

PLANNING COMMISSION
MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, January 17, 2011 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

CALL TO ORDER: Mr. Youmans, in the absence of a standing Chairman, called the meeting to order.

PRESENT: Commissioners Jennifer Beatley, Kevin McKannan, Dave Shore, Stephen Slaughter, Jr., and William Wiley

ABSENT: None

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, and Secretary Paula Le Duigou

VISITORS: Charles Devine, Arleta Lancaster, Mason Allen, Ali Tajalli, Emad Khezam, Thomas Day, Daisy Marzetta, Tim Stowe

ELECTION OF OFFICERS

Mr. Youmans opened the floor for nominations for Chairman of the Commission. *Commissioner Slaughter nominated Commissioner Shore as Chairman.* No further nominations were presented.

Mr. Youmans opened the floor for nominations for Vice-Chairman of the Commission. *Commissioner Slaughter nominated Commissioner Wiley as Vice-Chairman.* No further nominations were presented.

Commissioner McKannan moved to elect the officers as nominated.

The motion was seconded by Commissioner Slaughter.

Motion passed unanimously.

APPROVAL OF MINUTES

Vice-Chairman Wiley moved to approve the minutes of the December 20, 2011 regular meeting as presented.

The motion was seconded by Commissioner Beatley.

Motion passed 5-0.

CORRESPONDENCE

Mr. Youmans stated that the agenda had been revised to add item 3A2 - Trinity Auto site plan. There was also a revised staff report for item 2B, CU-11-702 - Ali Baba Hookah Bar, along with copies of numerous emails sent to Mr. Diem pertaining to that case.

CITIZEN COMMENTS

Chairman Shore stated that this was a time for citizens to address the Commission about items that were not scheduled for public hearing. None were forthcoming.

REPORT OF THE FREDERICK COUNTY PLANNING COMMISSION LIASON

Commissioner Mohn reported on items from the January 4 meeting, including the election of officers. June Wilmot was re-elected as Chairman, and Roger Thomas as Vice-Chairman. He stated that they had carried a light agenda that included the recommendation of approval of the Tasker Road Comprehensive Plan Policy Amendment and the 2012-2013 Capital Improvement Plan. He stated that they are continuing work on the Senseny/Eastern Frederick land use plan and they will continue with transportation and public facility policies.

PUBLIC HEARINGS

- A. **CU-11-678** Request of Charles Zarou dba IJ Canns American Grille for a conditional use permit for nightclub use at 3111 Valley Ave (*Map Number 329-01-12*) zoned Highway Commercial (B-2) District with Corridor Enhancement (CE) District overlay.

Mr. Youmans reviewed the request to add entertainment use consisting of small bands, D.J.'s, stand up comics, and dancing to an additional interior space at the existing IJ Canns American Grille restaurant.

The request for nightclub use is spelled out in a letter received December 2, 2011 from Mr. Charles Zarou. The applicant wishes to have events in the new 2,500 square-foot addition to the existing restaurant which will have hours of operation from 4pm to midnight on Fridays and Saturdays. Live amplified entertainment between 10pm and midnight on those nights would require CUP approval.

There is only one residential structure within close proximity of the proposed nightclub use. It is a single-family residence that the Creekside development completely surrounds. The residence is immediately to the north of the IJ Canns tenant space and is within a B-2 commercial zoning district. There are no building openings along the north wall of the subject restaurant space and there are no plans at this time for live amplified music on the existing outdoor terrace. Other single-family homes are situated a few hundred feet to the north within the Battle Park Estates Subdivision. Other commercial buildings and a natural screening berm buffer the residential area from the IJ Canns space.

Mr. Youmans stated that staff did not believe that there would be any impact on the existing residence north of the restaurant because of natural screening and a change in the elevation in this area, with the residence on a plateau above.

Mr. Youmans stated that even though the applicant is only asking for nightclub use up until midnight on Fridays and Saturdays, staff has included a favorable motion with conditions consistent with recently approved nightclub permits.

Chairman Shore asked whether there was any correspondence received in reference to this request.

Mr. Youmans stated that he had not received any.

Chairman Shore opened the public hearing

No one spoke regarding the request.

Chairman Shore closed the public hearing.

Commissioner Slaughter stated that he did not have any issues with this request and that it made sense. He said that he has been a patron at the establishment and the layout is conducive to this type of activity. He expressed disappointment that the applicant did not attend the public hearing so that questions could be directed to them.

Mr. Moore stated that the manager of the business had attended the work session the previous week. He stated that he spoke to the manager afterwards and that the manager had indicated he might not attend the public hearing because he did not hear any concerns raised during the work session.

Vice-Chairman Wiley moved to forward CU-11-678 to City Council recommending approval because the proposal as submitted will 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 approval is subject to:

1. *Reapproval required in three years;*
2. *The business shall comply with applicable noise and maximum sound level regulations per Sections 17-6 and 17-7.1 of Winchester City Code, as amended;*
3. *The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;*
4. *A maximum of four (4) criminal offense police calls per month within or attributable to the establishment, after which the permit may be subject to revocation;*
5. *Nightclub use to cease no later than 11:59pm Sunday through Wednesday night and no later than 1:30am Thursday night/Friday morning through Saturday night/Sunday morning;*
6. *All windows and exterior doors to remain closed during nightclub use and no aspects of nightclub use (including, but not limited to, customer age verification) to occur outside of the building;*
7. *Strict compliance with all local and state laws, especially those pertaining to ABC licensing and payment of meals tax, admissions tax, and annual business licenses;*
8. *The applicant is responsible for cleaning up any trash outside the facility after closing; and,*
9. *The CUP expires automatically if the nightclub use changes to another use or if the nightclub use ceases for more than one year, in accordance with Section 18-2-3.8 of the Winchester Zoning Ordinance.*

The motion was seconded by Commissioner Beatley.

Motion passed 5-0.

- B. **CU-11-702** Request of Emad Khezam and Ali Tajalli dba Alibaba Hookah Bar for a conditional use permit for nightclub use and to modify conditions of an existing conditional use permit for hookah establishment use at 932 Berryville Avenue (*Map Number 176-07-3*) zoned Highway Commercial (B-2) District.

Mr. Diem stated that the Commissioners had a revised staff report in front of them as a result of the work session of the previous week as well as email correspondence received since tendering their support of the request.

Mr. Diem reviewed the request to revise a previously issued CUP to remove the restriction of serving on-premise alcohol for consumption and to add nightclub use at the hookah establishment located at 932 Berryville Avenue.

Mr. Diem reviewed the conditions imposed with the current CUP.

Mr. Diem stated that representatives of the Virginia Health Department, Lord Fairfax Regional Office, were in attendance should the Commission have any questions in regards to food service, prepackaged food items, and the like.

Mr. Diem stated that there was an inspection performed by the Community Response Team and that City staff had viewed the official website of the hookah bar on December 5, 2011 and identified possible violations of the existing CUP.

The home page of the website advertised that there was "Live Entertainment almost Every Weekend." A concert flyer for one of the bands, identified as 3Sound, indicated that they would be performing at the establishment nearly every Saturday from 9:30pm-11:30pm. The website stated that there was a \$5 cover charge to help support the local band's forthcoming CD. Upon initial investigation, no admissions license or application was on file for the establishment with the Commissioner of the Revenue's office; however, an application has since been filed by the business owners.

The website also identified a full menu, which features 25 different items, all of which were reportedly pre-packaged. The menu included appetizers, salads, sandwiches and desserts. The Building Official's office has no record of a separate ventilation system for various portions of the establishment, which would allow food service. The Lord Fairfax District of the Virginia Department of Health has been notified, with further investigation anticipated. Further discussion with the applicants on January 10, 2012, revealed that the website is inaccurate regarding the food menu; and, the only consumable items available for purchase are hummus and pita bread, which are reportedly pre-packaged.

The applicant appears to have violated at least two (2) local laws, specifically pertaining to operating a nightclub without first obtaining a separate CUP for that use; and, charging an admissions fee or cover charge without having first obtained an admissions license. These circumstances demonstrate violation of Condition #11 of the imposed conditions by City Council. Photographs and other materials obtained from the establishment's website suggest that there may also be violations of Conditions #2 and #7.

The January 10, 2012 meeting with the applicants provided an opportunity for them to explain the circumstances regarding the nightclub activities, which they expressed have been infrequent and isolated to no more than three or four occasions. The most recent event was held on December 29, 2011, which was coordinated with City staff following their submission of the requisite CUP application. The applicants presumed that they would be permitted to hold the previously scheduled and advertised event but would be required to refrain from any further activity pending the outcome of the CUP process for nightclub use.

Since the meeting with the applicants, staff has received numerous letters of support for the establishment from patrons. Copies of the e-mailed correspondence have been included within the case file for the CUP application.

Mr. Diem stated that there were two separate issues involved with this applicant and he wanted to go into detail. He said that one condition that was imposed by City Council on May 10, 2011, (condition # 6 referring to serving alcohol), to have that condition removed or repealed. He said that there are three “must haves” in order for this establishment to have on premise sale and consumption of alcohol, and those three conditions consisted of a conditional use revision, an ABC license issued by the Commonwealth of Virginia, and a health department license. He said that in order to serve alcohol in an establishment that is not a private club, it would have to be a restaurant, and there are specific criteria for meeting the definition of a restaurant including serving food that are not prepackaged items. He said that the Health Department officials were here to address that particular issue.

Mr. Diem said that **CU-11-76**, granted by City Council to permit a hookah establishment, prohibited the onsite sale and consumption of alcohol. This request, **CU 11-702** is, in part, to repeal that condition. He stated that it is known through investigating this matter that the applicants have failed to meet the multiple existing imposed conditions for the hookah establishment on numerous occasions. Staff has legitimate concerns that the past incidents demonstrate an inability to comply with current requirements.

Mr. Diem said that, in his opinion, he felt that there were legitimate concerns about the public health, safety, and welfare that could be attributable to underage consumption of alcoholic beverages. He said that in order for the applicant to be able to serve alcohol on the premises would require they have a Virginia ABC license.

Mr. Diem stated that some of the emails that have been received reflect the tenor of the community and support. He said that other social media sites and blogs have reflected both sides of the issue: support for the applicants, as well as frustration at the lack of compliance to the previously imposed conditions on the applicant’s part. He said that some critics have stated that the hookah bar is being treated differently than other establishments that serve alcohol in the City. He said that in response to that he would argue that other establishments are licensed by the Virginia Department of Health and ABC and exist as restaurants, which is a distinguishable difference from a hookah bar. He said that there is no minimum age with patrons entering a restaurant, versus a minimum age of 18 years to enter a hookah bar, whose principle function is to use or inhale tobacco which is restricted to those who are 18 years of age or older. In addition, most restaurants, bars or nightclubs verify identification upon entry and refuse entry to anyone less than 21 years of age after 9:00 pm, although it is not a state law. That is what establishments do to proactively avoid underage consumption from taking place and being fined and having their licenses suspended for a period of time.

Mr. Diem stated that ABC reported that there is no license currently on file; however an application has been filed by Ali Baba Hookah Bar for an ABC license. He said that it is important to note that in order to have on-premise sales of mixed beverages, there is a minimum requirement of 45% food service and a maximum limit of 55% of mixed beverage sales.

Mr. Diem stated that he had spoken with the Lord Fairfax Health District earlier that day and they had confirmed that the applicant had not yet filed for a food service establishment license, nor is there a Health Department license. He said that serving hummus dip from containers purchased at a retail store constitutes food service in the opinion of the Lord Fairfax Health District representatives. He said that blogs, restaurant reviews and other website information identified indicate food service was occurring without a license. 45% of food service requirement by ABC cannot be met without a health department license concerning prepackaged food only. He said that prepackaged food generally consist of commercially packaged items such as small bags of chips or pretzels that are in sealed snack bags, bottled or canned soft drinks or juices, and candies. Once a packaged item is opened and served to a customer or table, for example, a container of hummus, food service has occurred.

Mr. Diem stated that from the establishment's website, on their blog regarding customer comments, "*I would highly recommend the Ali Baba platter for two. Hummus, grape leaves, tabouleh, falafel, and cheese pie and spinach pie very tasty. Tonight I tried Al Farker mint with lemon flavor, very nice with Turkish coffee.*" This was posted on their blog by a customer on July 12, 2011. He said that the Ali Baba platter for two and the types of items that are included there would not suggest to him that this is prepackaged food or that food service was not occurring.

Mr. Diem said that there is a public clean air act that has been adopted by the Commonwealth of Virginia and enforced by the Virginia Department of Health. He said that separate ventilation systems are required as well as separate and smoke-free dining areas must be provided. He said that staff did not have any building permits on file for interior alterations or additional ventilation systems. The City Building Official and Fire Marshal would like to conduct a joint inspection to confirm that no alterations have been made and to recalculate occupancy load if the Planning Commission were to make a favorable recommendation to for either or both requests today, and they would ask that this be a condition included for City Council's consideration.

Mr. Diem stated that the other part of the application before the Commission is a request for nightclub use. He said that they have had multiple nightclub entertainment events between May and December 2011, and no CUP for nightclub on file, and their application was submitted the beginning of December 2011. Staff did allow one event in late December as it was previously advertised, which was disclosed during the staff report. Their entertainment has included bands, and DJ's both performing beyond 10:00 pm. He said that nightclub is not currently defined in the Ordinance as requiring a component for alcohol sales on premise within the establishment. He said that it is equally important to point out that there have been no reported police incidents of loud music, disorderly conduct, or assault coinciding with any of the previously held events.

Mr. Diem stated that there were three options for the Planning Commission to consider, in no particular order. Those include:

1. Recommending **approval** of both requests within CU-11-702. If favored, he stated a number of desired conditions to include with the recommendation.
2. Recommending **denial** of both requests within CU-11-702 because past history demonstrates failure to comply with original conditions set forth within CU-11-76 and it poses a potential threat to public health, safety, and welfare, specifically, underage consumption.
3. Recommending **denial** of the request to remove the existing restriction on alcohol and **approval** of nightclub use within CU-11-702. If favored, he stated a number of desired conditions to include with the recommendation.

Mr. Diem reminded the Commission that there have been no incidents that required police action in regards to the establishment's nightclub activities.

Chairman Shore asked Mr. Diem what had precipitated staff's change in view since the work session in regards to the ABC aspect of the request and removal of the six month waiting period before a nightclub for approval.

Mr. Diem stated that some of the change occurred due to a conversation with the applicants following the work session. He said that they explained to him that they misunderstood the regulations; not fully grasping the ramifications would be for having hosting live events without a CUP, or being fully knowledgeable about the requirements for hosting live music. He said that he also based his decision on the lack of police activity surrounding the events. He said that when they were acting as a nightclub, it did not generate criminal incidents that required police involvement, which to him did not pose a threat or

problem to the surrounding community. He said he looked at it differently after obtaining this information from the police department and the business owners.

Commissioner Slaughter stated that this was a complex issue and he appreciated the information that Mr. Diem provided to the Commission.

Chairman Shore invited the representatives of the Lord Fairfax Health District to address the Commission.

Dr. Devine, Health Director; Mason Allen, Environmental Supervisor, Winchester and Frederick County Health Department; and Arleta Lancaster, Environmental Specialist, City Food Inspections, addressed the Commission.

Chairman Shore stated that they were in uncharted territory concerning prepackaged foods as no other establishment of this kind has been approved in the City by the Commission or Council before. He stated that he wanted to understand what the definition of prepackaged food was and how they are served.

Dr. Devine said that generally prepackaged food is something that the customer will pick up off the shelf and serve themselves, whereas food service occurs when food is opened and presented to the customer.

Chairman Shore asked if there was any issue with whether it was heated or not.

Ms. Lancaster stated prepackaged food normally by definition is not potentially hazardous, meaning it is shelf stable and not temperature controlled, therefore something you open and eat. She said that it does not have to be kept hot or cold to prevent bacterial growth.

Chairman Shore asked if this was something that could be heated in a microwave and presented to a customer.

Ms. Lancaster said the staff were doing it, that makes it a food service and makes them a food establishment that needs to be permitted by Virginia Code.

Mr. Allen stated that it needs to be temperature controlled at that point because it could be potentially hazardous.

Chairman Shore asked if the Health Department has had an occasion to inspect the operation at the hookah bar.

Dr. Devine stated that since they have not applied for a permit, they have not been inspected.

Vice-Chairman Wiley asked the Health Department representatives if had looked at the menu on the applicants' website.

Dr. Devine said that it was removed before they had an opportunity to look at it.

Commissioner Slaughter asked the Health Department representatives what their role, if any, would be in monitoring and working with the ABC to ensure that things are done properly.

Ms. Lancaster stated that in June 2011, she, the ABC representative, and staff from the Zoning Department met with the owners onsite and reviewed information with them. The owners were given written copies, documentation, and applications. They had a review with them onsite, but nothing happened after that.

Commissioner Slaughter asked if at that time they went through everything with them and gave them all the necessary and relevant information.

Mr. Allen stated that they had and that everything was pretty simple and up front. He said that he told them that if wanted to have a restaurant, they needed to close the room off to serve food, have a non-smoking area, and have separate ventilation. He said that Ms. Lancaster explained to them ways to make that happen, but they just never applied for the permit.

Commissioner Slaughter asked if the applicant were to get everything in place, who would monitor them to ensure they are in compliance.

Dr. Devine stated that at that point they would be viewed as a restaurant and would be handled as other restaurants are.

Commissioner Slaughter asked if they would be issued a permit like any other restaurant and be subject to inspections just as any other restaurant would be.

Ms. Lancaster confirmed that they would.

Commissioner Slaughter asked if the Health Department handles any aspect of the liquor license or if they work in conjunction with one another to ensure the restaurant is in compliance.

Ms. Lancaster stated that she could not speak for the ABC, but it is part of the requirement that the ABC review the Health Department permit before they issue the ABC permit.

Chairman Shore asked which organization monitors the ratio of food sales to liquor.

The representatives responded that the ABC does.

Commissioner Beatley asked the Health Department representatives if, based on the information provided by Mr. Diem pertaining to the food that was being served, in their opinion, that the food falls under the prepackaged food definition.

Dr. Devine stated that it appears to fall outside the definition of prepackaged food.

Mr. Tagnesi asked what would be done with someone who is in violation of proper food handling.

Mr. Allen stated that they educate the individual to the liability for the restaurant if they are serving food without a permit.

Mr. Tagnesi asked if the Health Department had any control over closing the establishment.

Mr. Allen said that if they do not have a permit, there is nothing to revoke, and he stressed the liability that that is to the owners.

Chairman Shore explained how a public hearing works and that the Planning Commission is an advisory board that makes recommendations to City Council.

Chairman Shore opened the public hearing

Ali Tajalli, co-owner, Ali Baba Hookah Bar, said that he wanted to point out a few things concerning his application. He said that if were to commit a crime, you then do not go out and advertise for it and let everyone know that you did it. He said that if you want to do something like that, you try to be sneaky about it and not let anybody know. He said that for them to do whatever happened in the Hookah Bar, they let everyone know. He said that it was done out of honesty and that they did not think they were doing anything wrong. He said that everything they did, according to their knowledge, was according to the law and what they pretty much thought was right from the previous meetings they had. He said that it was one or two times they had live bands in the place and that was it. He said that after Mr. Diem told him that it was against the law, they stopped.

He said that as far as prepackaged food goes, to them prepackaged food is something that is being cooked somewhere else, not on the premises. He said that if they didn't prepare it on the premises, to them it is prepackaged. He said that all they did was purchase the food and bring it to the place and serve it, that was all that they did. He said that they did not know that they did anything against the law and that they do not want to do anything against the law. He said that they wanted to obey all the rules and regulations so they can have a decent business.

Chairman Shore asked the applicant if he understood what the representatives of the Health Department said about the issue of what is and what is not acceptable.

Mr. Tajalli said that he did.

Chairman Shore asked the applicant if he had anything more to say.

Mr. Tajalli said no.

Thomas Day, 620 Beehive Way, stated that he was glad he came today because he learned more anout the issues. He stated that he had found the hookah bar just by accident. He stated that he had been looking for live entertainment or music, and he had been there on one occasion where there were some kids playing guitars, but it appeared to be no more than just a tune session. He said that he had been back frequently, but only on that one occasion had he come across that. He said that he feels the international flavor of this type of business and the niche they are in with the hookah is important. He said that the international flavor of the cultures is a good thing for the community.

Daisy Marzetta, Banbury Terrace, stated that she lives very close to the bar. She said that after many visits to the bar, she struck up a friendship with the owners and that they are very welcoming. She said that while she has a regular 9-5 job, she will on occasion help them out and does not accept pay from them to do it because she can see that they are two struggling businessmen who want to make it in the City. She said that the hookah bar is like a giant family; people go in and have fun. She said that like any place live entertainment is go into bring in more customers. She said that she was aware that they had made mistakes, but as soon as they learned what they had done, they attempted to fix the problem and keep things running smoothly. She said that the fact of the matter is that it would help out their business to have both the night club and alcohol license. She said that even if the Commission does not recommend the alcohol license, the nightclub license would help increase sales. She said that they are good people and that it is a good business and she strongly urged the Commission to recommend their approval. She said that while a lot of the customers are between the ages of 18-25, as Mr. Diem stated,

she has spoken with a lot of them and they have said that having this place keeps them out of trouble, that it is nice place where they can go and listen to music. She said that having a variety of music would help them to succeed in the City and in this economy.

Chairman Shore closed the public hearing

Vice-Chairman Wiley asked the Health Officials if food that is heated and then packaged before it gets to the restaurant was considered prepackaged food according to their guidelines.

Dr. Devine said that it depended on what happened to it once it got to the restaurant. He said that if it is opened and prepared in some way, then presented to the customer, that constitutes food service. He stated that if the package is prepared elsewhere and handled and opened by the customer, that would not be food service.

Mr. Slaughter asked that if hummus is in a container that is sealed and brought to the table and unsealed at the table by the customer, if that then is considered prepackaged.

Ms. Lancaster said that they were leaving out that it also has to be non-potentially hazardous. She said that once it becomes under temperature control, meaning you need to keep it hot or cold, it is no longer non-potentially hazardous. It has to be the non potentially hazardous product such as potato chips and candy. She reiterated that that was the step that was missing here, that it must be non-potentially hazardous.

Mr. Tagnesi asked that if pita bread came in a package and they had to take it out and slice it, would that be food service.

Ms. Lancaster said that that would constitute food service.

Vice-Chairman Wiley asked Mr. Diem what happened once he sent the certified letters to the applicants.

Mr. Diem apologized for not having copies of the notice of violation in front of him. He said that in late November that the CRT had identified some concerns regarding the establishment not being in conformance with the conditional use permit. He said in response to that a notice of violation had been issued. He said that a copy was sent through first class mail and the original of the notice of violation was attempted to be served through certified mail, return receipt requested. He said that staff is obligated to notify persons or property owners if they are in violation of an ordinance through certified mail so that it can be established that they have in fact been notified. After three attempts by the US Postal Service, the letter was returned to the City of Winchester as unclaimed. He said that he was aware after speaking with a Codes Compliance staff member that is also in the CRT that they had in fact been in conversation with Mr. Khezam who was in receipt of the first class copy of the notice of violation and wanted to know what they needed to do to come into compliance. He said that discussion was centered on completing an application for the conditional use permit if they wanted to continue having nightclub activities. Mr. Diem stated that at last week's work session, he had the opportunity to present the unclaimed notice of violation to Mr. Tajalli in person.

Vice-Chairman Wiley said that based on the original conditional use from May, he remembers some frustration on Mr. Diem's part in communicating with the applicant. He said that fortunately the applicants showed up in time for the public hearing. He stated that that being said, the learning curve was established then. He stated that he is frustrated with an applicant where staff has attempted to communicate with them via mail and was unsuccessful with the certified letter twice, the numerous issues in terms of use of the property, the conditional use and the violations that may or may not have occurred

based on what their conditional use is now. He said now they want an alcohol license, which requires a food service license, as well as nightclub use. He stated that he felt that there needs to be a sense of education for the applicant before the Commission moves forward. He said that he had been in favor of the applicant's conditional use previously, but now he is having tremendous frustration with the applicant when they ask for more when they are not abiding by their current conditional use permit, whether it is from a lack of understanding or anything else. He said that until they can get in concert with the City in terms of the use and what they can and cannot do, he recommends denial of the nightclub and alcohol until the business can operate accordingly, communicate with the Zoning Administrator, receive letters and calls, and ask questions. He said from there it can be taken to the next step.

Chairman Shore said his thoughts are Vice-Chairman Wiley's and staff's original position, which was to deny the alcohol change and to give up the issue of the nightclub use for some period of time, whether it is three or six months. He said that he understood Mr. Tajalli's comments at the work session, that this is a struggling business like many. He said that perhaps they could look at the nightclub use after three months to give them a chance to get things in order and then come back, and further down the road look at the alcohol use.

Commissioner Slaughter said that he has struggled since the work session with what appears a pattern of behavior that can be indicative of what could happen in the future, which troubles him. He said that at the work session Mr. Tajalli had indicated that he was not aware of what was going on, that he was absent from the business and that his partner may or may not have been truthful with him about what had been going on, and he seems to be the one there. He said that he would like to get a sense of how they are managing this business, the point being that if alcohol consumption is not being handled properly there are consequences for their customers and the community at large. He said that he has concerns right now that the things that need to be done correctly will be done based on the structure of how the business is being run according to Mr. Tajalli. He asked Mr. Tajalli if he could address those concerns for him.

Emad Khezam, co-owner, addressed the Commission and stated that he loves this City and that is why he is here. He stated that he has owned five businesses since 1994, which consisted of a dealership, mechanic shop, florist, dollar store and pawn shop. He said that his partner has managed the business for about 1½ years and they have never had a restaurant before. He said that he knows the people side of business. He said that he received the letter from Mr. Diem and he called him to find out what the \$200 was for. He said that Mr. Diem told him that he would need to pay this if he wanted to apply for a special use permit. He said that that was when he knew they had made a mistake so he went to the office and completed an application. He said that he received the letter via regular mail but he never received the certified letter. He said that if he had received it he would have come to see Mr. Diem to see what was going on.

Mr. Khezam said that he and his partner are honest people and that they could have sneaked if they had wanted to do many things. He said that as far as the violation was concerned, they would not do anything that would hurt people. He swore that he did not know that they needed a special use permit but once they did they applied for it. He said that he asked Mr. Diem to explain to him exactly what they needed to do, which he did, and now he and Mr. Tajalli know what they need to do.

Vice-Chairman Wiley asked whether he or Mr. Tajalli would be there to manage the business at all times.

Mr. Khezam confirmed that either one or the other would be there because the type of business that it is requires that it be watched. He said that he installed a security camera to watch everything and he believes they do it correctly. He admitted that they had made a mistake but they came as soon as they knew that it was one and tried to make it right because they do not want to lose their business. He said that many people like the business and that even parents come to them and state that they love it. He said that they

have options, they have the liquor license or not, they can have only the nightclub to have music for people, he said it was up to the Commission.

Commissioner Slaughter asked Mr. Khezam if he was present at the June meeting with the Health Department when they were given all the information pertaining to food service.

Mr. Khezam said that at that time the lady, whose name he could not remember, gave him the application and explained that when you apply for an ABC license you need to apply to the Health Department too. He said that he asked the lady then about prepackaged food and she said that you do not need a license for prepackaged food.

Commissioner Slaughter asked if she explained what prepackaged food was.

Mr. Khezam stated that she did not. He said that the food that he sees at Costco is what prepackaged food means to him. He said that most people in Winchester do not know what a cheese or spinach pie is. He also stated that the girl who was doing the work on their website disappeared and would not give them the code to get to their website. He said that they had the food listed on the website but they never served it. He said that they served only hummus because no one liked anything or knew what tabouleh was, so because everyone knows what hummus is, they decided to serve hummus only.

Mr. Khezam said that the band said they would play until 12:30 and that he was unaware that they would play until then. He said that they have three signs that say that they close at 12:00, so this was another violation. Mr. Khezam said that he does not stay until 12:30; the band said that they would. He said that he does not like the pictures on the website but that he is unable to get to the website. He said that he finally he found the girl and he then released everything.

Commissioner Slaughter asked Mr. Khezam how he is monitoring to make sure the age restrictions are in place and how would he plan to do that if he had a liquor license.

Mr. Khezam said that he would sleep there if he had to because he does not want to lose his business.

Commissioner Slaughter asked him how he was making sure that no one under 18 years of age got into the hookah bar.

Mr. Khezam said the he checks the driver license himself.

Commissioner Slaughter asked if he checked them when they entered the premises.

Mr. Khezam said of course.

Commissioner Slaughter asked if he did that with every person who entered.

Mr. Khezam said that he did not check every single person but that he was always by the camera; if he saw something he had helpers sometimes.

Commissioner Slaughter asked if he saw someone that did not look old enough if he would check it then.

Mr. Khezam said that sometimes Daisy will help him to check if she is there, and if he felt that something was not right, he would check.

Commissioner Slaughter asked if the customers' identifications were checked before they were allowed to purchase tobacco every time.

Mr. Khezam said that they were.

Commissioner Slaughter asked who did it.

Mr. Khezam said that he did, he was the only one who sold the tobacco.

Commissioner Slaughter asked what happened if he was not there.

Mr. Khezam said that he had to be there.

Commissioner Slaughter said that Mr. Khezam stated that he sometimes was back with the cameras.

Mr. Khezam said that the camera and door were about 10 feet away and that he knows when someone comes because he watches. He said that if he has five people come at once, he and Daisy will check them.

He said that if anything does not make sense to him, he will go back to the customer and ask questions or ask for their identification. He said trust him, he does not have a big violation, and he is there all the time and watches everything by himself, or his partner if he is not there. He said that he is 100% sure they do not have any problems. He stated he swore that he did not receive the certified mail card. He said that the mailman never gave it to him.

Commissioner Slaughter said that this was a complicated issue in that there were two parts to this. He said that as far as the alcohol license is concerned, it was hard, in good faith, to recommend that element when there are so many problems with the original CUP. He said that given the consequences of what may happen if serving alcohol is not followed the way it should be and what that could mean for the safety of the community, he would prefer to see a better track record before he would consider removing that from the original CUP constraints. He stated that he was on the fence concerning the nightclub permit, but the issue for him was the alcohol permit. He said that he wished that the applicant had come to them with a good track record to be able to ask and grant their request.

Commissioner Beatley stated that she agreed that the nightclub part was not as big of an issue for her. She stated that she felt that it was important that the applicant follow the conditions in the original CUP and she had concerns that that had not been done. She stated that it made sense to have the applicant come back to the Commission in three months. She said typically that when a CUP was granted to a business there were no issues to deal with. She stated that she felt that there were a lot of questions and confusion the past few months. She stated that she is against the alcohol and on the fence about the nightclub.

Commissioner McKannan stated that this reminded him of the Perlita's request where they had issues going in. He said that he is in support of the nightclub permit and revisiting it in a few months to make sure they are on track with no further violations. He said that he was not sure of the timeframe to return and that he wanted to make sure that everyone was on the same page with no further violations and a good track record. He said that he was not inclined to support permitting alcohol on site at this time.

Commissioner Slaughter moved that the Commission forward CU-11-702 to the City Council recommending denial of removing the restriction of on-premise sale and consumption of alcohol; and, recommending approval of nightclub use at the Ali Baba Hookah Bar, located at 932 Berryville Avenue. The nightclub use, as required to be operated in strict conformity with the imposed conditions of CU-11-76 and CU-11-702 and without allowing on-premise sale and consumption of alcohol, will 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 approval is subject to the following conditions, in addition to those previously enumerated in CU-11-76:

1. *Evaluation and review of the approved use required in six (6) months, with re-approval required in one (1) year and every three (3) years thereafter;*
2. *The business shall comply with the applicable noise and maximum sound level regulations per Sections 17-6 and 17-7.1 of the Winchester City Code, as amended;*
3. *The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;*
4. *A maximum of three (3) criminal offense Police calls per month within or attributable to the establishment, after which on-site security may be required and/or the permit may be subject to revocation;*
5. *Nightclub use to cease no later than 11:59pm Sunday through Wednesday night and no later than 2:00am Thursday night/Friday morning through Saturday night/Sunday morning;*
6. *All windows and exterior doors to remain closed during nightclub use and no aspects of nightclub use (including, but not limited to, customer age verification) to occur outside of the building;*
7. *Strict compliance with all local and state laws, especially those pertaining to payment of meals tax, admissions tax, and annual business licenses;*
8. *The applicant is responsible for cleaning up any trash outside the facility after closing; and,*
9. *The CUP expires automatically if the nightclub use changes to another use or if the nightclub use ceases for more than one year, in accordance with Section 18-2-3.8 of the Winchester Zoning Ordinance.*

The motion was seconded by Commissioner McKannan.

Motion passed 4-1 (Vice-Chairman Wiley in the negative).

C. TA-11-692 AN ORDINANCE TO COMPREHENSIVELY AMEND THE WINCHESTER ZONING ORDINANCE TO CORRECT SCRIVENER ERRORS IN SECTION NUMBERING

Mr. Moore stated that the text amendment before the Commission was unchanged from the December meeting and the January work session. He stated that, as previously discussed, the amendment was non-substantive and was only intended to correct errors in numbering.

Chairman Shore opened the public hearing.

No one spoke about the amendment.

Chairman Shore closed the public hearing.

Vice-Chairman Wiley moved to forward TA-11-692 to City Council recommending approval as identified in "Draft 1 – 12/7/11" because it will correct non-substantive scrivener errors in section numbering.

The motion was seconded by Commissioner Slaughter.

Motion passed 5-0

NEW BUSINESS

A. Administrative Authorization(s):

- 1) **SP-11-717** Greenway Engineering 3124 Valley Ave Rubbermaid Building Expansion

Chairman Shore read the following into the minutes:

At the January 10, 2012 work session, Commissioner Shore moved to grant administrative authorization for SP-11-717. The motion was seconded by Commissioner Slaughter. Motion passed 4-0 (Commissioner McKannan absent).

- 2) **SP-12-18** Stowe Engineering 2409-2425 Valley Avenue Trinity Auto Center

Mr. Moore presented the site plan to the Commissioners. There was some discussion about whether or not there should be notification to the owners of the residential properties on the opposite side of Hillcrest Alley. Mr. Moore pointed out that the lots were very deep and the homes were on the opposite end of the lots, fronting onto Massanutten Terrace.

Mr. Youmans pointed out that there was also a large difference in grade, with the houses being much higher than the alley.

Mr. Moore stated that a lighting schematic would be required to demonstrate that there is no spill over to the residential lots.

Vice-Chairman Wiley moved to grant administrative authorization for SP-12-18. The motion was seconded by Commissioner McKannan. Motion passed 5-0

OTHER DISCUSSION

Chairman Shore discussed the rotating schedule for attendance at the Frederick County Planning Commission meetings. Staff will email the rotating schedule to the Commissioners.

Chairman Shore asked that the Commissioners consider what other boards or groups they might want to sit in on as the Commission's representative. The committee assignments will be handled next month.

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:34 p.m.

Dave Shore, Chairman