

PLANNING COMMISSION  
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, March 17, 2009 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**PRESENT:** Susan Masters, Nate Adams, Frank Sublett, Kevin Talley,  
Philip Weber and Dave Shore  
**ABSENT:** William Wiley  
**STAFF:** Tim Youmans, Will Moore, Vince Diem, Angie Walsh, Kari  
Van Diest  
**VISITORS:** Richard Oram, Ty Lawson, Ron Mislowsky, John Lewis, and  
Clark Neff

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

**APPROVAL OF MINUTES:**

It was moved by Mr. Weber, seconded by Mr. Adams, to approve the minutes as presented.

Motion passed unanimously 6-0.

**CORRESPONDENCE**

A revised packet was presented that added:

Item 2A – Email from neighboring property owner concerning CU-09-02  
Item 4A – Revised Staff Report for SV-09-01  
Item 4B – Revised Staff Report for CU-09-01  
Item 5A – Administrative Authorization for a site plan.

**CITIZEN COMMENTS**

None

**REPORT OF FREDERICK COUNTY LIAISON**

Mr. Ours explained that for the second month in a row the Frederick County Planning Commission did not hold a first meeting so he had nothing to report. However, he added that he will be retiring as liaison after 11 years with the City.

## **PUBLIC HEARINGS**

**CU-09-02** Request of Richard Bell on behalf of Adams-Nelson Management for a modification of conditions for existing conditional use permits for private community center use and office use greater than 2,000 square feet per floor at 403 South Loudoun Street (*Map Number 193-1-H-1*) zoned Residential Business (RB-1) District with Historic Winchester (HW) District overlay.

Mr. Youmans presented the request is to relax some of the conditions associated with an approved CUP that allowed for more than 2,000 sq. ft. of office space in the former church, as well as relaxing some of the conditions associated with a previously-approved CUP establishing the Old Town Events Center. The office CUP limited occupancy to operations primarily serving disabled populations (e.g. Access Independence) and the events center CUP precluded weekday daytime use.

The office CUP would allow general office use without restriction. The relaxed conditions for the Old Town Events Center would permit weekday daytime use with limitations on frequency of use, hours of operations, and occupancy thresholds (among other conditions).

Richard Bell of 119 Peyton St addressed the email from the neighboring property owner concerning parking, stating that this is the first time he has heard of any issues. He wants to expand the use of the facility to daytime use. He stated that he would be available for questions.

Chairman Masters opened the public hearing.

Hearing none, she closed the public hearing.

Mr. Shore asked how the patrons were directed to park.

Mr. Bell explained that there are sandwich boards outside the events center. When occupancy will exceed a certain number, whoever is holding the event is required to have someone directing traffic.

Mr. Shore asked Mr. Bell if he thought that it was his customers that were parking in the neighborhood suggested by the email.

Mr. Bell stated that he really didn't know. He explained that there isn't someone standing there telling them where they can't park. They can only direct them to where they should park.

Mr. Adams asked if there was a legal shared parking arrangement.

Mr. Bell explained that it is recorded on the land records and the City is party to that agreement.

Mr. Adams asked if church changed hands, would whoever owns the building be able to continue to share in that parking.

Mr. Bell stated it was correct.

Chairman Masters explained a scenario in which all of the offices at 303 S. Loudoun St are leased and there is a large daytime event at the center. She asked where the overflow traffic would go.

Mr. Bell explained that they would still park in the same area, the offices at 303 S. Loudoun St are in the parking exempt district. He added that he can't allocate shared parking to any dedicated spaces.

Chairman Masters asked how many spaces could potentially be available during the day.

Mr. Bell stated that he cannot answer that. It is based on zoning, how many people are in town that day and how big the event is at the center. He added that other than the email today, he isn't aware of any parking concerns created by the center.

Mr. Adams asked why he is requesting the removal of Council review.

Mr. Bell explained that they have done it in the past and they have never been close to any parameters that would revoke their permit. He felt that it is a paper chase but if required they have no problem continuing to do it.

Mr. Adams felt that opening it to daytime use could possibly affect the neighborhood. He suggested that the one year Council review condition remain.

Mr. Sublett commented that he walks by the event center regularly and has seen the sandwich boards posted. He has observed that there is ample parking most of the time. He felt that what is happening is that people who live in town want to park in front of their homes/businesses. It is not that there isn't parking available, it is that they may have to park further down the street or even a block away. He was comfortable the way it was.

Mr. Shore asked how many square feet would be used during a daytime event.

Mr. Bell answered approximately 4000 sq ft.

Mr. Shore asked how many vehicles would be approved to use that space.

Mr. Youmans explained that according to the Ordinance, it is 1 space for every 300 sq ft.

Mr. Weber asked if the intention is to rent out the lower space as one big space or would it be divided.

Mr. Bell assured him that they would avoid any further dividing of the space.

It was moved by Mr. Adams, seconded by Mr. Weber, to forward **CU-09-02** to City Council recommending approval because the general office and private community center uses, as modified, 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 permits general office use up to 4,000 square feet in the lower level of the building without occupancy restrictions other than those contained in the variance approval of February 1999 (BZA-98-12).

The approval also permits private community center use in the upper level subject to:

1. Attendance of between 150 and 250 persons shall be limited to 44 days per calendar year, and attendance of more than 250 persons, but not greater than 319 persons, shall be limited to 11 days per calendar year;
2. Hours of operation not to extend beyond 10:00 PM on Sunday through Thursday, except for evenings prior to a public holiday, and not beyond 11:59PM on Friday and Saturday and evenings prior to a public holiday, with the exception of New Years Eve which would have a 1:00AM closing time on New Years Day;
3. Whenever event attendance is intended to exceed 100 persons, event promoters shall provide personnel to direct attendees to shared parking facilities. Signage directing attendees to off-street parking areas shall be provided for all events. Such assistance shall be provided for a period up to 30 minutes prior to any event having a uniform commencing time and throughout any said sized event not having a uniform commencement time. Personnel shall also instruct attendees not to loiter outside the premises and shall not allow a waiting or receiving line to form outside other than for weddings and funeral services;
4. Except for caterer food preparation facilities not situated in off-street parking areas and not visible from public street view, accessory outdoor activities, including but not limited to dining tents, exhibits and vehicle displays shall be prohibited; and,
5. The applicant taking into consideration the concerns of all neighbors and address them as they come up.

The permit for the modified private community center use is also subject to staff review and approval of a revised site plan showing updated parking requirements and how and where the increased parking is provided.

City Council review shall be required after one year.

[3:34:35 PM](#)

Motion passed unanimously 6-0.

**RZ-09-02** AN ORDINANCE TO REZONE 0.824 ACRES OF LAND AT 135 AND 137 LINDEN DRIVE (*Map Numbers 149-2-A-3 and 4*) FROM LOW DENSITY RESIDENTIAL (LR) DISTRICT TO RESIDENTIAL OFFICE (RO-1) DISTRICT. The Comprehensive Plan calls for expansion of the RO-1 District on Linden Drive. RO-1 zoning yields up to 3.5 units per acre.

Mr. Moore presented the request to rezone two residual LR-zoned parcels on the west side of Linden Drive to RO-1. The request was originally submitted as a conventional rezoning request (with no associated proffers), however the applicant subsequently submitted related proffers.

The 2008 rezoning of the WMC property on the west side of Linden Drive left the subject properties as a residual, isolated LR zone. It was contemplated at that time that these properties would eventually be requested to be rezoned to either MC or RO-1. The comprehensive plan calls for expansion of the RO-1 zone along Linden Drive on a conditional basis. Related proffers were submitted in the attached statement dated March 9, 2009.

The first proffer relates to consolidation of the two parcels at the time of future development. Neither of the subject properties could otherwise be developed/redeveloped individually for use other than single-family residential based upon the minimum lot area requirement of 20,000 sf.

It is known that sections of Linden Dr have deficient right-of-way (ROW) width, including the frontage portion of the subject property. Other properties along Linden Dr have addressed this deficiency in conjunction with development or consolidation of properties. The proffered consolidation of the subject properties will invoke the deficient ROW dedication at that time.

The second proffer is to grant interparcel access to one or both of the immediately adjacent properties at the time of future development. The subject property has approximately 102' of frontage along Linden Dr, with 100' being the minimum width required in the RO-1 zone. It will most likely be difficult to achieve minimum required driveway spacing for the subject property in conjunction with any future redevelopment. The commitment to granting interparcel access addresses this potential impact

Chairman Masters asked about the missing signature on the application.

Mr. Moore assured her that it would be obtained prior to the City Council public hearing.

It was moved by Mr. Talley, seconded by Mr. Adams to forward **RZ-09-02** to City Council recommending approval because the request, as proffered, adequately addresses potential impacts associated with the rezoning and is consistent with the Comprehensive Plan.

Motion passed unanimously 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. Lawson explained that the applicant is not planning to go forward with the rezoning but will be going forward with the street vacation. Correspondence was sent to the City stating that they have satisfied the qualifications of the existing 2000 proffer. He anticipates notification that they have indeed been satisfied at which point they will withdraw the RZ-09-01 rezoning request. He asked that the item be tabled until confirmation can be received that the proffer has been satisfied.

Mr. Weber asked what has to happen yet.

Mr. Youmans explained that both the Planning Dept and the City Attorney has to review the information regarding the dedicated easement along the southern boundary of the property.

Chairman Masters stated that in the event it should come back in the future, she wants the people on Greystone Terrace to have an opportunity to have a say.

Mr. Weber asked if tabling would allow the residence to have a say if it comes back again.

Chairman Masters explained that if it is withdrawn because the issue with the previously approved proffer is resolved, then there would be nothing to discuss.

Mr. Adams stated that they are in the middle of a hearing now, residents could speak and then the hearing could be closed with a motion to table, allowing the applicant to come back with any changes.

Mr. Weber agreed with Mr. Adams, saying that it would allow time for revisions for Commission review.

Chairman Masters reminded them that if the proffers are satisfied then this request will be withdrawn. There will be no need to bring it back for discussion.

Mr. Lawson wanted to make sure everyone is clear. Public opinion is fine and he was happy to hear it. But what he is asking is to table with the intention of withdrawing because he believes that they have complied with the proffers from 2000. He wasn't sure if public opinion would be relevant at this point.

Chairman Masters asked if anyone would like to speak on this matter.

Hearing none, she asked for a motion.

Mr. Adams suggested withdrawing the request.

Mr. Youmans reminded the Commission that tabling the item will keep the public hearing open.

Mr. Weber explained that his concern is that if its tabled it can just go away because it will be withdrawn. He asked why bother tabling at all if that is the case.

Mr. Weber moved to table **RZ-09-01** at the request of the applicant. This was seconded by Mr. Shore.

Motion Passed 5-1, Mr. Adams opposed.

### **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 reiterated what Mr. Lawson said. The applicant is proceeding with the street vacation as it is consistent with the 2000 proffers. It is tied to the previously approved conditional rezoning to B2, which will not change the existing MR zoning along the north side of Spring Street. He explained the differences in the past and present proposals around the cul-del-sac. Some of the items cannot be changed without coming back in front of committee and council.

Mr. Youmans noted that the applicant must meet all of the proffers before anything commercial can be done on the property. They will still need to discuss the proposed vacated areas with the adjoining property owners to see if they are interested. There will be some cost involved in the vacation including the suggestion by staff to have gated access on the commercial end for emergency access. Staff recommends tabling this item until next month, in order to discuss it with property owners and other departments for feedback.

Chairman Masters was concerned that the MR zoning would become land locked.

Mr. Youmans explained that one of the conditions is that it be assembled into property.

Mr. Adams felt that the request technically complies but does not meet the intent of the comprehensive plan. He asked what will happen to the intersection coming out on Pleasant Valley Avenue.

Mr. Youmans stated that these types of questions are why more feedback is needed from other departments of the city.

Mr. Adams stated that it would be helpful to see the action taken in 2000 by council to see how it meshes.

Mr. Youmans stated that the applicant cannot have two driveways connecting to Pleasant Valley Rd in close proximity to each other because of the driveway spacing standard in the Zoning and Subdivision ordinances.

Mr. Weber asked how that can happen without permission of Kmart property.

Mr. Youmans noted that the easement is within the boundaries of the Donegan property and does not require approval by the adjacent Kmart property owner.

Mr. Weber stated that one of the problems in the past have been getting access from the property owner. He asked how that has changed.

Mr. Youmans noted that the applicant is working with the City to resolve the issue, but that the City Attorney needs to review the document that Mr. Lawson had just submitted for fulfillment of the access proffer.

It was moved by Mr. Weber, seconded by Mr. Sublett to table **SV-09-01** until the April meeting to allow staff and the property owners time to review the modified request.

Motion passed unanimously.

**CU-09-01** Request of Richard Oram and Debra Johnson on behalf of the Union Jack Pub & Restaurant for a conditional use permit for nightclub use at 101 North Loudoun Street zoned Central Business, B-1 District with Historic Winchester, HW District overlay.

Mr. Diem explained that Mr. Sublett and others helped conduct sound checks to see levels in various areas including the apartments next door on March 14<sup>th</sup> between the hours of 7:56 pm and 9:30pm using a devise used by the police dept to uphold the noise ordinance. Readings were taken in the apartment while loud music was playing in the Union Jack Pub. They were gauged at

58-60 decibels. At that time noise could not be heard by naked ear. Mr. Diem instructed Mr. Oram to increase volume on 3<sup>rd</sup> floor and asked the audience to make as much noise as possible during the test. During the times when the audience was loud, they could be heard by the naked ear but the device still only registered 58 decibels in the apartment. Mechanical noise at the rear of the buildings registered at 66 decibels to give the commission some means of identifying the sound that is realized there. There is some sound absorption in the wall. Based on this, the staff modified the imposed conditions. Mr. Diem explained the changes.

Mr. Sublett expressed his satisfaction with the new recommendation. He stated that at times in the apartment he had to ask everyone to be quiet to even hear anything coming from the pub. He felt that the noise in apartment is a non-issue, the numbers speak for themselves. He felt that they have done more than due diligence on matter.

Mr. Adams agreed. He added that he would like to see the words horizontally and vertically stricken from condition # 3.

It was moved by Mr. Adams and seconded by Mr. Sublett to forward **CU-09-01** to City Council recommending approval because the use, as proposed within the Central Business (B-1) District, 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. Applicant applying for renewal of the CUP every five years, with review by City Council in March 2010;
2. The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;
3. The applicant is required to limit the noise within the Union Jack Pub & Restaurant to no more than **95 dBA** between the hours of 10:00pm and 6:00am. At no time, shall the sound emanating from the Union Jack Pub & Restaurant as measured from an outside wall or party wall exceed **75 dBA**;
4. All windows and exterior doors to remain closed during nightclub use and no aspects of nightclub use to occur outside the building;
5. A maximum of four (4) criminal offense police calls per month, after which private security is required and/or the permit may be subject to revocation;
6. Night Club use to end no later than 1:00AM on Saturday and Sunday mornings (Friday and Saturday nights); and no later than 12:00AM on any other day, with the exception of New Year's Day which would have a 1:00AM closing time;
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 property changes ownership;
8. Strict obedience with all local and state laws especially those pertaining to ABC licensing and payment of meals tax; and,
9. The applicant is responsible for cleaning up any trash outside the facility after closing.

Motion passed unanimously.

### **NEW BUSINESS**

Administrative Authorization:

**SP-09-04**      PHR+A      2016-2028 S Loudoun St      Wilkins South Loudoun Parking

It was moved by Mr. Weber and seconded by Mr. Adams to grant administrative authorization.

Motion passed unanimously.

**OTHER DISCUSSION**

Mr. Youmans reminded everyone that the comp plan meeting is scheduled after the next work session on April 13<sup>th</sup>. He also asked that everyone start thinking about city wide goals.

**ADJOURN**

With no further business to discuss, the meeting was adjourned at 5:00pm.

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Susan Masters, Chairman