

## PLANNING COMMISSION MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, June 18, 2013, at 3:00 p.m. in the Council Chambers, 15 North Cameron Street, Winchester, Virginia.

**CALL TO ORDER:** Chairman Wiley called the meeting to order at 3:00 p.m.

**PRESENT:** William Wiley, Stephen Slaughter, Martha Shickle, Beau Correll, David Smith, Dave Shore

**ABSENT:** Jennifer Beatley, Kevin McKannan

**EX-OFICIO:** Councilor Tagnesi, Dale Iman

**FREDERICK CO. LIAISON:** Stanley Crockett

**STAFF:** Tim Youmans, Will Moore, Aaron Grisdale, Anthony Williams, Catherine Clayton

**VISITORS:**

### APPROVAL OF MINUTES:

*Commissioner Slaughter moved to approve the minutes of the May 21, 2013, meeting as submitted.*

*Commissioner Shore seconded the motion.*

*Voice vote was taken and motion passed 5-0 with Commissioner Smith absent at the time.*

### CORRESPONDENCE:

Mr. Youmans addressed the Board and stated that there are no changes to the agenda but have some things that were revised in regards to item 3B under the Public Hearings portion of the agenda whereby Mr. Grisdale has prepared an updated staff report for TA-13-198 and my revision to the draft ordinance that we discuss. You also have a letter that was just received yesterday, dated June 17, 2013, from O'Sullivan Films pertaining to the Jubal Square rezoning case which is item 3C on your agenda.

### CITIZEN COMMENTS:

None.

### REPORT OF FREDERICK COUNTY PLANNING COMMISSION LIAISON:

Commissioner Crockett stated that the Frederick County Planning Commission had no items on their agenda for their June 5<sup>th</sup> meeting therefore he has no report.

## **EXECUTIVE SESSION:**

*At 3:08 p.m., Chairman Wiley moved to convene in executive session pursuant to §2.2-3711(A)(7) of the Code of Virginia for the purpose of receiving legal advice and status update from the City attorney and for receiving legal consultation regarding the subject of specific legal matters requiring the provision of legal advice by the City attorney and matters of actual or probable litigation.*

*Commissioner Shickle seconded the motion to convene in Executive Session.*

*Voice vote was taken and passed 6-0. Executive session will commence upon public vacating of Council Chambers.*

*At 3:48 p.m., the public was asked to return to Council Chambers.*

*Chairman Wiley moved to conclude the executive session of the Planning Commission called this afternoon and certify in accordance with §2.2-3712 of the Code of Virginia that only public business matters lawfully exempted from open meeting requirements and only such public business matters as were identified in the motion by which the executive session was convened were heard, discussed, or considered in the meeting. Any member who believes that there was a departure from the foregoing shall state prior to the vote.*

*Commissioner Slaughter seconded the motion to conclude Executive Session.*

*Roll call vote was taken whereby all six (6) members present voted to conclude Executive Session.*

## **PUBLIC HEARINGS:**

Chairman Wiley requested that RZ-13-196 be brought to the forefront of the public hearings to be heard first if that is not a problem.

**RZ-13-196** AN ORDINANCE TO REZONE 8.523 ACRES OF LAND AT 1900 VALLEY AVENUE, 211 AND 301 WEST JUBAL EARLY DRIVE (*Map Numbers 251-07-27-A, 251-01-31-A, AND 251-04-01-A*) FROM LIMITED INDUSTRIAL (M-1), HIGH DENSITY RESIDENTIAL (HR), AND HIGHWAY COMMERCIAL (B-2) DISTRICTS TO B-2 DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) OVERLAY. *Public hearing continued from May 21, 2013, meeting. (Mr. Youmans)*

Mr. Youmans addressed the Board and advised that the owner of the property has requested that this case be further tabled and that the State Code allows up to ninety (90) days before your recommendation must be provided to City Council. He advised that the Board does have the option to further table it if the Board wishes.

*Chairman Wiley called for questions or discussion from the Board. Hearing none, he called for a motion. Commissioner Correll moved to table RZ-13-196 until the meeting next month.*

*Commissioner Shore seconded the motion.*

*Voice vote was taken and the motion to table passed unanimously, 6-0.*

**CU-13-273** Request of Michael Bortz on behalf of T-Mobile Northeast, LLC, for a conditional use permit to upgrade existing telecommunications facilities with replacement antennas at 333 West Cork Street (*Map Number 192-01-C-16*) zoned Health Services (HS) District. (**Mr. Moore**)

Mr. Moore addressed the Board and advised of the scope of the project on behalf of T-Mobile. Mr. Moore stated that essentially there will be six new antennas installed in the same place as the current antennas whereby the new antennas will be visually the same, similar in height and mass. Additionally, there will be some roof-mounted equipment cabinets that are not visible from the street. The proposal is to go from two cabinets to one. Staff believes that the visible impact in the immediate area from the street is minimal.

**Chairman Wiley opened the Public Hearing.**

No public comment received.

**Chairman Wiley closed the Public Hearing.**

Chairman Wiley called for questions from the Board.

*Commissioner Shore moved to forward CU-13-273 to City Council recommending approval because the use of proposed should not adversely affect the health, safety or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommendation is subject to:*

- 1. Submission of an as-built emissions certification after the facility is in operation;*
- 2. Removal of the facilities should the use cease; and,*
- 3. Submission of a bond guaranteeing removal of facilities should the use cease.*

*Commissioner Smith seconded the motion.*

*Voice vote was taken and the motion passed unanimously, 6-0.*

**TA-13-198** AN ORDINANCE AMENDING ARTICLES 18 AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO CONDITIONAL USE PERMITS FOR TRANSMITTING AND RECEIVING FACILITIES AND TOWERS AND FEES FOR TELECOMMUNICATIONS FACILITIES AND RE-ADVERTISEMENT FEES. (**Mr. Grisdale**)

Mr. Grisdale advised the Board as it relates to the updated draft before them and advised of the changes. The updated change is an increase from \$500 to \$1,500 per application for a

telecommunications facility whereby it will apply to new facilities, modification of existing facilities and collocations of antennas/equipment. Additionally, he reviewed the other changes of an increase from \$75 to \$100 per application the re-advertisement fee to better help cover the City's costs and adding HR-1 District to Section 18-2-1.2.

Commissioner Smith questioned the subsequent increase in fee from \$1,200 which was originally proposed to \$1,500 in this proposal. Mr. Grisdale explained the additional increase.

**Chairman Wiley opened the Public Hearing.**

No public comment received.

**Chairman Wiley closed the Public Hearing.**

Chairman Wiley called for discussion from the Board. Hearing none, he called for a motion.

*Commissioner Correll moved to forward TA-13-198 to City Council recommending approval because the amendment, as subsequently proposed, presents good planning practice by providing for clear regulations and reasonable fees for such telecommunications facilities.*

*Commissioner Slaughter seconded the motion.*

*Voice vote was taken and the motion passed unanimously, 6-0.*

**OLD BUSINESS:**

Resolution to Initiate: **TA-13-146** AN ORDINANCE TO AMEND AND RE-ENACT ARTICLES 1, 8, 9, 10, AND 13 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO RESTAURANTS AND ENTERTAINMENT ESTABLISHMENTS. **(Mr. Grisdale)**

Mr. Grisdale addressed the Board and outlined the proposed changes to the regulations as to how a nightclub is handled. It removes the definition of a dance hall and nightclub, modifies the definition of a restaurant, and creates a separate definition for an entertainment establishment. An entertainment establishment would be defined as a venue where entertainment live or otherwise predominates over foodservice becoming the principal use for the business' operation without or without dancing and typically involving a cover charge or other charge for admission. Additionally, in each of the districts where nightclubs are currently permitted in the zoning ordinance, we would establish a by-right use as well as a conditional use within certain residentially zoned districts. Where an Entertainment Establishment is proposed outside of the 200 foot area of residential districts, it would not require a conditional use permit but would be allowed by-right. If it is within 200 feet of a residentially zoned parcel then it would require the conditional use permit process. The measurement is from the structure containing the use to the adjacent property line of the residential zoned district to get the 200 foot buffer determination, parcel edge to parcel edge.

Extensive discussion was made as it relates to the hours of operation and sales of alcohol, excessive noise, and trash. Additionally, concern was raised as to whether or not there have been any comments received from landlords, tenants, or the Downtown Business Association to which Mr. Grisdale responded just from tenants about the noise but we have not heard anything specific about this ordinance.

Commissioner Slaughter asked how the determination was made for the 200 foot zone to which Mr. Grisdale responded that he worked with the GIS mapping department and completed a buffer survey based upon parcels and not actual structures to determine a line that was not too restrictive but not too liberal either. Commissioners Slaughter stated that with the downtown area being a mixed use, how do you see this use with the apartments. Mr. Grisdale stated that the residents do have a reasonable expectation that there may be a variety of uses downtown that they need to take in to consideration. Commissioners Slaughter then questioned what, if anything, falls under the authority of the Zoning department if the hours of operation falls under the ABC board and the noise ordinance falls under the City police. Mr. Grisdale stated that trash and those types of issues would fall under the Code Enforcement purview.

Commissioner Smith has a concern that people are not being told when moving in to the downtown area that it is a mixed use area. Mr. Grisdale stated that there are potential ways to alleviate concerns making provisions and performance standards that are uniform in every situation where they are by-right uses. Mr. Grisdale further advised that this is still in the initiation phase and it would still come back to the Planning Commission should you choose to initiate this month for an actual public hearing and that he would be glad to reach to some of the other entities to get some feedback. Commissioner Shore stated that he believes that it is worth looking in to some standards.

Chairman Wiley called for any additional questions or discussion from the Board. Hearing none, he called for a motion.

*Commissioner Shickle moved to initiate TA-13-146 because it represents good planning practice by providing an opportunity for a vibrant downtown as well as allowing for reasonable review of entertainment uses in close proximity to residential zones.*

*Chairman Wiley seconded the motion.*

*Voice vote was taken and the motion failed, 2-4, with only Commissioner Shickle and Chairman Wiley voting in favor.*

## **NEW BUSINESS:**

Resolution to Initiate: **RZ-13-289** AN ORDINANCE TO REZONE 44.44 ACRES OF LAND AT 2410 AND 2416 PAPERMILL RD (*Map Numbers 272-01-8 AND 291-02-A-B*) FROM INTENSIVE INDUSTRIAL (M-2) DISTRICT TO HIGHWAY COMMERCIAL (B-2) DISTRICT. (**Mr. Youmans**)

Mr. Youmans presented this request to the Board stating that the request is being made to support economic redevelopment of the property in a manner more compatible with the major commercial development extending along both sides of S. Pleasant Valley Road in the general vicinity.

Chairman Wiley called for questions and discussion.

Commissioner Slaughter asked when the last time was that this type of rezoning had been done to which Mr. Youmans responded that he believes it was in 2007 with a series of properties, approximately 2,000 properties within City limits.

Hearing no other questions or comments, Chairman Wiley called for a motion.

*Commissioner Slaughter moved to adopt the resolution to initiate RZ-13-289 and schedule the rezoning request for public hearing in July because the request is generally consistent with the Comprehensive Plan which calls for Commerce Area Revitalization/Infill on the developable portion of the site.*

*Commissioner Shore seconded the motion.*

*Voice vote was taken and the motion passed unanimously, 6-0.*

#### **Administrative Approval:**

**SP-13-XXX** 720 Wade Miller Drive, Shenandoah University Health Sciences Building. **(Mr. Youmans)**

Mr. Youmans presented this case to the Board and Jeff Davis from Shenandoah University addressed the Board to further explain and justify the project request and loss of parking spaces as a result of the project Mr. Youmans advised that it is a big project and that it is a by-right use.

Chairman Wiley called for questions and discussion from the Board. Hearing none, he called for a motion.

*Commissioner Correll moved to grant administrative approval. Commissioner Slaughter seconded the motion*

*Voice vote was taken and the motion passed unanimously, 6-0.*

#### **ADJOURN:**

With no further business, Commissioner Shickle moved to adjourn. Commissioner Slaughter seconded the motion. Voice vote unanimous, 6-0 to adjourn. Therefore, the meeting adjourned at 4:25 p.m.