

PLANNING COMMISSION
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, September 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 Lanzetta, Colleen Hurley, Bob Harrison, Tom Chasler, Paul Thompson, and Jim Lockard.

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 August 18, 2009 regular meeting and August 20, 2009 special meeting as presented. The motion was seconded by Commissioner Adams.

Motion passed 7-0.

CORRESPONDENCE

Updated information was presented that included the following:

Item 2A, CU-09-172 – Letter from the Applicant
Item 2B, CU- 09-198 – Revised Staff Report
Item 2B, CU-09-198 – Police Call History Report

Mr. Youmans stated that staff was prepared to give an update on the status of the Comprehensive Plan. The agenda would need to be amended to add the discussion.

Commissioner Adams moved to amend the agenda to add a discussion of the Comprehensive Plan under New Business. The motion was seconded by Commissioner Shore.

Motion passed 7-0.

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON

A Frederick County Liaison was not present at the meeting.

PUBLIC HEARINGS

- 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.

Mr. Youmans explained that a letter was received from Don Crigler of DFC Architects requesting this item be tabled. There is a pending text amendment that would affect their case.

Commissioner Weber moved to table CU-09-172 at the request of the applicant. The motion was seconded by Commissioner Sublett.

Motion passed 7-0.

- B. **CU-09-198** Request of Milano's, LLC for a conditional use permit for nightclub use at 107 West Boscawen Street (*Map Number 192-01-O-12*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

Mr. Diem presented the request to establish a nightclub use at an existing restaurant business, which requires a Conditional Use Permit pursuant to Section 9-2-8 of the Winchester Zoning Ordinance.

In a letter from the applicant's legal counsel, Paul H. Thomson, Esq., dated July 31, 2009, Milano's fully intends to comply with all requirements set out by the City of Winchester. Furthermore, it is indicated within the letter that Milano's will comply with all special conditions, if any, in order to make this neighborhood business successful.

The applicant previously submitted a request for a Conditional Use Permit in 2007, which was withdrawn due to lack of support from the property owner, Rouss Fire Company. The current application presented for review and requesting approval is submitted with the acknowledgement of the property owner.

In response to a request at the work session, Mr. Diem provided a police call history for this location for the previous six months. A letter was also received from Tom Chasler, a neighboring property owner, requesting denial due to trash and loud music.

Chairman Masters opened the public hearing.

Paul Thompson, attorney for the applicant, asked that the request be approved. Both he and the applicant have reviewed the conditions presented by staff and felt that they are reasonable. He asked for the night club to start at 9:00pm instead of 10:00pm.

In response to Mr. Chasler's letter, Mr. Thompson stated that no one is allowed to take anything from the restaurant including bottles or cans of beer. There is someone posted at the door at all times to make sure that does not happen. He explained that there is a mesh of businesses downtown within a relatively small area. The noise and trash can be coming from other locations.

Mr. Thompson reviewed the police calls provided by Mr. Diem. Most of them were called in by restaurant employees, including the one for suspicious drug activity. The list still does not rise to the threshold of four (4) calls per month.

Colleen Hurley of 113 West Boscawen Street, 3rd floor, stated that she admits to being one of the people to call the police. She stated that improvements could be made to limit the amount of noise/vibration emanating from the bar. She stated that a recent request from the Union Jack required the use of insulation. She stated if that business can insulate, then this one can also. She stated that she is concerned about vibration from the subwoofer because the type of music they play has so much bass. She also stated that she has noticed excess trash on the street and beer bottles thrown into her recycling bin.

Bob Harrison, owner of 19-21-23 North Braddock Street, stated that the previous establishment at this location, the Old Town Bar and Grill, was very noisy and had impacted on his tenants at that time. He is concerned that this will do the same.

Jim Lockard, owner of 110 West Boscawen Street, stated that there have been times that the music was going strong after 1am. He stated that loud music at this time is “off the hook” when residences are so near. He stated that trash from the business is a problem. He is also concerned with what happens outside the establishment, such as people urinating in the alley.

Tom Chasler, owner of 104-106 West Boscawen Street and 124 West Boscawen Street, stated that he picks up beer bottles on the street constantly. He has not seen anything since the nightclub use was previously denied that would make him believe that the public or neighborhood would benefit from this being a nightclub.

Chairman Masters closed the public hearing.

Mr. Weber stated he was very concerned about noise level. He asked how they would be sure that 60 decibels would be adhered to.

Mr. Diem explained that 60 decibels would be equal to the ambient noise level in council chambers. Someone outside would not be able to hear anything outside the building.

John Lanzetta, owner/member of Milano’s, explained that he brought in a decibel meter to test the noise level. The volume was 98 decibels inside and 70 decibels outside while the music was playing. There was no change in the outside decibel level after the music was off. In his opinion 60 decibels is a quiet library; with people talking it was 70 decibels. Mr. Lanzetta sells and installs sound systems for a living and believes his findings are credible. He stated that he did not believe 60 decibels could be attained with street noise outside.

Mr. Shore asked where the music would be held.

Mr. Lanzetta explained his plan to extend the bar into the neighboring space and have the music in the back away from the door.

Mr. Wiley stated to Mr. Lanzetta that he is concerned with him spending money on expanding the use without thinking through what will happen if the decibel level is exceeded and the permit revoked.

Mr. Lanzetta stated that whatever decibel is set, he will meet. The Union Jack Pub faced a similar issue and was able to overcome it. He stressed that currently the sound systems are placed right beside the door and every time the door is opened the sound escapes. He felt that having the music in the back and away from the door would fix the issue.

Mr. Wiley questioned how Milano's would monitor trash during operational hours.

Mr. Lanzetta stated that there is a gentleman that cards everyone after 9pm and guarantees no one will leave the establishment with a bottle. If the bar would be caught allowing someone to take alcohol out of the bar, it would be a \$3000 fine.

Mr. Weber suggested that a number of Commissioners might want to go to the establishment similar to the process they used when the Union Jack permit was being considered.

Mr. Adams asked what the violation was that brought this request forward.

Mr. Diem explained that an advertisement through a website was brought to staff's attention, advertising 5-6 DJ's that would have been appearing at Milano's. The time slot given was 8pm to 2am. The Community Response Team went to the location and was met at the door by someone collecting admissions.

Mr. Adams stated that in 2007, Milano's knew that they had to apply for a nightclub permit in order to have amplified music and asked why they would advertise for such an event.

Mr. Lanzetta stated that he also co-owns a bar in another locality. There are occasions when the entertainment runs over the allotted time and he is not there to supervise.

Mr. Adams asked about the hole in the wall for an expansion that was done without a permit.

Mr. Lanzetta stated that based on the lease agreement it is up to Rouss Fire Hall to obtain the permits.

Mr. Adams stated that if Mr. Lanzetta wanted to comply with all the rules and regulations as stated in his letter, then there would not be all of these issues such as police calls and loud music.

Mr. Lanzetta explained that any establishment that serves alcohol will have these issues.

Chairman Masters stated that she is dissatisfied with the fact that even after Milano's had been made aware of the rules, they were not followed.

Mr. Sublett stated that based on the findings from the studies done at the Union Jack, he found it hard to believe that someone across the street would hear 75 decibels. He suggested that 65 decibels would be more reasonable.

Both Mr. Talley and Mr. Weber stated that further testing would need to be done before a decision could be reached.

Mr. Sublett stated that the Commission had already established what a reasonable decibel level is for this type of establishment. He did not feel anything would be gained from further testing. This would only delay the business moving forward

Chairman Masters stated that she agreed. A level has already been established.

Mr. Wiley stated he did not mind setting a certain level, however the question was whether or not the business would adhere to it.

Mr. Youmans stated that this is a unique situation because the residence is directly above this property. He stated it was important to be consistent with the noise level. However Ms. Hurley's major complaint was vibration, something that is not tested by the decibel meter.

Mr. Weber stated that 75 decibels has been established as acceptable. The 60 decibel level had only come up because it was self-imposed by another applicant.

Commissioner Weber moved to forward CU-09-198 to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers within 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 one year;*
2. *At no time shall the sound emanating from Milano's (107-111 West Boscawen Street) as measured from an outside wall or party wall exceed 75 dBA, which may require the installation of additional soundproofing;*
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. *Nightclub use limited to no more than twenty (20) nights per month;*
6. *Nightclub use to occur between the hours of 10:00PM and 1:30AM, Monday through Sunday;*
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, admissions, and annual business license fees and taxes; and,*
10. *The applicant is responsible for cleaning up any trash outside the facility after closing.*

The motion was seconded by Commissioner Sublett.

Mr. Adams stated that he still has concerns about the impact on the residents, trash, and for the ability of the applicant to comply with the rules. He could not vote in favor due to his concerns

Mr. Talley also stated his inability to vote in favor because he felt that each conditional use permit request should be looked at on a case by case basis, meaning more research would need to be conducted in order to make a decision.

Mr. Shore stated that the burden is placed on the applicant to do such testing to make sure they are able to comply with the conditions.

Mr. Sublett agreed, stating that it is a black and white issue. The rules are rigid and either they will comply or they will not. There is a review in six months and another in one year. He states that the applicant should be given the opportunity to try.

The motion passed 5-2, with Commissioners Talley and Adams voting in the negative.

- C. **CU-09-230** Request of T.G.I. Friday's for a conditional use permit for nightclub use at 111 East Tevis Street (*Map Number 292-02-3*) zoned Commercial Industrial (CM-1) District.

Mr. Moore presented the request for a conditional use permit to allow nightclub use at the existing restaurant business pursuant to Section 9-2-8 of the Winchester Zoning Ordinance.

The request came about after recent discovery by staff that T.G.I Friday's was hosting a weekly karaoke night on Tuesdays without the requisite CUP. When contacted by staff, management from the establishment promptly submitted this application. No enforcement action was required to be initiated.

Within the applicant's letter, General Manager Sanjay Sharma addresses potential impacts. He outlines adherence to ABC laws and steps the establishment takes to monitor consumption of alcohol. The site provides ample off-street parking and Mr. Sharma states that the proposed use on Tuesday night will not impact traffic any more than occurs on the busier restaurant nights of Thursday, Friday or Saturday. He further states that the noise from the use is contained within the building. A separate letter from J.P Carr, vice president of Glaize Developments, Inc., owner of the subject property, indicates consent to the request for Karaoke use occurring inside the walls of business.

Chairman Masters opened the public hearing.

Sanjay Sharma, general manager, explained that he was not previously aware that he needed a permit for karaoke. He has no concerns about the recommended conditions.

Chairman Masters closed the public hearing.

Commissioner Shore moved to forward CU-09-230 to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers within the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The approval is subject to:

1. *Reapproval after three years;*
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 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 1:30 a.m. 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; and,*
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.*

The motion was seconded by Commissioner Weber.

Motion passed 7-0.

OLD BUSINESS

None

NEW BUSINESS

Staff presented an update on the status of the Comprehensive Plan to the Commission. As a result of the charrette in August, the consultants have started preparing a citywide character area map. This map gives general usage recommendations for areas in the city rather than a parcel-specific land use. The draft areas are: redevelopment, civic/institutional or park, neighborhood stabilization, neighborhood stabilization with infill, commerce centers, and commerce areas with infill. Certain sites will have redevelopment scenarios prepared and are indicated on the map. Mr. Youmans presented a possible recommendation for a scenario along the Berryville Avenue corridor that he developed in conjunction with an access management study being conducted by the MPO along the Route 7 corridor.

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:52 pm.

Susan Masters, Chairman