

PLANNING COMMISSION
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, November 16, 2010, at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Vice-Chairman Shore, Commissioners McKannan, Slaughter, Sublett, Talley and Wiley (6)
ABSENT: Chairman Adams (1)
EX-OFFICIO: City Manager O'Connor
FREDERICK CO LIAISON: Commissioner Mohn
STAFF: Diem, Moore, Youmans, and Walsh
VISITORS: Ben Butler, Robert Ganse, Stephen Williams, Mandy McIntruff, John Hamilton, and Brian Bayliss.

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

APPROVAL OF MINUTES

Commissioner Talley moved to approve the minutes of the October 19, 2010 meeting as presented. The motion was seconded by Commissioner Sublett.

Motion passed 6-0.

CORRESPONDENCE

A revised packet was presented that included the following:
Item 3B – Request to initiate TA-10-613
Item 2B – Updated Staff report for CU-10-590

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON

Commissioner Mohn welcomed anyone that would like to sit in at the next Frederick County Planning Commission meeting, which was scheduled for November 17, 2010 at 7:00pm. He stated that the agenda was light, having only one Conditional Use item for a home-based day care along with continued Comprehensive Plan discussion.

PUBLIC HEARINGS – New Business

A. CU-10-588 Request of S&J Enterprises dba Buffalo Wild Wings for a conditional use permit for nightclub use at 5 Weems Lane (*Map Number 271-04-1*) zoned Highway Commercial (B-2) District.

Mr. Moore presented the request for a periodic reapproval of an existing conditional use permit (CUP) for nightclub use. The request also proposed expansion of the use from karaoke one night per week to karaoke and/or DJ three nights per week.

The business was granted the current CUP in April 2008. The CUP would be due for reapproval in April 2011. The owners have applied for reapproval several months early in conjunction with a request to expand to a maximum of three nights per week and to permit karaoke and/or DJ. The current restriction of karaoke only on one night per week was at the request of the applicant and the property owner at the time of the previous request.

In his letter dated September 28, 2010, applicant Robert Ganse states the intent to expand from Wednesday night karaoke to also include Friday night DJ and/or karaoke. He states the immediate intent is for only these two nights, however he also requests the flexibility to expand to a third night without having to reapply.

The Commission had asked in their work session the previous week for a comparison of imposed conditions pertaining to the number of nights per week and ending time for other nearby establishments. Mr. Moore stated that the two closest are TGI Friday's at 111 East Tevis Street and Mi Ranchito at 2018 South Loudoun Street, neither of which are limited on the number of nights per week and both of which have an ending time of no later than 1:30am.

Staff consulted with the Winchester Police Department on the request. Police staff noted a very limited number of calls for service to the business and the Chief of Police stated that he does not believe there would be any issues with the request.

Vice-Chairman Shore opened the public hearing.

Robert Ganse, representing Buffalo Wild Wings, explained that they are asking for a second night of karaoke due to the increase in competition. Their primary target is still for viewing sports and they do not intend on expanding too much into live entertainment. They are trying to find out what works, in order to stay in business.

Vice-Chairman Shore closed the public hearing.

Commissioner Sublett stated that the request is reasonable and that he thinks the same conditions that the other nearby nightclubs have should be fine.

Commissioner Sublett moved to forward CU-10-588 to 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 recommendation is subject to:

- 1. Reapproval required in April 2014;*
- 2. Taking into consideration the concerns of all of the neighbors and addressing them as they come up;*
- 3. A maximum of four (4) criminal offense calls per month within or attributable to the establishment, after which private security may be required and the permit may be subject to revocation;*

4. *At no time shall the sound emanating from the use as measured from an outside wall or party wall exceed 75 dBA;*
5. *All windows and exterior doors to remain closed during nightclub use and no aspects of nightclub use to occur outside the building;*
6. *Nightclub use is for karaoke and/or DJ only;*
7. *Nightclub use to end no later than 1:30 AM on any night;*
8. *Strict obedience with all local and state laws, especially those pertaining to ABC licensing and payment of meals tax; and,*
9. *The CUP expires automatically if the nightclub use ceases for more than one year or if the business changes ownership.*

The motion was seconded by Commissioner Wiley.

Motion passed 6-0.

- B. CU-10-590** Request of Winchester Medical Center for a conditional use permit for personal service and retail use at 401 Campus Boulevard (*Map Number 149-03-1*) zoned Medical Center (MC) District.

Mr. Diem presented the request for a Conditional Use Permit for personal service and retail use at the Valley Health Wellness & Fitness Center in response to a series of recent meetings including a Board of Zoning Appeals public hearing on July 14, 2010, a Planning Commission public hearing on September 21, 2010, and a subsequent Planning Commission meeting on October 19, 2010.

During the July 14, 2010 public hearing before the Board of Zoning Appeals, WMC argued that the contested use and occupancy of the Valley Health Wellness & Fitness Center could not be identified by only one use type as currently contained within the Zoning Ordinance, except for the much broader category of “personal service and retail establishments,” pursuant to Section 15.1-1-17. Again, and during the recent Planning Commission work session and public hearing meetings of September 2010, WMC presented that the use category of personal service and retail establishment exists at the Center.

The elements of use that best qualify as personal service and retail within the Wellness & Fitness Center include ancillary retail sales of water bottles, fitness clothing, and other small items. Additionally, the personal service aspect is primarily limited to massage therapy, which is offered in each of the men’s and ladies’ locker rooms.

In an effort to resolve outstanding issues of non-compliance with the current Zoning Ordinance provisions, Valley Health/Winchester Medical Center is proposing this Conditional Use Permit application, simultaneously with a recently submitted Text Amendment proposal pertaining to definitions and use provisions. In the event that both processes are successfully completed through City Council adoption, there will be no further issues of non-compliance with the Zoning Ordinance, based on previous determinations made earlier this year.

Vice-Chairman Shore opened the public hearing.

Ben Butler, attorney for the Winchester Medical Center, stated that this was a collaborative effort and that he appreciated all the help provided by staff in putting the request together. He stated that he also wanted to point out that there are retail taxes on all items sold.

Vice-Chairman Shore asked if taxes were paid on the personal service components as well.

Mr. Butler stated that the personal services components were part of the business/professional (BPOL) taxes paid.

Vice-Chairman Shore closed the public hearing.

Commissioner Talley asked if the center planned to expand on their retail sales in the future.

Mr. Butler stated that there were no plans to expand. The retail portion is more a convenience for the member in case they forget something, such as water shoes or a t-shirt.

Vice-Chairman Shore asked if this would take into consideration any additional expansions in this building.

Mr. Diem explained that it would depend on how the expansion would be defined.

Commissioner Talley moved to forward CU-10-590 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 recommendation is subject to the following conditions:

- 1. Personal service and retail use shall remain ancillary to the principal use and occupancy of the Wellness & Fitness Center;*
- 2. The hours of operation pertaining to personal service and retail use shall be consistent with and dependent upon the hours of operation of the Wellness & Fitness Center; and,*
- 3. Personal services are intended to specifically include massage therapy and personal fitness training.*

The motion was seconded by Commissioner Sublett.

Motion passed 6-0.

C. CU-10-593 Request of Velocitel on behalf of Clearwire for a conditional use permit for collocation of antennas on an existing telecommunications tower and associated ground support equipment at 799 Fairmont Ave (Map Number 153-01-2) zoned Limited Industrial (M-1) District.

Mr. Moore presented the request to add three panel antennas and associated ground support equipment to an existing, shared use tower.

The applicant outlined the request in the provided letter dated October 1, 2010 and in the related drawings dated 9/16/10. The drawings depict the existing 180' lattice tower with multiple equipment arrays comprised of six different carriers. Collocation of antennas on existing structures as proposed is encouraged within the Zoning Ordinance.

The subject antennas would be added at a height of 83' and would be the lowest mounted equipment array on the tower. A separate request from another carrier was recently submitted for replacement and addition of antennas to the top array on this tower. In addition to the mounting arms and three panel antennas, ground support equipment would be added on a new 3' x 6½' concrete pad within the fenced compound near the base of the tower.

Vice-Chairman Shore opened the public hearing.

No one spoke regarding the request

Vice-Chairman Shore closed the public hearing.

Commissioner Slaughter moved to forward CU-10-593 to 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 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 Talley.
Motion passed 6-0.*

D. RZ-10-601 AN ORDINANCE TO REZONE 0.056 ACRES OF LAND AT 210 BAKER STREET (Map Number 174-1-F-6) FROM RESIDENTIAL BUSINESS (RB-1) DISTRICT WITH HISTORIC WINCHESTER (HW) DISTRICT OVERLAY TO RB-1 DISTRICT AND TO REZONE 0.051 ACRES OF LAND AT 211-213 BAKER STREET FROM LIMITED HIGH DENSITY RESIDENTIAL (HR-1) DISTRICT WITH HW DISTRICT OVERLAY TO HR-1 DISTRICT

Mr. Youmans presented the request to alter the overlay zoning of two properties by removing them from the Historic Winchester, HW Overlay zoning district which is the local historic district designation.

The City has initiated a strategic neighborhood revitalization project for the subject area noted in the Area Description. A major component of that effort is the improvement of the public street network to support public safety, especially with regard to emergency response. The improvement includes widening existing Diehl St in the area of 210 Baker Street and also a southerly extension of the street through the block south of Baker Street. The extension of the street would require the demolition of 211-213 Baker Street.

Neither of the structures at 210 Baker St nor 211-213 Baker St is defined as contributing architecture in the inventory of historic properties used in establishing the local HW historic district. The rezoning effectively shifts the overlay zoning district line to run along the west side of these two properties rather than along the east side of them. By removing the properties from the HW district, there would most likely be less review required for use of federal funding through CBDG to undertake the larger neighborhood revitalization effort.

Mr. Youmans explained that this rezoning request does not authorize an acquisition of any kind.

Mr. Sublett asked if the zoning would allow the existing property owners on Kent Street to build another structure on the track of land facing Diehl Street.

Mr. Youmans explained that it is zoned Residential Business (RB-1). If they could meet the density standards, it would be possible.

Commissioner Slaughter asked if there were any concerns that if the revitalization does not go through and the two buildings are taken out of the Historic District.

Mr. Youmans stated that he had no concern about that. The buildings in question are non-contributing structures, meaning they have no historic value.

Vice-Chairman Shore opened the public hearing.

Stephen Williams of 404 N Kent Street stated that his main concern was that, in the past, revitalization has been done in this area and then it is forgotten. He asked if this is approved if the city would be maintaining it. He also asked for staff to go to the area and really look at where the street would go. He stated that some things look good on paper, but when you are there it is all together different. It will take a good bit of other people's property to get this through. Mr. Williams stated that he is not saying he is opposed to the idea of this project, but he wants to make sure the City follows through.

Vice-Chairman Shore closed the public hearing.

Commissioner Wiley asked if this would be a bonded job.

Mr. O'Connor stated that it would be. The process will not start until the City has obtained all the property and right-of-way necessary. He also stated that this section was chosen for improvements due to public safety issues with the streets being narrow and lighting issues.

*Commissioner Wiley made a motion to forwarded **RZ-10-601** to City Council recommending approval of the request as depicted on an exhibit entitled "Rezoning Exhibit, RZ-10-601, Prepared by Winchester Planning Department, October 14, 2010 because the request is in general conformity with the Comprehensive Plan and represents good planning practice.*

*The motion was seconded by Commissioner Sublett.
Motion passed 6-0.*

NEW BUSINESS

A. **SV-10-607 AN ORDINANCE TO VACATE A 150' LONG PORTION OF A PUBLIC ALLEY LOCATED BETWEEN 519 AND 523 VIRGINIA AVE AND CONVEY IT TO ONE OR MORE ADJACENT PROPERTY OWNERS**

Mr. Youmans presented the request from Mr. Philip Houston who resides at 523 Virginia Avenue for City Council to vacate and convey to him and the adjacent property owner on the opposite side of the alley equal portions of the 150-foot long portion of the 11.5-foot wide semi-improved public alley on the south side of the 500 block of Virginia Ave. Mr. Houston has also expressed an interest in acquiring the entire alley adjacent to his lot if the property owner at 519 Virginia Avenue is not interested in purchasing the half of the alley adjoining their lot.

The vacation request is only for the northernmost portion of the 11.5-foot wide unnamed N-S public alley that parallels N. Pleasant Valley Rd to the rear of the multifamily structures across from the post office. This northernmost portion is improved with gravel that functions much like a shared driveway to the homes at 519 and 523 Virginia Avenue. The applicant, Mr. Houston, has erected a chain link fence with wire at the top across the public alley in violation of City Code. A violation notice had been sent to the applicant informing him of the violation and notifying him of the need to remedy the obstruction of the public alley.

In his two-page letter dated September 8, 2010, Mr. Houston describes the subject portion of the alley as a private driveway and "part of an old alley that has been used for more than 50 yrs." He notes that the banks have fallen in on the sides and that no vehicle can get down through the area.

Mr. Houston also notes a 0.5-foot wide Reserve Strip along the west side of the 11.5-foot wide public alley. This feature could present problems for vacating the alley and conveying it partially to the owner of 519 Virginia Avenue since the Reserve Strip may still be owned by the heirs of the original subdivider laying out the east side lots and the public alley. Consultation with a local Land Surveyor familiar with this practice leads City staff to believe that it is not a portion of the public alley and can, therefore, not be vacated and conveyed by the City to an adjoining property owner. If the reserve strip was ever removed, there is no evidence of it provided with recent surveys.

The central portion of the alley is not improved although much of it can be traversed with a vehicle. The southernmost 147-foot long segment of the alley between the Vacuum Store and Smalts Florist Shop on National Avenue was vacated and conveyed in 1997 to the property owner who owned land on both sides of that segment of public alley. However, rather than close off the travelway in that area, the property owner improved the commercial property with a paved one-way driveway accessing angled parking spaces. The driveway then connects to an existing 10-foot wide alley leading out to Pleasant Valley Rd between two of the apartment buildings.

It should be noted that, even if the southernmost vacated portion of the alley was blocked off, there would be continuous one-way traffic flow possible along the remaining alley since the 10-foot wide alley connecting to Pleasant Valley Rd provides an access point at the southern end. Closing off the north end of the alley, as requested, would result in a rather long dead ended alley arrangement. Further complicating this is that there is an unimproved 10-foot wide alley running E-W behind the homes at 515, 5517, and 519 Virginia Avenue. The only access to the public street system is via the 11.5' N-S alley. The closure of the 150-foot portion of the N-S alley, as requested, would greatly increase the travel distance to a public street if and when this alley is ever put into use by any of the 3 property owners having benefit of it for access to the rear of their homes. A major finding that City Council must make in considering right-of-way vacation requests is that there will not be inconvenience caused by the discontinuance of the public right-of-way.

Commissioner Talley stated that the alleyway should be improved and even named because the public does not seem to know that it is a public alley.

Commissioner Slaughter moved that the Commission forward SV-10-607 to City Council recommending disapproval of the request because it would create an inconvenience for future redevelopment of the subject block in accordance with the updated Comprehensive Plan and also because of the uncertainty as to the ownership of the 0.5-foot wide reserve strip along the west side of the alley.

*The motion was seconded by Commissioner McKannan.
Motion passed 6-0.*

Mr. Wiley and Mr. Sublett left the meeting at 4:15pm.

B. Request to Initiate: TA-10-613 AN ORDINANCE TO AMEND AND REENACT SECTION 9-2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO CONDITIONAL USE PERMITS FOR MULTIFAMILY DWELLING UNITS

Mr. Youmans explained that Mr. Diem had drafted the text amendment to allow for multifamily units in B-1 that would not meet the absolute or average minimum floor areas per the Ordinance to be considered through a conditional use permit.

The request is to consider initiating the amendment as one that is publicly sponsored. If initiated, a public hearing would be scheduled for December.

Commissioner Talley moved to initiate TA-10-613.

The motion was seconded by Commissioner Slaughter.

Motion passed 4-0.

C. Administrative Authorization:

SP-10-642 Painter-Lewis, PLC 555-565 Adams Dr 5 Star Auto Spa Revision

Commissioner Talley moved to grant administrative authorization for SP-10-642.

The motion was seconded by Commissioner McKannan.

Motion passed 4-0.

D. Comprehensive Plan Discussion

Mr. Youmans provided a draft copy of Chapter 11 and gave a brief overview of the content. He suggested that the Commission consider reviewing the draft in detail on their own and discussing it again in December. He explained that the handouts were in black and white, but a color version will be either posted on the Planning Department page on the City's website or emailed individually to the Commissioners.

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:54PM.

David Shore, Vice-Chairman