

PLANNING COMMISSION
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, August 18, 2009 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Masters, Adams, Talley, Shore, Weber (5)
ABSENT: Wiley and Sublett (2)
STAFF: Youmans, Moore, Diem, Cantrell
VISITORS: Stephanie Levenson, Jim Vickers, Chuck Jarrett

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

APPROVAL OF MINUTES:

Commissioner Weber moved to approve the minutes of the July 21, 2009 meeting as presented. The motion was seconded by Commissioner Adams.

Motion passed 5-0.

CORRESPONDENCE

A revised packet was presented that included the following:

Item 2A – CU-09-147 – Letter from the applicant
Item 2A – CU-09-147 – Email from Concerned Neighbor
Item 2B – CU-09-150 – Updated Staff Report
Item 4A – TA-09-204 – Motion to Initiate

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON

A Frederick County Liaison was not present at the meeting.

PUBLIC HEARINGS

A. CU-09-147 Request of Stephanie Levenson on behalf of Sweet Caroline's of Winchester, LLC for a conditional use permit for nightclub use at 29 West Cork Street (*Map Number 193-01-F-22*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

Mr. Diem presented the request to renew a previously issued Conditional Use Permit (CUP) for nightclub use, following a recent change of ownership.

Staff received an email from Carolyn Duff, a concerned neighbor regarding sound levels. Mr. Diem read it aloud.

He explained that within the applicant's letter of intent, dated July 9, 2009, several self-imposed conditions were included. In conjunction with those previously outlined, it would be prudent to incorporate the conditions as identified by the applicant with any other conditions imposed by the City.

Chairman Masters opened the public hearing.

Stephanie Levenson, owner of Sweet Caroline's stated that she was available for questions.

No one else spoke regarding the request.

Chairman Masters closed the public hearing.

Mr. Talley asked if the 60 decibel condition also pertains to outdoor concerts.

Mr. Diem explained that it would be best to issue an event permit for each outdoor concert in order control the day and length of the event. Historically, the outdoor events do not go as late as the indoor activities.

Chairman Masters and Mr. Weber both stated disappointed that the previous owner did not adhere to the conditions imposed, in result disturbing their neighbors.

Mr. Youmans explained that when the original request came through, the outside seating was not included. He felt the noise may be coming from the people entering and exiting the smoking area.

Mr. Adams stated that noise is a concern, however during previous discussions there have been complaints of trash and lewd acts. Mr. Adams expressed how serious things like being responsible for the trash and people outside the building are. These things greatly affect the neighborhood.

Commissioner Weber moved that the Commission forward CU-09-147 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. Review at the end of six months and reapproval after three years;*
- 2. At no time, shall the sound emanating from Sweet Caroline's (29 West Cork Street) as measured from an outside wall or party wall exceed 60 dBA;*
- 3. The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;*
- 4. A maximum of four (4) criminal offense police calls per month within or attributable to the establishment, after which the permit may be subject to revocation;*
- 5. The applicant shall provide security personnel for inside and outside the business, who will always maintain communication with one another via two-way radios to mitigate safety concerns that may arise. In addition to security personnel, Sweet Caroline's shall provide video camera surveillance with recording capability;*
- 6. Nightclub use limited to no more than twenty (20) nights per month;*
- 7. Nightclub use to occur between the hours of 7:00PM and 1:30AM, Monday through Sunday;*
- 8. The CUP expires automatically if the nightclub use changes to another use, the nightclub use ceases for more than one year, or if the nightclub business changes ownership, in accordance with Section 18-2-3.8 of the Winchester Zoning Ordinance;*
- 9. All windows and exterior doors to remain closed during nightclub use and no aspects of nightclub use (including but not limited to customer age verification) to occur outside the building;*

10. All outdoor lighting used will be subtle in nature. The applicant shall not use floodlights or spotlights that will disrupt neighboring homes/businesses. Lighting will be light bulbs (covered by tents) and white, Christmas-style lighting;
11. The applicant has adopted a policy that all onsite parking is reserved for employee parking only that shall remain in effect for the duration of the Conditional Use Permit;
12. Strict compliance with all local and state laws, especially those pertaining to ABC licensing and payment of meals tax, admissions tax, and annual business licenses; and,
13. The applicant is responsible for cleaning up any trash outside the facility after closing.

*The motion was seconded by Commissioner Talley.
Motion passed 5-0.*

- B. CU-09-150** Request of Oak Hill Rental Properties, LLC for a conditional use permit for extended stay lodging at 2011 Valley Avenue (*Map Number 251-01-6*) zoned Highway Commercial (B-2) District with Corridor Enhancement (CE) District overlay.

Mr. Youmans explained the request for conversion of a motel use to a 42-unit extended stay lodging facility comprised of seven 1-story structures originally constructed as The Elms Motel. Each of the 42 units would be efficiencies, not suites with separate bedrooms, and would include newly installed cooking facilities.

The applicant is providing extensive on-site parking spaces and proposes to demolish the existing two-story structure at the front of the site which had historically served as the motel office and restaurant. The area of demolition will be restored to lawn area awaiting further redevelopment. Photographs of all lodging structures area provided in lieu of building elevations since no changes are proposed to the exteriors. The applicant is undertaking renovations including new roofs on some of the structures.

It is likely that the Change of Use proposal from regular motel use to Extended Stay Lodging constitutes a change under the Uniform State Building Code (USBC) from an R-1 motel (transient) to R-2 motel (non-transient). Plans would need to be submitted to provide a code summary to show compliance with the USBC, including provisions associated with the newly installed cooking facilities. Because of the small size of the units, it will be very difficult to comply with the accessibility requirements. At a minimum, the applicant would at least need to provide an accessible entry path from the parking lot to the unit entry doors.

The units range in size from 259 sq. ft up to 304 sq. ft. Section 18-4-5 would limit the occupancy to only one child in addition to the one permitted adult. There have been school-aged children residing at this location in the past as evidenced by a City School bus stopped on Valley Ave loading and unloading children at this location.

By proposing these units as Extended Stay commercial lodging instead of multifamily residences, the applicant does not need to provide as much green area. The occupancies will be taxed as lodging under this approach.

The applicant is requesting approval of this use for up to seven years. Per the applicant's updated letter dated August 4, 2009, the property would either be redeveloped or the use would need to revert to permitted motel use thereafter. The applicant does call out an on-site manager's residence. Since the definition of Extended Stay Lodging specifically calls for the use to primarily serve business travelers and

since it is specifically not intended that the units serve as primary residences, the presence of a staffed manager's office is recommended as a condition of approval.

A Police call report summary for the most recent 12-month period was prepared showing a total of 173 total calls to this property. Fifteen of the calls were traffic stops which would not necessarily have been associated with the existing establishment. Of the 158 non-traffic stop calls, 106 of them (67%) were specifically linked to a 'unit' address. Call types include: Traumatic Injury, Fight, Sexual assault, Domestic Assault, Threats, Disorderly Conduct, Drunk in Public, Simple Assault, Loud Music/Noise/Party, and many medical-related calls such as seizures and chest pains.

Chairman Masters opened the public hearing.

Jim Vickers explained that in the past week he has gone over some of the concerns that were brought up during the work session. Regarding fire concerns, he has spoken to Chief Wright about the cooking regulations. It has been decided that each unit will be equipped with a microwave for cooking. Weekly inspections will take place in order to insure that no other cooking appliance has been brought in and to make sure the smoke detectors are in working order. A log will be kept showing the time and person conducting the inspection, which would be available for review. Regarding police calls, Mr. Vickers explained that of the 173 calls, 31 were in reference to C-Cap and 86 concerned residents that are no longer there. Only 34 were for current residents. He intends to set up policies to reduce the number of calls and the amount of leases. Regarding the number of occupants, he has met with Social Services and plans to incorporate their guidelines referencing children's ages, stating what is appropriate with father and daughter and mother and son staying in the same room.

Mr. Vickers explained that in order to upgrade the property he plans to tear down the old C-Cap building, paint the exterior, replace the roofs, windows and doors of all the units, as well as putting in all new sinks, refrigerators and cabinets. He stated he would be available for questions.

No one else spoke regarding the request.

Chairman Masters closed the public hearing.

Mr. Talley stated he was concerned with the smoke detectors only being battery operated. He asked about fire extinguishers and what determines the length of stay.

Mr. Vickers stated that there will be extinguishers outside of each room.

Mr. Moore stated that there is nothing in the Ordinance that gives a maximum time limit for occupancy in extended stay lodging. Mr. Youmans added that because there is nothing in the Ordinance, it would come down to having a child enrolled in school from that address.

Chairman Masters and Mr. Adams both questioned the fact that there is no limit on the duration of stay. Mr. Adams suggested a six (6) month limit be given.

Mr. Shore stated that he worked adjacent to this property in the past and saw the nature of people that were staying there, most of them being older, living on a fixed income and ones needing easy access to a one level residence due to issues with mobility. If there was not a place like this, they would likely be homeless. Knowing the past history, Mr. Shore felt these occupants would be better off when the work is done than they are now. Adding the cooking facilities will stop some of the unsafe appliances that have been used in the past.

Chairman Masters stated that as of today she is for this use, but in the future she suggested that some thought be made concerning what would be best for the property.

Mr. Adams stated that he agreed with the concept but felt that this use does not fit under the definition of extended stay lodging. He asked that a time limit be included in the conditions.

Mr. Vickers explained that it is a reality that places like this are needed. Putting a restriction on it would require that they be evicted. If they have not corrected their financial situation, this could force them onto the streets. He suggested putting a limit on percentage of units that could be used for longer term residence.

Mr. Talley agreed that it is needed, but there are too many unknowns, especially with occupancy. He stated that he does not feel that this is an appropriate use for the property. This property is clearly not an extended stay facility.

Chairman Masters stated that she had a problem with putting limits on this extended stay when they had allowed the extended stay proposed by Mr. Saunders in past months without limitation.

Mr. Weber asked if there are any differences in these types of proposals. The definition is the same in both instances. He asked if they would be serving the same types of people, adding that each CUP is judged on a case per case basis.

Mr. Youmans stated the difference is that this proposed use is clearly not what was in mind when the definition of extended stay lodging was created. However, from a land use standpoint this is the best solution to correct some zoning issues.

Commissioner Shore moved that the Commission forward CU-09-150 for 42 extended stay units within the seven existing structures to Council recommending approval because the proposal, as conditioned below, will 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:

- 1. Installation of approved cooking facilities as generally depicted on the submitted floor plans;*
- 2. Retention of a staffed on-site lodging manager's office with proper directional signage so as to be easily located by intended business travelers;*
- 3. Expiration of the approval when the use of the property changes, but no later than September 30, 2016 after which the lodging facility would operate in compliance with motel use provisions;*
- 4. Occupancy of the units shall be for one (1) adult only, with the following exceptions: up to 10% of the units at any one time may be occupied by one (1) adult and one (1) child, and; up to 25% of the units at any one time may be occupied two (2) adults with no children;*
- 5. Strict compliance with payment of lodging tax to the City;*
- 6. Weekly smoke detector inspection by the property manager and annual inspection of the facility by the Fire Marshal's Office;*
- 7. Certificate of Occupancy for Business and revised Business License obtained upon approval of the CUP;*
- 8. Strict compliance with Property Maintenance Code provisions; and,*
- 9. Staff review and approval of the related site plan.*

The motion was seconded by Commissioner Weber.

Mr. Adams stated that he was generally supportive of the request, but he could not vote in favor of it without a specified time limit in place.

Motion passed 3-2, with Commissioners Adams and Talley opposed.

C. CU-09-151 Request of Oakcrest Properties, LLC for a conditional use permit for conversion of ground floor nonresidential use to residential use at 163-165 North Loudoun Street (*Map Number 173-01-F-17*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

Mr. Moore presented the request to permit conversion of a portion of the ground floor space in the existing structure known as the Lovett Building from nonresidential use to a one bedroom apartment.

Per Section 9-2-16 of the Zoning Ordinance, conversion of ground floor nonresidential use to residential use in the B-1 District requires a conditional use permit. As a prerequisite for consideration, no unit may be situated facing a major commercial street. While the property itself fronts upon the Loudoun Street pedestrian mall, the proposed residential unit is situated toward the rear of the building.

In 2008, the applicant applied for and was granted a CUP to create multi-family units in the structure. In that proposal, two units were to be created on each of the upper two floors, while the ground floor was to be a combination of retail and office space. The Zoning Ordinance was subsequently amended such that a CUP is no longer required to create the proposed upper-story multi-family units. This new request proposes an additional apartment in 705sf of the ground floor space in lieu of the previously proposed office space. The applicant states that this particular area of the building has been vacant for a number of years. The retail space fronting along the pedestrian mall and accessed from the primary storefront elevation is still proposed.

In the applicant's letter dated July 27, 2009, it is stated that trash collection, green space, etc was addressed in the previously issued CUP for the upper story units and confirms that these provisions will apply to the proposed unit as well. The applicant intends to use pickup provided by the City on the pedestrian mall for the units having access to the mall. Storage bins would be used to set out on Indian Alley for the units having access to Indian Alley. Maintenance of common areas will be the responsibility of the full-time property management staff of Oakcrest Properties, LLC. This staff will maintain all interior and exterior common areas including the courtyard at the rear of the building.

Mr. Moore reviewed data regarding density and floor area requirements, noting that the proposal would meet the Ordinance requirements. The applicant also previously received approvals from the BZA, for substantial rehabilitation in the floodplain, and the BAR, for exterior changes. Neither of these approvals is affected by the request.

Chairman Master opened the public hearing.

Jim Vickers explained that there has been a lot of progress on the building. He felt that it is a great example of what can be done with a building that appears to be beyond repair. He stated that he was available for questions.

No one else spoke regarding the request.

Chairman Masters closed the public hearing.

Mr. Weber stated that this was an excellent use of the property.

Commissioner Adams moved that the Commission forward CU-09-151 to City Council recommending approval because:

- 1. The proposal as modified will 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; and,*
- 2. The proposed residential use is as suitable as, or preferable to, other permitted uses on the ground floor.*

The recommendation is subject to staff approval of an updated site plan reflecting the additional residential unit and conformance with the floor plans as submitted.

Motion was seconded by Commissioner Weber.

Motion passed 5-0.

D. TA-09-87 AN ORDINANCE TO AMEND SECTION 18-1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO CERTIFICATES OF OCCUPANCY FOR BUSINESSES AND HOME OCCUPATIONS

Mr. Diem explained the proposed text amendment is intended to resolve current issues with owners/proprietors of businesses and home occupations who fail to remit payment for their business licenses, meals, admissions, transient lodging, real property and personal property taxes, by denying the issuance of, revoking, or suspending a Certificate of Occupancy for Business or Home Occupation.

It has recently been discovered that a number of businesses within the City have either failed to remit payment for their assessments or other tax-related fees, while continuing to maintain an active business license and Certificate of Occupancy for Business or Home Occupation. Individually, the sum of revenue owed to the City may be insignificant; however, the cumulative total of the amounts owed to the City by businesses operating in a similar manner is noteworthy.

Pursuant to § 15.2-2286(B), Code of Virginia, et seq., the Zoning Administrator is enabled to ensure that all taxes are paid prior to granting “final approval” for a particular use and occupancy.

Chairman Master opened the public hearing.

No one spoke regarding the amendment.

Chairman Master closed the public hearing.

Commissioner Talley moved that the Commission forward TA-09-87 as contained in “Draft 2, dated 5/28/09” to City Council recommending approval as it represents good planning practice and establishes equitable processes and requirements for all business and home occupation owners/proprietors.

Motion was seconded by Commissioner Weber.

Motion passed 5-0.

OLD BUSINESS

A. TA-09-89 AN ORDINANCE AMENDING AND RE-ENACTING ARTICLE 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO MINIMUM REQUIRED OFF-STREET PARKING

Mr. Moore stated that there have been three modifications to the amendment since the July meeting. The proposed 50% exemption area along Amherst Street was scaled back at the Commission's request. An exemption was provided for neighborhood convenience establishments. Finally, language regarding alternate surfacing of off-street parking areas was revised to further encourage such materials.

Mr. Diem stated that staff was available if the Commission had any questions about these changes or the remainder of the proposed amendment.

Commissioner Weber moved that the Commission forward TA-09-89 as contained in "Draft 8, dated 8/10/09" to City Council recommending approval as it represents good planning practice and will promote economic and environmental sustainability.

*Motion was seconded by Commissioner Shore.
Motion passed 5-0.*

NEW BUSINESS

A. Motion to initiate:

TA-09-204 AN ORDINANCE AMENDING ARTICLE 14.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE FLOODPLAIN DISTRICTS

Mr. Youmans gave a brief overview of the amendment. It is necessary to bring the Zoning Ordinance into consistency with the model ordinance language from FEMA so that Winchester stays out of probationary status in the National Flood Insurance Program. A special meeting and public hearing for the Commission will take place Thursday, August 20 at 5:00pm so that the Commission can make a recommendation to Council. Council must, in turn, act on the amendment by September 2. City Engineer Kelly Henshaw will be present at the special meeting to explain the amendment more in detail and answer any questions the Commission may have.

Commissioner Weber moved that the Commission initiate TA-09-204 and proceed with the advertised public hearing on August 20, 2009 because it represents good planning practice.

*Motion was seconded by Commissioner Adams.
Motion passed 5-0.*

B. Administrative Authorization:

SP-09-173 Artz & Associates 274 Linden Dr Linden Heights Animal Hospital

Chairman Masters read the following into the minutes: At the August 11, 2009 work session, Commissioner Weber moved to grant administrative authorization. The motion was seconded by Commissioner Talley. The motion passed 5-0 (Commissioners Adams and Sublett were absent).

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:56pm.

Susan Masters, Chairman