

PLANNING COMMISSION  
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, September 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, Slaughter, Sublett, Talley and Wiley (7)  
**ABSENT:** None (0)  
**EX-OFFICIO:** City Manager O'Connor  
**STAFF:** Diem, Moore, Youmans, Walsh and Williams  
**VISITORS:** Lawton Saunders, Ben Butler, Mark Merrill, Dena Kent, Todd Way, Vickie Lord, Johnny Lanzetta, Vincenzo Lanzetta, John Schroth and Les Veach

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

**APPROVAL OF MINUTES**

*Commissioner Talley moved to approve the minutes of the August, 17, 2010 meeting as presented. The motion was seconded by Commissioner Sublett.*

*Motion passed 7-0.*

**CORRESPONDENCE**

A copy of email correspondence from a neighboring property owner regarding item 2B, RZ-10-454, was provided.

A revised packet was presented that included the following:  
Item 2B, RZ-10-454 – revised staff report and revised proffer statement  
Item 2C, TA-10-473 – staff report provided  
Item 2D, CU-10-485 – comparison of nightclub conditions

**CITIZEN COMMENTS**

None

**REPORT OF FREDERICK COUNTY LIAISON**

A Frederick County Liaison was not present at the meeting.

**PUBLIC HEARINGS – New Business**

**A. CU-10-410** Request of Omps Funeral Home, Inc. for a conditional use permit for a crematory at 1560 Amherst St (*Map Number 150-15-3*) zoned Residential Office (RO-1) District.

Mr. Moore presented the request for a conditional use permit that would allow the existing pet crematory to operate as a primary use on its own parcel of land which would be subdivided from the existing parcel.

He stated that there have been no changes since the presentation at the work session.

**Chairman Adams opened the public hearing.**

No one spoke regarding the request.

**Chairman Adams closed the public hearing.**

Commissioner Talley asked how this would benefit the property owner.

Mr. Moore explained that this would allow the property to be subdivided such that the pet crematory would be on its own separate parcel. It could be sold at some point and operated as a separate entity.

*Commissioner Slaughter moved to forward CU-10-410 to City Council recommending approval because the use, as 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 approval is subject to recordation of the related minor subdivision plat.*

*The motion was seconded by Commissioner Talley.*

*Motion passed 7-0.*

**B. RZ-10-454** AN ORDINANCE TO CONDITIONALLY REZONE APPROXIMATELY 0.496 ACRES OF LAND AT 301, 303, 307 AND 309-311 SOUTH CAMERON STREET (*Map Numbers 193-01-K-10, 11, 12 & 13*) FROM RESIDENTIAL BUSINESS (RB-1) DISTRICT WITH HISTORIC WINCHESTER (HW) DISTRICT OVERLAY TO CENTRAL BUSINESS (B-1) DISTRICT WITH HW DISTRICT OVERLAY.

Mr. Youmans presented the request to rezone, with proffers, the properties along S. Cameron Street that comprise the parking lot at the corner of S. Cameron and E. Clifford Streets and the property currently improved with a two-family dwelling at 309-311 S. Cameron Street.

The current RB-1 zoning would allow development up to 35 feet in height. The proposed B-1, if not otherwise restricted by proffers, would permit structures as high as 75 feet. Acknowledging that there could be an impact on the surrounding historic structures and based upon discussion at the work session, the applicant has now proffered a height restriction of 35 feet, the same as exists for the properties under the current RB-1 zoning. This would translate to a tall 2-story or low 3-story building, depending upon construction technique and floor-to-ceiling measurements.

Additionally, the applicant is proffering out certain uses which could potentially be incompatible with the existing residential uses. The uses include: Adult bookstores and theaters; Auto and truck sales and service establishments; and, nightclubs and dance halls.

**Chairman Adams opened the public hearing.**

Lawton Saunders, representing the applicant, stated that any undesirable uses have been proffered out and that height is no longer an issue. He stated that when Council revised the parking regulations it recognized that this was a special parcel. He stated that the effort is to consolidate the entire site into one zoning and that there are no plans to do anything with it at this time.

**Chairman Adams closed the public hearing.**

Chairman Adams stated that the proffer in regard to the height now provides compatibility, plus the zoning would provide flexibility in use that that will benefit the downtown.

Commissioner Slaughter stated that he was supportive of the rezoning. He stated that Yount, Hyde, and Barbour has proven itself to be a stakeholder in the community and has shown that it supports what is envisioned for downtown redevelopment.

*Commissioner Sublett moved to forward **RZ-10-454** to City Council recommending approval of the request as depicted on an exhibit entitled "Rezoning Exhibit, RZ-10-454, Prepared by Winchester Planning Department, September 14, 2010 and as conditioned by the proffers in the Proffer Statement received on September 17, 2010, because the request, as proffered, is in general conformity with the Comprehensive Plan and supports economic development.*

*The motion was seconded by Commissioner Wiley*

*Motion passed 7-0.*

**C. TA-10-473 AN ORDINANCE TO AMEND AND REENACT ARTICLES 1 AND 15.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS AND USE PROVISIONS FOR MEDICALLY-BASED WELLNESS & FITNESS CENTERS AND WELLNESS SERVICE FACILITIES**

Mr. Diem presented the request to revise certain definitions and use provisions in response to a recent Board of Zoning Appeals determination, dated July 14, 2010; and, subsequently entered into writing, July 15, 2010.

During the July 14, 2010 public hearing before the Board of Zoning Appeals, WMC argued that the contested use and occupancy of the Valley Health Wellness & Fitness Center could not be identified by only one use type as currently contained within the Zoning Ordinance, except for the much broader category of "personal service and retail establishments," pursuant to Section 15.1-1-17. Again, and during the Planning Commission work session on September 14, 2010, WMC presented that the use category of personal service and retail establishment exists at the Center.

The Zoning & Inspections Administrator concludes that this is a flawed interpretation by WMC, as 15.1-1-17 requires that personal service and retail establishments be located either within the main hospital structure or in a physically contiguous structure to the main hospital. The Center is located at an entirely separate physical location, and is not physically contiguous to the main hospital. Therefore, the perpetuation of personal service and retail within the Center requires the approval of a Conditional Use Permit, which has neither been applied for nor previously granted. Certainly, that aspect of use and occupancy creates a violation of the Zoning Ordinance, pursuant to Section 18-2 of the Zoning Ordinance.

The uses currently provided for within the Zoning Ordinance which most closely fit the description of use and occupancy for the Center include Recreational facilities and Private health clubs and sports medicine clinics. Both stipulate that marketing to the public-at-large is not permitted, which was the basis of the original Zoning Determination that led to the Board of Zoning Appeals case. Within the proposed text amendment, WMC has struck through any reference of marketing to the public-at-large within the aforementioned uses; and, has proposed two new uses and corresponding definitions for Medically-based Wellness & Fitness Center and Wellness Service Facility. Acknowledging that there have been changes within the provision of health care since the most recent amendments to the Medical Center District were adopted in 1990, the Zoning & Inspections Administrator concludes that neither of the proposed uses are substantially different from what is already provided for within Recreational Facilities or Private Health Clubs and Sports Medicine Clinics. Further, the Zoning & Inspections Administrator finds that the definitions provided are broad in nature, which would create potential interpretation challenges by non-medically trained planning and zoning officials.

It was the Zoning & Inspections Administrator's determination that a text amendment was not necessary to address any perceived discrepancies or obsolescence within the Zoning Ordinance.

**Chairman Adams opened the public hearing.**

Ben Butler, attorney, introduced Mark Merrill, president of Valley Health, and Dena Kent, executive director of orthopedic and rehabilitative services. He stated that they would be giving brief statements and then he would address the Commission.

Mr. Merrill stated that in 1990 the world was different and that medical care was different. He stated that he was slightly perplexed as to why they are here. He stated that he does not believe that they fit into one category or definition of a private health club or recreational facility. He stated that his associates provided information at the BZA hearing that proved the Wellness Center fit into multiple categories.

Mr. Merrill stated that the BZA decision gave them a short period of time to submit a text amendment. They submitted the amendment on August 9, 2010 and, until now, have not received any comment on it as to whether it is too broad, too narrow, etc.

Mr. Merrill stated that there are many benefits to a medically-based wellness center and that the Police Chief is using a medically-based wellness center for the police force.

Mr. Merrill stated that Mr. Diem was asked at the BZA hearing whether he had received any complaints about the Wellness Center and that he had responded that he had received none.

Mr. Merrill stated that there was discussion at the work session about whether other fitness facilities in the community have closed because of the Wellness Center. He stated that since the Wellness Center opened, two fitness facilities have closed and now three have opened.

Mr. Merrill stated that he did not understand how limiting their ability to advertise would benefit the community.

Ms. Kent stated that she has been with Valley Health since 1991. She stated that she would start by addressing some of the questions brought up during the work session.

Ms. Kent asked if they using not-for-profit status in a predatory way and stated that they are not. She stated that it is one of the most expensive centers in the area because of the size, including two pools, and because of the medically trained staff. She stated that if they were trying to undercut the market, their

pricing would be lower than other gym memberships, when in fact they are one of the highest. She stated that they offer discounts for transition from clinical programs and that they are staffed with exercise physiologists.

Ms. Kent stated that they provide education not just to the community, but also to future health care providers. She stated that they provide internships.

Ms. Kent stated that they provide scholarships for access to fitness services for those who cannot afford it.

Ms. Kent stated that since the Wellness Center opened Winchester has had a net gain of six new fitness facilities.

Ms. Kent described the intake process for new members, which includes taking a medical history and rating the individual based upon standards of the American College of Sports Medicine. If the individual receives a certain rating, they must contact their personal physician prior to becoming a member.

Ms. Kent stated that right now they have over 5900 members.

Ms. Kent asked if it is wrong for the health department to market their flu vaccine when it is offered by Walgreens, Wal-Mart, and others because they are a not-for-profit. She stated that this is an analogy for the Wellness Center.

Ms. Kent stated that the Winchester Medical Center did not just start the services that are being offered at the Wellness Center. They have been offering them for over 50 years. She stated that she did not understand how offering them at the subject property is a problem. She stated that the comparison chart provided by staff did not include medical supervision. Staff at the Wellness Center monitors their members and will contact a physician if a member has an alternative reaction during exercise. The center targets people that need the medical oversight.

Mr. Butler stated that the recommendation made by the Zoning Administrator was questionable and inconsistent. He stated that, on one hand, the Zoning Administrator talked about the text amendment not being specific enough and then in his report he stated that it was so specific it would require medically trained staff to interpret it. He stated that the Zoning Administrator spoke of the impact of vehicular traffic, but no problem has been reported. He stated that the Zoning Administrator spoke about impacts on adjacent zoning districts, but he did not explain the impacts or give examples. He stated that the Zoning Administrator spoke of good planning practices, but this is just a textbook statement that has no merit as it applies to the facts of this case.

Mr. Butler stated that he agreed that the Ordinance is outdated, but it is impossible to do a comprehensive change in the four months that was given to them by the BZA. He stated that the core element is education and he feared that would be lost.

Mr. Butler stated that if the amendment passes, they promise that they will be back in the next 12 to 18 months with a comprehensive amendment working with the City.

**Chairman Adams closed the public hearing.**

Chairman Adams stated that he knows that there is litigation pending and that the City is reluctant to say certain things because of this.

Chairman Adams stated that health care has expanded into a full range of things in the last 20 years. He stated that it is obvious with all the facilities and programs now being offered at the Medical Center campus they have outgrown the MC District. He stated that the City and Valley Health need to sit down and work together to review the district and come up with something that works. He stated that there was no staff report at the work session last week. He stated that the proposed text amendment is so broad that it could include anything.

Chairman Adams stated that he does not see Valley Health as predatory, but it has been made clear that the Wellness Center has been marketing past the patients and to the public-at-large, which is prohibited. He stated that he cannot see approving this text amendment because it would be giving rights that would be grandfathered and could not be taken back. He stated that this text amendment will have a significant impact and should not be rushed considering that something as simple as a conditional use permit could apparently resolve the issue.

Chairman Adams stated that a lot of people have taken their position on this and there is no flexibility. He stated that the amendment is too broad at this particular time.

Commissioner Wiley stated that he concurs with Chairman Adams' statements. He stated that with the comprehensive plan amendment in progress, this would be the perfect time to reevaluate the MC District. He stated that, if approved, they could hypothetically market drugs against Walgreens and CVS and they could become a 24 hour operation and compete with Anytime Fitness. He stated that, if allowed, they could open up another health related facility that could push another business out.

Mr. Merrill stated that he looks instead at businesses that have evolved because of WMC. Instead of a deterrent, WMC is a major economic engine. He asked how they were to make people aware of what is offered if they cannot advertise.

Chairman Adams stated that no one is trying to shut the facility down. He stated that the truth is, based on the current Ordinance, advertising to the public is a violation. He stated that the key is to work it out and a conditional use permit is where it should start.

Commissioner Shore stated that the text amendment is an overly broad fix to the problem. He stated that an alternative would be to deny the amendment and suggest initiating a conditional use permit application, and then to proceed with a comprehensive rewrite.

Commissioner Shore asked for the status of enforcement.

Mr. Diem explained that the Board of Zoning Appeals issued a final order giving them four months to get a text amendment approved or all advertising must cease.

Chairman Adams asked City Attorney Tony Williams if there was any flexibility to the four month timeframe.

Mr. Williams stated that he and Mr. Butler had exchanged emails about this. He stated that the timeline could be extended until the text amendment can be worked out as long as they are moving forward.

Commissioner McKannan stated that he does not want to shut Valley Health off. He stated that they offer different expertise than a Gold's Gym or Snap Fitness. He stated that there needs to be some compromise.

Commissioner Talley stated that Valley Health is doing a great job. He stated that, as a medical facility, patients should be coming from a doctor. He stated that the text amendment is pretty broad at this point.

Chairman Adams stated that the best way to proceed is to not proceed at this point and to focus on a comprehensive text amendment.

Commissioner Sublett stated that nobody thought for a second that the Zoning Administrator went to Valley Health in order to get the medical aspects to stop. He stated that the issue is with the gym. He stated that all of the other services are great. He stated that the gym is the one service provided that is marketed specifically to the general public that is competing with private businesses. He stated that those businesses are paying taxes on their facilities and equipment, but the Wellness Center does not. He stated that it boils down to a fairness issue.

Chairman Adams recommended the item be tabled to allow the Medical Center to apply for a conditional use permit and free up time to work on the text amendment.

Ms. Kent stated that there are several wellness centers across Virginia and none of them are prohibited from marketing.

Chairman Adams stated that they do not have a separate Medical Center district like Winchester.

Mr. Butler requested that the item be tabled at the applicant's request and that they would not invoke the 90 day requirement for action on the amendment.

*Commissioner Shore moved to table TA-10-473 on the request of the applicant, with the understanding that the applicant waived the 90 day requirement.*

*The motion was seconded by Commissioner McKannan.*

*Motion passed 7-0.*

**D. CU-10-485** Request of Johnny Lanzetta dba Giovanni's for a conditional use permit for nightclub use at 21 North Loudoun Street (*Map Number 193-01-B-7*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

Mr. Moore presented the request for a conditional use permit to allow nightclub use at a new restaurant that will be opening on the Loudoun Street Mall.

Within their request letter dated August 10, 2010, operators Johnny Lanzetta and Vincenzo Lanzetta outline their intent to operate a full service restaurant and bar at the location and their desire to include entertainment such as karaoke, DJ, and live bands that, by definition, constitute nightclub use when occurring after 10pm. They tentatively intend to have nightclub use on Thursday, Friday, and Saturday nights.

In order to mitigate potential impacts, the applicants have stated that they are insulating the walls and ceilings to absorb noise and that there will security staff to take care of any misbehavior that may occur and to ensure that exterior doors do not remain open. The applicant has separately applied to the Old Town Development Board for a permit for an outdoor café.

Typically, a call history report is requested from the Police Department when an existing business applies for a nightclub CUP. As this will be a new business at this location, there is obviously no history to report. Applicant Johnny Lanzetta is also the operator of the nearby Milano's Ristorante and Bar on West Boscawen St. A nightclub permit was applied for that business in 2009. After receiving the Commission's recommendation, Council tabled action on that request for a six month period due to some issues including previous police call history. Council approved the nightclub permit for Milano's in March of 2010. The Police Department indicated on September 7 that there has been no call history for Milano's in 2010. However, the Police Department did state that they "will be opposing any new businesses operated by Mr. Lanzetta based upon his criminal history."

Mr. Moore stated that a comparison of conditions for other nightclubs had been requested at the work session and has been provided for three others in the downtown area – Union Jack, Milano's and Sweet Caroline's.

**Chairman Adams opened the public hearing.**

Johnny Lanzetta stated that he is not the owner of Giovanni's, his father Vincenzo is the owner. He stated that he is handling some of the administrative work for his father. He stated this will be more of a family restaurant and will have a different target crowd than Milano's. He stated that as far as Milano's goes, they have not had any police calls and that they are the only bar in the City that can say that.

**Chairman Adams closed the public hearing.**

Commissioner Wiley asked if they are going to keep Milano's open.

Mr. Johnny Lanzetta stated yes.

Commissioner Shore asked when they planned on opening.

Mr. Johnny Lanzetta stated that the plan is to open next month.

Commissioner Slaughter apologized and stated that he was not present at the work session. He stated that was concerned with the Police Department comment and asked Mr. Johnny Lanzetta if he minded explaining again what the statement by the Police Department meant.

Mr. Johnny Lanzetta stated that in September of 2000 he pleaded guilty to federal drug conspiracy charges and that he served five years.

Commissioner Slaughter stated that he is trying to understand Mr. Johnny Lanzetta's role in the business.

Mr. Vincenzo Lanzetta stated that this has nothing to do with the business. He stated that he is the owner and that the police need to leave his son out of this.

Mr. Johnny Lanzetta stated that he will be managing the business.

Commissioner Sublett asked what the applicant would like in terms of nights of the week and times of operation.

Mr. Johnny Lanzetta stated that they would like the same flexibility as the other nightclubs.

Commissioner Sublett stated that, after looking at the comparison with other downtown nightclubs, the limit on 20 nights per month seemed reasonable. He also suggested an ending time of no later than 1:30am on any night.

*Commissioner Sublett moved to forward **RZ-10-485** to City Council recommending approval because the use, as 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. Review after six months, beginning once the business has commenced operation, and reapproval required every three years thereafter;*
- 2. The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;*
- 3. At no time shall the sound emanating from the use as measured from an outside wall or party wall exceed 75 dBA;*
- 4. Security staff to be provided during nightclub use;*
- 5. All windows and exterior doors to remain closed during nightclub use and no aspects of nightclub use to occur outside the building;*
- 6. A maximum of four (4) criminal offense calls per month within or attributable to the establishment, after which the permit may be subject to revocation;*
- 7. Nightclub use is limited to 20 nights a month;*
- 8. Nightclub use to end no later than 1:30AM;*
- 9. The CUP expires automatically if the nightclub use does not commence within one year of approval, if the nightclub use ceases for more than one year, or if the business changes ownership;*
- 10. Strict obedience with all local and state laws especially those pertaining to ABC licensing and payment of meals tax; and,*
- 11. The applicant is responsible for cleaning up any trash outside the facility after closing.*

*The motion was seconded by Commissioner Talley.*

*Motion passed 7-0.*

## **NEW BUSINESS**

### **A. Comprehensive Plan Discussion**

Mr. Youmans stated that he had nothing to add at this time unless there were comments about what was discussed at the work session.

## **ADJOURN**

With no further business to discuss, the meeting was adjourned at 5:11PM.

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Nate Adams, III, Chairman