

PLANNING COMMISSION
MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, October 18, 2011, at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

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

PRESENT: Chairman Nate Adams, Vice-Chairman Dave Shore, and Commissioners Jennifer Beatley, Kevin McKannan, Stephen Slaughter, Kevin Talley and William Wiley (7)

ABSENT: None (0)

EX-OFFICIO: Councilor John Tagnesi and Interim City Manager Craig Gerhart

FREDERICK CO LIAISON: Commissioner Chris Mohn

STAFF: Planning Director Tim Youmans, Planner Will Moore, Zoning & Inspections Administrator Vince Diem, Old Town Development Board Executive Director Karen Helm, and Secretary Paula Le Duigou

VISITORS: David Smith, Scott Rosenfeld, Gary Oates, Raymond Long, Ben Weber, Rebecca McKavish

APPROVAL OF MINUTES

Vice-Chairman Shore moved to approve the minutes of September 20, 2011 as presented. The motion was seconded by Commissioner Talley.

Motion passed 7-0.

CORRESPONDENCE

Mr. Youmans stated that the only addendum item was a revised staff report for proposed text amendment pertaining to nightclubs and dance halls.

CITIZEN COMMENTS

Chairman Adams stated that this was a time for citizens to address the Commission about items that were not scheduled for public hearing.

David Smith, owner of The Village Square Restaurant, and Chairman of Old Town Development Board addressed the Commission. He stated that he understood that there had been discussion about nightclub conditional use permits.

Chairman Adams said that there was a new business item resolution to initiate which may amend the conditional use permit procedure for nightclubs and make it easier to obtain. That is the focus of the text amendment at this time, and it will be discussed as new business.

Mr. Smith asked if he could make comments about it now.

Chairman Adams suggested that when the new business portion of the meeting opens up, and with the Commission's permission, he could make comments then.

REPORT OF FREDERICK COUNTY LIAISON

Commissioner Mohn stated that they had the kickoff meeting of the Eastern Frederick Land Use Plan working group, which will be working on different sections of the new land use plan. They intend to have materials to take to the joint Board of Supervisors and Planning Commission retreat in January or February and would welcome any comments or involvement from the Winchester Planning Commission. Their next meeting is to take place on October 19, 2011 at 7:00 pm.

PUBLIC HEARINGS

A. RZ-11-529 AN ORDINANCE TO CONDITIONALLY REZONE 3.57 ACRES OF LAND AT 1705 AMHERST STREET (*Map Number 150-01-11*) FROM LOW DENSITY RESIDENTIAL (LR) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CE DISTRICT OVERLAY. The Comprehensive Plan calls for medical and general office uses on the periphery of the Medical Center District and identifies this property as a redevelopment site.

Mr. Youmans reviewed the request to conditionally rezone an 'L'-shaped parcel from LR to RO-1 district to permit office development on a vacant tract that fronts along Amherst Street. By proffer, the site would share access to Keating Drive with Sacred Heart.

The site, along with the Sacred Heart property is zoned LR. Land to the east, including the former Candy Factory site and the Frederick Co School properties is zoned RO-1. Land further to the west of Keating Dr is zoned B-2 and includes the CVS site. Land along the north side of Amherst St is all zoned RO-1. The portion of the site visible from Amherst St has Corridor Enhancement (CE) overlay zoning on it. The portion of the site that wraps in behind the next property to the east is not included in the CE District. No change to the CE overlay zoning is proposed.

The Comprehensive Plan calls for medical and general office uses on the periphery of the Medical Center District and identifies this property as a redevelopment site. This rezoning request brings the zoning into conformity with the adopted Plan. The applicant is proposing a single office building on the site that would not have any off-street parking between the building and Amherst Street. This is consistent with the provisions of both the RO-1 zoning and the Amherst St CE District zoning.

The one proffer included in the September 5, 2011 proffer statement assures that there will not be direct access to/from Amherst Street with a commercial entrance. The parcel will utilize the existing ingree-egress easement on Keating Drive. This proffer addresses potential traffic impacts associated with the rezoning to RO-1 and is consistent with the interparcel agreement established when Keating Drive was constructed.

Mr. Youmans, referring to the overhead map, pointed out the median crossover in the photo and stated that the use of that was consistent with the planning with Sacred Heart Church and traffic mitigation measures, further resulting in adequately addressing the increase in traffic.

The adjacent zoning, for both Sacred Heart as well as 1705 Amherst, are both in the low density residential district. To the west are two properties that are conditionally zoned to highway commercial, and then east a vacant property that is LR-1 and beyond that, the Frederick County school offices and Middle School. Across the street is R-1 until Linden Drive, and the closest residential property is at Fox Drive. As noted in the staff report, this is consistent with the Comprehensive Plan which does call for medical and general offices.

Mr. Youmans stated that it was discovered after the work session that the front portion of Keating Drive would also need to be rezoned to a designation such as RO-1 to accommodate commercial traffic. The Ordinance specifically does not allow commercial traffic to cross residentially zoned property unless it is a part of a public right of way, and Keating Drive is a private drive. The local representatives of Sacred Heart and the applicant are aware of the situation and Mr. Youmans recommended a rezoning of the front portion be pursued. He stated that while this is a necessary step, the Commissioners should focus on the current applicant's request.

Mr. Youmans stated that this was a straight forward application, but it did have a companion item of a conditional use for the development of the site. Per the draft motion in the staff report, Mr. Youmans recommended forwarding the motion to City Council.

Chairman Adams opened the Public Hearing.

Gary Oates of Greywolfe Engineering and Land Surveying addressed the Commission on behalf of the applicant. He stated that they could create an entrance directly onto Amherst Street, but the use of Keating Drive was preferred and previously set up with an easement. He stated that he was available for any questions the Commission might have.

Chairman Adams closed the Public Hearing.

Vice-Chairman Shore asked if there was a more appropriate zoning classification for the entire Sacred Heart property.

Mr. Youmans stated that both churches and schools were by-right uses in all residential districts as well as RO-1.

Vice-Chairman Shore stated that rezoning the entire property might increase the tax rate.

Mr. Youmans stated that this was not really an issue because the church is tax-exempt.

Vice-Chairman Shore asked Mr. Youmans how he envisioned fixing the problem that just surfaced.

Mr. Youmans stated that the rezoning case needed to move forward and doubted that there would be opposition to it, including City Council.

Chairman Adams asked how many houses could be built on the property if it were remain LR. Mr. Youmans responded that probably fewer than 10 homes could be built according to the requirements in LR and space necessary for streets.

Chairman Adams stated that the rezoning was absolutely consistent with the area and that it was a better use of that particular side of Amherst. He asked if the conditional rezoning is approved with this accepted proffer, what would happen if there were a problem with the Diocese, or if the Diocese does not act as quickly as the applicant would like.

Mr. Youmans stated that it is entirely up to the applicant to modify the proffer, and that can be done up until the time of the Public Hearing with City Council. He stated that there is some time before Council has a second reading and public hearing of this request. He stated that he does not think that anyone questions the wisdom of having access at Keating Drive given the lack of a median crossover. There is a possibility to work with the owners of the former candy factory site to the east to get an access lined with Omph Drive, but there are utilities that would make that more difficult.

Chairman Adams stated that RO-1 is very attractive, but once you start putting more ingress/egress on Amherst Street, it can bog things down and can make it problematic. This particular proffer at Keating Drive is the ideal situation.

Mr. Youmans said that if that does not go through, the applicant nonetheless has a right to some form of access to the property.

Chairman Adams asked Mr. Youmans if he was saying that the Commission could make a recommendation on the rezoning with this particular proffer, and the proffer could be dropped when it goes to City Council.

Mr. Youmans stated that the applicant can modify, add to or delete it if they choose.

Chairman Adams asked why it would be a conditional rezoning if the proffer were dropped.

Mr. Youmans stated that if the applicant eliminates the proffer it would no longer be a conditional rezoning. If the applicant modified or added elements it, would remain conditional.

*Vice Chairman Shore moved that the Commission forward **RZ-11-529** to City Council recommending approval as depicted on an exhibit entitled "Rezoning Exhibit RZ-11-529, Prepared by Winchester Planning Department, September 9, 2011" because the request is generally consistent with the recommendation in the Comprehensive Plan which calls for medical and general office uses on the periphery of the Medical Center District. The recommendation is subject to the attached proffers dated September 5, 2011.*

The motion was seconded by Commissioner Talley.

Motion passed 7-0.

B. CU-11-530 Request of Scott Rosenfeld for a conditional use permit for a structure with a footprint exceeding 8,000 square feet at 1705 Amherst St (*Map Number 150-01-11*) with proposed zoning of Residential Office (RO-1) District with Corridor Enhancement (CE) District overlay.

Mr. Youmans reviewed the request to allow a single office structure in the Amherst Street Corridor Enhancement District where the footprint of the building exceeds the 8,000 square-foot 'by right' limit. The proposed building is proposed to appear like two smaller buildings with a connecting center area.

The Amherst Street CE District was established by City Council with a Conditional Use Permit provision to consider buildings with footprints exceeding 8,000 square feet on a case-by-case basis. The 8,000 sq.ft. threshold was set by Council when the CVS pharmacy at the corner of Amherst St and Meadow Branch Avenue was being considered for approval. Since then, an enlargement of the Sacred Heart Academy building was allowed with CUP approval. The building is proposed to contain 15,188 square feet of net office space on the first full level of the building. There is a partial lower level that is exposed to grade on the west elevation. It totals 5,444 square feet of net area.

The building is designed in a fashion that makes it appear like two separate structures that are attached in the center with a common lobby that includes elevators and a staircase. Also, because of the location along the south side of Amherst Street, it would not be out of scale with the predominantly larger buildings including those on the Sacred Heart property to the west and the Frederick County Administrative offices and James Wood Middle School to the east.

Mr. Youmans stated that in the initial elevations, the building meets or exceeds the guidelines for the CE District. He stated that staff anticipates that there will be some refinements and does not suggest that the conditional use be conditioned upon strict adherence to these floor plans and elevations. There is not a lot of opportunity to exceed the square footage and still be in line with the covenants with Sacred Heart.

Chairman Adams opened the Public Hearing.

Gary Oates of Greywolfe Engineering and Land Surveying stated that he is available for questions.

Chairman Adams closed the Public Hearing.

Chairman Adams stated that the plan is premised upon the success of getting ingress/egress off of Keating Drive. He asked what would happen if the proffer with Keating Drive fell by the wayside.

Mr. Youmans stated that that is an issue as far as gaining access to the site. He said that as a conditional use, this does not have to go through as much review with City Council as the rezoning does. He stated that there is the right of the private property owner to have access to public streets, so if the easement fell through, then we would have to look at providing an ingress/egress to Amherst Street and the crossover.

Chairman Adams stated that they are essentially looking at whether something with larger than an 8,000 square-foot footprint is appropriate.

Mr. Youmans stated that that was correct.

Chairman Adams asked if the ingress/egress would be addressed through a site plan.

Mr. Youmans stated that it would.

Chairman Adams asked how tall the building would be.

Mr. Youmans stated that it would be compliant with the height standards in the RO-1 district.

Mr. Oates stated that it would be 35 feet at the peak and lower in the lobby area.

Chairman Adams asked what the footprint would be.

Mr. Oates stated it would be 18,000 square feet.

Commissioner Wiley and Mr. Oates discussed access to the parking lots and sharing agreements with the church.

Chairman Adams asked how large the CVS footprint was.

Mr. Youmans stated that it was approximately 13,000 square feet and that was driven more by proffers of that conditional zoning because it preceded the adoption of the CE District.

Chairman Adams confirmed that CVS was B-2 and asked what the height of that structure was.

Mr. Youmans said that it was around 18-20 feet tall.

Chairman Adams stated that the size of the building and the parking requirements would leave little room for green space.

Mr. Youmans said that the green space at the front of the building in conjunction with the fairly wide area along the public right of way would give a green front lawn perception, which is the intent of RO-1 and similar with what is on the opposite side of the street.

Chairman Adams asked what conditional uses have been granted for structures larger than 8,000 square feet.

Mr. Youmans stated that an addition to Sacred Heart Academy had been granted conditional use. CVS did not require conditional use because it predated the adoption of the CE District. He stated that he could not recall any others.

Mr. McKannan asked how far back the building would be from Amherst Street. Mr. Youmans stated that the site plan calls for at 35 feet. The Comprehensive Plan's intention is to reduce that for future construction to allow for public transportation and a green trail.

Mr. McKannan asked about public transit.

Mr. Youmans said that there was a bus stop at Keating and Amherst.

Mr. McKannan asked about the covenant restrictions, Mr. Youmans stated that that was between the church and owner of the property.

Mr. McKannan asked what other type of structures could be built on this site.

Mr. Oates stated that the purpose of the property was to house offices.

Mr. Youmans said that the applicant could build multiple 8,000 square foot structures on the site based on the zoning. The size of the buildings is driven by how much parking and land you have. What the applicant is attempting to do is remain consistent with the Comprehensive Plan and, in this case, it means putting all the buildings together out front with parking in the rear.

Chairman Adams stated that he was concerned about the size of the building so close to Amherst Street. During the CVS public hearings there was a lot of discussion about its size. Although corridor enhancement came after CVS, they were benevolent enough to try to adhere to those particular standards. CVS is a 13,000 square foot building and now we are talking about an 18,000 square foot building that is closer to the road. He stated that if it means that perhaps there are smaller buildings and more of them to be consistent with the corridor, then that may make more sense than to have a huge, imposing structure.

Mr. Youmans said that he understood his point and that was why it was important for the Commission and Council to determine whether this was compatible.

Chairman Adams asked if there were any more questions.

Commissioner Slaughter stated that he imagined the height of Sacred Heart Church exceeded 35 feet, as well as James Wood Middle School.

Mr. Youmans said that they did.

Commissioner Wiley moved that the Commission forward **CU-11-530** to City Council recommending approval because the proposal, as submitted, should not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The recommendation is subject to:

1. Approval of property rezoning to RO-1 (RZ-11-529);
2. General conformity with submitted building elevations and floor plans; and,
3. Staff review and approval of a related site plan.

The motion was seconded by Commissioner Talley

Chairman Adams stated that he felt that the structure was too tall and imposing for one of the nicest entrances into Winchester. It is an area that the Commission tried to preserve, which is why they put in a conditional use permit for building sizes over 8,000 square feet.

Vice-Chairman Shore stated the developer was attempting to mitigate some of the appearance of height by adding windows, and that he hoped that staff would work with the developer on this general conformity issue and that they would keep that in mind and not allow it to be changed to make it look like another mass.

Motion passed 6-1 (Chairman Adams in the negative).

C. CU-11-537 Request of Terrace Club, Inc. for a conditional use permit for a private club at 2215 Valor Dr (Map Number 270-06-4A) zoned Highway Commercial (B-2) District.

Mr. Moore reviewed the request for a conditional use permit to allow use of the property and existing building as a private club pursuant to Section 8-2-7 of the Winchester Zoning Ordinance.

Located at the SW corner of Valor Dr and Weems Lane, the subject property is zoned B-2, as are all surrounding properties. To the north, on the opposite side of Weems Lane, are commercial uses including a bank, thrift shop, and restaurant. Directly to the west are two nonconforming single family dwellings. Further to the west is a used car lot. To the south is a strip commercial center which includes a restaurant/nightclub in the northernmost space. To the east, on the opposite side of Valor Dr, is the Shawnee Volunteer Fire & Rescue station.

The subject property was most recently occupied by a gallery/framing shop. The proposed use as a private club requires a conditional use permit within the B-2 District and is defined in the Zoning Ordinance as follows:

- 1-2-21 CLUB, PRIVATE: Those associations and organizations of a fraternal or social character not operated or maintained for profit, but the terms shall not include night clubs or other institutions operated as a business.

Within his letter of intent date September 19, 2011, Manager Raymond Long notes that the club must vacate its current location, the Winchester Towers, which it has occupied for 48 years due to a pending sale of the property. The hours of operation for the club are identified as 9am-9pm Sunday through Thursday and 9am-10pm Friday and Saturday.

A recent application for nightclub use on the property immediately to the south generated concern from the owner and tenants of one of the adjoining, nonconforming residences. The proposed use of this property as a private club with its defined hours of operation is likely to have less of an impact on

surrounding properties than other potential uses that would be permitted by-right on the property, such as a convenience store or a restaurant/bar open to the general public. The private club use, as defined, and proposed hours of operation would also preclude its use for activities currently defined as nightclub use (i.e. live entertainment after 10pm).

The Chief of Police advised that the Police Department has no issues with this request. The Treasurer advised that the applicant pays business license and personal property on time. The Commissioner of Revenue advised that the applicant is good on all filings.

Chairman Adams opened the Public Hearing.

Raymond Long, manager of the Terrace Club, addressed the Commission. He stated he had received a call from Mr. Stultz, the adjoining property owner, and explained to him what type of operation the Terrace Club was. According to Mr. Long, Mr. Stultz stated to him that he had no problem with the request because it is not a nightclub.

Chairman Adams closed the Public Hearing.

Commissioner Talley stated that in the work session, Mr. Long had said that the Club held benefits and asked for clarification.

Mr. Long said that they do occasionally have them for charity.

Commissioner McKannan asked if they had other events.

Mr. Long stated that they do have a Christmas party every year, periodic bands for special occasions, and low ball tournaments, but no bingo games.

Commissioner Beatley asked if the special events end in the proposed hours of operation.

Mr. Long stated that they do.

Chairman Adams asked if the Chief of Police had stated that they had had no issues with the new location or whether they had had issues at the current one.

Mr. Moore stated that staff had asked the Chief about the new location as well as any issues that might have been present with Terrace Club at its current location. He stated that the Chief simply responded that they had no issues with the request.

Commissioner Talley asked for clarification of the ABC law for the Club. He understood it that they could bring alcohol in but not sell it.

Mr. Moore stated that they have an on-premise beer and wine license which they can sell, but they cannot sell liquor. He said that the ABC has specific laws covering private clubs which allow members to bring in their own liquor. They can be served this liquor, but it cannot be sold to them.

Commissioner Slaughter moved to forward CU-11-537 to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The recommendation is subject to:

1. *The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;*
2. *Strict obedience with all local and state laws, especially those pertaining to ABC licensing; and,*
3. *Use to end no later than 9pm Sunday through Thursday and no later than 10pm Friday and Saturday.*

The motion was seconded by Commissioner McKannan.

Commissioner Talley asked if it were permissible for them to move the tables around and have it be a dance hall.

Mr. Moore said that he would need to defer to Mr. Diem on the definition of a dance hall. He stated that the floor plan would not be interpreted so strictly as to prevent tables from rearranged. The one thing that staff did find relevant was the western side of the floor plan where the offices and storage is, providing more of a buffer between the club and the residence to the west.

Mr. Diem stated that a dance hall was possible only if it was opened to the public for admission or some other compensation or exchange of value. As long as it is operated as a private club, then it would not be subject to the dance hall regulation.

Motion passed 7-0

NEW BUSINESS

A. Resolution to initiate: **TA-11-450 AN ORDINANCE TO AMEND AND RE-ENACT ARTICLES 8, 9, AND 10 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO NIGHTCLUBS AND DANCE HALLS**

Mr. Diem stated that this was an opportunity to consider for initiation a text amendment to the Zoning Ordinance regarding night clubs and dance halls. He compiled data after research to provide more of a staff report regarding this proposal. He said that the document that may be presented for your recommendation and ultimately be sent to Council may look different as far as what regulations are included, and that some of that will come out in the staff report. Mr. Diem stated that nightclubs and dance halls were not always a conditional use permit in Winchester. In the 1976 Ordinance, B-1 and B-2 zoning districts allowed nightclubs and dance halls by right, and there were no regulations regarding the operations of nightclubs and dance halls. Eventually a definition of nightclubs was provided in the Ordinance and the most recent amendment was adopted in 2001. The use and occupancy of both is only permitted through a conditional use permit process in B-1, B-2 and CM-1 zoning districts. In further research, he noted that in 1983 through 2007, City staff received on average one application per year. In the last 5+ years, the City has seen a dramatic increase in applications to an average of five per year. If all of these uses had remained in operation there would be 50+ night clubs operating in the City. However, that is not the case, and today there are an estimated thirteen establishments that have active conditional use permits associated with night club or dance hall use. There are currently no licensed dance halls in the City. Everything that the City has a license for or a conditional use permit associated with is considered a nightclub. There are some establishments that operate or otherwise constitute a nightclub and that have been grandfathered in because they have been in operation since before there was a required conditional use process. Staff recommends adopting modifications to the process for review and approving nightclubs and dance halls. If City Council adopts a new process, it would also have a fiscal impact. The filing fee for a CUP is \$500 and if you weigh that against the cost of running a public hearing notice, there is very little revenue left over once that cost is covered. If you have an additional public hearing notice, the \$500 in most cases is expended, leaving little to no money to offset the cost of

the administrative process which compiles the information needed for Planning Commission and City Council. Essentially the applicant is paying for the advertising costs, and in some cases it does not entirely cover that either.

Mr. Diem stated that City Council has adopted a set of specific goals and objectives from the 2009 retreat, those being reaffirmed during the 2011 retreat. In furtherance of those goals, staff is looking for ways to enable an effective and efficient process and to enable and encourage economic development, thereby promoting sustainability in the City. One of the specific processes in question is the conditional use permit process for nightclubs and dance halls. This has come to light more recently due to the current economic conditions, which is forcing existing restaurateurs to look at other ways to compete with other restaurants and vendors, by adding other entertainment for their customers. In some cases that entertainment is scheduled months in advance and the last thing on their minds is obtaining a conditional use permit to operate a nightclub. It puts them in a peculiar dilemma in that they are spending money to advertise the event. They want to have the event and continue to be viable in the market, however, they have to follow the process as set forth in the Ordinance, and that process can take up to four months. In some cases the owner has been in business many years and has little or no problems with previous operations and has few if any calls for service from the Police, Fire Marshal, or Health Department, yet they are scrutinized in the same manner as someone who is opening up a brand new bar or restaurant. Staff has looked into a number of solutions which were touched on in the work session, everything from avoiding substantive changes to leaving the Ordinance as is, keeping the process, and maintaining the status quo, however enhancing it with the recently drafted application form which has not been implemented yet. Staff feels that this is an opportunity to place review and recommendation responsibility on Department Directors, such as the Police Chief, Fire Marshal, Zoning & Inspections Administrator and Commission of Revenue, as well as the Health Department and ABC. Also the responsibility through the City Manager or his designee to actively address the issues that come up after an administrative approval has been given.

Mr. Diem then referred to the list of localities throughout the Commonwealth and what they provide in the handout. He said that this list was not all inclusive, but focused on a few that had a vibrant downtown, ranging in size with Winchester being one of the smallest. He discussed the different attributes of the Cities in the report. He stated that they have no unilateral approach to the process of permitting nightclubs across the Commonwealth; they utilize a variety of solutions to this issue, with each locality successful in their approach. He pointed out Alexandria and Charlottesville particularly. He stated that in Charlottesville, in certain situations they used a by-right approach, and in most cases, they use a provisional use permit, which would be the equivalent of an administratively-issued conditional use permit or full public hearing conditional use permit. He stated that Alexandria's approach is unique. When the applicant completes a conditional use permit, if they answer the questions on the application in the negative, then it automatically triggers a public hearing before the Planning Commission.

Mr. Diem stated that the draft before the Commission is not written in stone. There may be opportunities besides the application form to look more closely at what Alexandria and Charlottesville do and how their processes work and work some of what they do into the framework of an Ordinance for Winchester. He stated that he felt there was still an opportunity for an administrative review process in some situations. Something to consider is requiring a full public hearing process in certain districts. The intensity of the use as defined by the applicant's responses to the questions on the application would otherwise warrant their coming before the Planning Commission or City Council for public hearings. He stated that all of these things need to be taken into consideration.

Mr. Diem referred to the staff report and pointed out the brief analysis of the pros and cons of the various localities. He stated that, in conclusion, conditional use permit processes are in place to address health, safety and welfare, and are not necessarily a tool for discouragement or to segregate types of uses. When

a CUP comes up, it has to be looked at as to how that use will impact the property where it is located and the impact on the neighbors. If we conclude after reviewing that the issues that arose were noise, loitering, drunkenness, parking, lighting, trash and debris, we should consider that these issues may occur at any restaurant or bar may not even have a conditional use permit for nightclub use. These issues are law enforcement matters or the direct responsibility of the management operating the establishment itself. Whether or not that is something that goes to public hearing before Planning Commission or City Council, there is cause for consideration there. Theoretically, restaurants are permitted by right, and can occupy every vacant storefront on the downtown walking mall. They are not regulated in the same manner as a nightclub, they may serve alcohol if properly licensed, and can play music for their patrons so long as the nightclub definition does not otherwise apply. For example, if they wanted to have a live band, Karaoke, or DJ, and they cut it off at 10:00, it is not a nightclub. They could do that every night of the week if they wanted to.

Mr. Diem, referring to the overhead map, addressed the question of how much impact there would be and to what areas, if the proposed draft Ordinance was adopted. As presented currently, that means anything within 300 feet of a residentially zoned parcel would require a conditional use permit. He identified areas along Berryville Avenue, part of Valley Avenue, Weems Lane, and the core area downtown that would fall under administrative approval and those that would require full review by the Planning Commission or City Council.

Chairman Adams stated that B-1 was really what they were focused on and the impact that it would have.

Mr. Diem stated that that was where some of the concern came from and that staff attempted to respond to and be more effective citywide. At this time, the only three zoning districts that identify that use type are B-1, B-2 and CM -1. He stated that there is a focus on the downtown area and he sees more applications submitted for nightclubs.

Chairman Adams stated that that was the problem, that there are a great number of people living in the area surrounding the B-1 district and that that was why there was a need to have conditional use permits and the public hearing process to determine the impact. He said that while we are talking about health, safety, and welfare issues, we are also talking about injury to property and person and the impact that has. Chairman Adams stated that, for him, B-1 is the focus for conditional use permits. B-2 and CM-1 have less impact on residential and do not weight the same.

Mr. Diem stated that he did not disagree with that assessment and pointed out that other localities with similar places to protect have developed ways to manage through their application format. There are certain areas of some of the other localities where it requires a public hearing based on the intensity and type of nightclub use that is presented in the application format. He stated that he will have more information available for the next meeting.

Chairman Adams asked if it was just City Council's desire to make this something other than revenue neutral. Mr. Diem stated that he was not aware of whether it was or not.

Mr. Diem stated that he was not opposed to the final product being some combination of the two processes. He said that he was not opposed to specifically identifying a geographic area of the City that requires a conditional use permit and public hearing process regardless of the distance to residential zoning. He said that this was an opportunity to employ a revised application form and strengthen the regulations within Article 18 of the Zoning Ordinance, so that we are not utilizing the same language but differentiating slightly between one use and another. One thing that he found beneficial in researching the various localities was that much of the language that we incorporate as suggested conditions or imposed conditions for nightclubs are in their general regulations for that type of use. It is a given, if you

are going to operate a nightclub, that you going to have to address all of the concerns with neighbors as they come up, you will need to adhere to all laws, pay your taxes, and maintain your licenses. Rather than have them as conditions, they are provisions that apply to all nightclubs.

Vice-Chairman Shore stated that if, in fact, it is a by-right situation, by virtue of an applicant meeting the requirements of the application, they could do whatever is allowable for instance, under ABC. Theoretically, based on ABC rules, an establishment could operate as a nightclub 365 days a year and have music and serve clients alcohol until 1:00 a.m. and close at 1:30 a.m.

Mr. Diem stated that he could not confirm that that would be the case because he is not familiar with the ABC regulations, but that under the current Ordinance, there was nothing to prevent that from happening. The only way to address that would be through changes to the current Ordinance or through a conditional use permit.

Vice-Chairman Shore stated that that was his concern if they relinquish the conditional use permit process. He would like to specify limits based on the use of each property and see it built into the permit so that there are not late night activities such as karaoke or bands with amplified music 365 days a year on the downtown mall. He stated that he feels that it will cause more issues for the residential uses that we are trying to build up and affect the City's ability to create a vibrant downtown.

Mr. Diem stated that he understood, and also said that he was not sure how many nightclubs and dance halls operated 365 days a year until 3:00 am in the City when it was permitted by-right with no regulations and no definition provided.

Vice-Chairman Shore stated that what occurred in the past or in other localities is different than Winchester.

Chairman Adams invited Mr. Smith to speak.

Mr. Smith stated that he was speaking on behalf of the Old Town Development Board, stakeholders and developers who have heard about this discussion, and share the same concerns. He stated that it seems that some people think the term vibrant community means that something is always going on. The Old Town Development Board is trying to provide a community where people live, work and invest. He stated that he feels that alleviating the process is where the problem begins. He said that he understood that City Council wanted to streamline many of the application processes to free up staff to do other things. But with something as important as deciding what is part of the community, it is something that both the Planning Commission and City Council should be involved in.

He stated that with a lot of the new development that is going on in Old Town right now, they are bringing in a lot of high end apartments. Some of the developers have expressed that they have rented some of the units out but the tenants are not renewing their leases due to late night noise. Young professionals and older individuals are renting these units, and if they have to wait until 1:30 for the noise to die down on Fridays and Saturdays to get a good night's rest, it might not be a place that they want to live. He said that he was glad that his restaurant closes at 10:00 throughout the week because he sees what goes on after that time. He said that there is a level of noise nuisance late at night that requires the police to be called and that he would like to know how many times the police are called to Old Town in comparison to other areas that allow nightclubs. There are residents that live on the second story of many buildings, and when they are exposed to noise it makes it difficult to rent out those places. This also affects the ability to attract high end residential units in downtown. He said that Charlottesville has long been considered a university town, and would probably continue to be seen as such. It caters to students that party all night long and live on the 7-11's. Most others, if surveyed, live outside the downtown area.

He stated that the presentation that will happen this evening will display the reconstruction of the mall with more trees and benches and water features hoping to attract more people with families to the mall. Mr. Smith stated that he would like Old Town Development Board, EDA, and Planning & Zoning meet to discuss how we want to brand Old Town Winchester and what we want to see before we do away with City Codes.

Mr. Ben Weber, owner of 17, 19, 20 W. Boscawen Street, and also a member of the Old Town Development Board, addressed the Commission. He said that he liked the concept of adding the combined approach of the CUP as well as administrative approval process as it gives the ability to feel out the business. He stated that one problem is with the low application fee for the permit. He stated that the application fee should be a minimum of \$1,000 because it would help prevent fly-by-night businesses from starting up and then leaving. This could be a deterrent and make sure they have a business plan in place from the start. Suppose a business owner opened a restaurant and then 3 months after opening they decide that they want it to be a nightclub. This is an indication that you did not have a business plan and did not think your decision through. He stated that there are now 60 new apartments in the downtown and we need to know that our downtown is much different from Alexandria. The residents there do not live in the downtown area, they live a block off. He said that he knows there is a noise decibel Ordinance, but if there was a bar open late, and 15 people decided to go out and have a smoke, we have added a new noise nuisance to the community. He stated that he would strongly recommend that in the downtown area, as mentioned by staff, there was an opportunity to isolate the Old Town area and certain areas in B-1. He would recommend that the B-1 and Historic district be one of the areas isolated. He stressed that Winchester is different from Alexandria and Charlottesville and that we cannot take a concept from these places and shoehorn it into our area. He also stated that he would like to see what the police records are for the downtown area. He again stated his desire to see the downtown area isolated and that the public hearing process be retained for nightclubs.

Commissioner Slaughter commended Mr. Diem for the work that he put into the draft and the attempt to streamline the process. He stated that he likes the application and the ease with which an applicant can move through. It is a very simple process. He said that his only problem with it was doing away with the public hearing/CUP process, even in certain circumstances. He stated that he felt that the process is important, that there are times with nightclubs or bars where 95% are great, but there are some that have problems, and this process allows citizens to address their grievances. If there are issues, they could affect not only residents, but businesses as well. They need to have a way to express their concerns and hold that offender accountable and he sees the CUP process as an important part of that. He stated that while there is an Administrator to handle many things, he feels that to have a public forum to express concerns is important. He said that he feels that they are on the right track but wants to keep the CUP/public hearing process.

Commissioner Beatley asked Mr. Diem about his analysis of Charlottesville and its CUP and administrative approval combination. She asked if the downtown area requires a CUP. Referring to the maps, she stated that it made sense to do by-right in most cases. She stated that felt that creating an isolation area with a CUP requirement was a good compromise.

Mr. Diem stated that Charlottesville identifies usage as music halls and all-night restaurants. Not all localities refer to usages as nightclubs. He said that music halls and all-night restaurant are allowed with a provisional use permit in B-2 and B-3 districts, through a special use permit - the equivalent of a CUP - in the M-1 district, and by-right in the industrial corridor. Two zoning districts allow it through administrative process, and one through a CUP process. Their B-1 district does not allow it at all.

Mr. McKannan stated that he appreciated input from the citizens and that the Commission has paid close attention to getting feedback with all the growth that is occurring. He stated that he liked the combination

of CUP and administrative approval. He stated that to have a CUP strictly for the historic area would be advisable, and he agreed that the three boards meeting would be beneficial in defining the direction that the City should go in.

Chairman Adams stated that based on the feedback, it sounded like it was premature to initiate the amendment given that there was still more information forthcoming. He said that he also felt that the combination approach of CUP/administrative review was appropriate. He confirmed with Mr. Diem that the form that he had devised represented the administrative review in terms of the health, safety, and welfare requirements, then moving on to the CUP for the other issues, specifically the B-1 District. He stated that most of B-2 should be exempt except for a few pockets, and CM-1 would definitely be exempt from a CUP based on the map. He stated that he agreed that Loudoun Street was a jewel and wanted to encourage people to visit. He said that it should be kept safe, welcoming and appropriate and that we should not jeopardize that from a lack of oversight, which is what the Planning Commission helps to do.

Commissioner Slaughter stated that he understood that the downtown area was very important, but he wanted to know why it should be different in other areas of the City. He said that they, too, have businesses that could be adversely affected by the behavior and actions of a neighboring establishment as much as someone in the downtown area. He felt that they should have the same ability to address their concerns as a downtown business.

Chairman Adams stated that he saw that as the big question of B-2, because that will have the business opportunities that Commissioner Slaughter was referring to. He stated that he felt that it would not have any impact in the CM-1 District. He agreed that B-2 was another area that needed some focus.

Mr. Youmans said that, by definition, nightclub was something that started at 10:00 pm and that most of the businesses in the B-2 and CM-1 districts do not have people in them at that time.

Commissioner Slaughter said that he understood that and that there are many times where a nightclub request comes up and, because the nightclub permit has become a valuable revenue stream, it is easier to hold them to certain standards such as trash, paying taxes, and helping to prevent behaviors that would adversely affect neighboring residents and businesses.

Mr. Diem stated that many concerns and nuisances that exist can be addressed through the administrative review process to ensure that the regulations are being met. He stated that he agreed with the Commission to not initiate anything today, but to come back at a later time after he has had a chance to provide them with additional information, giving them the ability to make a more informed decision about the resolution.

Vice-Chairman Shore stated that agreed with Mr. Smith and Mr. Weber's approach of meeting with all the stakeholders to see how appropriate this would be in light of everyone else's needs. He stated that he felt that they all seemed to have to same goals, but are not aware of the others' concerns. He stated that doing so sooner rather than later would be beneficial. He asked if they would be willing to do this.

Mr. Smith and Mr. Weber stated that they would.

Chairman Adams confirmed that the Commission would not be initiating the resolution today.

B. Administrative Authorization

- 1) **SP-11-576** Diamond Z Engineering, 2311 Valley Ave Sheetz revision

Chairman Adams read the following into the minutes: At the October 11, 2011 work session, Commissioner Talley moved to grant administrative authorization for SP-11-576. The motion was seconded by Commissioner Wiley. Motion passed 6-0 (Commissioner McKannan absent).

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:50.

Nate Adams, III, Chairman