

PLANNING COMMISSION  
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, December 15, 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 Councilor), Francisca Barahona, John Butcher, Steve Parrish, Patrick Sowers, Ron Mislowsky, Larry Omms, Jimmy Omms, Pat Goodman and Evan Wyatt.

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

**APPROVAL OF MINUTES:**

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

*Motion passed 7-0.*

**CORRESPONDENCE**

A revised agenda packet was presented that included:

Item 2A – revised staff report

Item 2B – revised staff report

Item 4A, 2 – Added SP-09-436 for consideration for administrative authorization

**CITIZEN COMMENTS**

None

**REPORT OF FREDERICK COUNTY LIAISON**

A Frederick County Liaison was not present at the meeting.

**PUBLIC HEARINGS**

- A. **CU-09-267** Request of Francisca Barahona dba Mi Salvador Restaurant for a conditional use permit for nightclub use at 930 Berryville Avenue (*Map Number 176-07-3*) zoned Highway Commercial (B-2) District.

Mr. Diem presented the request to expand the use and occupancy of an existing restaurant to include activities consistent with the definition of “nightclub”.

He explained that efforts by the Winchester Police Department and its Community Response Team (CRT) identified that nightclub activities were occurring at the Mi Salvador Restaurant without a conditional use permit (CUP) having first been obtained. Members of the VA ABC, Winchester Police Department, Winchester Fire Marshal's office, and Codes Compliance staff participated in the initial discussions with the business owner, who responded by gathering information to submit with a CUP application. Further discussions between the owner, Ms. Baharona, and the aforementioned CRT members resulted in an outline for maintaining compliance with the various state and local codes.

Within her letter of intent, dated September 22, 2009, Ms. Baharona expresses her interest in operating a nightclub at 930 Berryville Avenue, within the existing Mi Salvador Restaurant. Her intent is to operate the nightclub use on Friday and Saturday nights between 10:00PM and 1:30AM, featuring Karaoke and DJ entertainment. A dance floor will be provided for the patrons.

To maintain health and safety of the establishment, Ms. Baharona has contracted with JP Exhaust Cleaning Services to maintain the exhaust hood and filter system. She states that this will be regularly conducted and periodic inspections by the Fire Marshal will be requested. Ms. Baharona explains that four security guards will be employed to provide a secure environment both inside and outside the building.

With regards to public health and safety concerns, the following information has been received from the Winchester Police Department, as well as, the Winchester Fire and Rescue Department, Office of the Fire Marshal. The Fire Marshal reported that there have been no incidents within the last two years. All fire code violations, previously discovered, were corrected. There are no outstanding complaints at this time. The Police Department reported that during the last 12 months, there have been no criminal or nuisance incident reports.

According to City records, the initial Certificate of Occupancy for Business issued to Jose Barahona for Mi Salvador Restaurant was issued on November 2, 2005.

**Chairman Masters opened the public hearing.**

Francisca Barahona, the business owner, stated she is hard working, she drives a school bus for Loudoun County and she has two girls. She wants to have this business to provide for their future. She stated she would be available for questions.

**Chairman Masters closed the public hearing.**

Mr. Shore stated that the applicant offered security in her letter, but that security is not included as a recommended condition for the permit. He suggested that a condition be added requiring security, which has been standard in the past when issuing a CUP for a nightclub.

*Commissioner Shore moved that the Commission forward CU-09-267 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 the following:*

- 1. Review after six months and re-approval every three years thereafter;*
- 2. Nightclub use is for Karaoke and/or DJ only (no live amplified music);*
- 3. At no time shall the sound emanating from the use exceed 75 dBA as measured from an outside or party wall;*

4. *The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;*
5. *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;*
6. *Nightclub use to end no later than 1:30AM on any day;*
7. *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;*
8. *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;*
9. *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;*
10. *The applicant is responsible for cleaning up the area around the outside the business after closing and maintaining it free from litter and debris; and,*
11. *Four (4) security guards will be employed to provide a secure environment both inside and outside the building.*

*The motion was seconded by Commissioner Weber.*

Mr. Adams stated that he was glad that security was offered by the applicant.

Mr. Sublett stated that there was a question as to whether the applicant intended to maintain four guards at all times.

Mr. Weber asked Mr. Diem if he will coordinate with the applicant regarding noise monitoring as he has in other recent applications so that there is an understanding as to what 75 dBA sounds like.

Mr. Diem confirmed that we would be willing to do so.

Mr. Adams suggested changing condition #5 to add 'after which security shall be required', stating that the business has had no issues up to this point.

Mr. Shore pointed out that there have been no problems because there has not been any nightclub use; however he was not opposed to amending the condition.

*Commissioner Adams moved to amend the main motion to motion to remove condition #11 and modify condition 5 to read:*

5. *A maximum of four (4) criminal offense police calls per month within or attributable to the establishment, **after which security shall be required** and the permit may be subject to revocation;*

*The amendment was seconded by Commissioner Sublett.*

*The motion to amend passed 7-0; then,*

*The main motion, as amended, passed 7-0.*

B. **CU-09-360** Request of BAPA Hospitality, LLC dba Shoney's Inn for a conditional use permit for extended stay lodging at 1347 Berryville Avenue (*Map Number 197-02-7A*) zoned Highway Commercial (B-2) District.

Mr. Diem presented the request to change the use and occupancy from operating exclusively as a motel to include partial extended stay lodging facilities, with an on-site manager's suite at Shoney's Inn, located at 1347 Berryville Avenue.

With regards to the Virginia Uniform State Building Code, the Building Official has already reviewed the existing conditions in comparison with the submitted floor plans. The motel currently consists of 98 rooms, according to the City's tax assessment records. The rooms include a bathroom and an additional vanity area with sink, refrigerator and microwave. Essentially, no changes would be required pursuant to the building code to accommodate the change of use requested. The applicant seeks to convert the operational use of 15 rooms to extended stay lodging, including an on-site manager's residence/suite. The designated units include #101, 102, 103, 111, 201, 202, 229, 230, 231, 232, 233, 234, 235, 236, and 329.

Typical Floor plans are provided with the application. The units measure approximately 267 square feet each, with exception to the manager's suite, which consists of three combined units (#101-103). For comparison sake, if these units were classified as dwellings, then the occupancies would be limited to 1 person per 200 sq. ft of space (i.e. 1 person/unit) per Section 18-4-2 of the Winchester Zoning Ordinance (WZO). Section 18-4-5 of the WZO would further limit the occupancy to only one child in addition to the one permitted adult. The Planning Commission and City Council may want to consider applying an occupancy limit in conjunction with any CUP approval.

With regards to public health and safety concerns, the following information has been received from the Winchester Police Department, as well as, the Winchester Fire and Rescue Department, Office of the Fire Marshal. The Fire Marshal reported that within the last two years, there have been 22 EMS and fire incidents. All fire code violations, previously discovered, were corrected. There are no outstanding complaints at this time. The Police Department reported that during the last 12 months, there have been 25 incidents. Of those incidents, at least 17 were alleged criminal offenses including threats, vandalism, assault, drugs, larceny, and domestic violence.

During the Planning Commission work session on December 8, 2009, a question was raised concerning tax rate differences between extended stay lodging and motel. According to the City Code and the Commissioner of Revenue, the tax rate for motel accommodations of less than 30 days is 5%. There is no room tax for extended stay lodging or accommodations of more than 30 days. A question regarding the 10% of rooms that can be used for extended stay lodging, without a Conditional Use Permit was also raised during the work session. That exemption within the zoning ordinance definition of motel specifically limits the consecutive number of days that a room may be occupied by the same individual(s); whereas, the definition of extended stay lodging does not.

Unlike other similar requests in recent months, the applicant is not requesting a moratorium on this proposed use and occupancy at any time in the future. Other requests have had conditions imposed that would limit the period of time in which the facility may operate in this manner. 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.

### **Chairman Masters opened the public hearing**

John Butcher, one of the owners of the adjacent Eastgate Shopping Center, stated he was concerned that extended stays become eyesores. He stated that this is the east entrance to the City and it is important that it makes a good impression on those coming in. He stated he was concerned as to who would be responsible for making sure that it was being used as an extended stay and not living quarters and that the City might have to spend money to patrol the area.

Steve Parrish, general manager of the Aikens hotel group, which includes the Hilton Garden and Hampton Inn along Berryville Avenue, asked what the definition of a hotel was as opposed to an extended stay facility. He questioned whether every hotel in the city should be at this meeting because this could affect the way they do business. He stated that currently all hotels in the area have 30, 60 and 90 day stays, especially with all the new government buildings and activity in the area. He wanted to know if this meant that they are doing something illegal. He stated that if this is the case and they are not allowed to honor government contracts, it would force paying customers out of the city and into the county. He also stated that he is concerned about crime for this particular location because it appears that the use will actually be for something other than business travel.

### **Chairman Masters closed the public hearing.**

Chairman Masters asked Mr. Diem to clarify the difference between what could be done by-right as opposed to an extended stay conditional use permit.

Mr. Diem stated that for hotel/motel, there is a limit of 10% for rooms occupied for more than 30 days but no more than nine months. An example was that a 100 room hotel could have up to ten rooms being used for more than 30 days, but less than nine months, without the need for a conditional use permit.

Chairman Masters stated that Mr. Parrish brought up an interesting question that needs to be discussed at a later time. The Ordinance has already been written, so this application needs to be addressed by today's rules.

Mr. Shore stated that it is off the subject, but Mr. Parrish brought up a changing nature with hotels and motels within the city. He suggested the Ordinance be looked at, because it sounded like some, if not all, of the hotels may be out of compliance.

Chairman Masters explained that when the Ordinance was drafted the concern was that smaller hotels were turning into homes.

Mr. Adams stated that there is a problem with the definition of extended stay. After six months it would be the primary residence, but the definition states that it is not intended to be a primary residence. He stated that there would be any way to enforce this.

Mr. Adams also stated that there are problems with this particular application. He stated he is concerned with the police and EMS call history. He questioned the advantage of having ten rooms as an extended stay as to how this would help or impact the already high volume of calls.

Mr. Diem stated that the current management is fairly new and that they inherited a number of problems from the previous owner. He stated that there was no way to predict how the approval of the permit would affect the call volume.

Mr. Adams stated that he could not make an informed decision or finding of no adverse impact at this time.

Mr. Youmans stated that there may be an advantage to this application because conditions can be imposed. If the applicant stays within the 10% by-right, no conditions can be imposed. He stated that condition #4 which restricts occupancy was important. One of the big concerns Council had was having the school bus pulling up in front of a hotel picking up children, which implies that it is a residence.

Mr. Shore asked if the amount of problem calls were proportionate to other hotels.

Mr. Diem did not have the statistics in front of him, but he could recall that the Elms site had a very high volume of calls that has since been reduced.

Mr. Sublett stated that he agreed with Mr. Adams in that he was not sure if he can make the finding as needed to recommend approval. He questioned condition #4 that would allow two children to stay there. He stated that there is no way he could vote for this if that stipulation is remains. He stated that if the hotel only charged them \$25 a night, that would be \$750 for the month. He stated that at that price, the parent could find something more suitable for their child for an extended period of time.

Mr. Talley asked about the other five rooms set aside for the manager and housekeeping staff. He asked if those could be used for extended stay.

Mr. Diem explained that it is the intent for the manager to reside there which would be an extended period of time. The same could be said for the housekeepers' quarters.

Mr. Weber stated that he shared Mr. Sublett's concern for children being in these rooms. He understood that there are new owners, but the record stands for what has been happening the last twelve months. He also asked what concern the city had that other hotels are operating out of compliance as the speaker stated.

Mr. Diem explained that staff addresses violations as they become aware of them. At no time has a hotel owner come forward and stated that they were violating the Ordinance and want to now apply for a permit.

Mr. Weber stated that the reason they have not come forward is probably because they are not aware that they are doing something that puts them in violation. He suggested that something be done to bring everyone into compliance before a decision is made on this case.

Mr. Diem suggested that the board proceed under the current definition until the situation is worked out or the item could be tabled. He stated that it would be a good time to open a dialogue with the business owners based on the discussion today. While the Ordinance may be amended in the future, hotels should operate in accordance with the Ordinance until it is resolved.

Mr. Adams asked if the city still collects the hotel tax if the hotel opts to use the 10%.

Mr. Diem stated that, based on his conversation with the Commissioner of Revenue, they would be exempt at that point for those rooms.

Mr. Shore stated that this could become a big issue for Council. A huge amount of tax revenue could be lost.

*Commissioner Adams moved to forward CU 09-360 to City Council recommending disapproval because the proposal would negatively impact the health, safety or welfare of those residing or working in the area and it would be detrimental to public welfare or damaging to property or improvements in the neighborhood, based on the history of criminal offense incidents as reported by the Winchester Police Department and the number of EMS responses as reported by the Winchester Fire and Rescue Department.*

*The motion was seconded by Commissioner Weber*

Mr. Talley stated that it was unfortunate for the new owners that they have not had the opportunity to address the problems, but the recommendation makes sense.

*Motion passed 7-0.*

**C. TA-09-359 AN ORDINANCE TO AMEND ARTICLE 8 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SPECIAL PROVISIONS FOR SIDE AND REAR YARDS FOR COMMERCIAL CENTERS WITHIN THE HIGHWAY COMMERCIAL (B-2) DISTRICT**

**Chairman Masters recused herself.**

Mr. Youmans presented the request to allow for relief of side yard and rear yard requirements in certain circumstances within a commercial center as defined in the City's Zoning Ordinance.

The applicant provided a good explanation of the privately-sponsored text amendment request in a Statement of Justification dated November 2, 2009. Reference is made to the existing shopping center where a zero lot line subdivision is requested and how it would be similar in nature to one that was approved many years ago for an adjacent commercial center through action of the BZA.

So long as adequate easement provisions are included in any subdivision proposal for interparcel access, utilities, and stormwater management, then staff believes the ordinance should not be of any detriment. The proposed language would still require compliance with existing B-2 yard requirements along the exterior boundary of the commercial center.

Proposed zero- or reduced-setback commercial center subdivisions will need to be reviewed separately for compliance with the Statewide Building Code since that code requires certain minimum distances, usually in the range of 3-5 feet, where openings such as doors, windows, and vents are situated.

The introduction of this provision would make the interior minimum side and rear yard requirements within B-2 zoned commercial centers similar to what is already in effect for side yards in the RB-1 and B-1 districts, as well as what is already in effect for rear yards in the B-1 district.

**Vice Chairman Adams opened the public hearing.**

Patrick Sowers with Patton, Harris, Rust and Associates stated that he wanted to reiterate that this would only apply to commercial shopping centers in the B-2 district. He stated that he was available for questions.

**Vice Chairman Adams closed the public hearing**

Mr. Adams asked if a new site plan would be required once it is a separately platted parcel.

Mr. Youmans explained that it may be needed. For example, if the new configuration results in not enough green area being provided, a plan may need to be prepared and a waiver or variance may be requested.

*Commissioner Sublet moved to forward TA-09-359 to City Council recommending approval because it supports economic development by permitting additional flexibility for commercial center ownership.*

*The motion was seconded by Commissioner Weber*

*Motion passed 6-0-1 (Chairman Masters abstained).*

D. **SP-09-386** Request of Greenway Engineering on behalf of Omps Funeral Home for site plan approval for a pet crematory at 1560 Amherst Street (*Map Number 150-15-3*) zoned Residential Office (RO-1) District.

Mr. Moore presented the request to construct an 851sf building with an attached portico and access drive on a portion of the site to the north of the existing structure. The Commission reviewed the plan at its November meeting and ordered a public hearing to be held

The proposed use is permitted within the RO-1 District. The owner is going through a separate stationary air permit process for the pet crematory use with the Virginia Department of Environmental Quality (DEQ). Staff has had contact with the permit writer in Harrisonburg who has stated that the permit is ready to be issued pending the outcome of today's hearing.

The adjacent residential zoning and use to the north and northwest invoke increased side and rear yard requirements, both of which are provided with the proposed building location. Screening requirements to adjacent residential properties are generally already met. One exception is directly to the west of the proposed building, where non-evergreen vegetation exists along the rear property line of one adjacent residential property. A waiver of the screening requirement, which would otherwise need to be evergreen screening or opaque fencing, is requested in this area. Staff supports this waiver request due to the density of the existing vegetation and considerable change in elevation between the properties. The base of the residential structure is approximately 18 feet above the base of the proposed structure.

Additional pavement area of 971sf, including a drive and turnaround area providing access to the small portico, is planned off of an existing driveway. A waiver of the curbing requirement for this new pavement area is requested. A stormwater basin is planned to the east of the new drive and sheet flow is desired into this area. The remainder of the site utilizes an edge of pavement condition. Three new off-street parking spaces were included in the initial iteration of the plan, however the use does not invoke an additional parking requirement and the applicant has indicated that these will be removed from the plan.

The owner provided substantial frontage improvement by installing public sidewalk along Amherst Street in conjunction with a previous expansion of use. No proportional improvement requirements were recommended to the applicant by staff in conjunction with this proposed building.

**Chairman Masters opened the public hearing.**

Evan Wyatt of Greenway Engineering reiterated that, as Mr. Omps explained at the work session and as Mr. Moore stated in the staff presentation, the crematory is regulated through DEQ. He asked that the waivers be taken into consideration and stated that he would be available for questions

Pat Goodman, an adjoining property owner, spoke in favor of the plan. He stated he has lived there for many years and has had no issues with funeral home. Mr. Omps has been a good neighbor and it sounds like a good use.

**Chairman Master closed the public hearing.**

Mr. Talley asked how it would be ensured that Mr. Omps maintains the vegetation and if it was on his property.

Mr. Moore explained that it was included as a condition that the owner maintains the existing vegetation and that the site plan depicts it on his property.

Mr. Adams stated that his concern was how this would affect the neighbors, but having just one speaking in support of the plan told him that there was no concern.

*Commissioner Adams moved to approve **SP-09-386** subject to the following:*

- 1. Waiver of additional screening to the property directly to the west of the proposed building, subject to the owner maintaining the existing vegetation along this boundary;*
- 2. Waiver of curbing in the area of new pavement adjacent to the proposed building; and,*
- 3. Staff review and approval.*

*The motion seconded by Commissioner Weber.*

*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.

*Commissioner Weber moved that the item remain tabled at the request of the applicant. The motion was seconded by Commissioner Talley.*

*Motion passed 7-0.*

## **NEW BUSINESS**

### A. Administrative Authorizations:

- 1) **SP-09-392** PHR+A 801 N Kent St Sunshine's Pride Dairy  
Chairman Masters read the following into the minutes: At the December 8, 2009 work session, Commissioner Weber moved to grant administrative authorization. The motion was seconded by Commissioner Wiley. Motion passed 7-0.
- 2) **SP-09-436** PHR+A 2350 S Pleasant Valley Rd Wal-Mart Pallet Storage

Mr. Youmans presented the site plan that included an expanded enclosure for storage of pallets adjacent to the existing enclosure.

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

*Motion passed 7-0.*

### B. Resolutions

- 1) Motion to approve a resolution honoring Phillip Weber Jr.  
*Commissioner Adams moved to approve the resolution. The motion was seconded by Commissioner Shore.*

*Motion passed unanimously.*

- 2) Motion to approve a resolution honoring Susan G. Masters  
*Commissioner Weber moved to approve the resolution. The motion was seconded by Commissioner Adams.*

*Motion passed unanimously.*

## **ADJOURN**

With no further business to discuss, the meeting was adjourned at 4:25pm.

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Nate Adams, III, Vice Chairman