward. He agrees with Chairman Masters, the issue should be tabled

Mr. Shore disagreed. He felt having elevations done is an expensive task, and to ask the applicant to provide them when nothing is going to be done with the building is unnecessary. He also felt that the issue should not be tabled, that the staff knows what the commission is looking for and would be able to oversee the project from here.

Mr. Adams stated that he feels that the concerns that have been voiced can still be addressed under the CUP by modifying the requirements.

Chairman Masters stated that there isn't enough documentation to make a ruling.

Mr. Talley agreed stating that the applicant did not submit a full packet. They should have to come back with additional information. Mr. Talley also asked for clarification regarding the one year review, specifically when it starts.

Mr. Youmans stated it is one year after the issuance of the occupancy permit.

Chairman Masters stated that she has no issue with the use but there are still a lot of unanswered questions.

Mr. Sublett stated that the board has made clear what is wanted. At this point it could be passed and left up to staff.

Chairman Masters stated that all other applicants are asked to follow these steps. The details are needed.

Mr. Adams agreed with Mr. Sublett that the details that are left are all internal. He asked if the site plan needed for parking would include the northwestern entrance.

Mr. Youmans stated it would. He continued to say that even if the northwest entrance is used he would still recommend the bump-out, for safety reasons. He stated the CUP could be approved and the information requested would come back to the commission on the next site plan.

Chairman Masters asked that if the motion is made that it's said that there are no exterior changes to the building.

*Mr. Adams, seconded by Mr. Weber, moved to approve CU-07-12 subject to the following:*

1. Review at the end of one year and reapproval every three years thereafter;
2. Taking into consideration the concerns of all of the neighbors and addressing them as they come up;
3. A maximum of four (4) valid police calls per month, after which private security is required and/or the permit may be subject to revocation;
4. Strictly obeying all local and state laws, especially those pertaining to ABC licensing and payment of meals tax;
5. Nightclub use to end no later than 2:00 AM;
6. Flashing crosswalk lighting or other pedestrian safety measures deemed acceptable to the City Police Dept provided on N. Cameron St with the main entrance being on the northwest corner;
7. Site Plan approval for conversion of the former industrial spaces to theater, restaurant, and beer hall assembly area use (including associated off-site site improvements for parking);
8. No exterior changes, other than lighting, signage and traffic calming, and;
9. The CUP expires automatically if the nightclub: changes ownership; changes to another use; or ceases for more than one year.

*The motion was approved with a 5-2 vote. Mr. Talley and Chairman Masters voted against the motion.*

**RZ-07-12** An ordinance to conditionally rezone .926 acres of land at 401 N. Cameron St., 403-415 N. Cameron St. and 10 Baker St. from Central Business, B-1 District with Historic Winchester, HW Overlay to Central Business, B-1 District with Historic Winchester, HW Overlay. The conditional rezoning would result in different proffers than the unfulfilled

proffers that are associated with the current conditional zoning of the subject parcels. The Comprehensive Plan calls for light industrial use.

**Mr. Adams and Mr. Willingham recused themselves from the discussion.**

Mr. Moore presented the request for rezoning of the subject parcels. The current conditional zoning contains a proffered 24-unit townhouse development which the applicant does not intend to pursue. The proposed rezoning would result in the same base zoning of B-1 with HW overlay; however, the extent of departure from the current conditional zoning calls for this request to be addressed as a rezoning rather than a proffer amendment. The applicant intends to instead reuse the existing structures for office space. A proffer is included that would limit any future conversion to residential use to no more than 30 units. Applicant is also pursuing the processes to get the subject property including in the National Historic District which could open up the rehabilitation efforts to some available tax credits.

John Willingham, representative of OTSS, LLC, 925 Meadow Ct was available for any questions.

Chairman Masters opened the public hearing and asked if there was anyone wishing to speak in reference to the request.

Jim Funk of Cross Junction, VA, and owner of 419 N Cameron St the building attached to the subject property. He asked why he was never notified about the building being made historic and why it was made historic.

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

Hearing none, Chairman Masters closed the public hearing.

Chairman Masters asked if this property was in the parking exempt district.

Mr. Moore said that yes it is.

Mr. Youmans expanded on Mr. Moore's comment by saying that the parking exempt status is contingent upon the outcome of this hearing. Without the B-1 Zoning they won't have parking exemption. Mr. Youmans also addressed the question proposed by Mr. Funk regarding the Historic District. He explained that the local Historic District was extended at the request of Mr. Ray Smith who was the applicant on the two prior rezonings. He did that as part of his proffer to assure that there would be a review entity of the site from an architectural standpoint.

Chairman Masters questioned if the Historical District extension stops at the north side of the subject property.

Mr. Youmans stated that it does as long as there is a proposal for the 24 townhouses. Both the parking exemption and the Historic Extension are contingent on what has been previously approved.

Mr. Talley asked if Mr. Funk's property is part of the subject property or if it just butts up against it.

Mr. Moore clarified that it just butts up against it. He also explained that having the new conditional B-1 zoning approved would allow for some protection as any changes to the structure would have to be approved through the BAR. There is no proffered layout for future construction because the applicant intends to use the existing building.

Mr. Youmans expanded on this by saying the applicant stated a desire to re-use the building, however there is no proffer that says that they must.

Mr. Talley stated that the recommendation listed this property as being in the "blighted" part of the city. He asked if the designation has been made.

Mr. Moore stated that it hadn't. The language was taken from the previous rezoning amendment and can be removed.

Mr. Weber asked if the board could act on the conditional rezoning when the property is still owned by the individual or group which still has conditions attached to it.

Mr. Moore explained that the owner has signed the zoning application.

*Mr. Weber, seconded by Mr. Sublett, moved to approve RZ-07-12 subject to having the motion read "support reinvestment in this ~~blighted~~ portion of the City".*

Mr. Funk asked for clarification on what this motion would mean. He asked if the applicant could demolish the building.

Mr. Youmans reiterated that there is not a proffer that this rezoning hinges upon re-use of the building. It is clearly their intent.

Mr. Moore expanded by saying that there are protections. They could not demolish the property under this new zoning until it was approved by the BAR. He went on to say that they would have to go before the board to request any new construction.

Mr. Shore mentioned that this is not ultimate protection. He referenced a previous situation where the applicant got approval to demolish, then a COA to build a very nice building and let it expire. Now it's a parking lot.

Mr. Sublett explained that nothing is absolute. He is satisfied that the BAR would provide the proper oversight.

*The motion was approved 5-0-2(with Mr. Adams and Mr. Willingham abstaining).*

**TA-07-07 AN ORDINANCE TO REPEAL SECTION 16-25 OF THE WINCHESTER CITY CODE AND TO AMEND ARTICLES 1, 18, AND 21 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITION AND OPEN STORAGE OF INOPERABLE MOTOR VEHICLES, AND CIVIL PENALTIES ASSOCIATED WITH OPEN STORAGE OF INOPERABLE MOTOR VEHICLES.**

Mr. Diem presented that the Zoning Ordinance Text Amendment is staff-initiated; and, is intended to consolidate multiple sections of City Codes and Ordinances that are currently inconsistent with one another into one provision within the Zoning Ordinance. Staff has determined that certain inconsistencies exist between Section 16-25 of the Winchester City Code, Section 18-6-10 of the Winchester Zoning Ordinance, and the Code of Virginia. The Planning & Development Committee has received information regarding the simultaneous request to repeal Section 16-25 of the Winchester City Code. This action would allow the enforcement of inoperable motor vehicle storage violations to be the sole responsibility of the Zoning & Inspections Department, which is currently shared with the Police Dept., provided that the violation is found upon private property and not within a public right-of-way.

Chairman Masters opened the public hearing and asked if there was anyone wishing to speak in reference to the request.

Seeing none, Chairman Masters closed the public hearing.

Mr. Weber asked why we have the language listed as Section 18-6-10.2.

Mr. Diem explained that it is language taken from the Code of Virginia. It's what the general assembly has adopted.

*Mr. Talley, move to approve TA-07-07. The motion was seconded by Mr. Weber was then unanimously approved.*

**TA-07-08 AN ORDINANCE TO AMEND ARTICLE 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO ACCESSORY USES AND STRUCTURES.**

Mr. Diem presented that the amendment is intended to allow greater flexibility in design and to inspire architectural compatibility between principal and accessory structures on residential properties located within the Historic Winchester (HW) District.

Staff has identified a need to provide relief of the current accessory structure building height limitations within the Historic Winchester (HW) District. Specifically, residential properties within the HW District that were improved with a single-family dwelling constructed in or before 1930 would benefit from a waiver of the requirement that presently limits accessory structure heights to no more than an average of twelve (12) feet. The current height restriction applies to accessory structures that are not set back from the side or rear property lines.

Within the HW District, accessory structures can be found immediately adjacent to alley ways and other thoroughfares; and, structures that were built to reflect the architecture of the corresponding single-family dwelling appear to exceed the 12' height limit. Examples were presented.

The BAR would be designated to determine the appropriateness of the design for an accessory structure that would exceed the 12' height limit also any new or alteration to an existing structure.

Chairman Masters opened the public hearing and asked if there was anyone wishing to speak in reference to the request.

Seeing none, Chairman Masters closed the public hearing.

Mr. Talley asked what would be considered a hardship for a property.

Mr. Diem explained it could be the size of lot or maybe they couldn't meet the setback requirements and needed to go up instead of out. He continued to say that one of the provisions is that the issue has to be unique to the property and not shared.

Mr. Sublett stated that he supports this amendment however his concern is that this ordinance will allow a second story to be added to an existing building that may impair a neighbor's view. He also asked whether or not the 75 years old rule needed to be adjusted if this amendment passes.

Mr. Weber stated that he isn't sure how the BAR understands its responsibilities.

Mr. Sublett stated that he would like to change the language to be more explicit.

Mr. Diem agreed that it would negate the need for a variance.

Mr. Weber asked if the BAR could ensure these concerns would be taken into account with a COA.

Mr. Diem stated that the COA states that it would be taken into an account under Section 14-6.1.2. He also stated that the dating, 75 years vs. 1930, is referred to regarding demolition requests. He continued to say that similar language could be added to this amendment.

Chairman Masters stated that this situation is very subjective.

Mr. Sublett stated that he just wanted to make sure that the neighbors were protected.

Mr. Weber stated that the Section 14-6-1.2 that was previously mentioned would give that protection.

Chairman Masters echoed the same concern for the neighbors.

Mr. Weber asked if Mr. Diem could re-write the language to give a more concrete idea of how this would affect surrounding neighbors.

Point of Order, Chairman Masters asked Mr. Youmans if there should be a motion to table in order to get the re-write. Mr. Youmans stated that there should.

*Mr. Weber, seconded by Mr. Sublett to table TA -07-08 to allow time for the language to be revised to ensure the BAR takes into consideration properties covered by the amendment.*

***The motion to table TA-07-08 was seconded by Mr. Sublett and approved unanimously by voice vote.***

**TA-07-09 AN ORDINANCE TO AMEND ARTICLES 3, 4, 5, 5.1, 6, 7, 9, 10, 16.1 AND 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TIME-SHARED OFF-STREET PARKING.**

Mr. Youmans presented the provision to amend the time-shared parking to adjust the table to encourage greater use, to expand the provisions to include buildings situated outside the HW District, and finally to eliminate the CUP requirement, thus eliminating Council approval on any request.

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

Seeing none, Chairman Masters closed the public hearing.

*Mr. Willingham, seconded by Mr. Adams to approve TA-07-09 because it represents good planning practice and promotes economic development by encouraging adaptive reuse of obsolete existing structures for an array of uses which may have differing demands for parking during certain times of the day or days of the week.*

*The motion was approved unanimously by voice vote.*

### **OLD BUSINESS**

None

### **NEW BUSINESS**

1. SP-07-60 Greenway Eng 2214 Papermill Rd Papermill Place  
Mr. Willingham, seconded by Mr. Weber moved to authorize administrative approval.  
The motion passed on a vote of 6-0-0.
2. SP-07-64 Potesta 139 Commercial St nTelos tel.  
switch bldg  
Mr. Weber, seconded by Mr. Willingham moved to authorize administrative approval  
with a waiver on the sidewalk. The motion passed on a vote of 6-0-0.

**OTHER DISCUSSION**

None

**ADJOURN**

With no further business to discuss, the meeting was adjourned at 5:33pm.

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Susan Masters, Chairman