

PLANNING COMMISSION
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, April 19, 2011 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 Beatley, Slaughter and Wiley (5)

ABSENT: Commissioners McKannan and Talley (2)

EX-OFICIO: Councilor Tagnesi and City Manager O'Connor

FREDERICK CO LIAISON: Commissioner Mohn

STAFF: Youmans, Diem, Moore and Walsh

VISITORS: Lawton Saunders, Marilyn Heath, Ali Taljalli, Emad Khezam, Gary Oates, Stephanie Petway, India Ourisman, Fred Hudson, and Terry Hudson

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 March 15, 2011 meeting as presented. The motion was seconded by Commissioner Slaughter.

Motion passed 5-0.

CORRESPONDENCE

A revised packet was presented that included the following:

Item 3A, CU-11-76 – updated Staff Report

Draft revisions to Chapters 5 and 9 of the proposed Comprehensive Plan

Draft Resolution for the Comprehensive Plan

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON

Commissioner Mohn stated that the Frederick County Planning Commission met at the beginning of April and forwarded their proposed Comprehensive Plan to Board of Supervisors recommending approval. The Board of Supervisors will hold a public hearing on the Plan on Wednesday, April 27. The Commission also reviewed and discussed the 6-year secondary road improvement plan and a couple of possible Ordinance amendments. Their next scheduled meeting will include discussion on two conditional use permits.

PUBLIC HEARINGS – New Business

A. SP-11-131 Request of Greywolfe, Inc. for site plan approval for off-street parking and phased building additions at 672 Virginia Avenue (*Map Number 175-11-10*) zoned Medium Density Residential (MR) District.

Mr. Youmans presented the request for approval of off-street parking and phased building additions. Phase 1 is a 23-space parking lot. Phases 2 and 3 reflect two additions to the existing church structure. The Phase 2 addition would consist of 3,654 Sq. ft. and the Phase 3 addition would consist of 1,320 sf.

The adjoining residential property owner/occupant to the north has requested that vehicular access be provided through the newly proposed parking lot to allow access to storage buildings at the rear of his property near the northern boundary of the church lot. The church has agreed to cooperate with the adjoining property owner and will allow the owner to share in the cost of a driveway extension and screened set of gates in the perimeter screening fence.

The Phase 2 addition to the church will consist of three stories, including a basement level, to the north end of the existing sanctuary. The 29' by 42' addition will be at least 15 feet from the adjoining residential lot. The minimum yard in this area is 15 feet. This 3,654 sf, 1,218sf per level, addition will support another 50 seats on the sanctuary level.

The Phase 3 addition to the church will consist of two stories, including a basement level, to the west of the existing sanctuary. The 12' by 55' addition will support another 40 seats on the sanctuary level.

Chairman Adams opened the public hearing.

Applicant Gary Oates, representing the church, stated he met with the neighbor on Friday and that the issues with access to the two sheds have been addressed.

Chairman Adams closed the public hearing.

Commissioner Slaughter asked if there will be an opening in the screening fence between the two properties.

Mr. Youmans stated that there will be an opaque gate installed that will provide the access to the sheds.

Commissioner Wiley moved to approve SP-11-131 subject to staff review and approval.

The motion was seconded by Vice-Chairman Shore

Motion passed 5-0.

B. CU-11-126 Request of Zach Varkaris/Azzet LLC dba Tippy's Taco House for a conditional use permit for nightclub use at 147 North Loudoun Street (*Map Number 173-01-F-22*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

Mr. Diem presented the request to include nightclub activities to the newly established restaurant. Primarily established as a restaurant with alcohol beverages served, the applicant intends to provide live, amplified musical entertainment throughout the weekends and occasional midweek performances.

According to their application letter of intent, the type of musical performances intended will include blues and jazz.

As this property is similarly located on the walking mall, as is Union Jack Pub & Restaurant, and Giovanni's, it is staff's recommendation that the imposed conditions reflect those that were applied to the aforementioned businesses for their nightclub activities.

Chairman Adams opened the public hearing.

Lawton Saunders stated that he owns rental property in the area and is renovating apartments across from the subject property. He stated that he is not particularly opposed to this application, but he is generally concerned about the number of nightclub permits already issued in the downtown area. He stated that there is not a real visible police presence downtown. Most of the people that occupy his properties are executives or single nurses and doctors here on a temporary basis. Having fights break out and continue into their parking lot does not leave them with a real good impression. By the time the officers arrive it cannot be determined where the fight originated, so it is not counted against the business. Up to this point, he has been trying to tell tenants that there are a limited number of police calls allowed for the nightclubs, but four police calls equals one fight a week, and that is hard to explain to the tenants. He stated that nightclubs are part of downtown and a certain amount of activity is expected, but there has to be a balance between business and the safety and enjoyment of people living downtown.

India Ourisman stated that she is a neighbor of the subject property and that she supported Mr. Saunders' concerns. She has lived downtown for 20 years. She stated that there are sufficient nightclubs on this end of the mall. As it is, she cannot open her windows on nights and weekends because of the noise. She has tried not to become a nuisance to the police department, and they have been supportive, but they have told her that they do not know what to do. There is a back entrance to Tippy's Taco that is right below her window. A previous owner put in a patio and allowed people to socialize there until after 2AM and had after hours parties in the parking lot. If this becomes a nightclub, she stated she is concerned that it would cause amplified music in the back. Mr. Hudson was the previous owner of Sweet Caroline's. She stated she was very concerned about his history of ignoring neighbors' complaints.

Chairman Adams closed the public hearing.

Chairman Adams stated that he wanted to make sure everyone understood that the reason why the nightclub permit is needed is because they want to have amplified music after 10PM. The purpose is not to address serving of alcohol or congregation of people. He stated that he was concerned with the mixed use issues as well and would like to see a balance that will protect the residents. He suggested that maybe the number of nights that music is allowed should be more limited. He stated that he wished the applicant was present. He also stated that maybe they should consider weekends plus one night per week. He stated that, while not particular to this request, the City may need to look separately at addressing music played over loudspeakers in patio dining areas.

Commissioner Slaughter stated that he agreed with Chairman Adams that having the nightclubs and residential together will get worse over time if something is not done. He was inclined to approve this because it is in line with what was previously approved. He stated that he was frustrated that the applicant was not here to address the concerns. He suggested tabling the item until the applicant appears.

Vice-Chairman Shore stated that he agrees with tabling the request. He stated that Mr. Saunders and Larry Omps are making substantial investments across the street.

Chairman Adams stated that a friend was in town last week and loved it here. He did not want a visitor's first impression to be a fight outside of a nightclub. He suggested a reduction in allowable police calls from 4 to 2. He asked for clarification that the public hearing is now closed.

Mr. Youmans stated that it is closed, but the Commission could still ask questions of the applicant next month.

Chairman Adams stated that the issues of focus seem to be the number of police calls and the number of nights per week.

Commissioner Slaughter moved to table CUP 11-126 for one month.

The motion was seconded by Vice-Chairman Shore.

Motion passed 5-0.

C. CU-11-161 Request of Network Building & Consulting, LLC on behalf of Verizon Wireless for a conditional use permit for a telecommunications facility at 1955 Valley Avenue (*Map Number 251-01-5*) zoned Limited Industrial (M-1) District.

Mr. Moore presented the request to of install a rooftop telecommunications facility on the Virginia Apple storage warehouse. A total of 15 panel antennas would be installed, including 5 each on a stairwell on the north side of the building, a stairwell on the south side of the building, and a ballast mount at the west end of the roof. The stairwell-mounted antennas are proposed to be painted to match the brick building. A brick screening wall will be constructed around the ballast-mounted antennas. Additionally, rooftop equipment will be enclosed in a brick equipment shelter and a generator will be screened with a brick screening wall.

The proposal meets the Ordinance intent to utilize existing towers, buildings, or other structures as a primary option rather than construction of a new tower. While all proposed improvements are outside (to the rear) of the portion of the warehouse that is within the CE overlay District, the applicant has proposed a number of measures to minimize potential visual impacts on the surrounding area.

Chairman Adams opened the public hearing.

Stephanie Petway, representative of the applicant, stated that she had read the staff report and has no issues with the conditions. She stated that she was available for questions.

Chairman Adams closed the public hearing.

Vice-Chairman Shore asked what would happen if the building was demolished.

Mr. Moore explained that it would be a private matter between the property owner and lessee.

Ms. Petway stated that it would be covered in the lease agreement. If the building were sold, the lease would transfer to the new owner.

Vice-Chairman Shore wanted to know if the frequency emitted would interfere with other frequencies.

Ms. Petway explained that the FCC regulates what frequency is used by permit/license. Penalty for violating that permit/license is a fine in the millions.

Chairman Adams stated that he was glad that the telecommunication companies were moving away from poles and were looking at collocation. He stated that they had done a wonderful job with this project by blending the antennas with the building.

Commissioner Slaughter stated that he was thankful for the good information and exhibits.

*Vice-Chairman Shore moved to forward **CU-11-161** to Council recommending approval because the use, as proposed, should 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 applicant, tower owner, or property owner removing the equipment within ninety (90) days once the equipment is no longer in active use.*

The motion was seconded by Commissioner Wiley.

Motion passed 5-0.

D. Winchester Comprehensive Plan - The Winchester Comprehensive Plan addresses the future of the City of Winchester for its citizens. The Plan is guided by the adopted vision statement of City Council and outlines specific goals and objectives toward the attainment of that vision.

Mr. Youmans gave a presentation on the progress of developing the proposed Plan over the past few years. He then reviewed the proposed changes to Chapter 9, Future Development, which included a revision to the section on partnerships with Frederick County and inclusion of an updated graphic on Frederick County's Urban Development Area. He also stated that the concept plan for the former Blind Faith building was removed from Chapter 11 because a project is already underway at that property.

Mr. Moore presented the proposed changes to Chapter 5, Environmental Sustainability. Most of the changes were proposed by the Natural Resource Advisory Board (NRAB). He stated that it was clear that the NRAB had put a lot of effort into their recommendations and that they added a lot of clarity to the document. Staff suggested only two revisions to the NRAB's recommendations. These involved removing Town Run from a list of state-designated impaired waterways because it is not specifically designated as such, and revising proposed language that would have encouraged field parking and gravel lots. Mr. Moore explained that gravel lots would not function as pervious surfaces unless the subgrade is specifically designed similar to what is designed under paver lots such as the Church site plan reviewed earlier.

Chairman Adams opened the public hearing.

Gary Oates stated that he is a Frederick County resident, a Frederick County Planning Commissioner, and also an engineer who has prepared site plans in the City and the County. He stated that he agreed that gravel lots should not be encouraged. He stated that he had reviewed the Plan and that it was well done.

Fred Hudson stated that he was a citizen of Frederick County. He stated that his primary concern is with TDRs. He stated that he thinks they are dangerous. He stated that the high density areas may become problems with the merging of nightclubs and residential areas. Reston started out good with bike trails and paths to walk on and now it has major crime problems. He stated that it will happen here if something is not done to prevent it.

Chairman Adams closed the public hearing.

Commissioner Slaughter stated that he had concerns with the option to charge stormwater maintenance fees as stated under New Environmental Changes on page 9 and asked why it was included.

Mr. Moore stated that it was listed as one possible option that the City could look at as it continues to face stricter stormwater regulations from the State. In particular, cities and other areas that have stormwater conveyance systems are being targeted disproportionately by these regulations because they have these point sources that can be measured for pollution. Meanwhile, rural areas that have issues such as animal waste and fertilizers washing into streams are not impacted as much by regulations. He stated that such fees would not be something staff would necessarily want to support, but it was simply listed as an option that could be considered, if necessary, in the future.

Commissioner Slaughter stated that most of the changes made common sense, but he did not like the idea of imposing additional fees on businesses. He suggested that it be removed.

Commissioner Wiley stated that he was in agreement. The Plan should stay topical and not be so specific.

Mr. Youmans explained that City Council has contemplated the idea previously and asked staff to see how it could be used. No one is advocating it at this point.

Vice-Chairman Shore moved to adopt the following Resolution:

WHEREAS, § 15.2-2225 of the Code of Virginia requires posting of the Comprehensive Plan on a website, public notice in a local newspaper, and conducting a public hearing prior to a recommendation by local planning commission to governing body on adoption of a Comprehensive Plan; and,

WHEREAS, prior to the recommendation of the City's Comprehensive Plan, staff to the Winchester Planning Commission posted the Comprehensive Plan that is being considered for recommendation on the official City of Winchester website maintained by the City and on which matters pertaining to the Planning Commission are generally posted; and,

WHEREAS, notice of the April 19, 2011 public hearing was published twice in a local newspaper in accordance with § 15.2-2204 of the Code of Virginia; and,

WHEREAS, the Planning Commission held a public hearing on the plan on April 19, 2011 and after the public hearing, the Commission identified revisions to Chapter 5 pertaining to Environmental Sustainability based upon input from the Natural Resources Advisory Board, revisions to Chapter 9 pertaining to the Frederick County Comprehensive Plan and use of TDR's, and Chapter 11 to eliminate the Redevelopment Concept for the former Blind Faith Building and adjoining walkway/plaza.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission hereby forwards the Plan to City Council recommending approval, as amended, to include the revisions to Chapters 5, 9, and 11.

BE IT FURTHER RESOLVED, that the Planning Commission hereby directs the Secretary to prepare a certified copy of this resolution to the governing body and directs City staff to post the recommended and certified version of the Comprehensive Plan on the City website.

The motion was seconded by Commissioner Slaughter.

Motion passed 5-0

The Commission took a five minute break before proceeding.

Prior to commencing with the agenda, Terry Hudson asked to address the Commission.

Mr. Hudson, a representative of CU-11-126/Tippy's Taco, which was tabled earlier in the meeting, asked for an opportunity to apologize for his lateness. He explained that his partner is British and does not understand the importance of these meetings. He stated that he will personally be at the meeting next month to address the Commission.

Chairman Adams thanked Mr. Hudson for his apology and told him to make sure he attends the next scheduled work session.

3. PUBLIC HEARING – Old Business

- A. CU-11-76** Request of Emad Khezam and Ali Tajalli for a conditional use permit for a hookah establishment at 932 Berryville Avenue (*Map Number 176-07-3*) zoned Highway Commercial (B-2) District.

Mr. Diem presented the request to establish and operate a Hookah Establishment, as defined in the Zoning Ordinance, at the subject property. Several concerns were raised by the public and members of Planning Commission and City Council during the review and approval process for the text amendment incorporating the use and definition. Primarily, the concerns raised were with regards to promoting the use of tobacco to young adults between the ages of 18 and 25, as has reportedly been commonplace among Hookah Establishments in the United States. As the use is only permitted through the conditional use permit process, the Planning Commission has the ability to recommend the imposition of specific conditions to City Council for the operation of the use that has been applied for. A particular benefit to the site chosen by the applicant, is that is somewhat obscured from through traffic moving east and west on Berryville Avenue.

Following the March 2011 Planning Commission meeting, a request for a legal opinion pertaining to the definition of “public health, safety, and welfare” was forwarded to the City Attorney, Anthony C. Williams. In his written opinion, dated April 5, 2011, Mr. Williams provided the following conclusion:

“Insofar as “public health, safety, and welfare” are undefined terms under the Code of Virginia and the City Code of Ordinances (including the Zoning Ordinance) in the context of Conditional Use Permits, the term is to be given its plain meaning and applied in relation to the public at large.”

Chairman Adams continued the public hearing.

Ali Tijali appreciated the opportunity to give his proposal. He explained that they already have a business at this location; A-1 Auto. The basement portion of the property used to be a restaurant but has closed down. Hookah is big in their culture and since Winchester did not have a Hookah Bar, he thought this would be a great business opportunity. He brought a hookah with him to show the Commission how it is used. He showed the individually wrapped, disposable mouthpiece and the different types of hoses, including reusable ones that would be washed nightly with warm water and completely disposable ones. He showed how foil is placed over the tobacco and under the coal and stated that this prevents people from putting other substances in the hookah. He showed a tobacco container that could be purchased at

the location and pointed out the warning label on the side. He stated that they would abide by all local and state laws as well as any requirements of the Commission and Council.

Marilyn Heath, a city resident that has spoken on many times on this issue, wanted to add that having been a respiratory therapist, the fact that they do not sterilize all the pieces concerns her a great deal. The respiratory machines she has used were all strictly regulated, had many disposable parts, and everything else was sterilized at certain temperature under strict guidelines. Cleaning with hot water will not make it sanitary.

Chairman Adams closed the public hearing.

Vice-Chairman Shore asked how the customer would get started. He asked if the customer would actually handle the hookah.

Mr. Tajalli explained that the customer would come in and be handed a menu. All devices would be kept in the back out of reach. Once the order was placed, staff would bring out the hookah and prepare it for use.

Chairman Adams asked how often a disposable hose would be replaced.

Mr. Tajalli explained that the disposable hose would be thrown out after the first use. On a regular hookah, the mouth piece would be the only item replaced. Those hoses would be cleaned each night by running water through them. There will be 20 hookahs available for use and 50-100 for sale.

Chairman Adams asked if there was a mechanism in place to monitor the sanitation.

Mr. Youmans stated there was really no way to monitor it.

Chairman Adams asked the applicants what they thought of a possible age limit of 25 years old.

Mr. Tajalli stated that they could not do this and stay in business.

Commissioner Wiley stated that he has listened to a lot of comments and read all of the reports. He understands that the Commission has to look at public health, safety, and welfare, but in his opinion, the Commission was overstepping their bounds when they were trying to put stipulations on how the business is run. He stated that he agrees with the proposed restrictions, although he is not sure how they can all be enforced. He stated that he had visited a hookah establishment in Stafford and saw nothing objectionable. He stated that if you want to go in and smoke a hookah, that's your decision. He will vote in favor based on the restrictions.

Commissioner Slaughter stated he appreciated Commissioner Wiley's comments. He stated that he has spent a lot of time researching this and there is a wide variety of ways to how it is being addressed. His concerns start with approving a type of business that promotes tobacco use when all the laws are trying to ban it. He pointed out that while it is legal to smoke, it is not legal and lawful to smoke anywhere you want. Private use is legal, but this business would be encouraging people to smoke. He stated that this is not just an issue here, but all over the country.

Vice-Chairman Shore stated that he was still against the use because it goes against what the City is trying to, but after reading the legal opinion from the attorney, it appears that turning it down would not be defensible.

Commissioner Slaughter stated that he did not see this as the Commission banning a lawful activity, but simply restricting where it can be used and how.

*Commissioner Slaughter moved to forward **CU-11-126** recommending **disapproval** because the use as proposed will adversely impact the health, safety or welfare of those residing or working in the area and may be detrimental to public welfare and injurious to property or improvements in the neighborhood.*

The motion was seconded by Commissioner Beatley.

Motion passed 3-2, with Vice-Chairman Shore and Commissioner Wiley voting in the negative.

4. NEW BUSINESS

A. Administrative Authorizations:

- 1) **SP-11-184** Rare Hospitality International 2713 S Pleasant Valley Rd Longhorn Steakhouse
Commissioner Beatley moved to grant administrative authorization for SP-11-184 and to encourage widening of the access drive. The motion was seconded by Vice-Chairman Shore. Motion passed 5-0.
- 2) **SP-11-218** Painter-Lewis PLC 5 Weems Lane Buffalo Wild Wings Revision
Vice-Chairman Shore moved to grant administrative authorization for SP-11-218 including the requested greenspace waiver. The motion was seconded by Commissioner Wiley. Motion passed 5-0.
- 3) **SP-07-34** (revision) Habitat for Humanity Restore 111 Featherbed Ln/1944 Abrams Creek Dr
Chairman Adams read the following into the minutes:
At the April 12, 2011 work session, Commissioner Wiley moved to grant administrative authorization for SP-07-34 to accept funds to be applied to a future City project along Featherbed Lane in lieu of construction of the asphalt trail as depicted on the approved plan. The motion was seconded by Commissioner Slaughter. Motion passed 5-0-1 (Chairman Adams abstained).

ADJOURN

With no further business to discuss, the meeting was adjourned at 5:49PM.

Nate Adams, III, Chairman