

PLANNING COMMISSION MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, December 16, 2014, at 3:00 p.m. in Council Chambers, 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, Commissioner Wolfe
ABSENT: None
EX-OFFICIO: Councilor Tagnesi, City Manager Freeman
FREDERICK CO. LIAISON: Commissioner Kenney
STAFF: Tim Youmans, Aaron Grisdale, Josh Crump, Catherine Clayton
VISITORS: Joshua Schakola, Arthur Christjohn, Kenneth Williams, Stephen Williams, Thomas Lawson, Kathleen Beyrau, Denise LaCour

APPROVAL OF MINUTES:

Chairman Wiley called for corrections or additions to the minutes of November 18, 2014. Commissioner Slaughter moved to approve the minutes as amended. Commissioner Loring seconded the motion. Voice vote was taken and the motion passed 7-0.

CORRESPONDENCE:

Mr. Youmans advised that there is a correction to the minutes of November 18, 2014. The correction to be made is that the 28 S. Braddock Street address should have been 218 S. Braddock Street. He then stated that the Commission has received a revised agenda and additional materials for Item 2D, which is the rezoning for Meadow Branch Avenue. Beginning behind page 113, staff has included the December 12, 2014, Traffic Analysis that was submitted to the City on Friday, along with the second revised version of the Proffers that was received last Thursday. He concluded by stating that the only other change is under OTHER BUSINESS, Item 6A, staff has added another Administrative Approval, which is the site plan for the new John Kerr Elementary School.

CITIZEN COMMENTS:

Arthur Christjohn, 523 Fairmont Avenue, said that there is a street light out at the corner of North Avenue and Fairmont Avenue. He said that it has been out for three (3) weeks now and that he has called the City several times and was advised that it is the electric company's issue. Mr. Youmans said that staff will refer that on to Public Services.

REPORT OF THE FREDERICK COUNTY PLANNING COMMISSION LIAISON:

Commissioner Kenney said that they have not had a meeting since November 5, 2014, but that he would like to give some updates. He said that in the month of November, the Commission reviewed and made minor changes to the By-Laws; they set a retreat date for February 20, 2015; and the Frederick County Planning Commission wishes Chairman Wiley and Commissioner McKannan good luck in their capacity on City Council.

PUBLIC HEARINGS – NEW BUSINESS:

CU-14-640 Request of Joshua Schakola on behalf of Verizon Wireless for a conditional use permit for modifications to a telecommunication tower at 799 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 to the existing telecommunications facilities at the tower located on the National Fruit property. He said that the applicant intends to add three antennas mounted to the pre-existing lattice tower behind the existing antennas. The additional antennas are proposed in order to add additional capacity and uninterrupted coverage in response to increasing demand for streaming and data usage. Collocation of antennas on existing structures as proposed is encouraged within the Zoning Ordinance. The applicant does not intend on expanding the existing ground support equipment with this request. He added that due to the scrivener's error in the public advertisement, this item was re-advertised for this month's public hearing. He concluded by stating that he is available for questions.

Commissioner Loring asked if there has been any other feedback received from residents. Mr. Grisdale responded that he has not received anything.

Chairman Wiley Opened the Public Hearing

Mr. Christjohn, 523 Fairmont Avenue, said that he is concerned because Verizon has left hanging wires and that they are electrically active. He said that Verizon has a history of parking in his driveway when they are working on their equipment. Additionally, he said that he is concerned that Verizon is not going to do a good job and that there will be radio interference with the additional antennas.

Joshua Schakola, Verizon Wireless, to address the concerns, the equipment box and electric line issues are actually land-line issues and not those of Verizon Wireless. As for the radio interference, Verizon does extensive non-interference studies to ensure that they are operating within the FCC guidelines and do not and cannot interfere with other antennas on the tower. He added that the modifications on the tower are simply to enhance the existing service there. They are not actually new antennas, they are remote radio heads used to enhance and amplify the existing signal.

Chairman Wiley Closed the Public Hearing

Chairman Wiley called for discussion from the Commission.

Commissioner Loring asked for clarification from Mr. Schakola in that wireless service should be better in that northern quadrant of the City to which Mr. Schakola responded yes, that is correct.

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

Commissioner Smith 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 Loring seconded the motion. Voice vote was taken and the motion passed 7-0.

TA-14-698 AN ORDINANCE TO AMEND AND REENACT 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 and publicly initiated ordinance amendment pertaining to mobile food truck establishments (food trucks). Over the past several months staff has received several 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. 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. 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 and set up on private property only. It will allow for limited durations of time. It will be an administrative zoning review and approval with the Zoning Administrator. It would allow for a vendor to apply for one (1) property up to ten (10) properties within the City of Winchester and the permit would be valid through the calendar year, ending on December 31st. There will be a \$500.00 yearly permit fee associated with the application. This is a flat fee whether it is one (1) site or up to ten (10). The ordinance does set up some basic parameters as to hours of operation, adherence to the City's noise ordinance, and what can be vended. It can be food, non-alcoholic beverages, and associated merchandise such as key rings or t-shirts to promote the business. They will be required to have a trash receptacle on the premises and they must control and pickup any refuse that may be associated with the use and there are some signage provisions that are included as well. They are prohibited from taking up any required fire lanes, ingress/egress, access easements, and things as such within a parking lot. It also talks about the licenses and permits that the vendor would be required to have and maintain. Basically a City business license through the Commissioner of Revenue's office and a valid health department license through the Department of Health are required and must be displayed. The proposal is consistent with City Council's Strategic Plan. He concluded by saying that he is available for questions.

Chairman Wiley called for questions from the Commission.

Commissioner Loring asked if the fee is consistent with other jurisdictions and with the state statute. Mr. Grisdale said that the state does not have a direct enabling legislation that speaks exactly to food trucks but there was a lot of research that took place in terms of other municipalities and how they have been approaching this new issue. Some of the benchmark communities that we compared ourselves to and did research with are the City of Charlottesville, Arlington, some of the tidewater communities, and so forth that have established ordinances.

Commissioner Slaughter asked about Section 18-25-3 and how will the primary use and accessory use be monitored and enforced. Mr. Grisdale said that staff will gauge that based upon their menu and their food sales being the primary aspect of the business. If they are not selling food, then that would be cause to look in to it further. Commissioner Slaughter asked if this gives enough teeth to be able to

enforce the ordinance and tell them no or to revoke their permit. Mr. Grisdale said that he believes so and if the vendor is not selling food, then it would be cause to look in to it further.

Councilor Tagnesi asked about the private property and what the procedure would be to ensure that the private property owner gave permission. Mr. Grisdale said that there is an application form that would require a property owner's signature or the applicant could attach a copy of their lease with the property owner.

Chairman Wiley Opened the Public Hearing

Kenneth Williams, 1600 S. Braddock Street, said that he is concerned about the 48 hour time frame. He said that should be up to the food truck owner and the property owner. He feels this should be given more time and that it is done unfairly. He also said that there should be more detailed work done on this.

Mr. Grisdale made a point of clarification – the Apple Blossom Festival permit is separate from this permit because there is a temporary event permit issued for things such as that.

Chairman Wiley Closed the Public Hearing

Chairman Wiley called for discussion from the Commission.

Commissioner Slaughter said that without this, food trucks are not permitted at all. Mr. Grisdale said that it is a gray area right now in the Zoning Ordinance in terms of temporary event permits which have been interpreted to cover food trucks but it really is not set up to address that issue, so no, it does not directly speak to food trucks. Commissioner Slaughter said that it is a start and it can be revisited if there is something that is not working. Mr. Grisdale said yes, it can be revisited so that the City has an ordinance that works.

Commissioner Smith asked if the committee has discussed the proximity of food trucks to other food establishments. Mr. Grisdale said that there is not a prohibition to downtown within this ordinance but the applicant can only set up on private property. In terms of the proximity requirement, it was something that was discussed and the feeling was that since there could be two brick and mortar restaurants set up right next to each other, staff did not want to get in the business of protecting a certain class of businesses so it was decided not to put a buffer requirement in the ordinance.

Commissioner McKannan said that this was modeled after other jurisdictions and do you find that the \$500.00 fee is unanimous across the board as being the average fee that is charged. Mr. Grisdale said that it is comparable. Some localities are more and some are slightly less.

Commissioner Shickle asked if there is a list of potential food truck vendors who are waiting for this to become enacted to which Mr. Grisdale said no, there is not a definitive list but there have been conversations with three (3) or four (4) interested businesses over the last six (6) months. Commissioner Shickle then asked if those who are interested have any concerns about the fee or the 48 hour limitation. Mr. Grisdale said that one interested party was a member of this panel and was invited to speak in support of or in opposition to this ordinance, however, he has not heard back from the individual. Commissioner Shickle then asked that if this ordinance was passed as written, how will staff evaluate what changes need to be made, if any, to remove the barriers. Mr. Grisdale said that if there

are barriers identified in the future, staff would definitely become aware of those because if someone is inquiring about starting up a food truck, they would be directed to our office through the City, so he said that he thinks that staff would become aware if there are concerns that something in the ordinance is prohibiting someone from pursuing that business opportunity. Commissioner Shickle then asked if the \$500.00 fee is an annual fee or just at the time of application. Mr. Grisdale said that it is an annual permit so it is valid through the end of the year so the permit fee would be for one (1) up to ten (10) sites. Commissioner Shickle then asked if there were changes to the fee schedule, staff would have the mechanism to grandfather at whatever time in that year there may be a change in the fee schedule. Mr. Grisdale said that it would depend on how a future ordinance is structured, if a previous fee would be partially refundable. Commissioner Shickle then said that it seems that the fee is a little trickier to adjust down the road than the 48 hours. Mr. Grisdale said that in terms of the fee, it depends on when an ordinance is adopted to the time of year as to when people pay that fee. Mr. Grisdale then said that there were some discussions whether to have a flat fee or have a sliding scale fee, it was half and half as to what direction to go, so it was just a recommendation that was made but if the Planning Commission feels that it is too high or should be adjusted, they can make a recommendation that staff modify that language. Commissioner Shickle then said that as written, the ordinance does allow the vendor to sell merchandise that promotes their food business with the key being that it is to promote their business, not to be their primary business. Mr. Grisdale said that it is to supplement the food business.

Commissioner Loring – for clarification – a food truck vendor could sell merchandise that said the name of their business and that the fee is good for one (1) site or up to ten (10) sites and that fee is not prorated. He then asked Mr. Grisdale to speak about the logic of having a 48 hour window. Mr. Grisdale said that the thought there is that food trucks are transient and not intended to be or have a fixed location.

Commissioner Smith asked about the taxes. Mr. Grisdale said that he spoke with the Commissioner of Revenue and the Department of Health. The Commissioner of Revenue's office has an itinerant merchant license and meal taxes that would have to be collected. In response to enforcement, the Commissioner of Revenue has a variety of tools to ensure payment and compliance. As for the Health Department, it is a yearly permit with periodic inspections.

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

Commissioner Slaughter moved to forward TA-14-698, with a favorable recommendation because the proposed amendment establishes baseline operational requirements and includes provisions for the protection of public health and safety, while also allowing for increased start up business opportunities consistent with the City's Strategic Plan.

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

RZ-14-628 AN ORDINANCE TO REZONE 5.1674 ACRES OF LAND AT 380 MILLWOOD AVENUE (Map Number 233-01- -3) FROM MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT ZONING TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT ZONING WITH PLANNED UNIT DEVELOPMENT (PUD) OVERLAY. **(Mr. Crump)**

Mr. Crump explained that today staff learned that there was some confusion with the public notification procedures and that the sign had not been posted. Staff is asking that the Commission table until the January 2015 meeting.

Chairman Wiley called for a motion.

Commissioner Loring moved to table RZ-14-628 until the January 2015 meeting. Commissioner Smith seconded the motion. Voice vote was taken and the motion passed 7-0.

RZ-14-663 AN ORDINANCE TO CONDITIONALLY REZONE 10.59 ACRES AT 200 MERRIMANS LANE (Map Number 149-01- - 7-A), FROM CONDITIONAL RESIDENTIAL BUSINESS (RB-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY (0.80 ACRES) AND CONDITIONAL MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT (9.79 ACRES) TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY. **(Mr. Youmans)**

Mr. Youmans presented an overview of the documentation and stated that staff has not had adequate time to review the revised Proffer Statement dated December 11, 2014, or the Traffic Impact Analysis, which is mostly focused on the two (2) intersections. He added that staff did meet with the applicant last Wednesday to discuss a number of changes that did get reflected in the December 11th Proffer Statement. He advised the Commission that there was a closing last Friday on the Ridgewood Orchard section as well as a closing on the DBL Holdings property. Staff also has the Minor Subdivision whereby C & S has transferred ownership of the school parcel to the Winchester Public School Board. The Comprehensive Plan identifies the area as a Redevelopment Site. The submitted rezoning request does fulfill the first prerequisite (PUD Zoning) but is not limited to age-restricted housing. Therefore, the request is contrary to the Comprehensive Plan in this regard. The Statement of Justification does an excellent job of outlining the unlikelihood that families with school-aged children would want to rent a more expensive luxury apartment as compared to renting or purchasing a less expensive single-family house elsewhere in the City. Since this is a conditional rezoning request, the applicant has voluntarily submitted proffers to mitigate potential impacts arising from the rezoning of the property RB-1 (CE) & MR to MR (PUD). Substantive changes to the Proffer Statement begin on page 3 of the updated statement dated December 11, 2014. The Generalized Development Plan was most recently updated on November 25, 2014, and received by staff on December 2, 2014. It includes the actual conceptual Development Plan depicting the layout of the improvements on the site. As for the Traffic Impact Analysis, Mr. Eisenach will address this and give comments at the January 2015 meeting as he has not had the opportunity to review the submitted document.

Mr. Youmans stated that staff has some reservation as to recommending that the Planning Commission and City Council move forward with actions on this conditional PUD rezoning request before the Major Subdivision creating the subject site and establishing Meadow Branch Avenue is complete. There is now a Memorandum of Understanding with the City to provide up to One Million Dollars in funding for the construction of Meadow Branch Avenue. He said that staff does have the Major Subdivision that creates this separate parcel from the remainder of the Ridgewood Orchard property. Staff would recommend that the Planning Commission table the request for at least one month. He concluded by stating that he is available for questions.

Chairman Wiley called for questions from the Commission.

Commissioner Loring asked about the second entrance and if it would have a left hand turn lane. Mr. Youmans said that the approved plans that the City contracted with Painter-Lewis to prepare for Meadow Branch Avenue did not have that. The updated Development Plan does depict a south-bound left turn lane.

Commissioner Shickle asked if there is something missing on page 5 of the Proffer Statement because it does not read correctly. Mr. Youmans said that he believes that there is a verb missing and that the applicant could clarify that aspect.

Commissioner Slaughter asked if the attorney will be reviewing the proffers and giving feedback to which Mr. Youmans said that the attorney will review them but that he has not had the opportunity to do so. Commissioner Slaughter asked that if the Commission tables the case, would it be recommended to leave the public hearing open to which Mr. Youmans said that he believes it would be a good idea.

Commissioner Smith stated that this is quite a lot of information in a short amount of time.

Chairman Wiley – to clarify – the traffic entrance is just a two-way stop as it is right now and so a person could come out of there and head south from the apartment complex to which Mr. Youmans said that is correct. Chairman Wiley then said that he assumes that the storm water management requirements will be in line with DEQ measures. Mr. Youmans said that they do have to meet the minimum state water quality and quantity measures. He said that what this reflects is that they do not plan to do anything above and beyond the minimum.

Chairman Wiley Opened the Public Hearing

Thomas Lawson, representative for the applicant, said that the Comprehensive Plan is only a guide. He reiterated several points and stated that the applicant has made every attempt to work with the City and to comply and that he feels it is a tax-positive project to the City. He also stated that he looks forward to recommendations from the Planning Commission and to continuing the process.

Kathleen Beyrau, Justin Court, said that she has some safety concerns about the road and the fact that it is being extended. She asked that the Commission keep in mind how the amount of traffic that this four-lane road will cause.

Mr. Youmans – point of order – suggest that the Planning Commission keep the public hearing open. Chairman Wiley said that he will keep the public hearing open.

Chairman McKannan asked Mr. Lawson to clarify the reason that the rents charged for the apartments will be market-rate and why it was stricken out of the Proffer Statement. Mr. Lawson said that it was stricken because it was redundant.

Commissioner Shickle asked for a review of the outstanding items. Mr. Youmans said that the big one is to allow Mr. Eisenach adequate time to review the Traffic Impact Analysis and to allow staff adequate time to review and compile an updated staff report that does exactly what the Commission is asking for, a summary of the updated documents and any items that may be outstanding.

Commissioner Loring asked if the applicant can speak to the impacts if the Commission delays this for one (1) month. Denise LaCour, Denico Development, said that this will impact the project because of funding and it will add to the timeline for approval and closing. Commissioner Loring then asked if the School Board has looked at the numbers. Mr. Youmans said that it all came with the Impact Study so he has not had the opportunity to speak with the School Board. Commissioner Loring then said that a tabling would allow everyone adequate time to review this. Mr. Youmans reiterated that with the

change in City Council's meeting schedule, he feels that Ms. LaCour will come out at the same point that she was when this began.

Hearing no other discussion, Chairman Wiley stated that the public hearing will remain open. He then called for a motion.

Commissioner Smith moved to table RZ-14-663 until the January 20, 2015, regular meeting to allow adequate time for staff to fully review the revised documents and exhibits and to provide adequate time for the applicant to address the comments and concerns that City staff identifies.

Commissioner Loring seconded the motion. Roll call vote was taken and the motion to table passed 6-1.

PUBLIC HEARINGS – Continued

None.

NEW BUSINESS

None.

OLD BUSINESS

None.

OTHER BUSINESS

A. Administrative Approval(s):

- 1) Site Plan Report
 - a) **SP-14-727** Spring St. & S. Pleasant Valley Ave – Winchester Marketplace Phase I – Major Revision

Commissioner Loring moved to approve. Commissioner Wolfe seconded the motion. Voice vote was taken and the motion passed 7-0.

- b) **SP-14-686** 427 Meadow Branch Ave – New John Kerr Elementary School – New Site Plan

Commissioner Loring moved to approve. Commissioner Shickle seconded the motion. Voice vote was taken and the motion passed 7-0.

Presentations were made by Mr. Youmans, Councilor Tagnesi, and Vice-Chairman Slaughter to Chairman Wiley and Commissioner McKannan in appreciation for their dedication to the Planning Commission and to wish them both well in their new positions on City Council. Mr. Youmans then invited all members to a reception in honor of Chairman Wiley and Commissioner McKannan.

ADJOURN

With no further business before the Planning Commission, the meeting adjourned at 4:50 p.m.