

PLANNING COMMISSION MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, October 21, 2014, 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, Vice Chairman Slaughter, Commissioner Smith, Commissioner McKannan, Commissioner Shickle, Commissioner Loring
ABSENT: None
EX-OFICIO: Councilor Tagnesi, City Manager Freeman
FREDERICK CO. LIAISON: Commissioner Kenney
STAFF: Aaron Grisdale, Tim Youmans, Josh Crump, Catherine Clayton
VISITORS: Norma Tindell, Patrick Sowers

APPROVAL OF MINUTES:

Chairman Wiley called for corrections or additions to the minutes of the September 16, 2014, meeting. Hearing none, he called for a motion. Commissioner Loring moved to approve as submitted. Commissioner Slaughter seconded the motion. Voice vote was taken and the motion passed, 6-0.

CORRESPONDENCE:

Mr. Youmans advised the Commission that they have received a revised Staff Report for CU-14-558 which Mr. Crump will address.

CITIZEN COMMENTS:

None

REPORT OF THE FREDERICK COUNTY PLANNING COMMISSION LIAISON:

Commissioner Kenney presented his report from their October 1, 2014, meeting. He stated that they had one discussion item and three public hearing items. The discussion item was for the Southern Frederick Land Use Plan as an amendment to the 2030 Comp Plan. It was just a discussion item to pass along to the Board and back to staff. Two of the public hearing items were for ordinance amendments to parking buffers and screening requirements between an R-4 district and also in the M-1 district as it pertains to outdoor storage, common areas, and common storage use. The third public hearing was on a rezoning. All items were forwarded to the Board of Supervisors. He stated that there was no meeting on October 15, 2014, and there will be a work session for the Board of Supervisors coming up on November 3, 2014.

PUBLIC HEARINGS – New Business:

- A. **CU-14-558** Request of VFW Post 2123, Inc., for a Conditional Use Permit to establish a Private Club for the VFW Post for the property at 121 Bruce Drive (Map Number 311-01-A-5), zoned Highway Commercial (B-2) District. **(Mr. Crump)**

Mr. Crump presented the staff report stating that this is a request to allow use of the property and to construct a new building to be used as a private club. The site is currently a vacant lot but the VFW Post wishes to establish a Post Home. The applicant has proposed hours of operation for the club from 4:00 p.m. to 10:00 p.m. Tuesday through Thursday, 1:00 p.m. to midnight Friday and Saturday, and 1:00 p.m. to 8:00 p.m. Sunday. The proposed use is likely to have a minimal impact on surrounding properties

during business hours, however, after business hours and on weekends is where the most impacts would occur. The applicant has proposed up to eight (8) days per month to have live entertainment, generally on Friday and Saturday evenings and/or Sunday afternoons. With the potential number of members and guests between 75 to 100, this could cause potential parking issues. There are 34 parking spaces called for on-site on their proposed site plan. Staff sought comments from Jennifer Jones, Winchester Parks and Recreation Department and the Chief of Police. Ms. Jones said that she had no problem with the request as long as the club does not impede access to Weaver Park and their events. The Chief of Police also said that he has no problem with the request as there have been no problems with this group in the past. Staff also contacted the Blue Ridge Youth Soccer Association and the Winchester Rugby group, both of whom utilize Weaver Field. Neither group indicated that they would have a problem with the request. Mr. Crump concluded by stating that he is available for questions.

Chairman Wiley called for questions from the Commission.

Commissioner Loring asked about parking for the park to which Mr. Crump indicated that the park has about a dozen spaces and, on occasion, they use some of the grass area for overflow. Commissioner Loring asked about the site plan that was referenced and if it would be for the overflow parking. Mr. Crump stated that the site plan would be for the building that they intend to construct on the vacant lot. Commissioner Loring then asked how overflow parking would be addressed. Mr. Crump said that one recommendation is for the VFW to get permission from the City if the post knew they were going to have a big event.

Mr. Youmans said a point of clarification on the site plan that the Commission currently has is that it is only conceptual and there would be greater scrutiny of it with the actual site plan review.

Chairman Wiley Opened the Public Hearing

The applicant chose not to speak on his own behalf.

Norma Tindell, 136 Bruce Drive, spoke and expressed her concerns about parking as it is already a big issue. She stated that people already are parking along the street and they block resident's driveways. She said that this is totally nonconforming to what they already have in the neighborhood. She also said that she is concerned about extra traffic and that the City closed off the entrance to Weaver Park that did come off of Papermill Road to allow for a gravel parking space for the park. She closed by saying that when there is soccer or rugby, the field where they want to build this is used for overflow parking and that parking is going to get worse if this is allowed.

Mr. Youmans stated that Bruce Drive was annexed in to the City during the 1970s and was not up to standards at that time. He added that Bruce Drive received some improvements in conjunction with some development. There was some sidewalk expansion on the north side and a wider street. The lodge would have to do frontage improvements on the south side of Bruce Drive along their frontage. So there would be improved street conditions on the south side of the road, basically widening from the center of the street including pavement widening, curb and gutter installation, and sidewalk installation.

Chairman Wiley asked if parking is permitted on the street to which Mr. Youmans responded yes unless it is posted or if there is a fire lane. Mr. Youmans added that the only additional curbside parking that would be practical would be where they widen out and create parking along the front. They do have a separate in and out driveway so there will only be a minimal amount of frontage across their property in between those driveways.

Commissioner Shickle asked if Winchester Rugby and Blue Ridge Soccer are each responsible for parking, that is, do they have an agreement with the park that addresses their parking. Mr. Youmans

responded that staff can check with the Parks and Rec director to see how those arrangements are structured. Historically, if the parking lot is full, people just went on to the grass at the north end at Weaver Park. Commissioner Shickle asked if the space that is currently being used for overflow parking is developed, is it a capacity issue and do they need to look for other space or how does it get worked out. Mr. Youmans said that it is something that staff will need to look in to and that he was unaware that the rugby group was using the field which will now be improved, perhaps they can work out arrangements. Presumably rugby is played during the daytime hours and the lodge's uses will predominantly be evening hours. Commissioner Shickle then asked if they have permission to park on the private property now to which Mr. Youmans said that he is guessing that they do not.

Chairman Wiley Closed the Public Hearing

Chairman Wiley called for discussion from the Commission.

Commissioner Smith asked what type of building is located in front of the parcel in question and if they allow parking there for some of these events. Mr. Crump responded that it is a tire company and that if the VFW and the tire company want to work out an agreement, staff would be happy with that but it would be between the two entities.

Commissioner Slaughter then stated that the property currently is zoned B-2 so anything that is allowed by-right in the B-2, they can just go ahead and do without having to get a conditional use permit to which Mr. Crump responded that is correct and that in the B-2, a private club is listed as a conditional use permit. Commissioner Slaughter then stated that, in general, this seems that this is a better situation than what could go in by-right even though there are challenges with parking. Mr. Youmans said that it is worth noting that the properties on the north side are a mix of residential and commercial/industrial uses but the zoning there is actually limited industrial on the north side. That is actually more intensive zoning on the north side than you have with the B-2 zoning on the south side.

Commissioner McKannan then asked the applicant if they find their busiest days to be the live entertainment days to which the applicant responded yes. Commissioner McKannan then asked how many automobiles would be going on to their site during the busy times. The applicant responded that he cannot recall at the old post where they would have more than 35 cars. Commissioner McKannan then asked if it is possible that the Planning Commission initiate a dialog with Parks and Rec and advise them that there may be some issues with parking. Mr. Youmans said that staff can certainly do that.

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

*Commissioner Smith moved to forward **CU-14-558** to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The recommendation is subject to the following:*

- 1. The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;*
- 2. Strict obedience with all local and state laws, especially those pertaining to ABC licensing;*
- 3. Use to end no later than **8 pm** Sunday through Thursday and no later than **12 am** Friday and Saturday;*
- 4. Use allowed no more than **8** days of live entertainment per month;*
- 5. The establishment is precluded from parking along Bruce Dr. or at Weaver Park unless permission is given to VFW Post 2123 from the City; and,*
- 6. Staff review and approval of the required site plan.*

Commissioner Loring seconded the motion. Voice vote was taken and the motion passed 6-0.

B. TA-14-593 AN ORDINANCE TO AMEND AND REENACT SECTION 10-6 AND ENACT SECTION 10-9 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIDE AND REAR YARD SETBACK REQUIREMENTS AND SPECIAL PROVISIONS FOR REDEVELOPMENT SITES IN THE COMMERCIAL INDUSTRIAL (CM-1) DISTRICT. (Mr. Grisdale)

Mr. Grisdale presented the staff report stating that the proposed is a privately sponsored text amendment pertaining to side and rear yard setback requirements and special provisions for redevelopment sites in the CM-1 District. This amendment would allow for properties which have been identified as a “redevelopment site” within the Comprehensive Plan Character Map, to be eligible for zero setbacks on the side and rear property lines. Additionally, this will open opportunities to allow for the creation of property lines along a shared common boundary between two connected buildings; current Zoning Ordinance requirements do not allow for such subdivisions when dealing with connected buildings.

This proposal is similar to a privately sponsored amendment which was submitted in 2009 for commercial centers in the B-2 district. At that time, the desire was to allow for the creation of new property lines and subdivisions for properties that qualify as a commercial center. As long as adequate easement provisions are established to provide for inter-parcel access, utilities, storm water management, etc., staff believes the ordinance will be consistent with good planning practice by providing an additional tool for property owners and developers to implement redevelopment in areas identified within the Comprehensive Plan for such activity.

While this zoning amendment will allow for future property lines through connected buildings, there are also considerations regarding fire proofing and protection which will be separately considered through the application of the Uniform Statewide Building Code, due to the close proximity of building walls to the property line. Staff believes this amendment is consistent with good planning practice and may help future redevelopment by allowing for current buildings in designated redevelopment sites to be considered for subdivision while being consistent with the Zoning Ordinance’s development standards. Staff recommends approval of the amendment. He concluded by stating that he is available for questions.

Chairman Wiley called for questions from the Commission.

Commissioner Loring commented for clarification, would this eliminate the need for further review. Mr. Grisdale stated that in some instances, it would eliminate the need to go to the Board of Zoning Appeals for some side yard and/or rear yard deficiencies. Commissioner Loring then asked if it is across all zoning categories to which Mr. Grisdale responded that it would be just the CM-1 zoning districts.

Commissioner Slaughter said to clarify further, it is strictly the CM-1 zoning so, if two parcels were CM-1 and some other zoning, this would not apply to which Mr. Grisdale responded that is correct. Mr. Grisdale then advised that this is tied to redevelopment sites and in the proposed Ordinance language, it is narrowly defined as areas identified within the character map of the Comprehensive Plan as redevelopment sites. Therefore it is not even the entire CM-1 District, it is what City Council and the Planning Commission had specifically identified as candidates for redevelopment. It is strictly within the bounds of the CM-1 District and then other buffer requirements would “kick in” if they are adjacent to other zoning districts.

Chairman Wiley Opened the Public Hearing

Patrick Sowers, applicant, stated that Mr. Grisdale did an excellent job summarizing the request and that he believes this request will add options to rebuild sites and it is a good addition to the Zoning Ordinance. He concluded by stating that he is available to answer any questions.

Chairman Wiley called for questions from the Commission.

Commissioner Loring asked if Mr. Sowers has a project in mind for one of the sites to which Mr. Sowers stated that the impetus for the proposal is the Zeropak facility.

Chairman Wiley Closed the Public Hearing

Chairman Wiley called for discussion from the Commission. Hearing none, he called for a motion.

*Commissioner Loring moved to forward **TA-14-593** to City Council with a favorable recommendation because the amendment, as proposed, presents good planning practice by providing for redevelopment opportunities in existing structures within designated redevelopment sites as identified within the Comprehensive Plan.*

Commissioner Slaughter seconded the motion. Voice vote was taken and the motion passed 6-0.

PUBLIC HEARINGS – Continued

None.

NEW BUSINESS:

TA-14-476 AN ORDINANCE TO AMEND AND REENACT ARTICLE 17 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO NONCONFORMING USES AND VESTED RIGHTS. (Mr. Grisdale)

Mr. Grisdale presented the staff report stating that this amendment is a staff drafted amendment intended for public initiation through the Planning Commission. As part of an internal zoning ordinance review team, numerous areas were identified within Article 17 that needed to be updated to conform to the Code of Virginia, as well as modern planning practices. As a result of a several month long editing process, staff has finished a complete rewrite of Article 17.

The Code of Virginia §15.2-2307 enables localities to adopt provisions pertaining to nonconformities, as well as providing for certain provisions that must be included within local Zoning Ordinances. This ordinance amendment incorporates the requirements of §15.2-2307 as well as applying more specific uniform standards for nonconforming uses, structures, and lots of record. The revised Article has been restructured as to allow for better readability and organization among topics. The previous ordinance was not well organized and as a result the provisions were difficult for citizens, businesses and developers to read and understand. Furthermore, most of the provisions of the ordinance had not been revisited or revised since the adoption of the 1976 Zoning Ordinance.

The new Article is categorized into four parts: General Provisions, Nonconforming Structures, Nonconforming Uses, and Nonconforming Lots:

1. General Provisions –
 - a. Definitions of common terms used in the Article
 - b. Standards that apply in each nonconformity situation
 - c. Vested rights
 - d. Determination of a nonconforming status by the Zoning Administrator
2. Nonconforming Structures –
 - a. General requirements that apply to all nonconforming structures
 - b. Enlargement of nonconforming structures
 - c. Modification/restoration/replacement of such structures

- d. Destruction of nonconforming structures
- e. Common repairs and maintenance
- f. Expiration of nonconforming status
- 3. Nonconforming Uses –
 - a. General provisions that apply to all nonconforming uses
 - b. Expiration of a Nonconforming Use
 - c. Change of a Nonconforming Use
 - d. Expansion of a Nonconforming Use
- 4. Nonconforming Lots –
 - a. Development on a Nonconforming Lot
 - b. Highway Realignment or Condemnation

Some of the important specific changes within the rewrite of Article 17 include:

1. Establishing clearer provisions as to how a determination of a nonconforming status occurs by the Zoning Administrator. (Section 17-1-4)
2. Codifying the existing practice of allowing for the modification of a nonconforming structure provided that the modification reduces the extent of the nonconformity. (Section 17-2-3)
3. Modifying the amount of repair/maintenance that can be conducted on a nonconforming structure. Previously, owners were limited to 10% of the replacement value of the structure per calendar year; now owners can complete repairs up to 35% of the replacement value of the structure per year. (Section 17-2-5)
4. Allows for the owner of a nonconforming use to pursue a conditional use permit (CUP) to change an existing nonconforming use to a more restricted and less intensive nonconforming use. This will allow for greater flexibility for owners to use their property, while also measuring and mitigating potential impacts from the change in use. The ordinance includes specific evaluation factors to be considered by the Planning Commission and Council for each proposal. If Council believes that the proposal is consistent with the Comprehensive Plan, the neighborhood, and will not have unmitigated impacts they can approve the new use. (Section 17-3-3)

Staff believes that this is a more readable ordinance that makes the City's standards clearer for the public to understand. The standards are also consistent with the enabling provisions of the Code of Virginia and are consistent with good planning practice. Mr. Grisdale stated that staff recommends initiation and that he is available for questions.

Chairman Wiley called for questions from the Commission.

Commissioner Smith asked if there is a person who purchases a building that is not in conformance to today's standards and they want to do very little to the building, would that be restrictive. Mr. Grisdale said that this is actually loosening the current standard to make it a little more permissive in the future, so if someone purchases a property and they want to fix it up because it is really run down from the lack of maintenance over the years, currently the individual would be limited to 10% of the value of the structure in terms of the amount of repairs. This would give additional flexibility to that property owner to make sure that it is up to code. It would also establish a cap so that a person could not completely retrofit the building. If the owner wanted to do that, then they would need to completely comply with today's ordinance requirements.

Commissioner Loring asked if the updated ordinance put any property owner at legal or financial risk if this amendment would be approved. Mr. Grisdale said that anytime there is an ordinance change there is

potential impact to property owners, sometimes more favorably, sometimes less favorably but this ordinance proposal would be more favorable towards a property owner in terms of allowing for the incremental approach.

Commissioner McKannan said that it looks like there is a loosening of the restrictions a little and it appears that it would benefit a lot of people and that flexibility is good. Mr. Grisdale said that staff does come across a variety of situations day-to-day. The current ordinance is fairly rigid in most all situations, a person is required to come under today's ordinance requirements and so this one is more permissive in terms of trying to achieve that more over time. Mr. Grisdale said that in terms of the percentages and values, staff is willing to evaluate those if there are specific concerns that the Commissioners have, they are not necessarily set in stone and staff would be glad to further evaluate them with the Commission. Mr. Youmans said that it gives the property owner more flexibility where currently they can only make improvements up to 10% of the property's value, with this proposed change, they could make up to 35% improvements. It will allow for a continuation of nonconforming uses and it really is drafted in favor of the property owner.

Hearing no other questions or discussion, Chairman Wiley called for a motion.

*Commissioner Smith moved that the Planning Commission initiate **TA-14-476** pursuant to the attached resolution. Commissioner Loring seconded the motion. Voice vote was taken and the motion passed 6-0.*

OLD BUSINESS:

None.

OTHER BUSINESS:

A. Administrative Approval(s):

- 1) Site Plan Report
 - (a) **SP-14-589** 207 N. Kent Street Chopstick Café – Major Revision

Commissioner Loring moved to approve. Commissioner McKannan seconded the motion. Voice vote was taken and the motion passed 6-0.

- (b) **SP-14-611** 1900 Valley Avenue The Lofts at Jubal Square – New

Commissioner Loring moved to approve. Commissioner Smith seconded the motion. Voice vote was taken and the motion passed 6-0.

- 2) Minor Subdivision Report
 - (a) **MS-14-560** 548 & 600 Merrimans Lane Boundary Adjustment & Lot Consolidation

Presentation was made for informational purposes.

- (b) **MS-14-590** 207 N. Kent Street Lot Consolidation

Presentation was made for informational purposes.

ADJOURN:

With no further business before the Commission, the meeting adjourned at 3:53 p.m.