

**PLANNING COMMISSION
MINUTES**

The Winchester Planning Commission held its regular meeting on Tuesday, September 18, 2012 at 3:01 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

POINTS OF ORDER

PRESENT: Commissioner William Wiley, Chairman Dave Shore, Commissioner Kevin McKannan, Commissioner Stephen Slaughter Jr., Commissioner Jennifer Beatley and Commissioner Beau Correll
ABSENT: Commissioner David Smith
STAFF: Planning Director Tim Youmans, Planner Will Moore, Director Zoning & Inspections Aaron Grisdale and Secretary Paula Le Duigou

Approval of Minutes

Commissioner McKannan moved, seconded by Commissioner Wiley, to approve the August 21, 2012 minutes as presented. The motion passed unanimously.

Correspondence

Mr. Moore stated that there was no correspondence to share and that there had been a revision to the agenda.

Citizen Comments

None

Report of Frederick County Planning Commission Liaison

No representative of Frederick County was present.

PUBLIC HEARINGS

CU-12-404 Request of Greenway Engineering for a Conditional Use Permit for multifamily dwelling at 443 Millwood Avenue (*Map Number 233--08--40A*) zoned Highway Commercial (B-2) District.

The request by Greenway Engineering is for CUP approval of multifamily use on the upper level of the existing building housing Goodwill on the ground floor. The applicant proposes 5 dwelling units in newly added space on the second floor of the building that is currently utilized as structured parking.

The site as well as property across Spring Street to the south and most of the land across Millwood Avenue directly east of the subject structure is zoned Highway Commercial (B-2) District. Uses in the surrounding B-2 district include automotive commercial. Land to the west and north of the site as well as land across Millwood Avenue further north of the subject structure is zoned Medium Density Residential (MR). These areas contain single-family residences.

The request is consistent with the New Urbanism recommendations of the Comprehensive Plan to encourage higher density mixed use development. While the site itself was not called out as a redevelopment site, land directly to the east and south were called out, and the close proximity to Shenandoah University makes it attractive as an option for off-campus student housing. The existing building lends itself to adaptive reuse on the second floor where some office space along the Millwood Ave frontage will remain.

The CUP applies only to the multifamily use proposed on the upper level of the building. The CUP provisions in Section 8-2-20 of the Zoning Ordinance allow a maximum of 8 units per building. The applicant is proposing a total of 5 one-bedroom units.

The applicant's letter dated August 3, 2012 outlines the proposal and addresses how the project is in compliance with the various CUP provisions for this type of use. In his letter, Mr. Wyatt notes that all of the units comply with the 700s.f. minimum requirement for 1-bedroom units. The floor plans annotate the floor area of each proposed unit, ranging from 775 s.f. up to 883 s.f. in size. A small roofed HVAC and bicycle storage area is included on the upper level. This space is enclosed on three sides, including the exterior side facing toward the Greystone Terrace residential area.

The BZA granted variances to allow the second floor addition to encroach into the 35-foot front yard along Spring Street to the same extent that the existing building encroaches. The variance also allows an existing overhang to be utilized as unenclosed terrace space for three of the five apartments.

The 1.052-acre site would be large enough to support 13 dwelling units, of which a maximum of 8 could be proposed in the subject structure. The Density provision for multifamily in the B-2 zoning district allows up to 1 unit for every 3,500 square feet of Total Project Area. Total Project Area, by definition in Section 1-2-91.1 of the Zoning Ordinance excludes 100-year floodplain acreage and counts 50% of the portions of the site with slope in excess of 20%. No exclusions for floodplain or steep slope apply.

The floor plans clearly show all five apartment entrances connecting to a common hallway that accesses out to a small portion of the upper level that will still be unenclosed. An existing vehicle ramp serving the existing rooftop parking will provide access to the new apartments. Consistent with the Zoning provisions, none of the entrances are oriented to the front (Spring St elevation) of the site.

A site plan exhibit dated August 3, 2012 depicts site improvements that will be undertaken in conjunction with the residential conversion of the upper level of the structure. The Site Plan depicts some reduction of paved area on the site, including the removal of asphalt in a small area immediately abutting the Greystone Terrace neighborhood, an end island area in the Millwood Ave parking lot, and some concreted areas where planters will be installed along the south (Spring St) elevation of the building. The removal of excess impervious area on the site is desirable given the introduction of residential use.

A blended Green Area requirement that takes into account the 23,275 square feet of existing nonresidential use and 4,304 square feet of new residential space on the upper level would render a Green Space requirement that amounts to 18% of the total land area. The 18% green area required is a blend of the 15% minimum required with the previously approved nonresidential uses, and the 35% minimum requirement associated with B-2 residential use. The majority of the building area (84%) on the site would remain in nonresidential use.

The plans note existing green area on the site totaling 11.2%. With the removal of some paved area, the proposed green area would amount to 12.7% of the site, which is partially compliant with the blended 18% minimum associated with B-2 mixed use. The applicant notes that the new addition amounts to less than a 25% expansion and that the Zoning Ordinance allows the Planning Director and Planning Commission to waive the green space requirement.

The proposed five apartments on the upper level of the structure represent a good reuse of what is underutilized second floor space. The proposal should not adversely impact the health, safety or welfare of anyone residing or working in the area and not be detrimental to public welfare or injurious to property or improvements in the area.

While the introduction of the second floor multifamily use will eliminate some existing parking spaces, there are still 40 parking spaces available on the site. Based upon the mix of uses (retail, office, storage, and residential) the base parking requirement would amount to 46 spaces. However, the property benefits from parking reductions amounting to 8 spaces because of the proximity to a public transit stop and the inclusion of bicycle racks. The resulting requirement is 38 parking spaces.

Regarding visual impacts, the applicant has provided computer-generated elevations of what the structure would look like from all four directions if the second-story addition was approved. It is important to note that the B-2 zoning would permit, by right, vertical expansion of at least 35 feet and up to 55 feet provided that there is one additional foot of rear setback for each additional one foot of height above 35 feet. The applicant is proposing a total height of 35 feet according to zoning definition. A low pitched roof is included in the height computation.

Mr. Dwight Allen, who resides at 1462 Greystone Terrace (immediately to the west of the subject building) has noted in a Sept 10, 2012 email to the City that he has met with the applicant and that his main concern regarding terrace space overlooking his property has been addressed. He does note, however, one remaining concern about how much of the horizon the resulting Goodwill building will block after the addition and roof.

For a conditional use permit to be approved, a finding must be made that the proposal as submitted or modified 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.

Commissioner Smith entered the meeting

Commissioner McKannan asked, based on the square footage, how many residents could live in each unit.

Mr. Moore stated that he did not know that they had done that detailed of an analysis. He said that it would likely be one to two occupants and that the actual determination of occupancy was a complicated formula and that they would have to look at the square footage of all the living spaces, as well as other factors.

Commissioner McKannan asked if there would be a maximum of two residents, to which Mr. Moore ventured to guess that that would be the case.

Mr. Grisdale stated that that was consistent with the square footage.

Commissioner Beatley asked about the location of the staircase.

Mr. Moore stated that he would let the applicant address that question.

Mr. Evan Wyatt, applicant, directed the Commissioner to the rear elevation drawing. He stated that one of the things that was being looked at was the stairwell potential.

Mr. Wyatt said that this was one thing that he had wanted to get back to the Commission about because there were many questions about it at the work session. He said that there was not a requirement for the building to neither be ADA accessible nor provide accessible routing to them.

Mr. Wyatt said that there was a provision in the building code that required there be additional fire rating and sprinklering within the units as exemptions and modifications. He said that they had met with the building official and he supported all of that.

Mr. Wyatt said that the other comment that had been made pertaining to the ramp and accessibility for ADA. He advised the Commission that they wanted to keep the ramp in play because there is an HVAC unit on the top that will require access for maintenance.

Mr. Wyatt said that if the Commission was concerned about vehicles going up the ramp to move furniture, he said that the property owner had no issue with a condition being placed that prohibited any access save the need for maintenance of the HVAC unit.

Mr. Wyatt said that the only issue they could see was with the office that the Goodwill people use to which they have internal stair access to the second floor. He said that if they needed to get a handicapped individual to that floor, they would need to use the ramp to get access.

Mr. Wyatt said that they were interested in making the landscape better and that the pitched roof, which is a 3/12 pitch, is consistent with the Business school building across the street from the subject property. He said that they would replicate that.

Mr. Wyatt said that, responding to the comment from the adjoining property owner, that they are entitled to have a 55 foot high wall line on this building, but are less than 35 feet instead. He said that in addition to the roof pitch, they are not building according to what was allowable.

Commissioner McKannan asked about the lighting in the parking lot and what it was like in the evening as he was concerned about the students after dark.

Mr. Wyatt said there was wall path lighting and there would be also on the second level and the entranceway. He said that they were reluctant to put pole lights in because of the residents behind the site.

Chairman Shore asked if the wall path lighting would affect the residents across the street at all.

Mr. Wyatt did not believe that it would, and on one side of the building there was no need for lighting. He described to the Commission the elevation that would not require it.

Chairman Shore stated that he did not have a problem with the ramp being used for furniture moving use, but he didn't see a need for it to be used on a daily basis.

Mr. Wyatt said the ramp is gated today, and if it were used at all it could only be used with pre arranged permission from the property manager.

Mr. Tagnesi asked if the only way to access the second level was via the ramp.

Mr. Wyatt said that they would be introducing stairs as well.

Chairman Shore stated to Mr. Moore that this would be something looked at in the site plan.

Mr. Moore said that it would be

Commissioner Correll said that the only one with access to the gate key would be the property manager.

Mr. Wyatt said that they would have access to the gating on the second level where the bike storage is because they believe that that should be enclosed as well. He said the ramp access would have to be coordinated with the property manager.

Commissioner Correll stated that he was concerned that a lot of people could have access to the ramp, and he felt that as long as they had limited access via the manager, he was all right with the proposal.

Chairman Shore opened the public hearing

With no comments forthcoming, Chairman Shore closed the public hearing

Commissioner Slaughter moved that the Commission forward CU-12-404 to City Council recommending approval per Section 8-2-20 of the Zoning Ordinance to add five (5) one-bedroom apartments 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 the following:

- 1. Close adherence to the submitted site plan, elevations, and floor plans; and,*
- 2. Staff review and approval of the site plan including a waiver of green space to allow 12.7% where a slightly higher amount would otherwise be required.*

Commissioner Beatley seconded the motion.

The motion passed unanimously.

NEW BUSINESS

Discussion and Motion to Initiate a Zoning Text Amendment pertaining to Donation Drop-off Boxes TA-12-473.

Mr. Grisdale said that the text amendment before the Commission was in response to concerns brought to City Council by a representative from Blue Ridge Hospice regarding the proliferation of donation boxes appearing around the City and how it's detracting from the local organizations. He said that they were asked to review the Ordinance to see if there was anything that could be done to address their concern.

Mr. Grisdale stated that this particular ordinance before the Commission defines donation drop off box within the ordinance and provides some site location requirements within Article 18 to govern them.

Mr. Grisdale stated that donation drop off boxes would be allowed in all zoning districts but only on properties where there is place of worship or related charitable use, with conditions outlined in Article 18 that talked about which yards they would be prohibited or permitted in.

Mr. Grisdale stated that they would be specifically prohibited from all front and quarter side yards, and be located only in rear and non required side yards. He said that there are some basic requirements, such as it cannot obstruct vehicular or pedestrian access on the property, be located in public rights of way, landscape strips, required parking spaces, fire lanes, loading zones and the like. He said that it cannot create a condition detrimental to surrounding land uses.

Mr. Grisdale said that it would need to be clearly marked to identify to what use the donated goods are going for, along with contact information for whomever would be maintain the donation box.

Mr. Grisdale said that there would be a limit of two donations boxes on the property, and a capacity of no larger than six cubic feet, which is the standard size.

Mr. Grisdale stated that there would be additional landscaping required depending on location. He said that if it was located within 15 feet of a residentially used parcel then landscaping would be required per established guidelines in the ordinance. In addition a permit would be required to ensure that each condition were being met.

Chairman Shore asked if the existing boxes would be grandfathered and allowed to stay.

Mr. Grisdale said that they would not; all would have to comply to the proposed ordinance.

Chairman Shore asked if the owners of the boxes have a contract with the locations where they have them.

Mr. Grisdale said that they didn't know how it was handled between the property owners and the box owners. He presumed that they did have agreements.

Commissioner Smith asked if there were a lot of boxes.

Mr. Grisdale said that this was one of those things that once it's pointed out to you, you start to realize how many there are around.

Commissioner Correll said that the ordinance as proposed would require a person that would like to put a box up, to get a permit and site drawing to staff, but that would only apply to places of worship and charities. He asked Mr. Grisdale if that was correct, and he responded yes.

Commissioner Correll said that property owners would have to get a permit to place boxes on their own property.

Mr. Grisdale stated that that was correct because some of the development requirements, they did not want to see people placing things in a required fire lane, required parking spaces or within five feet of the property off the road. He said that there are certain siding minimum requirements that are applied unilaterally across all parcels where these would be permitted.

Commissioner Correll asked if there were all ready provisions in place in code to prevent placing a donation box in a right of way or in parking spaces.

Mr. Grisdale stated that there was a catch all provision in the ordinance concerning right of ways, that no obstruction can be placed there, however it is not as clear cut with parking spaces. He said that there are ways that address this in the current ordinance and that it would probably be too broad of a brush to stroke that might further restrict these than would be desired by treating them as accessory structures.

Mr. Grisdale stated that he felt that this was a middle ground between being overly aggressive with determining these as accessory structures, which is how they would be defined in the ordinance now, that would allow these to be on related parcels and tied to local organizations.

Commissioner McKannan, referring to the packet information, asked for clarification about what was being added to the ordinance.

Mr. Grisdale explained what was before the Commissioner.

Mr. Iman said that he wanted to provide some background and stated that what has been happening across the country are for-profit organizations coming in and putting these boxes, sometimes with, sometimes without permission, on large properties. He said that they are giving the impression to the general public that they are donating clothing and goods to charitable or religious organizations when in fact it is for-profit.

Mr. Iman said that often times the clothes are being cut and sold as rags by the pound and the shoes are being sold by the thousands to corporations, who are doing something with them, he was not sure.

Mr. Iman stated that basically the interest was to regulate these in such a way that allow charities and religious organizations to continue to do good things for the local community and to weed out these for profit organizations whose goods do not stay in the local community or being used as they were intended. He said that this would be a no charge permit and would give the City more ability to monitor regulate where they were located.

Commissioner McKannan stated that he was glad to hear this explanation because he didn't understand why this needed regulation.

Mr. Iman stated that these boxes are not maintained in many communities and are eyesores and this was something that they wanted to avoid if possible.

Commissioner McKannan said that he last thing that he would want to see was to over regulate even local organizations and affect their ability to get donations.

Mr. Iman stated that local organizations are in support of this type of legislation on a nationwide basis.

Mr. Tagnesi asked if this change would affect the people that are doing it now. He asked that if an out of town organization came and applied for a permit would they still be able to put out their boxes, or are they being restricted.

Mr. Grisdale said that it would need to be on a property with a related use, either a place of worship or a charitable use. He said that if a group wanted to contract with a third party to do the collection that was fine as long as it was located on the parcel where the use is taking place and the regulations are being met.

Commissioner Correll said that what if a for profit entity came and they place their name on it, say that donations were accepted here and listed the contact information of their agent, what discretion would there be to reject that application.

Mr. Grisdale said that he would look at the current use of the parcel they are asking the permit for and whether it was meeting the requirements of Article 18.

Commissioner Smith asked about maintenance of the boxes. He asked how they would be maintained if they belonged to an out of state organization.

Mr. Grisdale said that if it were creating a detrimental situation and impacting surrounding land uses, it can be addressed through a violation of Subsection C. He said that maintenance entails that the bins are in good condition, that there isn't trash accumulating, etc.

Commissioner Smith said that if you ask for landscape screening, how it would be visible to determine whether a box was being maintained.

Mr. Grisdale said that landscaping would only be required if the box were within 15 feet of a residentially used parcel.

Commissioner Wiley asked Mr. Grisdale to describe the landscape requirement.

Mr. Grisdale said it would be vegetation.

Commissioner Wiley said that he knew that, but he asked how, and he didn't know what the section was because the request was dropped in their laps today, how much landscape was being discussed.

Mr. Grisdale said that he left it vague in order to be more flexible to work with to allow it to be determined based on the proposed site.

Commissioner Wiley stated that he felt that this was a great idea and a smart way to monitor the situation based on the practices of some of the for profit groups. He said that his concern was that they may be opening Pandora's Box with the added work that this could generate, and that a lot of people may come and he wanted to know if this was going to go before the Commission or would it be handled at the staff level.

Mr. Grisdale said that it would be primarily administrative action review.

Mr. Tagnesi asked what the punitive response would be if staff had to contact an owner repeatedly to clean up their box.

Mr. Grisdale said that they did not have a revocation mechanism built into the current proposal, and that if something was a continuing violation of the provisions in the ordinance, then a notice of violation would be issued, citations can be issued subsequent to that.

Chairman Shore asked if it were common to not have punitive action built into an ordinance. He asked if staff would have a difficult time enforcing the ordinance if it weren't built in.

Mr. Grisdale said that the few that he did see didn't have a revocation mechanism built in, but if it were a concern of the Commission that language could be added.

Commissioner Correll said that he felt that it would have to be spelled out exactly the punitive aspect, speaking without issuing a legal opinion. He said that it is well accepted that a decision of administrative authority cannot be arbitrary and capricious, so if the Commission would like to do so, they should set some kind of guidelines to refer to.

Commissioner McKannan said that they would need to be put on notice that it could result in something.

Mr. Moore said that what was being proposed for the Commission's consideration is possibly initiating this amendment, not making a recommendation, so whether or not they are comfortable with initiating it, language can always be added.

Commissioner Smith asked what the proposed timeline was for initiation because he would like to see some of the other language in there so they can approve it as a whole.

Mr. Moore said that the initiation was the first step and made it possible for staff to advertise for a public hearing. He said that one possible scenario was that it could be initiated this month and a public hearing scheduled with more detail at the next work session.

Mr. Moore explained the process in detail.

Chairman Shore that it would be reviewed in Council before it was all said and done and that the ultimate answer was to get on with it.

Mr. Youmans wanted to point out, as far as the boxes being reviewed as part of a minor site plan revision, that they were no different than a dumpster enclosure or a sign that falls into disrepair, so the Zoning Ordinance generally covers the enforcement and penalties that are associated with it. He said that they probably do not need to have special penalties associated with this because it's all ready part of the Zoning Ordinance and has a class of actions.

Commissioner Correll said that he thought that this was the first that this has come before the Commission that he was aware of, and that it may have been discussed very briefly before at the work session, but he did not recall the details.

Commissioner Correll said that he felt that it would go a long way if the record was developed a bit more, although they spoke generally to other areas. He said that if there was a letter or two from charitable organizations that would like to submit something to the Commission that described the problem in Winchester and that that would go a long way.

Commissioner Correll said that most importantly, the ordinance as proposed, could be massaged a bit at the next meeting, but the issue for him is that the ordinance requires churches and charitable organizations to get permits to put a box on their own property, when he felt that it was fairly obvious that a church or charitable organization puts a box on their own property it's for that purpose. He said that the actual problem that is trying to be addressed specifically is, as long as the record is developed on it, for profit entities putting boxes and using the good will of people to accept these contributions.

Commissioner Correll said that as of this moment he would not support a measure that makes churches and charitable organizations to have to get approval for something on their own property.

Commissioner Smith said that if you have the for-profit boxes offer to pay to put their boxes on church and charitable organizations properties.....

Commissioner Correll said that he did not see the utility in holding then to standards when the problem appears to be out of towners boxes making it look like they are a charity.

Chairman Shore said that there are a lot of churches in residential neighborhoods, and it could become an issue of you live next to one. This would give the owners the knowledge of where they could place it so it wouldn't put any burden on the neighboring properties.

Commissioner Wiley moved to initiate a Zoning Text Amendment pertaining to Donation Drop-off Boxes TA-12-473.

The motion was seconded by Commissioner Beatley

Commissioner Correll opposed (6-1)

Administrative Approval(s)

SP-12-421 510 N Kent St Terry Doyle 4-unit multifamily conversion

Commissioner Slaughter moved to grant administrative approval without the waiver for the asphalt.

Commissioner Slaughter seconded the motion.

The motion passed unanimously.

SP-12-XXX - Administrative Approval for a minor site plan to allow for TaxiStand use in addition to existing auto sales use at 1013 S. Loudoun St. The request is for land owned by Mr. Jack Schutte.

Commissioner Smith moved to grant administrative approval to SP-12-XXX as presented.

Commissioner Beatley seconded the motion

The motion passed unanimously.

ADJOURN

With no further business to discuss the meeting was adjourned at 4:07 p.m.