

PLANNING COMMISSION MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, November 18, 2014, at 3:00 p.m. in Council Chambers, Rouss City Hall, 15 N. Cameron Street, Winchester, Virginia.

CALL TO ORDER: Vice Chairman Slaughter called the meeting to order at 3:00 p.m.
PRESENT: Vice Chairman Slaughter, Commissioner Smith, Commissioner McKannan, Commissioner Loring, Commissioner Wolfe, Chairman Wiley (Arrived late)
ABSENT: Commissioner Shickle
EX-OFFICIO: Councilor Tagnesi, City Manager Freeman
FREDERICK CO. LIAISON: Absent
STAFF: Tim Youmans, Aaron Grisdale, Josh Crump, Catherine Clayton
VISITORS: Brent Markee, Charles Jackson, Debborah Walker, Chris Maben, Ben Pelletier, James Testa, Joshua Schakola, Arthur Christjohn, Shane Powers

APPROVAL OF MINUTES:

Vice Chairman Slaughter called for corrections or additions to the minutes of the October 21, 2014, meeting. Hearing none, he called for a motion. Commissioner Smith moved to approve the minutes as submitted. Commissioner McKannan seconded the motion. Voice vote was taken and the motion passed 5-0.

CORRESPONDENCE:

Mr. Youmans advised the Commission that there are no changes to the public hearing items on the agenda however; they have received an updated agenda only as it relates to the addition of two site plans for Administrative Approval under Item 6A, SP-14-650 and SP-14-713

CITIZEN COMMENTS:

None.

REPORT OF THE FREDERICK COUNTY PLANNING COMMISSION LIAISON:

None.

PUBLIC HEARINGS – 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 is a staff drafted amendment intended for public initiation through the Planning Commission. This amendment is a staff drafted and a Planning Commission initiated amendment. 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 completed a

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 be 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 concluded by saying that staff recommends a favorable recommendation and that he is available for questions.

Vice Chairman Slaughter called for questions from the Commission.

Commissioner Loring asked if staff has received any comments from the public to which Mr. Grisdale responded no, he has not. Commissioner Loring then reiterated that the City will be fully compliant with the State Code to which Mr. Grisdale responded yes, with this particular ordinance.

Vice Chairman Slaughter asked, that if the Commission finds that this does not have the desired effect, it would be easy later to change certain parameters of this and roll back some things that we find may be abused. Mr. Grisdale responded that if we do find things that are not working as intended, we are always able to go back through this process and make those adjustments and fine tune them and try to get back on the track that Planning Commission and Council desire.

Vice Chairman Slaughter Opened the Public Hearing

Vice Chairman Slaughter Closed the Public Hearing

Vice Chairman Slaughter called for discussion from the Commission.

Commissioner Smith said that he believes it is more advantageous for property owners. Councilor Tagnesi asked if the 35% came from the Code of Virginia to which Mr. Grisdale responded no, rather it is something that staff came up with. The areas that State Code mandates in the language that we incorporate in our ordinance basically pertains to vested rights, the expiration of a nonconforming use or status; it is pretty narrow, the rest of the ordinance is up to the locality and that is one of the provision that is. Vice Chairman Slaughter said that he is back and forth on this because he likes the rigidness that we have right now with getting people to a conforming use but he can see the logic in giving people a bit more flexibility so it does make sense to give it a chance knowing that if it is not working, the Commission can revisit it and make it better later.

Hearing no other discussion, Vice Chairman Slaughter called for a motion.

Commissioner Loring moved to forward TA-14-476 to City Council with a favorable recommendation because the amendment, as proposed, is consistent with good planning practice by establishing clear provisions for nonconforming uses, structures, and lots, as well as ensuring current provisions are consistent with the Code of Virginia.

Commissioner McKannan seconded the motion. Voice vote was taken and the motion passed 5-0.

RZ-14-625 AN ORDINANCE TO REZONE 0.064 ACRES OF LAND AT 116 W. LEICESTER STREET (Map Number 192-01-S-12) and 118 W. Leicester Street (Map Number 192-01-S-13) FROM MEDIUM DENSITY

RESIDENTIAL (MR) DISTRICT ZONING WITH HISTORIC WINCHESTER (HW) DISTRICT OVERLAY TO
RESIDENTIAL BUSINESS (RB-1) DISTRICT ZONING WITH HISTORIC WINCHESTER (HW) DISTRICT OVERLAY.
(Mr. Youmans)

Mr. Youmans presented the staff report stating that this request is to conditionally rezone two adjoining lots along the north side of W. Leicester Street . The request does include proffers and these proffers are such that it restricts the use of those lots to residential use only, specifically two townhouses. Rezoning to the RB-1 district would allow for construction of two townhouses similar in scale to the two blighted dwelling units that were demolished on the properties in recent years. The MR zoning would not allow for an attached unit, not even a single family attached, so it makes it impractical to do that under MR. There is absolutely no interest on the part of the property owner to have any kind of commercial use there and the proffers would forever prohibit any kind of commercial use. That is the one concern that staff heard from people who called the Planning Department but staff did reassure them that, as it is proposed, there would be no opportunity to do anything other than one townhouse unit on each of those two lots. The Comprehensive Plan calls for Neighborhood Stabilization in this area. The conditional rezoning would support appropriately scaled redevelopment of two townhouse dwellings (one dwelling per lot) on an infill basis. The two attached dwellings that previously existed on the two lots were demolished a few years ago due to their blighted condition. The current MR zoning would not permit any reasonable use of the property. Additionally, the rezoning does not affect the Historic Winchester (HW) overlay zoning. Any construction on the lots would need to comply with historic district standards and a certificate of appropriateness would need to be issued by the Board of Architectural Review. Mr. Youmans reiterated the fact that there is absolutely no chance that there can be any kind of commercial use. He concluded by stating that staff recommends approval and that he is available for questions.

Vice Chairman Slaughter called for questions from the Commission.

Commissioner McKannan asked about the MR zoning and if the property stays with this zoning, the applicant could not construct the townhouses to which Mr. Youmans said that they could not. Commissioner McKannan then asked what the applicant could do if the applicant built on there. Mr. Youmans said that it would have to be very, very narrow single family detached residences. Particularly the westerly lot as it becomes so narrow that it almost becomes unreasonable under that land use restriction even to be able to do the minimal kind of use on the property. Commissioner McKannan then asked, if the applicant would combine the two lots, what possibilities would they have at that point. Mr. Youmans said that if the applicant is forced to combine the two lots then you could build one single family detached dwelling but then you are forcing the property owner to do a resubdivision of the land and that includes a lengthy process.

Commissioner Loring - for clarification, the townhouses that are proposed are attached because there is no setback. Mr. Youmans said that they are attached and that is desirable from a compatibility standpoint. Mr. Youmans said that this particular street has a number of narrow lots along the North side. This is effectively providing the owner a means to rebuild back in character with that particular section of the neighborhood. Commissioner Loring then asked if they would be attached to the house that was originally attached to the one unit that was demolished to which Mr. Youmans said, that as long as it can meet the building code, the assumption is that they would build right up to it. Vice Chairman Slaughter asked if they would have to get permission from the other property owner to build in such a manner to which Mr. Youmans said that as long as the applicant stays within the boundaries of their own property, he does not believe that they would need permission from the other property

owner; however, it would be up to the building official to determine as part of the building permit review process how the zero lot line construction has to be done.

Commissioner Smith asked if the townhouses that have been proposed to be built will be the same height and width as the previous house to which Mr. Youmans said that decision would be up to the applicant to propose a layout and then the Board of Architectural Review to decide the aesthetics of it. Mr. Youmans reiterated that the properties are in the historic district and they would remain in the historic district.

Vice Chairman Slaughter – sensing that there may be a question that comes up in the public hearing, he asked Mr. Youmans to explain that procedure. Mr. Youmans said that a site plan for townhouse development would be required and staff would be looking at how they are providing off-street parking spaces and that would be the main thing depicted on the site plan other than the unit dimensions themselves. Mr. Youmans said that the redevelopment of the easterly lot would have to respect the easement for the alley.

Commissioner McKannan asked if there is a reason that this was originally zoned MR versus HW now since there were attached dwellings there prior to this or is this something that was grandfathered in. Mr. Youmans said that when they created the zoning map originally for this area, probably 1960, they basically struck a line center between Washington Street and Braddock Street without necessarily looking at the characteristics of these lots being much smaller and more consistent with the size requirements in the RB-1 district rather than the MR. He added that it was not an issue until the owner demolished the blighted structures.

Vice Chairman Slaughter asked if the applicant would like to address the Commission.

Brent Markee, Triple T Construction, on behalf of the applicant, stated that when the owner had purchased the properties, the original intention was to restore the structures for rentals; however, based upon his understanding, the units were beyond restoration and needed to be demolished. He then said that it is his understanding that the owner cannot combine the lots to build even a single family dwelling, which financially would not have been feasible anyway. He reiterated that the owner has no desire to encroach in the right-of-way for the alley and there is no desire to attach the new unit to the other unit because it has now been repaired and it looks very nice. He said that he would be glad to answer any other questions.

Vice Chairman Slaughter Opened the Public Hearing

Chris Maben, adjoining property owner, said that he feels that the neighborhood is represented here and that we are opposed to turning this in to a high density situation. Essentially it is a very strange lot and the parking in this area is already challenged. We are opposed to anything other than a single family home.

Charles Jackson, owner of 110, 112, 113, and 114 W. Leicester Street, stated that the applicant does not own the alley and that he has part of the alley and he uses it to pull trash out from the rear of his property. He also said that parking or using the alley for traffic will present a hazard. He said that he does not want townhouses there because townhouses do not fit in to the historic district.

Deborah Walker, 808 Kennedy Drive, said that although she no longer lives in the neighborhood, she has taken over some property on Leicester Street that was owned by her uncle, Dr. H.M. Brooks. She

said that she agrees with Mr. Jackson. She then said that she is looking to do some upgrading to some of the properties that she owns there and she has to do what the Board of Architectural Review says and that she does not see townhouses fitting in the neighborhood. She also said that this area is not conducive for a new structure. She then said that if the easement to the alley is "shut off," she would be landlocked to the parcel that she owns behind 110 W. Leicester. She closed by saying that she is not opposed to a single family home if it is constructed to fit in with the rest of the houses.

Patricia Bland, 124 W. Leicester Street, stated that she disagrees with putting a new home there because it would not look right. She said that when she wanted to do things to her house, like vinyl siding, she wasn't allowed.

Brent Markee, representative of the applicant, reiterated that the alley would not be blocked and everything will be done to historic standards, and the lots cannot be combined. We would like to build something there but we cannot build a single family home because zoning will not allow it.

Vice Chairman Slaughter called for order in Chambers.

Vice Chairman Slaughter Closed the Public Hearing

Vice Chairman Slaughter called for discussion from the Commission.

Commissioner Smith asked if there is a potential plan or design for the townhouses that the applicant wants to build here. Mr. Youmans said that we do not because they did not proffer a layout but because they are in the historic district, it does fall upon the BAR and they do impose standards so that ensures that the character of the new construction will have to adhere to the same standards that the existing development does so, no, they will not be able to use vinyl siding or inappropriate materials.

Vice Chairman Slaughter said to clarify that point, anything that other residents of that street have had to adhere to according to the BAR, the new construction will have to adhere to the exact same criteria and guidelines as what those renovations adhere to. Mr. Youmans said yes, pretty much. The BAR looks at new construction in the context of the historic setting. Commissioner Loring then asked about the height of the building to which Mr. Youmans said that is everything, the scale, the mass, the relationship to the street and adjoining buildings. Mr. Youmans said what would be awkward here is if the Planning Commission insisted on elevations and took on the role of being the determiner of the aesthetics and that would take that away from the entity that City Council has designated to do that which is the Board of Architectural Review so that is why he did not want the Commission to approve a set of plans that the BAR might disagree with.

Commissioner Smith asked about the easement to which Mr. Youmans said that it is on the easterly portion and the alley is still there and the records do not indicate that it is a publicly-platted alley, meaning separate and apart from either property on either side. He added that he believes that it is accurately presented as an alley that is available and must be retained for passage of vehicles but it is partially on the subject property and partially on Mr. Jackson's property. Mr. Youmans said that the applicant has no intention, nor would he be allowed, to encroach in to that alleyway.

Commissioner Loring asked when the two previous structures were demolished, how long ago. Mr. Grisdale advised that it was about 2012 or so. Chairman Wiley asked if that was done on the part of the owner proactively or was it required by the City in terms of constant letters that it be torn down. Mr.

Grisdale responded that it was a result of some long standing code enforcement issues and deferred maintenance at the property which eventually got to a point where it was unsafe. Chairman Wiley said that the owner was proactive about taking care of that, is that correct, to which Mr. Grisdale said the owner was proactively working with the building official on that.

Commissioner Loring – to clarify, there are two lots there, correct. Mr. Youmans said that there are two grandfathered lots there. Commissioner Loring said that the option to build one house on the two lots is not really on the table. Mr. Youmans said that he would clarify that, if the owner was required to assemble those two properties together, which is a resubdivision, something which you would not typically force a property owner to do, but if it were done, they would still not meet standards for lot area, lot width and yard requirements. As for the front yard, we do have a provision that allows for an individual to average the setbacks with the structures on either side so they would not need a variance for the front yard setback to build right up in line with the structures on either side. The difficulty of not supporting the conditional rezoning that effectively allows them to rebuild to the same intensity that was there for possibly centuries, the Commission would be putting a hardship on the owner to say, yes you have two lots but you cannot enjoy your use of those two lots.

Vice Chairman Slaughter allowed Chris Maben to ask Mr. Youmans about the nonconforming lots and whether the Commission would allow the owner to build a single structure since they are nonconforming. Mr. Youmans deferred to Mr. Grisdale. Mr. Grisdale responded that those two lots are nonconforming lots of record and there are provisions in the zoning ordinance in our current nonconforming language that would allow for someone to build on those; however, there are still some minimal standards associated with that. There are some minimum setbacks, yard requirements and things of that nature. Mr. Grisdale added that with the very small size of these two lots, it would very difficult or impractical to build anything on either of those lots just because of how small they are.

Commissioner Loring asked what the actual dimensions of the lots are. Mr. Youmans said that 116, which is the easterly lot, is indicated on the survey to be 26.67 feet wide as compared to the minimum lot width in the MR district which is 60 feet, so you can see that is not even half the minimum requirement. The total square footage of that lot is 3,023 square feet and it does show the alley separate from the lot as an undefined width. Mr. Youmans then said that he does not have the width of the lot at 118 but that it is narrower than the 26 foot lot line.

Vice Chairman Slaughter asked Mr. Youmans to clarify the easement going back in to the back and asked if there are any existing lots back there. Mr. Youmans said that he hesitates to do that because what is depicted on the assessor's records because it appears that the boundaries have been changed or are inaccurate on the assessor's records. He added that to his knowledge, there is not a landlocked parcel in the back that depends only on the alleyway. Vice Chairman Slaughter said that the alley was not created as an easement to a particular lot back there to which Mr. Youmans responded no, it is a very old alley and a very old area of the City and there have been no changes to the property boundaries in that area. Mr. Youmans said that it is one of the few blocks between Boscawen Street and Gerrard Street or actually in this case, Handley Boulevard, where you do not have a defined north-south alley. Vice Chairman Slaughter then asked if there are any units that are not attached there to which Mr. Youmans said that they are all attached. He added that the character of this portion of the MR district is such that all of the units are attached to each other.

Vice Chairman Slaughter then reminded Mr. Charles Jackson that the public comment section is closed as Mr. Jackson was speaking out of turn in the audience. Vice Chairman Slaughter then allowed Mr. Jackson one quick comment.

Mr. Charles Jackson said that staff had things wrong and that the house on 116 W. Leicester Street was originally on Cecil Street and Mr. Washington owned 118 and then he said that they pulled that house in there and it was not attached like the rest of the houses and that is why there is no record of it.

Vice Chairman Slaughter called for additional questions from the Commission. Additionally, he reiterated that the duties of the Planning Commission are tough and in this circumstance, elevations and such are going to be handled by the BAR. What the Planning Commission is looking at is if the zoning fits, the use, and if it is consistent with the Comprehensive Plan. So, whatever decision the Commission makes, there will still be others, BAR and City Council, which will have an opportunity to look at this and offer their insight. He added that having said that, are there any other comments or discussion.

Commissioner Loring stated that what the Planning Commission is focusing on is the zoning and whether it is correct for these two lots. Vice Chairman Slaughter said yes the zoning but also whether it is consistent with the Comprehensive Plan and what it calls for about redevelopment areas and the hardship on the property owner because the property owner has certain rights and the Commission must take that in to account.

Chairman Wiley said that there are challenges. The property owner is trying to be proactive and they are trying to make something work. This is what the City wants and he added that he is in favor of the request.

Hearing no other comments or discussion from the Commission, Vice Chairman Slaughter called for a motion.

Chairman Wiley moved to forward RZ-14-625 to City Council recommending approval as depicted on an exhibit entitled "Rezoning Exhibit RZ-14-625, Prepared by Winchester Planning Department, 10-3-2014" because the request is consistent with the Comprehensive Plan which calls for Neighborhood Stabilization in the site. The approval is subject to the proffers in the proffer statement titled "Rezoning Request Proffer" dated October 31, 2014.

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

Vice Chairman Slaughter reiterated to the residents that the Planning Commission is offering a recommendation. This will go to City Council and residents will have an opportunity to speak there as well and voice any additional concerns you may have with the project.

Vice Chairman Slaughter returned leadership of the meeting to Chairman Wiley at 3:51 p.m.

CU-14-637 Request of Ben Pelletier on behalf of Verizon Wireless for a conditional use permit for modifications to telecommunication antennas at 1955 Valley Avenue (Map Number 251-01- -5) zoned Limited Industrial (M-1) District. (Mr. Crump)

Mr. Crump presented the staff report stating that the applicant is proposing to remove twelve (12) of the fifteen (15) existing antennas and replace them with twelve (12) new antennas as part of an upgrade of existing rooftop telecommunications facilities at 1955 Valley Avenue. The applicant originally applied for a conditional use permit to install a rooftop telecommunications facility at the subject property in 2011. The application was recommended for approval by the Planning Commission and subsequently by City County on May 10, 2011. In the applicant's most recent request, a total of 12 of the original 15 panel antennas would be removed and replaced with antennas similar or smaller in size. The antennas are proposed to be painted to match the brick building as they were originally. Both the existing and proposed antennas will be flush mounted to the existing penthouse in accordance with the prior approval. All proposed improvements are outside and to the rear of the warehouse, the applicant has proposed a number of measures to minimize the potential visual impacts on the surrounding area. He concluded by stating that he is available for questions.

Chairman Wiley called for questions from the Commission.

Commissioner Loring asked if the property owner agrees with this request. Mr. Crump advised that he does and also that the property owner must also sign the original application.

Chairman Wiley Opened the Public Hearing

Ben Pelletier, applicant, said that he is available for questions.

Chairman Wiley Closed the Public Hearing

Chairman Wiley called for discussion from the Commission.

Commissioner Slaughter stated that this is pretty straightforward and that he is okay with the request.

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

Commissioner Loring moved to forward CU-14-637 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 recommended approval is subject to the following conditions:

- 1. Submit an as-built emissions certification after the facility is in operation;*
- 2. Removal of the Nextel equipment as noted on the submitted plans;*
- 3. The applicant, tower owner, or property owner shall remove equipment within ninety (90) days once the equipment is no longer in active use; and,*
- 4. Submit a bond guaranteeing removal of facilities should the use cease.*

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

CU-14-638 Request of James Testa of Testa, Inc., for a conditional use permit single family detached dwelling at 2905 Shawnee Drive (Map Number 332-03- -89) zoned Highway Commercial (B-2) District. (Mr. Crump)

Mr. Crump presented the staff report stating that the applicant had originally intended to develop the property into a commercial use and demolish the existing dwelling. The applicant now wishes to utilize the dwelling as a residential rental property. The proposed use as a single family dwelling does require a CUP within the B-2 District and there will be no upgrades or modifications to this property associated with this CUP. He concluded by stating that he is available for any questions.

Chairman Wiley called for questions from the Commission.

Commissioner Slaughter said that at one point this was a residential property to which Mr. Crump stated that is correct.

Commissioner Loring said that on one of the exhibits in the applicant's proposal, there is a dashed line through the property. He asked if the applicant is intending to split the property to which Mr. Crump responded no, the applicant is not; however, the applicant is here and he could possibly speak more to this.

James Testa, applicant, stated that the dashed line in the exhibit was the old, original property line before he combined the parcels.

Chairman Wiley Opened the Public Hearing

Chairman Wiley Closed the Public Hearing

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

Commissioner Smith moved to forward CU-14-638 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.

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

CU-14-640 Request of Joshua Schakola on behalf of Verizon Wireless for a conditional use permit for modifications to a telecommunications tower at 701 Fairmont Avenue (Map Number 153-01- -2-A) zoned Limited Industrial (M-1) District. (Mr. Grisdale)

Mr. Grisdale presented the staff report stating that the applicant is proposing to add three (3) new antennas and install one (1) GPS antenna as part of an upgrade of existing telecommunications facilities at the tower located on the National Fruit property. The applicant intends to add these three (3) antennas to the pre-existing lattice tower behind existing antennas. The additional antennas are proposed in order to have additional capacity and uninterrupted coverage in response to increasing demand for streaming and data usage. The applicant does not intend on expanding the existing ground support equipment with this request. He concluded by stating that he is available for questions.

Chairman Wiley called for questions from the Commission.

Commissioner Loring reiterated that the applicant will not be making the tower higher to which Mr. Grisdale responded that they will not increase the height.

Chairman Wiley Opened the Public Hearing

Joshua Schakola, applicant, said that he is available for questions.

Arthur Christjohn, 523 Fairmont Avenue, said that he has a problem with Verizon altogether because they use his driveway to park in so they can work on their equipment. He has a problem with their request as a whole and he asked the Commission to say no.

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 CU-14-640 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 recommended approval is subject to the following conditions:

- 1. Submit an as-built emissions certification after the facility is in operation;*
- 2. The applicant, tower owner, or property owner shall remove equipment within ninety (90) days once the equipment is no longer in active use; and,*
- 3. Submit a bond guaranteeing removal of facilities should the use cease.*

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

RZ-14-639 AN ORDINANCE TO REZONE 0.736 ACRES OF LAND AT 2508 PEPERMILL ROAD (Map Number 291-02- -1) FROM INTENSIVE INDUSTRIAL (M-2) DISTRICT ZONING TO COMMERCIAL INDUSTRIAL (CM-1) DISTRICT ZONING. (Mr. Youmans)

Mr. Youmans presented the staff report stating that this is a request to conditionally rezone from M-2 to CM-1 the southerly 70-foot wide portion of the Silver Lake property currently housing Noland. The rezoning would allow for this 0.736-acre area to be assembled in with the adjoining vacant lot owned by Silver Lake that is already zoned CM-1 so that it can be enlarged to accommodate a grocery store. The request includes proffers which would limit the use to retail and would only take affect if the related boundary line adjustment between the two parcels is recorded. Land to the south and the east is zoned CM-1 and has been developed with retail, restaurant, and service used. This includes the Bank of Clarke County site which shares access to South Pleasant Valley Road and Papermill Road with the vacant site proposed for grocery store development. Land to the west is zoned M-2 and includes the Cavalier Kitchens site. The Comprehensive Plan calls for Commerce Area Revitalization/Infill in this area. The rezoning to CM-1 is consistent with this vision. The Plan advocates proactively redeveloping property where needed to achieve maximum sustainable potential. The subject portion of the industrial site housing Noland Company is underutilized and is enclosed by an unattractive chain link fence with strands of barbed wire on top that detracts from the emerging national chain retail and restaurant area to the east and south. The proffer linking the effectuation of the rezoning to the related boundary line adjustment ensures that the rezoning action will not result in split zoning on the existing M-2 property. We do not have a site plan as yet because they did not proffer a site plan. He concluded by stating that staff does recommend approval and that he is available for questions.

Chairman Wiley called for questions from the Commission.

Commissioner Wolfe asked if there are any traffic concerns. Mr. Youmans said that he does not want to put too much emphasis on the preliminary site plan concept but there would be access via a shared driveway coming in from South Pleasant Valley Road on the east that today comes in and comes down to serve the bank on the corner. There would also be the shared driveway coming down to Tevis Street and that is a right-in, right-out only because of the raised concrete median in that location. These existing conditions should mitigate any potential impacts on traffic but, in addition to that, there will be a new driveway coming out to Papermill Road in the area of the 70-foot swath.

Commissioner McKannan asked if the Commission will see a site plan to which Mr. Youmans said, at least for an administrative authorization, yes.

Commissioner Smith said that on Pleasant Valley the sidewalk ends and he asked if there will be an extension of the sidewalks to which Mr. Youmans said yes, north of the driveway entrance there will be an extension.

Chairman Wiley said that based upon the Nolan operation, will the CM-1 usage be in conformance or not if this is to be rezoned. Mr. Youmans said that he does not believe that they do any industrial fabrication there, rather it is a wholesaler.

Chairman Wiley Opened the Public Hearing

Shane Powers, applicant, said that he is available for questions.

Chairman Wiley Closed the Public Hearing

Chairman Wiley called for questions or discussion from the Commission.

Commissioner Loring asked if there have been any questions or input from the public. Mr. Youmans responded that everyone wants to know who it is but other than that, no, we have not.

Commissioner Slaughter said that generally it makes sense and he sees no reason not to approve the rezoning since it is consistent with the Comprehensive Plan and this is the area that the City wants this type of development, especially with the infill of commercial. He said that he would be in favor of a motion to recommend approval.

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

Commissioner Slaughter moved to forward RZ-14-639 to City Council recommending approval as depicted on an exhibit entitled "Rezoning Exhibit RZ-14-639, Prepared by Winchester Planning Department, 10-7-2014" because the request is consistent with the Comprehensive Plan which calls for Commerce Area Revitalization/Infill on the site. The approval is subject to the proffer statement titled "2508 Papermill Road, Winchester, Virginia 22601 Rezoning Request Proffer" dated October 14, 2014.

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

TA-14-645 AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15.1, 16, 16.1, 18, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TELECOMMUNICATIONS FACILITIES, PERMIT AND REVIEW REQUIREMENTS, AND FEES. (Mr. Grisdale)

Mr. Grisdale presented the staff report stating that this is an ordinance amendment initiated by City Council to revise how we handle our telecommunications requests. The intent of Council is to have staff explore ways to streamline the review and permitting process for telecommunications facilities. Following a review of our Zoning Ordinance provisions and provisions of the Middle Class Tax Relief Act of 2012, staff has presented some opportunities to facilitate a more streamlined review process for collocations and modifications of existing facilities. At their October 14, 2014, meeting, City Council initiated this text amendment and sent it to the Planning Commission for review and recommendation. The updated provisions in the draft amendment categorize the types of requests received from telecommunications providers into three groups: new telecommunications facilities, major modifications, and minor modifications. New facilities and major modifications will still require the CUP process; however, minor modifications will be an administrative review and approval.

Major modifications are based upon FCC guidance as to what constitutes a substantial increase in size of an existing facility:

- The height of the existing facility is increased by more than ten percent (10%) from the current height or twenty (20) feet, whichever is greater;
- More than 4 new equipment cabinets or 1 new shelter;
- Protrusion of more than twenty (20) feet or width of the tower, whichever is greater; or,
- Excavation outside existing leased or owned property and current easements.

Minor modifications include new antennas that do not meet the threshold for major modifications, as well as collocations on existing towers and buildings. The applicant will be able to submit an application for administrative review and approval. Through this process, the applicant will still need to secure additional zoning requirements, if needed, such as Historic Winchester and Corridor Enhancement district approval. A fee of \$500 will be associated with the application. The ordinance will also include the same three basic requirements for administrative approval as are typically included with a telecommunications CUP approval: certification the antennas meet federal requirements, bond covering removal of the equipment, and a requirement to remove the equipment once it is no longer in active use.

Mr. Grisdale said that staff recommends that this ordinance receive a favorable recommendation. He concluded saying that he is available for questions.

Chairman Wiley called for questions from the Commission.

Commissioner Smith asked if the fees that are attached are consistent with other localities. Mr. Grisdale responded that they are and we are not proposing to modify the Conditional Use Permit fee for the current review process but there would be a fee associated with the administrative review process to cover the expenses.

Commissioner McKannan commented that most of the fee is for advertising costs, is that correct. Mr. Grisdale said that when we typically charge fees they go for staff review, advertising fees, and any other fees associated with that review so that is why you see this lower fee for the administrative review because it is less intensive than the current process.

Chairman Wiley said that the current two projects that the Commission just passed would be administrative reviews to which Mr. Grisdale said yes, the two from the meeting today would be handled as administrative reviews.

Commissioner Loring said given that, do the providers think this is a good idea to which Mr. Grisdale said that although he cannot speak for them, he would think so.

Commissioner Slaughter asked if it would make sense to add language for minor modifications that if staff comes up against something unforeseen, then staff could ask the applicant to go through the CUP process. Mr. Grisdale said that is possible and staff can take a look to see if there is some type of situation that would present itself. Typically with a minor modification it would be a collocation or removal of some of the existing equipment, so it would be pretty rare that staff runs in to that type of instance. He said that he does understand the concern because there may be an unusual circumstance that may pop up. Mr. Grisdale said that staff will take a look and if there is a concern, staff can ask that language be included at the Council review. Commissioner Loring said that it makes sense, just as a catchall.

Chairman Wiley Opened the Public Hearing

Justin White, consulting firm, said that he had a few things that he hoped that would be clarified going forward either in the text or from guidance by staff, particularly relating to various carriers. It was not clear from the text whether the two conditions or the Board process would be required. The first question is if there is a carrier looking at a site and a second carrier comes along and wants to add equipment, it would be a new site for them but it would not necessarily fall in to the major modification categories, would they be required to get a conditional use permit for themselves or would they “take shelter” under the original one. The second question has to do with how things are counted, how the cabinets are counted, for example. When there are multiple carriers at a site potentially adding or removing cabinets from their own sections, how is that counted and when would a major modification kick in. Is it per carrier, is it per platform, or is it per site. These are some things that we need to see some more clear guidance on.

Commissioner Smith asked what exactly is meant by cabinets. Mr. White said that the cabinets are a piece of equipment that spans all of the equipment platforms and carriers have anywhere from one to four per site.

Chairman Wiley Closed the Public Hearing

Mr. Grisdale clarified saying in terms of how the language is structured in the proposal, basically there are certain things that are major modifications if a request does not meet those thresholds, then by default, falls to a minor modification and thus an administrative review. A potential hypothetical situation, let’s say we have some building-mounted antennas that has had one conditional use permit come through as a new request; a second carrier comes along later and wants to add antennas, that would be a minor modification because it already went through the conditional use process initially unless it meets one of those five criteria included within the major modification. Most of those types of requests will fall as a minor modification as long as they are not the initial request. In terms of the cabinet count, for those modifications, they are cumulative over time. So, for instance, if we have five modifications over two years, each one is adding a new equipment cabinet, the fifth one would put it over the threshold for a major modification.

Commissioner Smith said that when a carrier no longer wants to use one of the cabinets, they would need to remove it and then a new carrier comes in and wants to add a new cabinet in place of the old equipment, then this would be considered a new one. Mr. Grisdale said that this would probably fall into the minor modifications unless it is meeting those thresholds, i.e., percentages, expansions, and so forth; then it would fall under a major modification. It would be the cumulative effect, if someone is removing something and someone else is adding something, it would be a net-zero effect.

Commissioner Loring asked if a sentence needs to be added to indicate that it is cumulative up to the threshold. Mr. Grisdale said that there is some existing language in Article 18-2-1.2, subsection 3v.

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

Commissioner Smith moved to forward TA-14-645 to City Council recommending approval because the amendment, as proposed, presents good planning practice by providing for a more streamlined review process for telecommunications facility installations and modifications.

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

PUBLIC HEARINGS – Continued

None.

NEW BUSINESS:

TA-14-698 AN ORDINANCE AMENDING AND REENACTING ARTICLES 1, 18, 21, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO MOBILE FOOD ESTABLISHMENT DEFINITIONS, PERMITS, AND FEES. (Mr. Grisdale)

Mr. Grisdale presented the staff report stating that this is a staff drafted ordinance amendment pertaining to mobile food establishments (food trucks), which staff is requesting the Planning Commission initiate. Over the last several months, staff has received inquiries about the permissibility of food trucks on private property within the City. Presently the Zoning Ordinance does not have clear provisions that address this issue. Staff developed a working group with representatives from the restaurant community, a food truck operator, City staff, a previous Planning Commissioner, and a representative from the Chamber of Commerce to discuss the issue and develop a draft ordinance. The committee developed this draft ordinance which we believe provides for basic guidelines for the operation of mobile food establishments within the City as well as baseline protections of public health and safety.

Mr. Grisdale further advised that the proposed ordinance will allow for a mobile food establishment operator to apply for a permit that can be used for up to ten (10) properties throughout the year. Also, the amendment establishes several basic documents to be submitted with the permit applicant, including property owner permission, a site sketch, and documentation of licensure from the Commissioner of Revenue's office and Department of Health. The draft ordinance also establishes basic operational requirements, including hours of operation, where such vending may take place, signage,

refuse requirements, and parking requirements. He also said that these are yearly permits therefore, if we realize that something is not working, we can come back and revisit it. He concluded by stating that staff recommends the text amendment be initiated for public review and that he is available for questions.

Commissioner Wiley asked if they were able to get anything worked out about the tax situation. Mr. Grisdale responded that he did reach out to the Commissioner of Revenue who advised that they will be responsible for full tax compliance with business licenses, meals taxes, and business personal property taxes. As such, they have a number of tools and techniques that they use in order to ensure that any business complies with the particular reporting and payment of their taxes.

Commissioner Smith asked if the vendors will be subject to impromptu health department inspections as well since they will be moving to different locations. Mr. Grisdale responded that he cannot speak for the health department and that his basic understanding is that they have the one-time, yearly inspection but that he does not believe they follow them from place to place. He did say that he can reach out to the health department before next month's meeting and public hearing to try to get some more information.

Commissioner Loring asked if there is any restriction on the number of permits. Mr. Grisdale responded that there is no provision that would limit the number to one (1), so hypothetically, an applicant could apply for two (2) or three (3).

Commissioner Slaughter – to clarify, with the ten (10) sites, they have to present site sketches and everything for every site that they are potentially going to go to and they are strictly limited to those sites, and there is no grandfathering. Mr. Grisdale said that is correct and they would present those sketches up front so that staff can confirm that they are not going to be taking up fire lanes, required parking spaces, and such other things. There will be no grandfathering because this is not establishing a nonconforming situation because it is not a permanent use on a piece of property.

Commissioner Smith questioned if there is a mobile food truck with permission from a property owner, and the owner becomes unhappy with the mobile food truck owner because of circumstances such as trash being left on the property, or too many people coming there, what recourse does the property owner have to remove the mobile food truck. Mr. Grisdale said that in terms of enforcement, the Zoning Administrator has the ability to revoke an issued permit for noncompliance with the stated standards in the ordinance and there is a revocation provision included within the ordinance should someone fail to comply with any of the requirements.

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

Commissioner Slaughter moved to initiate TA-14-698, per the attached resolution. Commissioner Smith seconded the motion. Voice vote was taken and the motion passed 6-0.

OLD BUSINESS:

None.

OTHER BUSINESS:

A. Administrative Approvals:

1) Site Plan Report

(a) SP-14-650 1600 Amherst Street – Omp’s Funeral Home – Minor Revision

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

(b) SP-14-687 1328-1470 Commerce Street – Rosenberger’s – Minor Revision

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

(c) SP-14-693 901 Amherst Street – Glass-Glen Burnie Foundation – Minor Revision

Chairman Wiley recused himself. Commissioner Loring moved to approve. Commissioner McKannan seconded the motion. Voice vote was taken and the motion passed 5-0.

(d) SP-14-695 805 Cedar Creek Grade – Petal Properties – Minor Revision

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

(e) SP-14-713 218 South Braddock Street – Allen Rogers – Minor Revision

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

ADJOURN:

With no further business before the Commission, the meeting adjourned at 4:55 p.m.