

PLANNING COMMISSION
MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, April 15, 2008 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, and Talley. Commissioner Willingham arrived late.

Ex Officio & Staff: Griffin, Youmans, Diem, Moore, Grisdale, Walsh, Shickle and Deskins

Frederick County Liaison: Rick Ours

ABSENT: Sublett

VISITORS: Tim Painter, Dave Falkenstein, Laurence Miller and daughter.

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

APPROVAL OF MINUTES:

Mr. Weber, seconded by Mr. Adams, moved to approve the minutes of the March 18, 2008 meeting as presented. The motion carried 5-0.

CORRESPONDENCE

There was a revised agenda including:

1. Item 3a – Commission Decision on SP-08-17 made at the April 8, 2008 work session
2. Item 3b – Consultation by Zoning Administrator
3. Item 3c - Presentation on Comprehensive Plan Update

Mr. Willingham arrived at the meeting

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON

Mr. Ours announced that he has officially been re-elected to serve as Liaison for the 11th year. He gave a brief overview of what transpired at his last meeting:

1. Rezoning of Grove's Harley from RA to B2.
2. Rezoning of M-1 to Rural Areas at Winchester Regional Airport
3. Rezoning request for Clearbrook from RA to B2, west on Rt. 11 near Hopewell Rd - recommending denial.
4. Approved a development plan for Westview Business Park.
5. Approved revision to By-laws to do away with last minute Proffers.

PUBLIC HEARINGS

CU-08-06 Request of Denesia Berry for a Conditional Use Permit for a nightclub at 932 Berryville Avenue (*Section 176, Double Circle 7, Lot 3*) zoned Highway Commercial, B-2 District.

Mr. Moore presented the request for nightclub use at the Caribbean American Restaurant and Lounge located on the lower level of the structure that houses the Camino Real restaurant. The entrance to the business is at the rear of the building, facing toward the shopping center containing Food Lion, Family Dollar, etc.

A CUP for nightclub use was issued in 2005 for another business (Bistecca DiItalia) at this location which has since ceased operation. Staff is unaware of any problems that resulted from that use. A nightclub did exist at one time in the upper level of the building in conjunction with the Camino Real restaurant. There were many reported problems associated with that nightclub use; however that use was discontinued and superseded by auto sales use.

Mr. Moore stated that he has been in contact with the applicant and she stated that she will not be able to attend the meeting, however she did provide a brief letter stating the hours of operation will be from 9pm to 2am, Thursday thru Saturday.

Chairman Masters opened the public hearing.

No one was present to speak on the request.

Chairman Masters closed the public hearing.

Chairman Masters stated that she needed to know that all the grammatical errors in the applicant's letter are going to be fixed before going to City Council. Mr. Moore stated that staff will ensure this is done.

Mr. Talley asked if the business could operate as a nightclub until 2am on Sunday.

Mr. Moore explained that he isn't versed in the current ABC laws. However the live entertainment, regardless of whether alcohol is served on premises, is what qualifies the use of a nightclub. There is no prohibition on the live entertainment until 2am on Sunday.

Mr. Adams stated that the applicant is offering a lot more than what is typically required for a conditional use permit; cameras, security, etc. He asked why these wouldn't be included in the conditions when granting the permit.

Mr. Moore stated that the Commission could incorporate those conditions into the draft motion if it is felt that they are needed.

Mr. Adams stated that the property has had a checkered history so there may be a need to be a little stringent.

Mr. Moore stated that staff has no objection since the applicant is offering those things. He incorporating the conditions into the draft motion in the staff report.

Mr. Willingham asked if the applicant was the prior owner.

Mr. Moore said she was not.

Mr. Willingham shared his concern with setting a higher expectation with this applicant than they have with everyone else.

Mr. Adams stated that the applicant has set the bar higher for herself. She is not being asked for anything more than she has stated she is willing to provide.

Mr. Talley reiterated that Mr. Moore has spoken with the applicant and she has stated that she is, at a minimum, going to provide one bouncer during the nightclub use.

Mr. Moore added that it was not at staff's suggestion that she have private security.

Mr. Adams asked if the applicant was made aware of what is usually required for this permit.

Mr. Youmans stated that she was given a sample list of conditions taken from previous applications.

Mr. Weber asked if the applicant had previous nightclub experience.

Mr. Moore said that staff did not know the answer to that question.

Mr. Weber stated that it is possible that prior experience has lead her to what she is suggesting here.

Mr. Adams stated that City Council can remove the conditions if they see fit.

Chairman Masters stated that it is her opinion that the applicant set three conditions for herself, those being cameras, security and signs. Adding these conditions would be simply adding the applicant's conditions that she submitted with her application. After a year, if things have gone well it can be adjusted.

Mr. Adams, seconded by Mr. Weber motioned to forward CU-08-06 to City Council recommending approval because the use, as proposed, 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:

- 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. Provide surveillance cameras and private security on the premises and also post "no loitering" signs as set forth in the applicant's letter dated March 3, 2008;*
- 4. A maximum of four (4) valid police calls per month, after which additional private security is required and/or the permit may be subject to revocation;*

5. *Strictly obeying all local and state laws, especially those pertaining to ABC licensing and payment of meals tax;*
6. *Nightclub use is limited to Thursday, Friday and Saturday nights (and following mornings) of each week;*
7. *Nightclub use to end no later than 2:00 AM; and,*
8. *The CUP expires automatically if the nightclub: changes ownership; changes to another use; or ceases for more than one year.*

Motion carried 5-1 (Willingham opposed).

RZ-08-05 AN ORDINANCE TO CONDITIONALLY REZONE 633 CEDAR CREEK GRADE CURRENTLY ZONED HIGHWAY COMMERCIAL, B-2 DISTRICT WITH CORRIDOR ENHANCEMENT, CE OVERLAY TO INCLUDE PLANNED UNIT DEVELOPMENT, PUD OVERLAY AND, TO CONDITIONALLY REZONE A PORTION OF 629 CEDAR CREEK GRADE FROM HIGHWAY COMMERCIAL, B-2 DISTRICT WITH CORRIDOR ENHANCEMENT, CE OVERLAY TO HIGH DENSITY RESIDENTIAL, HR DISTRICT WITH PLANNED UNIT DEVELOPMENT, PUD OVERLAY AND CORRIDOR ENHANCEMENT, CE OVERLAY AND, TO REZONE A SEPARATE PORTION OF 629 CEDAR CREEK GRADE FROM HIGHWAY COMMERCIAL, B-2 DISTRICT WITH CORRIDOR ENHANCEMENT, CE OVERLAY TO INCLUDE PLANNED UNIT DEVELOPMENT, PUD OVERLAY.

Mr. Youmans presented the rezoning request explaining that there is a patchwork of zoning with this request. The property was subdivided into two separate parcels in 2006 and is under two separate ownerships. Currently, there is a 1.4-acre vacant parcel (TRACT B) known as 633 Cedar Creek Grade that is owned by Treybul Companies II, LLC is situated at the corner of Cedar Creek Grade and Tower Ave. This parcel is conditionally zoned Highway Commercial, B-2 District with Corridor Enhancement, CE District overlay zoning, but without Planned Unit Development, PUD District overlay zoning. The remaining land not sold to Treybul from MELCO, Inc. consists of a 7.2-acre partially developed parcel (TRACT A) known as 629 Cedar Creek Grade. It wraps around the south and east of the Treybul parcel and has frontage on three public streets—Cedar Creek Grade, Tower Ave, and Middle Rd. This split-zoned parcel includes about 2.8 acres of land that is conditionally zoned B-2 with CE District overlay but without PUD District overlay zoning. This area includes the existing office building that is located close to Cedar Creek Grade, as well as all of the improved parking area (including the existing parking lot expansion in behind the Treybul parcel). The rear 4.4 acres of the MELCO parcel is vacant HR (PUD) zoned. Most of this area is not within the CE Overlay district, although a narrow strip along the interface with the B-2 zoned portion of the site appears to be overlaid with CE zoning.

The pending proposal specifically calls for mixed use (ground-floor commercial with two floors of residential above) in the Phase 2 area, now generally identified as the Treybul parcel (Tract B). The Phase 2 area and Treybul parcel would be enlarged to encompass the area of the three mixed use buildings depicted on the Master Development Plan Exhibit that accompanies the PUD overlay rezoning request. Phase 2 would include up to 16 dwelling units on the upper floors of the mixed use structures. The total ground floor commercial space would amount to a maximum of 10,700 sq ft of retail space.

The modified residential proposal for Phase 3 at the rear of 629 Cedar Creek Grade now calls for 4 apartment buildings each containing 12 units for a total of 48 dwelling units. The units would be situated along private roadways that also serve as parking lots similar in nature to the Pemberton Village and

Stuart Hill projects in Meadow Branch South which is also zoned HR (PUD). The previous proffer of a public street connecting Middle Rd to Tower Ave is eliminated with this revision.

Mr. Youmans explained the specifics of the revised proffer received today including a maximum of two bedrooms per unit in Phase 3, providing traffic calming controls, and a grant of \$370.00 per constructed dwelling to be used for capital improvements in the Winchester Parks & Recreation system.

Chairman Masters opened the public hearing.

Tim Painter of Painter-Lewis PLC, stated that this request does correspond with the Comprehensive Plan and will be a great transition along Cedar Creek Grade. The Proffer allows for a lot of green space and recreational amenities. He stated he was available for questions.

Chairman Masters stated that she was pleased to see the new proffer statement and to see that a maximum of two bedrooms has been added. She felt that it was important to attach the proffer to their recommendation.

Mr. Talley agreed with Chairman Masters and stated that he felt it would be a great improvement

Mr. Talley, seconded by Mr. Willingham motioned to forward RZ-08-05 to Council recommending approval of the rezoning request as depicted on an exhibit entitled "Rezoning Exhibit RZ-08-05 Prepared by City Planning, April 8, 2008" subject to the proffers in the Revised Proffer Statement dated April 7, 2008, and subject to the general layout as depicted on the exhibit entitled "Master Development Plan for Cedar Creek Grade Neighborhood Retail Complex" prepared by Painter-Lewis, P.L.C. and dated April 7, 2008, because the rezoning represents good planning practice by expanding opportunities for high density, mixed use development in a suitable area.

Mr. Adams stated that, as a former member of the BZA and as a Planning Commissioner, to hear "PUD" makes him panic because with good intentions you hope it works out, but sometimes it just doesn't. However, this project is one that makes it work.

Chairman Masters agreed with Mr. Adams.

Mr. Shore stated that this project will provide upscale rental housing.

Motion carried unanimously 6-0.

TA-08-01 – AN ORDINANCE AMENDING ARTICLES 1-2 AND 18-9 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITION OF FENCE AND PERTAINING TO PERMIT REQUIREMENTS FOR FENCES AND ACCESSORY STRUCTURES

Mr. Grisdale stated that this request is staff initiated and is specifically related to the addition of a definition of *fence*, and the addition of zoning permit requirements for fences and accessory structures. Currently, the Ordinance does not contain a definition for a fence, and this amendment seeks to correct that. The proposed definition details the definition of a fence, which excludes landscaping from the definition. These situations can be prevented with the requirement of a zoning fence permit before installation. Property owners' plans that conflict with the Zoning Ordinance can be addressed at the

planning stage rather than during the enforcement stage preventing the financial hardship that may result from our current ordinance. These amendments contain provisions for a permit requirement for accessory structures as well. He reminded the Commission that there will NOT be a fee for the permit.

Chairman Masters opened the public hearing.

Laurence Miller, 601 Treetops Lane, had questions as to being able to remove an old fence and putting up a new one. His concerns were related to an ongoing situation on a neighboring property to his.

It was discussed by the Commissioners and Staff and determined that Mr. Miller's concern was not relevant to the current discussion of the proposed text amendment. Mr. Adams stated that it seemed that Mr. Miller has some valid concerns and asked that staff assist Mr. Miller. Mr. Diem stated he would handle the situation outside of the meeting.

Mr. Shore, seconded by Mr. Talley, motioned to forward TA-08-01 as contained in "Draft 2, dated 4/08/08" to City Council recommending approval because it provides an opportunity for citizens and City Staff to ensure that proposed fences and accessory structures are in compliance with Zoning Ordinance requirements and represents good planning practice.

Mr. Adams stated that while he hated to add another level of bureaucracy, he would rather educate the applicants than have them construct something in violation and have to come back and ask for a variance.

Motion carried unanimously 6-0.

NEW BUSINESS

A. Administrative Authorizations

- 1) **SP-08-15** Greenway Engineering 710 Berryville Ave Premier Motor Cars
Mr. Willingham, seconded by Mr. Weber, moved to authorize administrative approval of SP-08-15. The motion passed on a vote of 6-0.

- 2) **SP-08-17** John D Reno, PE 425 Handley Blvd JHHS site plan amendments
At the April 8, 2008 Work Session, Mr. Willingham, seconded by Mr. Weber, moved to authorize administrative approval of SP-08-17. The motion passed on a vote of 6-0.

- B. Zoning Administrator consultation with Commission regarding requested waiver of 3-foot separation standard at 905 Cedar Creek Grade. – Mr. Diem *****Withdrawn by Mr. Diem*****

- C. Housing Study Overview – Ms. Shickle

Martha Shickle gave a brief overview of the Comprehensive Plan update involving housing market data. She provided figures from 1990 to 2006 showing supply and demand for housing for both owners and renters. It was determined that there is an insufficient supply of housing units affordable to low and middle income residents. Most members earn incomes too low for them to afford to pay market prices for homes or rents in the communities where they work.

Mr. Adams asked what the Commissioners could do with respect to the Comprehensive Plan to resolve some of these issues.

Ms. Shickle explained that it would probably help to build more upscale rental properties because currently the higher income families own or rent below their affordability limit. This would free up those properties for the middle income residents, thus freeing up properties for the lower income residents.

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:47pm.

Susan Masters, Chairman