

PLANNING COMMISSION
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, April 21, 2009 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Adams, Shore, Sublett, Talley, Weber and Wiley
ABSENT: Masters (1)
STAFF: Youmans, Moore, Wright, Diem and Walsh
VISITORS: Mark Stivers, Michael Doleman and Judy Sue Huyett-Kempf

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

APPROVAL OF MINUTES:

Commissioner Weber moved to approve the minutes of the March 17, 2009 meeting as presented. The motion was seconded by Commissioner Talley.

Motion passed 6-0.

CORRESPONDENCE

A revised agenda packet was presented, to include:

1. A supplemental letter from Celebrating Patsy Cline, Inc. regarding CU-09-03.
2. An updated Staff Report for CU-09-04.
3. A motion to initiate TA-09-01 pertaining to landscaping and screening requirements.
4. Request for administrative authorization for SP-09-07.

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON

None

PUBLIC HEARINGS

CU-09-03 Request of Celebrating Patsy Cline, Inc. for a conditional use permit for a museum at 608 South Kent Street (*Map Number 213-1-M-17*) zoned Limited High Density Residential (HR-1) District.

Mr. Youmans presented the request to operate a museum in the residential structure along the east side of S. Kent Street in the block between E. Monmouth St. and E. Germain St where Patsy Cline lived between 1948 and 1957.

He explained that Council adopted a provision for private museums and art galleries in the HR-1 District on March 10, 2009. The provision requires that the property be situated within either a local or national historic district. The site is within the National Historic District. The applicant indicated that the museum operation will occur within the structure with intent to operate 7 days a week between 10am and 4pm, with occasional after-hour fundraiser events.

Parking will be provided on the Craun property on E. Pall Mall Street. In advance of Mr. Craun developing permanent parking on that site, the Patsy Cline Museum has secured permission to establish a temporary parking lot using the existing gated entrance serving the former Amerigas operation. A sketch submitted with the request depicts 3 angled and 1 parallel off-street parking spaces served by a gravel driveway leading into the Craun site where a gravel turnaround is proposed. Some nominal landscaping improvement is depicted and a clearer site plan will need to be submitted for approval. No off-street parking is available on the museum house lot since the house takes up most of the width of the narrow lot. On-street parking is permitted in front of the structure, although this area may need to be reserved for motorcoach loading and unloading.

The 10am to 4pm hours of operation should minimize impacts on peaceful enjoyment of the surrounding residences in the evenings. Presumably, the majority of visitors will be coming to the museum on the weekends. It is unknown at this point what volume of trips to the museum will be by personal automobile instead of motorcoach. To minimize traffic impacts on the residential neighborhood, employees and volunteers should be required to parking in the 4 spaces provided on the Craun lot. It will be difficult to effectively direct visitors to this remote parking since it is not within view along S. Kent St. Once the Green Circle Trail is constructed within the easement already provided across Mr. Craun's property (including bridge over Town Run), visitor parking could be more practical on the Pall Mall site.

Vice-Chairman Adams opened the public hearing.

Judy Sue Huyett-Kempf, President of Celebrating Patsy Cline wanted to make it clear that the reason for increasing the number of requested after hour events from 4 to 10 is because admissions alone will not be enough to keep the house open. She stated that she would be available for questions.

Vice-Chairman Adams closed the public hearing.

Mr. Shore stated that this was a great idea and long overdue, however he was concerned about parking when everyone in that neighborhood is home from work. He suggested a shuttle to the museum to minimize the negative impact.

Mr. Talley asked about occupancy load for the home at one time, which Mr. Youmans stated would be based on building code. Ms. Huyett-Kempf stated that she was told it would be about 49 people based on the square footage.

Mr. Wiley asked why the request noted 55 attendees.

Ms. Huyett-Kempf explained that the 55 attendees would be for special events held outside in the back yard.

Mr. Talley asked about the intent to have music.

Ms. Huyett-Kempf stated that they have no intention of having music at this time due to space restrictions. It would be more like a barbeque in Patsy's backyard.

Mr. Shore stated that it would be reasonable to require the applicant to provide off-site parking relief that would keep from dumping cars into that neighborhood.

Mr. Sublett agreed, suggesting that the applicant be asked to provide a shuttle.

Ms. Huyett-Kempf agreed to the shuttle, stating that when the historic marker was placed at the location they had a shuttle and it worked.

Commissioner Shore moved to forward **CU-09-03** to City Council recommending approval of the private museum operation as proposed because the use 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. Review at the end of three years;
2. Taking into consideration the concerns of all of the neighbors and addressing them as they come up;
3. Museum use to begin no earlier than 10:00am and end no later than 4:00pm on Sunday through Saturday, except for up to four (4) annual fundraisers on either a Friday and Saturday night which may extend up until 11:00pm and require the use of shuttle buses to offset the negative impact of the neighborhood and up to six (6) private receptions on any evening which may extend up to 9:00pm and include no more that 55 attendees; and,
4. Employees and volunteers shall park in the off-street parking spaces on the E. Pall Mall St lot during operating hours; and,
5. Idling of motorcoaches and other vehicles, other than personal automobiles, on S. Kent Street shall only occur out of the travel lanes of the public street and shall occur for the minimum amount of time needed to load and unload passengers, but in no case longer than fifteen (15) minutes.

The motion was seconded by Commissioner Weber

Motion passed 6-0.

CU-09-04 Request of Goodfellows, LLC for a conditional use permit for nightclub use at 821 North Loudoun Street (*Map Number 134-5-6*) zoned Highway Commercial (B-2) District.

Mr. Diem presented the request for re-approval of a Conditional Use Permit to allow nightclub use at the site in the Northside Station shopping center. He explained that a nightclub is defined in the Zoning Ordinance as “(a)n establishment that provides live amplified music, Karaoke, DJs, and/or dancing between the hours of 10 p.m. and 6 a.m.” Having a nightclub does not require the sale or consumption of alcohol. The Exchange on S Loudoun Street was given as an example.

On April 17, 2009, staff contacted Kevin D. Weatherholtz, Special Agent, Virginia ABC enforcement. He indicated that the ABC Hearing Officer had finally reached their decision regarding the matters heard in 2008; and, as a result, recommended revocation of the wine and beer, and mixed beverage licenses issued to Goodfellow’s, LLC. In further conversation with SA Weatherholtz, it was revealed that Goodfellow’s, LLC would have a period of thirty (30) days, within which to file an appeal to the ABC Board, Richmond, Virginia. As it stands, the Virginia ABC website currently shows an active license for wine and beer, and a temporary license for mixed beverage.

Mr. Diem reminded the Commission that while this is an issue that they have to work through, it is not part and partial to the CUP requirement.

The applicants have indicated they have participated in several meetings with city officials and representatives to address zoning, tax, fire and police department concerns that were previously referenced. They have stated that they had also met with representatives of the Virginia Alcohol and Beverage Control Board to arrange for training of employees and managers and to take other steps necessary to assure compliance with Virginia law and regulations. As stated in their March 12, 2009 letter, their desire is to insure that the establishment does not adversely affect the health, safety and welfare of their neighbors nor otherwise be detrimental to the property or improvements in the neighborhood.

According to Chief Wright, the remaining issues that need to be resolved include a fire extinguisher, fire alarm, and kitchen cooking extinguishing system. As of April 16, 2009, coordination and communication was still ongoing between Michael Doleman of Goodfellow’s, LLC and the Fire Marshal’s office. A re-inspection date of April 30, 2009 was scheduled as a result of that discussion.

Mr. Diem stated that staff believes that the subsequent actions taken by representatives of Goodfellow’s, LLC, following the March 10th action by City Council, demonstrate their sincere willingness to be a responsible business partner in the City of Winchester. Staff encourages Goodfellow’s, LLC to continue meeting with the Winchester Police Department and the Virginia ABC officials to discuss their progress. Certain conditions could be imposed, so as to re-establish a Conditional Use Permit for nightclub use with a probationary trial period.

Vice-Chairman Adams opened the public hearing.

Mark Stivers, attorney for the applicant confirmed that what Mr. Diem said was true. He spoke briefly about current violations, explaining that they have been and will continue to be addressed. The ABC penalties can range from a fine to suspension, so he reiterated what Mr. Diem said about it not affecting the CUP request. Mr. Stivers questioned item 12 on the staff recommended conditions list. He asked for clarification of its meaning. He asked that it be re-worded to take

into account violations that have been identified to this point but not yet addressed. He thanked staff and the commission for all their help in making this a positive thing. He stated he was available for questions.

Vice-Chairman Adams closed the public hearing.

Mr. Adams stated that there are outstanding issues that need to be resolved. He agreed that #12 was too general suggesting that 'past identified violations' be added to the condition. The end result is to make sure that it is a safe place where there is no need to worry about fire or injuries.

Mr. Wiley asked for the opinion of the fire department.

Chief Frank Wright stated that there are existing violations dating back to June 12, 2008 that have not been corrected. He is aware that they have had a company come out and look at the suppression system and are waiting on another company to look at it. He suggested putting a timeline on condition #12 to meet code. An example was given that the fire alarm system in the ceiling had been painted black possibly blocking heat sensors. He felt that 60 days is more than enough time for what has to be done.

Mr. Sublett asked if the system was legal.

Chief Wright stated that the system was legally installed by the previous tenant, but now the floor plan has changed. The hoods and suppression nozzles have to cover all of the cooking appliances and they do not currently. If the system is tested and is in working order, a solution may be as simple as rearranging the kitchen so that the appliances and suppression system are in alignment. He added that they will need to hire an outside agency to inspect and sign off on the equipment.

Mr. Sublett asked Chief Wright if the checklist that was handed out by the applicant would be helpful to them or a nuisance as it suggests monthly calls to him reporting their status.

Chief Wright stated that they would not want to be called every month, but a check off list for them would be a good thing to help make sure everything is getting done on time.

Mr. Diem stated that the checklist in this case serves to demonstrate their intent.

Commissioner Talley moved to forward **CU-09-04** to City Council recommending approval because the use, as re-defined and 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. Review at the end of three months and reapproval after one year;
2. After one year, the Conditional Use Permit could be modified by City Council to extend the reapproval cycle to a period of three years;
3. Taking into consideration the concerns of all of the neighbors and addressing them as they come up;
4. Keeping the rear doors that face toward the adjacent residential development closed at all times except during the minimal time needed for deliveries and trash removal;
5. At no time, shall the sound emanating from Goodfella's (Goodfellow's, LLC) as measured from an outside wall or party wall exceed 75 dBA;

6. All windows and exterior doors to remain closed during nightclub use and no aspects of nightclub use to occur outside the building;
7. A maximum of four (4) criminal offense police calls per month within or attributable to the establishment, after which private security is required and/or the permit may be subject to revocation;
8. Night Club use to end no later than 1:00AM on Saturday and Sunday mornings (Friday and Saturday nights); and midnight on any other day, excluding New Year's Day which shall end no later than 1:00AM;
9. The CUP expires automatically if the nightclub use changes to another use, the nightclub use ceases for more than one year, or if the business changes ownership;
10. Strict compliance with all local and state laws, especially those pertaining to ABC licensing and payment of meals tax;
11. The applicant is responsible for cleaning up any trash outside the facility after closing; and,
12. The applicant must fully correct all past identified violations, excluding ABC violations, by June 20, 2009.

The motion was seconded by Commissioner Sublett

Motion passed 6-0.

PUBLIC HEARINGS – Continued

RZ-09-01 AN ORDINANCE TO CONDITIONALLY REZONE 3.4 ACRES OF LAND AT 1519 AND 1523 S. PLEASANT VALLEY ROAD FROM HIGHWAY COMMERCIAL (B-2) DISTRICT TO B-2 DISTRICT WITH PROFFERS, AND TO CONDITIONALLY REZONE 0.8 ACRES OF LAND AT 201 SPRING STREET FROM MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT TO B-2 DISTRICT, AND TO AMEND PROFFERS PERTAINING TO 5.37 ACRES OF CONDITIONAL B-2 ZONING ON 222 SPRING STREET. The request also calls for portions of Spring St to be conditionally rezoned B-2 as depicted on the submitted rezoning plan. The Comprehensive Plan calls for commercial, residential office, and medium density residential use. Medium density residential zoning yields up to 4.2 units per acre. No residential units are proposed

Mr. Youmans stated that the applicant has requested the item be tabled until next month.

Commissioner Wiley moved to table **RZ-09-01** at the request of the applicant. The motion was seconded by Commissioner Shore.

Motion passed 6-0.

OLD BUSINESS

Recommendation to Council: **SV-09-01** AN ORDINANCE TO VACATE AND CONVEY TO ONE OR MORE ADJACENT PROPERTY OWNERS PORTIONS OF SPRING STREET RIGHT OF WAY

Mr. Youmans stated that this is related to the rezoning request that was just tabled and that the applicant has also requested this item to be tabled.

Commissioner Shore moved to table **SV-09-01** at the request of the applicant. The motion was seconded by Commissioner Wiley

Motion passed 6-0.

NEW BUSINESS

- A. Motion to initiate: **TA-09-01** AN ORDINANCE AMENDING ARTICLE 19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO LANDSCAPING AND SCREENING REQUIREMENTS

Commissioner Sublett moved to initiate **TA-09-01**. The motion was seconded by Commissioner Weber.

Motion passed unanimously 6-0.

- B. Administrative Authorizations:

- 1) **SP-09-03** Valley Eng 1832 Amherst St WMC-East Parking Garage revision

Commissioner Weber moved to grant administrative authorization. The motion was seconded by Commissioner Talley.

Motion passed 6-0.

- 2) **SP-09-07** PHR+A 154 Commercial St Commercial St Used Cars revision

Commissioner Weber moved to grant administrative authorization. The motion was seconded by Commissioner Shore.

Motion passed 6-0.

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:27pm.

Nate L. Adams, III , Vice-Chairman