

PLANNING COMMISSION  
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, December 21, 2010, at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**PRESENT:** Chairman Adams, Vice-Chairman Shore, Commissioners McKannan, Wiley, Slaughter and Sublett. (6)  
**ABSENT:** Commissioner Talley (1)  
**EX-OFICIO:** City Manager O'Connor, Councilor Willingham  
**FREDERICK CO LIAISON:** Commissioner Mohn  
**STAFF:** Diem, Moore, Youmans and Walsh  
**VISITORS:** Marilyn Heath, Tim Painter, Lawton Saunders, John Tagnesi, and Philip Weber

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

**APPROVAL OF MINUTES**

*Vice-Chairman Shore moved to approve the minutes of the November 16, 2010 meeting as presented. The motion was seconded by Commissioner Slaughter.*

*Motion passed 6-0.*

**CORRESPONDENCE**

None

**CITIZEN COMMENTS**

None

**REPORT OF FREDERICK COUNTY LIAISON**

Commissioner Mohn stated that the Commission had been reviewing the products of working groups that had been set up to review different sections of the County's Comp Plan. At the last work session, each group went over their recommendations. Now staff will take that information and work on the narratives. The Commission plans to have a draft ready for review for their annual retreat in February and then hopes to be ready for public hearings and possible adoption of those amendments by April or May.

**PUBLIC HEARINGS – New Business**

- A. **TA-10-613** AN ORDINANCE TO AMEND AND REENACT SECTION 9-2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO CONDITIONAL USE PERMITS FOR MULTIFAMILY DWELLING UNITS

Mr. Diem presented the request developed by members of the City's Development team, including the Economic Development Director, the Planning Director, and the Zoning & Inspections Administrator.

The purpose of the amendment is to alleviate some of the burdening restrictions identified within the Zoning Ordinance pertaining to minimum square footage allocations for individual dwelling units within a multifamily dwelling unit structure.

The proposed text amendment is intended to solely enable maximum density within the Central Business (B-1) District and is not proposed to affect any other zoning districts at this time.

In recent years, the City has observed a number of redevelopment and revitalization efforts applied to existing multi-story buildings within the Historic Winchester (HW) District; and more specifically, within the Central Business (B-1) District, with HW overlay. Not all proposed re-development projects are carried through to completion; however, and the current Zoning Ordinance dwelling unit square footage requirements for multifamily dwellings is seen as an impediment. This is predicated, in part, by the limited footprint of the building and the spatial allocations that were originally dedicated when the structures were first erected.

For individuals and developers who are attempting to utilize state and federal tax credit incentives for rehabilitation, this presents an even larger concern. Certainly, the form and over-arching architectural style of the building cannot be jeopardized through an inappropriate expansion of the building; and, considering the built-up environment of the City's core downtown area, horizontal expansion may not even be possible. Additionally, projects that involve the restoration and rehabilitation of historic structures are often more costly to developers, as special attention must be given to the use of certain materials and methods of construction. Routine maintenance is also more frequently required, as the exterior materials are often not synthetic.

In recent years, City staff has been charged with the responsibility of considering ways in which housing density and mixed-use development can be inspired and enabled within the downtown core area. Studies have been conducted, and examples have been made of some of the past successful efforts. In order to continue attracting young professionals, college students, and others who are seeking the convenience of a walkable community in an urban setting, a much more diverse array of quality housing choices should be considered.

This text amendment intends to provide developers and property owners with an opportunity to create the type of moderate- to high-quality dwelling units within multifamily dwelling structures that would continue to attract the aforementioned population to the downtown area, without risking the feasibility of completing such an undertaking. It is staff's opinion that an opportunity for increased densities, even if through the Conditional Use Permit process, would encourage more historic rehabilitation of existing buildings and create a more densely-occupied downtown area. Existing businesses could benefit from the change, as a bi-product of the increased density.

**Chairman Adams opened the public hearing.**

No one spoke regarding the amendment.

**Chairman Adams closed the public hearing.**

Vice-Chairman Shore stated that the product was good and that it matches with the intent of the Comp Plan.

Chairman Adams stated that before he was on the Commission, he was a member of the BZA. They heard many requests that had to do with economic hardships and were not approved. Because of this, a lot of projects did not go forward. He stated he was glad the City was going this route in order to promote the downtown and bring more young professionals to the area.

Commissioner McKannan stated that at the work session it was suggested that Section 18-4-2 be added to this amendment as well.

Mr. Diem explained that it was inadvertently left out and asked that it be added to the motion. There were no objections from staff.

*Commissioner Slaughter moved to forward TA-10-613 to City Council recommending approval as identified in "Draft 2 – 12/21/10" because the text amendment will encourage and enable greater densities through the inclusion of quality housing units within the core downtown area, meets the objectives of the comprehensive plan update, and represents good planning practices. The amendment as written should include section 18-4-2 of the Zoning Ordinance.*

*The motion was seconded by Commissioner Wiley.*

*Motion passed 6-0.*

**B. TA-10-639 AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 8, 9, AND 10 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS AND USE PROVISIONS FOR HOOKAH ESTABLISHMENTS**

Mr. Diem presented the request to amend the Winchester Zoning Ordinance to allow for the inclusion of Hookah Establishments within the definitions and use provisions. Specifically, the applicants intend to operate a Hookah Establishment at 928 Berryville Avenue, which is zoned Highway Commercial (B-2) District; however, within their proposed text amendment, they are suggesting that the use also be permitted through the Conditional Use Permit process in the Central Business (B-1) and Commercial Industrial (CM-1) Districts.

In response to a request to operate a Hookah Bar at 928 Berryville Avenue, the Zoning & Inspections Administrator determined that no such use is defined or provided for within the Winchester Zoning Ordinance.

Hookah establishments are gaining in popularity throughout the United States and within the northern Virginia region. As a concept that has existed throughout the Middle East and parts of Asia for centuries, the idea is still relatively new to this geographic region of the United States. Certain concerns are associated with permitting this type of establishment to operate within the City of Winchester, which include the promotion of tobacco smoking and an attraction to minors as a late-night alternative to bars and nightclubs. To combat these public health, safety, and welfare concerns, the City has an opportunity to impose certain restrictions and conditions through the Conditional Use Permit process. A legal opinion published by the University of Maryland – Baltimore Law School cites that many localities have opted to permit Hookah establishments through the Special Use or Conditional Use Permitting process, so as to regulate their hours of operation, convenience and accessibility to minors, and even dispersion throughout the municipality.

The text amendment, as proposed, reflects some of the concerns shared between the City staff and the applicant. The applicant worked closely with staff to develop an acceptable and accurate definition of a Hookah Establishment, as well as identify particular areas or zoning districts within the City where such use(s) could be considered. Finally, the provision of allowing this type of use only through the Conditional Use Permit process ensures that the City will have an opportunity to restrict the hours of

operation, limit the age of patrons to 18 years of age and older, and establish dispersion requirements between establishments.

**Chairman Adams opened the public hearing.**

Marilyn Heath stated that when she saw the possibility of this type of business coming to the Winchester area she felt she needed to speak up. Her husband is a physician treating throat and oral cancer and she has two sons, one who is of legal smoking age. She read from an article recently printed in the Winchester Star talking about the danger of smoking no matter the type of tobacco used and the effects it can have on the body. She stated that smoking is an urgent global health emergency that is overloading our healthcare system. Winchester is known for being a drug center, which is embarrassing. Hookahs are also commonly used for drugs such as marijuana. She asked why the City would want to bring an establishment like this into the community and expose it to the children. She concluded by stating that she is against this amendment not only for health reasons but the drug culture that goes with it.

**Chairman Adams closed the public hearing.**

Commissioner Wiley asked how other municipalities have handled this type of business.

Mr. Diem explained that he has seen varying interpretations of the use. Some other localities that have gone through the process have done so through a Conditional Use or Special Use permit.

Chairman Adams asked if the position of the City is that a hookah establishment is ok as long as it is regulated.

Mr. Diem explained that if they are regulated, they need to be held to a standard based on the will of the people. There were no objections prior to the public hearing. He stated that with regulations, it could be a use that fits.

Chairman Adams stated that anyone can go into a retail establishment and buy a hookah, take it home and use it. The question being asked is if the city wants a public arena that will permit this to be done. He agreed with Mrs. Heath, however motorcycles are not safe but the right to ride is not taken away; you just have to wear a helmet.

Vice-Chairman Shore pointed out that the applicant talked about marketing it to young people. Initially he heard that if it was filtered through water it was not as bad as smoking cigarettes. Then staff presented documentation about the hookah and he was amazed to hear that it is actually worse. As a parent, he could not recommend this type of business. He understood that the City needs revenue and jobs but not bad enough to endanger the young people in the community. Also, the language in the recommendation stated that it should be approved because it would “*promote and protect public health, safety, and welfare*”, but this establishment in no way does that.

Commissioner Slaughter also had some concerns. He stated that he understood that there was no law that prohibits smoking but there is also not one that guarantees it either. It is not being suggested that someone cannot smoke a hookah privately in his/her own home. The City is being asked to allow a business that promotes smoking and targets young adults. His concerns included health concerns and whether warning signs would be posted. He added that in the applicant’s letter they stated that the hookah is a safe way to smoke tobacco and that he would be serving cakes and things of that nature. Given those reasons, he stated he was not sure the applicant understood the ins and outs of the clean indoor air act. He stated that he agreed with Vice-Chairman Shore and for that reason would not be able to support this amendment.

*Vice-Chairman Shore moved to forward TA-10-639 to City Council recommending denial because the use, as defined and provided for within the text amendment proposal, does not represent responsible planning practices of promoting and protecting public health, safety, and welfare.*

*The motion was seconded by Commissioner Slaughter.*

Chairman Adams stated that he was on the fence because there is already a cigar store in town. More discussion is the key to whether the City wants to promote smoking to an impressionable age. He tends to agree with the motion to deny.

*Motion passed 6-0.*

## **NEW BUSINESS**

### **A. Administrative Authorizations:**

- 1) **SP-10-680** Greenway Engineering 3124 Valley Ave Rubbermaid Product  
Storage Area

Chairman Adams read the following into the minutes: *At the December 14, 2010, work session, Commissioner Talley moved to grant administrative authorization for SP-10-680. The motion was seconded by Commissioner Slaughter. Motion passed 7-0.*

- 2) **SP-10-687** Greenway Engineering 2214 Papermill Rd Papermill Place Revision

Chairman Adams read the following into the minutes: *At the December 14, 2010, work session, Vice-Chairman Shore moved to grant administrative authorization for SP-10-687. The motion was seconded by Commissioner Talley. Motion passed 7-0.*

- 3) **SP-10-694** Painter-Lewis PLC 142 N. Loudoun St SU Student Housing

*Commissioner Wiley moved to grant administrative authorization for SP-10-694. The motion was seconded by Commissioner McKannan. Motion passed 6-0.*

### **B. Comprehensive Plan Discussion**

Mr. Youmans reviewed the draft version of Chapter 9 of the Comp Plan. He pointed out that the title had been changed from Future Land Use to Future Development. This chapter will focus on what to change and what to preserve. A more detailed review is scheduled to take place at the January 2011 Worksession.

Chariman Adams announced that Commissioner Sublett's term is expiring and that he has decided not to renew. He has assisted on the Commission for 4 years and will be greatly missed. Councilor Willingham presented Commissioner Sublett with a Resolution from City Council for his dedication to the Planning Commission. Those in attendance were invited to stay after adjournment for a reception in honor of Commissioner Sublett.

**ADJOURN**

With no further business to discuss, the meeting was adjourned at 4:18PM.

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Nate Adams, Chairman