

PLANNING COMMISSION
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, October 20, 2009 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Masters, Adams, Shore, Sublett, Talley, Weber, and Wiley (7)
ABSENT: None (0)
STAFF: Youmans, Moore, Diem and Walsh
VISITORS: John Willingham (City Council Member), Larry Hammack, Allen Smith, Maureen Keeler, James Carwile, Mr. and Mrs. Gerald Dulaney, and Gretchen Swierczynski.

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

APPROVAL OF MINUTES:

Commissioner Weber moved to approve the minutes of September 15, 2009 regular meeting as presented. The motion was seconded by Commissioner Adams.

Motion passed 6-0-1 (Commissioner Wiley was absent for the vote).

Commissioner Wiley arrived at 3:01 pm

CORRESPONDENCE

A revised agenda packet was presented that included:
Item 3B, TA-09-323 – added motion to initiate
Item 2B, RZ-09-254 –revised staff report, correspondence from citizens
Item 2C, CU-09-262 – correspondence from citizens

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON

A Frederick County Liaison was not present at the meeting.

PUBLIC HEARINGS

- A. **CU-09-217** Request of Larry Hammack for a conditional use permit for a Neighborhood Convenience Establishment at 1009 Franklin Street (*Map Number 196-10-4*) zoned High Density Residential (HR) District.

Mr. Moore presented the request for a conditional use permit to allow for an existing, coin-operated laundry facility in the basement of a multi-family dwelling to be used commercially by persons who do not reside in the dwelling.

The existing facility consists of four washers and four dryers and occupies approximately half of the 1200sf basement of the dwelling. It was discovered by staff that the facility was being used commercially by surrounding residents and a Notice of Violation for the commercial use was issued. The applicant subsequently submitted this request. The proposal is to allow for the use as a neighborhood convenience establishment, a conditional use in the HR District and as defined as the Winchester Zoning Ordinance.

The applicant indicates in his request letter that his enterprise manages five buildings in the area and that the residents are low to moderate income renters, many of whom do not have access to a vehicle during the day. The hours of operation have been 9:30 am to 11:30 pm, seven days a week. The area is accessed directly from an exterior door at the rear of the building and is secured after hours. The rear access and small parking area are illuminated with a dusk to dawn security light. The applicant states that there have been no complaints since the facility has been in operation.

If approved, the applicant will need to apply to the Building Official for a change of use group classification for the subject area. Such change of use may require the applicant to address certain code-related issues, including, but not limited to, accessibility requirements and the provision of restrooms. The extent of such requirements, if any, will be determined through a change of use inspection. If improvements are determined to be required, necessary permits would need to be obtained and any corresponding work completed prior to issuance of a certificate of occupancy for the commercial use. The applicant would then need to obtain and maintain a valid business license.

Chairman Masters opened the public hearing.

Larry Hammack explained that there have been no complaints in the past regarding security or loitering. He stated that he felt that it was unreasonable to require an ADA bathroom considering there was not one there previously.

Chairman Masters closed the public hearing.

Chairman Masters explained that the Commission could not address the need for the ADA bathroom. That is set by code and would be handled by the building official.

Mr. Adams stated that if the bathroom is not installed, the laundromat cannot be opened to the public. He asked staff if there had been any changes regarding calling this request a laundromat instead of a neighborhood convenience establishment.

Mr. Moore explained that staff recommended applying as a neighborhood convenience establishment mainly due to the recent amendments to the parking ordinance. The classification of a laundromat would require a site plan and other improvements to be made to the property, gearing it more toward a commercial establishment. This classification and the recommended conditions will keep it more limited to its purpose in serving the surrounding neighborhood.

Mr. Adams stated that the applicant voiced his displeasure of having to install an ADA bathroom. He asked how staff would guarantee this gets done.

Mr. Moore explained that in order for the applicant to receive his Certificate of Occupancy, he will need to get the required permits and inspections.

Mr. Talley stated that the hours of 9:30am to 11:30pm were reasonable.

Commissioner Talley moved to forward CU-09-217 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:

- 1. Use specifically as a laundry facility, with a limit of four washers and four dryers to be provided;*
- 2. No exterior signage will be provided, with the exception of hours of operation to be posted at the entry door;*
- 3. Hours of operation to be no earlier than 9:30am and no later than 11:30pm, seven days a week, with the area to be secured at all other times;*
- 4. Illumination of the rear access with a dusk to dawn light is to be maintained;*
- 5. The applicant applying to the Building Official for a change of use inspection;*
- 6. The applicant obtaining all necessary permits and completing all required work prior to applying for a certificate of occupancy for the commercial use;*
- 7. The applicant applying for and maintaining a valid business license for the use, to include payment of all related fees and taxes;*
- 8. The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up; and,*
- 9. The permit expires automatically if the use does not commence within one year of approval, the use ceases for more than one year, or if the use changes to another use allowed in the district, in accordance with Section 18-2-3.8 of the Winchester Zoning Ordinance.*

The motion was seconded by Commissioner Shore.

Mr. Weber stated that he is uncomfortable with the neighborhood convenience establishment classification. It appears as though there are no negative effects for this use; however, this could be setting a precedent in taking one use and classifying it as another.

Mr. Adams stated that he agrees with Mr. Weber, but also agrees that limiting the use with conditions alleviates his concerns.

The motion passed 6-1, with Commissioner Weber voting in the negative.

- B. **RZ-09-254** AN ORDINANCE TO REZONE 0.191 ACRES OF LAND AT 208-218 EAST FAIRFAX LANE (*Map Number 174-01-G-17*) FROM LIMITED HIGH DENSITY RESIDENTIAL (HR-1) DISTRICT TO RESIDENTIAL BUSINESS (RB-1) DISTRICT. The Comprehensive Plan calls for logical expansion of the RB-1 area on an incremental basis along the periphery of the existing RB-1 District. RB-1 zoning yields up to 19 units per acre. Six existing units are proposed to be rehabilitated.

Mr. Youmans presented the revised staff report. The application was converted from a request to conventionally rezone to, instead, conditionally rezone, a property at the corner of E. Fairfax Lane and West Lane from a zoning designation which does not permit multifamily use to one that does permit multifamily use so that the subject property containing an existing unoccupied six-unit apartment building can be purchased and rehabilitated without running afoul of zoning provisions. A Proffer Statement is included with the request.

In the attached memo from the applicant that was received by the City on Sept 3, 2009, the contract purchaser, who is serving as the applicant on this request, outlines his desire to rehabilitate the existing structure. He notes his desire to rent out the refurbished apartments for \$800-\$1,300 per month, preferably to SU students and families locating to the area. While the HR-1 to RB-1 rezoning request facilitates this desire, there is no proffer linked to the rezoning that assures that any specific level of rehabilitation or minimum level of rent would be accomplished. The applicant certainly makes it clear that this is his intent.

If left in the present Limited High Density Residential district, the property could not effectively be rehabilitated as a 6-unit apartment building, nor anything more than a duplex, other than within the constraints of the 10% replacement cost restriction imposed on all nonconforming uses as per Article 17 of the Zoning Ordinance. The rezoning to RB-1 would otherwise open up opportunities for mixed use on this site, but the proffers submitted on 10/15/2009 limit the use to multifamily only. At just under 0.2 acres, it is unlikely that anyone would be able to get more than the 6 grandfathered residential units on the site. Someone starting from scratch today would probably only be able to get 4 units there unless they achieved a high level of LEED certification.

Chairman Masters opened the public hearing.

Allen Smith spoke on behalf of the applicant. He stated that parking could be a drawback, but he was hopeful that it could be resolved. He stated that he would be available for questions.

Chairman Masters closed the public hearing.

Mr. Shore asked Mr. Smith about the possible solutions to the parking situation.

Mr. Smith stated that the current on-street parking areas could be utilized more efficiently by simply striping the spaces. He also said there may be a possibility of parking along West Lane.

Mr. Shore asked if West Lane would be wide enough to accommodate parking.

Mr. Youmans explained that he would have to look at directional flow. Ultimately, the Fire Department would have to determine if parking could occur on West Lane.

Mr. Shore stated that this situation would be a great guinea pig to see if the new parking amendment is going to work. Parking will be tight with the amount of possible occupants.

Chairman Masters added that it is all ready zoned limited high density residential, so there would be no change in volume. Parking is already allowed in front of the building.

Mr. Weber stated that the building is empty. There will be an increase in the amount of traffic once it is occupied.

Mr. Adams stated that they are already entitled to six grandfathered units in the current zoning. He asked why it would be beneficial to rezone the property to RB-1.

Mr. Youmans explained that the units are deteriorated. There are limitations in the Ordinance to how much reinvestment can be made in a 12-month period to a nonconforming use. The amount of rehabilitation necessary would not be permitted. By rezoning the property to a district where multi-family use is permitted, the proposed reinvestment could occur.

Chairman Masters stated that she was thankful that someone was willing to rehab the units. She asked what would prevent them from tearing the building down and building a high rise.

Mr. Youmans explained that the proffers do not prevent them from demolishing the existing units, but they would have to submit a site plan and stay within the RB-1 provisions for any replacement. The amount of units already present probably exceeds the density that could be achieved in new construction.

Commissioner Shore moved to forward RZ-09-254 to City Council recommending approval because the request, as proffered, is generally consistent with the Comprehensive Plan which calls for logical expansion of the RB-1 area on an incremental basis along the periphery of the existing RB-1 District. The rezoning also facilitates the rehabilitation of deteriorated housing. The motion was seconded by Commissioner Weber.

Motion passed 7-0.

- C. **CU-09-262** Request of Maureen Keeler for a conditional use permit for a Family Day Care Home at 97 Christopher Drive (*Map Number 195-13-32*) zoned Medium Density Residential (MR) District.

Mr. Diem presented the request to operate a Family Day Care Home intended to provide child care services for between five and twelve children from the applicant's personal residence at 97 Christopher Drive.

As a result of Zoning & Inspections enforcement efforts, an alleged violation of the Zoning Ordinance was identified at the subject property. Home occupations are permitted in any single-family dwelling within the City; and, childcare of up to five children who do not otherwise reside at the property is permitted by right. More than five children were observed being cared for at the subject property. In response to the City's concerns, Ms. Keeler, immediately sought to remedy the situation by applying for a Conditional Use Permit.

Within her letter of intent, Ms. Keeler clearly articulates her level of certification and experience, along with the anticipated impact on the surrounding neighborhood. She further states that the use, if permitted, will not create any adverse impacts on the residentially-zoned neighborhood occupied by families. As a reasonably small operation, Ms. Keeler does not anticipate employing multiple persons to assist her; and, therefore, off-street parking requirements may otherwise be

limited to no more than two (2) required spaces, which could be accommodated on the existing driveway.

The property is improved with a single-family dwelling, which is further illustrated by a submitted floor plan. The floor plan identifies a play room, along with other essential spaces used for meal preparation, and dining. Other rooms are utilized for sleeping. An enclosed outdoor play area is provided in the rear yard of the property, and features a number of playground type items and toys.

Chairman Masters opened the public hearing.

James Carwile of 16 North Purcell Avenue recommend the permit be approved, stating that there have been no parking issues or noise issues. He stated his rear yard backs up to the property and it is a joy to see the children playing there during the day.

Margaret Dulaney of 801 Allen Drive agreed with Mr. Carwile. She stated that there has been no traffic or parking problems. She stated that it is a delight to see the children arrive happy and go home happy. She stated Ms. Keeler provides an educational but fun atmosphere. She goes on walks with the applicant and the children. She stated the neighbors she has talked to all feel the same way.

Gretchen Swierczynski of 93 Christopher Drive also recommended the request be approved. Ms. Keeler is not only her neighbor but her daycare provider as well. The home is well maintained, the use is nonintrusive, and it brings positive energy to the neighborhood.

Chairman Masters closed the public hearing.

Commissioner Wiley moved to forward CU-09-262 to the City Council recommending approval; because the use, as proposed, will not adversely impact the surrounding neighborhood. The following conditions shall be imposed:

- 1. The Conditional Use Permit shall be subject to review by Council after one year, with re-approval every five (5) years thereafter;*
- 2. The use shall not provide child care to more than twelve (12) children at any one time who are not permanent residents of the subject property;*
- 3. The operator of the family day care home shall maintain certification and licensure as required by the Virginia Department of Social Services and shall comply with the terms of the license at all times;*
- 4. All business license fees and taxes shall be maintained up-to-date, in accordance with the City Code and Winchester Zoning Ordinance; and,*
- 5. The permit shall expire automatically upon change of ownership of the business or property,*

The motion was seconded by Commissioner Shore.

Motion passed unanimously 7-0.

NEW BUSINESS

A. Administrative Authorizations:

- 1) **SP-09-76** Valley Engineering 1880 Amherst St WMC-Heart & Vascular Center
- 2) **SP-09-77** Valley Engineering 1840 Amherst St WMC-North Tower

Chairman Masters read the following into the minutes: *At the October 13, 2009 work session Commissioner Shore moved to grant administrative authorization for SP-09-76 and SP-09-77, including the proposed proportional improvements. The motion was seconded by Commissioner Weber. The motion passed 7-0.*

- 3) **SP-09-278** Neurological Properties 125 Medical Cir Medical Circle Imaging Center

Chairman Masters read the following into the minutes: *At the October 13, 2009 work session Commissioner Sublett moved to grant administrative authorization for SP-09-278. The motion was seconded by Commissioner Weber. The motion passed 5-0-1-1 (Commissioner Adams abstained; Commissioner Shore was absent for the vote).*

B. Motion to initiate: **TA-09-323** AN ORDINANCE TO AMEND ARTICLES 1 AND 5.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO STANDARDS FOR VARIOUS TYPES OF DWELLINGS IN THE LIMITED HIGH DENSITY RESIDENTIAL (HR-1) DISTRICT

Commissioner Shore moved to adopt a resolution to initiate the amendment pertaining to development standards for various types of dwellings in the Limited High Density Residential (HR-1) zoning district, as it will allow expanded re-development opportunities for residential properties, while respecting the transitional single-family residential nature of the HR-1 zoning district. The motion was seconded by Commissioner Talley.

Motion passed 7-0.

OLD BUSINESS

- ### A. **CU-09-172** Request of DFC Architects, PC for a conditional use permit for a two family dwelling at 314 South Kent Street (*Map Number 193-01-T-3*) zoned Limited High Density Residential (HR-1) District with Historic Winchester (HW) District overlay.

This item remains tabled.

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:06pm.

Susan Masters, Chairman