

PLANNING COMMISSION MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, November 19, 2013, at 3:00 p.m. in Council Chambers, Rouss City Hall, 15 N. Cameron Street, Winchester, Virginia.

CALL TO ORDER: Chairman Wiley called the meeting to order at 3:00 p.m.

PRESENT: Chairman Wiley, Commissioner Slaughter, Commissioner Smith, Commissioner Correll, Commissioner McKannan, Commissioner Beatley, Commissioner Shickle

ABSENT: None

EX-OFFICIO: Councilor Tagnesi, City Manager Iman

FREDERICK CO. LIAISON: Absent

STAFF: Tim Youmans, Will Moore, Aaron Grisdale, Catherine Clayton

VISITORS: Susan Rhodes

APPROVAL OF MINUTES:

Chairman Wiley called for corrections to the minutes of the October 15, 2013, meeting. Hearing none, he called for a motion. Commissioner Slaughter moved to approve the minutes as submitted. Commissioner Beatley seconded the motion. Voice vote was taken and the motion passed 7-0.

CORRESPONDENCE:

None.

CITIZEN COMMENTS:

None.

REPORT OF THE FREDERICK COUNTY PLANNING COMMISSION LIAISON:

None.

PUBLIC HEARING:

TA-13-493 AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 13, AND 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO HOME OCCUPATIONS PERMITTED IN ACCESSORY STRUCTURES WITH A CONDITIONAL USE PERMIT (**Mr. Grisdale**).

Mr. Grisdale presented the staff report and advised that this Zoning Ordinance text amendment was initiated by City Council as a publicly sponsored text amendment to revise the ordinance to allow for home occupations in accessory structures with a conditional use permit. He advised that presently the Zoning Ordinance provisions only permit a home occupation to be conducted

in a dwelling unit on a property, with the exception of accessory garden uses. This amendment would support the economic trend of working from home by allowing a resident to request a conditional use permit (CUP) for a home occupation in an accessory structure by City Council. The intent to include the CUP requirement for these requests is due to the difference between main buildings and accessory structures regulations. By utilizing the conditional use permit review process, the Planning Commission and City Council can evaluate the potential impacts on neighboring properties and include conditions on the operation of the home occupation. He further added that an application for a CUP for the home occupation would require the inclusion of the following:

- Property survey or sketch drawn to scale detailing the setbacks of the accessory structure and the proximity of structures on adjoining properties.
- A scaled interior site sketch illustrating the proposed home occupation in the accessory structure.
- A letter outlining the scope and nature of the occupation, involving operating hours, days of the week, and similar details.

Mr. Grisdale advised that the text amendment does not include provisions for outside employees; rather it clarifies some of the types of home occupations which are not permitted and recommends inclusion of a few additional uses on the list. He added that they are proposing to take dance instruction off of the list. Furthermore, a provision was included which clarifies the intent of the home occupation standards (Section 18-19-2.2) and that the language that was added clarifies that there should be no interruption, congestion, or change to the character of the neighborhood in terms of traffic or vehicular parking resulting from a home occupation. He concluded his presentation by stating that he is available to answer any questions from the Board.

Chairman Wiley called for questions and discussion from the Board.

Commissioner Shickle stated that at the Work Session, Mr. Moore had made a recommendation that perhaps some uses could be allowable without having to go through the process if they are presently allowable in the home.

Mr. Grisdale responded that Mr. Moore had made a suggestion that if an accessory structure meets the required setbacks that potentially they could be allowed by-right as well. He added that he did not receive a unanimous opinion back from the Commission on that so he did not make an inclusion within this text amendment but that it is something that makes sense. Some of the large differences that we are trying to weigh here are in accessory structures and that they typically do not meet required setbacks so there is a distinction between allowing for a home occupation in those structures which may be up against the property line versus accessory structures that meet the setback requirements. From staff's perspective, that would be something that we would be open to if the Commission wanted to make that recommendation.

Commissioner Shickle asked if that is what some of the Council members were talking about to make it easier for people to conduct business in the City of Winchester as part of this objective.

Mr. Grisdale stated that some of the discussion from the Work Session involved whether there is a desire to allow for certain explicit uses by-right, such as office space or space for crafting,

within an accessory structure and that he is unsure if there has been a final opinion on that from the Commission's perspective.

Commissioner McKannan asked how staff will address the issue of traffic congestion. He added that he knows that there is a provision in the text, Section 18-19-2.2, stating "there shall be no interruption, congestion, or change to the character of the neighborhood in terms of traffic or vehicular parking resulting from the operation of the home occupation" but he stated that it will happen. He asked how the City plans to enforce this issue.

Mr. Grisdale said that basically we will take everything on a case-by-case basis and investigate these concerns and complaints especially if they are having a negative impact on the neighboring properties in the vicinity.

Commissioner McKannan added that it will happen especially if staff is planning to take the whole dance instruction thing off the list of excluded home occupations; it is just a matter of time before this section is tested. He added that he is all for expanding the fact that people can have a home business but it will be just a matter of time until you are faced with this situation.

Commissioner Slaughter asked if we do allow use by-right and if there is a situation that causes problems because of that use. He then asked if it would be hard to facilitate the termination of that use if it is a by-right use versus use allowed by a conditional use permit.

Mr. Grisdale responded that it would be a little more difficult because it would be established as a by-right use which has some non-conformities attached versus a conditional use permit where, if there are violations of that conditional use permit, it can go back to City Council for consideration.

Commissioner Slaughter added that there are some pros and cons. On one hand, allowing some by-right use might make it easier if the applicant does not have to come through you but on the other hand, it might make it harder for you.

Commissioner Correll asked about a by-right use where a person could use a home office in a manner in which it does not draw clientele from the immediate public. He questioned whether there would be concerns about traffic congestion if there is a limitation on who can visit that office.

Mr. Grisdale stated that it is a possibility. While going through the process of drafting up this ordinance, there was some consideration about putting some limitations on visitors or clients coming to the property but rather than getting in to a bunch of splitting hairs with the Home Occupation Ordinance, he said he would prefer not to get into that level of detail. It is one possible way to address these issues, that is to insert situations to limit the outside clients or people coming to the business.

Commissioner Correll stated that there could be a compromise, where you can say that there are no clients from the outside and then you would not have a traffic issue but there would still be a place where the homeowner can work on-site at their business. That would cut down on the

administrative burden on you while still allowing maximum flexibility to the business. He added that he would be in favor of that by-right use but only with the consensus of the rest of the Commission.

Councilor Tagnesi said, using the example of the jewelry party on the weekend, people show up for a couple of hours and there is traffic in the neighborhood but it is really not an issue because it only happens once in a while for a couple of hours. He then added that he does not believe that it is a big issue.

Commissioner McKannan added that it is going to be tough to tell people that they cannot bring in any outside business from the community.

Mr. Grisdale said that traditionally with the home occupations that we have allowed in the main residences, we have not had, for 98-99% of the cases, negative impacts from those where there is too much foot traffic coming in or out of the house or too much traffic impacts. Most are small scale and you only see limited situations such as what Councilor Tagnesi described where there may be one night a month or one night per quarter where there is some kind of heavier impact on the community. The majority are very low impact.

Commissioner McKannan asked what the typical process is for approving these applications. Is it going to be brought before you and then is the Board going to have some sort of say in it or is City Council going to have some sort of say in it as far as the impact it is going to have on the community as far as if it is deemed a traffic nightmare in the neighborhood or something like that.

Mr. Grisdale advised that presently as the provisions are written, if it is a main dwelling, it is an administrative review process. If someone comes in and applies for a home occupation, he reviews the application to make sure that it is consistent with the home occupation regulations and if it is, he signs off and the applicant gets their license with the Commissioner of Revenue's office. This proposal here would allow for use in the accessory structure. The person would have to apply for a conditional use permit so it would come through Planning Commission for recommendation and then go to City Council for approval or denial.

Chairman Wiley called for additional questions from the Board.

Chairman Wiley opened the Public Hearing.

Susan Rhodes, 364 Parkway Street, addressed the Board and stated that she is delighted about this proposal adding that she is an artist and that she would like to be able to work in a detached structure. She added that she does not want a sign or an employee, nor does she want to teach. She said that she has had a home occupation since 2007 and has never had clients come by because it is not that type of business. She likes the idea of having extra space and she likes the by-right. She also stated that she feels the neighborhood keeps a watch on itself.

Chairman Wiley closed the Public Hearing.

Chairman Wiley called for discussion from the Board.

Commissioner McKannan stated that he is pretty satisfied with the oversight that will be involved with this. He added that there will be enough checks and balances to hopefully thwart any issues that may be foreseen with a potential business. He added that he is comfortable with the text amendment the way it is now.

Commissioner Slaughter stated that he agrees. He added that he thought maybe he had a little concern when this first came up but hearing how it works with the Comprehensive Plan and that it does not allow other employees, this is good. Also, as far as the Conditional Use process, it is a good first step that can be revisited as we evolve, especially when we see what types of applications that staff is getting. It can be looked at and changed so he is supportive of it as is.

Commissioner Correll asked what the process is for a small business owner to do what they want to do at their own place through the proposed permitting process.

Mr. Grisdale stated that should this ordinance be adopted, the applicant would contact staff to outline what it is that they are looking to do, staff would then evaluate what they are looking to do and whether it is in the house or an accessory structure. If it is going to be in an accessory structure, staff would advise that it will require a Conditional Use Permit. We would have a pre-application meeting to outline exactly what that process involves, the timelines, the application requirements, and things like that, and then we would walk them through the process. Then they would come here to the Planning Commission for the public hearing, recommendation, and then to City Council for the final decision.

Commissioner Correll then asked how many months an applicant would have to put their business on hold.

Mr. Grisdale stated that it depends on the time of the application, between two and three months.

Commissioner Correll stated this is his concern with it, that if someone wants to do something small, they have to put their business on hold when clearly there is no impact on the community. He added that he would be in favor of an additional section to allow by-right small business owners where there is no impact on the community and no customers visiting the site, to allow them the flexibility to use their own property as they will on their own property.

Commissioner Shickle asked for clarification, stating that today if someone wants to operate a home occupation in their home and it conforms, then they can come in to the office and get an administrative approval. If this ordinance gets adopted, it would open up further possibilities for them to have the choice if they have an accessory structure to do that same business in that structure. So, in theory, the person would not have to put her business on hold because they could still operate the business from the home until such time as the conditional use permit is issued.

Mr. Grisdale stated that is correct.

Commissioner Shickle stated that there would be no imposition on the way the person is doing things now.

Mr. Grisdale stated that is correct and that if someone applied to have a business in their home, provided they meet the home occupation regulations, they can get instant approval. Typically it is same-day approval so, in theory, they could apply for the approval in their house while the conditional use permit process is going through the review.

Commissioner Shickle stated that really we are opening up a new opportunity for those people who are currently operating a business and for the people who do not have the space in their current home but they do have an accessory structure, this is opening up another opportunity for them to operate their business on-site.

Mr. Grisdale stated, that is correct.

Chairman Wiley called for further discussion. Hearing none, he called for a motion.

Commissioner Slaughter moved to forward TA-13-493 to City Council with a favorable recommendation because the amendment, as proposed, presents good planning practice by providing for expanded opportunities for residents to conduct home occupations in accessory structures while providing for case-by-case review of potential impacts on neighboring properties.

Commissioner McKannan seconded the motion.

Voice vote was taken and the motion passed 7-0.

ADJOURN:

With no further business, the meeting adjourned at 3:22 p.m.

William Wiley, Chairman