

PLANNING COMMISSION
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, July 17, 2007 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Planning Commissioners: Weber, Adams, Shore

Ex Officio & Staff: Griffin, Moore, Youmans, Van Diest, Grisdale,
 Williams

Frederick County Liaison: None Present

ABSENT: Masters, Willingham, Sublett

VISITORS: C. Irvine Cather, Jr., C. Cather, A. Capitano, Sarah Dees, James Martin,
 Debbie Martin, Don Crawford, P.L. Bartley, Chuck Phares, JoAnn Phares, Tamara
 Flegal, Mary Margaret Wise, Jennifer Watts, Adelaide Turnbull, James Dowling, Jody
 Elson, Dan Royer, Pat Leinbach, Betty M. Manuel, Helen Ford, Janette Ogg, Tracy
 Marlett, Melissa Elliott, Mary Dale Jenkin, Lori Jones, Stephen Armstrong, Mary Laisen

Roll Call was performed.

Mr. Youmans notified Mr. Adams that he did not have a quorum. There were three out of the seven voting board members and one Ex Officio member totaling four out of 9. That is not a quorum per the by laws.

Mr. Adams stated that if there is not a quorum, the Planning Commission could not conduct any public hearings or take any action that would result in voting on any public hearings. He added that two of the things on the agenda for today's meeting are of interest to many of the guests present. One involves a conditional rezoning on Millwood Avenue. The other involves group homes. He noted that there appears to be a great number of people present that typically do not attend the Planning Commission Meeting. He thought it would be a waste for the board to declare the meeting adjourned for a lack of a quorum. Mr. Adams suggested the board proceed with the two items as informational items that is to say a formal action would not be taken but that a presentation would be heard. At that point, there could be a discussion for the guests. Mr. Adams reiterated that this is not a public hearing and no formal action would be taken. The public hearing would occur at the next scheduled meeting in August.

Mr. Adams started by announcing TA-07-02. Aaron Grisdale, Zoning Inspector, presented the Text Amendment.

TA-07-02 –AN ORDINANCE AMENDING ARTICLES 1-2, 3-1, 4-1, 5-1, 5.1-1, 6-1, 7-1, 8-2, 9-1, 13-1, 15-1, 15.1-1, 16.1-2, 18-4, 21-2, 21-3, and 21-3 OF THE WINCHESTER ZONING

ORDINANCE PERTAINING TO THE DEFINITIONS OF ADULT CARE RESIDENCE, ALCOHOL TREATMENT CENTERS, DRUG TREATMENT CENTERS, FAMILY, FAMILY CARE HOME, GROUP HOME, PROTECTED POPULATION RESIDENCE, AND SINGLE HOUSEKEEPING UNIT; AND, PERTAINING TO USE AND OCCUPANCY OF DWELLING UNITS; AND, PERTAINING TO VIOLATIONS AND PENALTIES

Mr. Grisdale stated that the proposal for a comprehensive Zoning Ordinance Text Amendment is staff-initiated; and, is specifically related to revising and adding to the current definitions, distinguishing the difference between use and occupancy of a dwelling unit, and amending violation and penalty provisions pertaining to residential overcrowding, as authorized by the Code of Virginia.

Mr. Grisdale stated that citizen complaints regarding the location and potential placement of group homes within residentially-zoned neighborhoods initiated further research and investigation of current Ordinance standards. The complaints were received during November and December of 2006. Enforcement activity was not initiated, due to questions surrounding the legality of the City's Zoning Ordinance. Mr. Grisdale added that the research revealed that the Code of Virginia provides a definition of *group home*, along with a provision for the inclusion of *group homes* within single-family residences for the purposes of zoning. In the code, it states that:

- *No more than eight mentally ill, mentally retarded, or developmentally disabled persons, along with one or more resident counselors or other staff, is considered as residential occupancy by a single family*
- *Mental illness and developmental disability shall not include current illegal use of or addiction to controlled substances*
- *No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed*

Mr. Grisdale stated that the Code section defines a “residential facility” as any group home or other residential facility for which the Department of Mental Health, Mental Retardation and Substance Abuses Services is the licensing authority.

Mr. Grisdale stated an immediate conclusion drawn from this particular Code section was that the current separation distance required between *protected population residences* as outlined within Section 3-1-11.1 of the Winchester Zoning Ordinance, appears to be inconsistent with the Code of Virginia. The current code states that no protected population residence may be located closer than three hundred (300) feet from any other protected population residence.

Mr. Grisdale stated that it was determined a need to re-define *family*, so as to further align members of a *group home* as defined by the Code of Virginia with single-family residences. Separately, a need to provide reasonable accommodations for persons with disabilities residing together in a dwelling unit was identified through researching the applicability of the Federal Fair Housing Act of 1988.

Mr. Grisdale stated that the Winchester Zoning Ordinance presently provides for separate, but very similar, definitions of *adult care residence*, *alcohol treatment centers*, *drug treatment centers*, *family care home*, *group home*, and *protected population residence*. A proposal within this Text Amendment is to eliminate the redundancy of definitions and provide for one, all-inclusive definition of *group home*.

Mr. Grisdale stated that re-defining *family* presents its own challenges when considering the evolution of traditional single-family dwelling unit occupancy within the United States. The intended purpose of re-defining *family* within this Text Amendment is to accomplish the following objectives:

1. Allow for one or more persons related by blood, marriage, legal guardianship or adoption, including foster children to reside in a dwelling unit
2. Allow for up to four unrelated persons or a combination of related and unrelated persons to live and cook together as a single nonprofit and non-commercial housekeeping unit
3. Allow for nontraditional families including two unrelated adults and any children related to either one or both to reside in a dwelling unit
4. Allow for inclusion and reasonable accommodation of no more than eight persons who are residents of a group home or who are “handicapped” as defined by the Fair Housing Act and/or “disabled” as defined by the Americans with Disabilities Act
5. Allow for the fair and consistent imposition of occupancy standards (i.e., square footage of sleeping areas, number of adults based on livable square footage of residence) to be no more or less restrictive among each of the aforementioned classifications

Mr. Grisdale stated the term *single housekeeping unit* is not currently defined within the Winchester Zoning Ordinance; however, if added could be instrumental in the overcrowding enforcement effort by characterizing identifiable standards, such as:

- members of the dwelling unit share a common lease or rental agreement
- a period of tenancy that is common to all members
- a common right to use and enjoy the entire dwelling unit
- a single periodic rent payment to the owner or owner’s agent
- shared utility payments and grocery expenses
- shared living and cooking supplies and facilities
- the absence of individual locks installed on bedroom doors

Mr. Grisdale stated that during the Planning Commission Public Hearing on May 15, 2007, questions were raised pertaining to the initial draft of **TA-07-02**. The following information is provided in response to the questions raised by the Commissioners.

Q. What is the required ratio of counselors to patients/residents in a group home?

A. The regulations that apply to the licensing and operation of group homes is identified within 12 VAC 305; and, specifically 12 VAC 305-590 pertains to staffing. There does not appear to be a set schedule or requirement for staffing; and, it would appear as

though the staffing requirements are strictly dependent upon the types of services provided and number of persons served.

Q. What is the applicability of Section 1-2-31, which limits maximum occupancy of a dwelling unit to no more than twelve (12) persons?

A. Section 1-2-31 of the Winchester Zoning Ordinance defines dwelling unit as follows:

DWELLING UNIT: One (1) or more rooms in dwelling designed for living or sleeping purposes, and having only one (1) kitchen. Notwithstanding any other provisions of the Ordinance, not more than 12 people may live in or occupancy any dwelling unit.

Mr. Grisdale stated that the proposed definition of *family* is consistent with what is commonly accepted throughout the Commonwealth of Virginia

Mr. Grisdale stated the purpose of this Text Amendment is also intended to further distinguish the difference between protecting public health and safety through the establishment of maximum occupancy limitations for dwelling units, and preserving quality of life in single-family residential neighborhoods through permitted use standards, by creating two separate ordinances, each dealing with one particular requirement. He added that finally, the City of Winchester has an opportunity to benefit from recent amendments to the Code of Virginia, pertaining to civil penalty fine amounts and criminal prosecution of violations relating to overcrowding in single-family residential dwellings.

Mr. Grisdale stated that the Zoning Administrator is respectfully requesting that the Planning Commission forward to the Common Council of the City of Winchester recommending a resolution to amend the Winchester Zoning Ordinance pertaining to the current definitions of *adult care residence, alcohol treatment centers, drug treatment centers, family, family care home, group home, protected population residence, and single housekeeping unit*. The Zoning Administrator also respectfully requests that the Planning Commission forward these recommendations to the City Council, as it would allow for corrections to be made to the provisions regarding use and occupancy of dwelling units, and violations and penalties resulting from residential overcrowding. He added the proposed definitions within this Text Amendment appear to be consistent with localities throughout the Commonwealth of Virginia; and, take into consideration other nontraditional and equivalent occupancies of a dwelling unit, while preserving the character of single-family neighborhoods. Furthermore, it establishes the enforceability of maximum occupancy of dwelling units within the City; thus, preventing undue densities and overcrowding.

Mr. Grisdale wanted to point out that in the definition of Group Home, mental illness and developmental disability shall not include current illegal use of or addiction to controlled substances. He also added the civil penalties have increased to \$200.00 for a first violation and \$500.00 for each subsequent violation arising from the same set of operative facts. The language in 21-3 has been changed to read:

Any person, firm, or corporation, whether as principal, agent, employed or otherwise who receives more than three civil penalties of the same nature but with different operative facts, the violation **may be criminally prosecuted** under Section 21-2 of this Ordinance.

Mr. Adams stated that this is the 3rd draft of the Text Amendment. He asked if the initial concerns or reason for drafting this involved the over crowding situation in the City of Winchester. Mr. Grisdale confirmed that was the reason and also the concerns about group homes the City had received last fall. Mr. Adams asked if when talking about group homes, was it talking about group homes in the classic sense with people who are protected, mentally disabled, or what. Mr. Grisdale stated he was not sure. He added that Staff was concerned that they fell under these multiple different definitions. Staff did not have specific information on what each one was, but they would be classified as this all inclusive group home at this point.

Mr. Adams stated it was his understanding that while doing this Text Amendment, it was discovered some inconsistency in the code concerning group homes and the way Winchester treated it versus the way it's treated in the Virginia Code. Mr. Grisdale confirmed that.

Mr. Adams stated that Mr. Williams who is the City Attorney has had an input in the drafting of this current version of the Text Amendment. Mr. Williams stated that was correct. Not only did we have some inconsistencies with the State Code, there was an inconsistency with the Federal Fair Housing Act involving the distances between group homes. He thought Mr. Diem did quite a job in trying to navigate bringing it into consistency with the State Code while consolidating the plethora of definitions that were in the older version. Mr. Williams added that he was consulted in some of the complaints received by Mr. Diem regarding over crowding. He stated that Mr. Adams was correct that some of it involved single family residence over crowding and the other did involve over crowding in the nature of houses with recovering substance abuse users. Mr. Diem had a mixture of those types of things he was trying to deal with all at once while trying to revise this into a tool that he could use for Zoning enforcement purposes.

Mr. Adams asked Mr. Williams to tell the people present at the meeting what the practical impact of this Text Amendment would be in regards to establishing group homes, solving over crowding, and how the City intends to apply it. Mr. Williams stated that he could not speak to how it will be applied because his job is to make sure it is consistent with the law. The enforcement or use of it will be something the Zoning office will do. He stated that from his perspective, what it does is clears up a lot of the confusion in the previous version of the Code. If you look at all of the number of things a structure could be called that house a number of people, it was easy for me, even as an attorney, to get confused on whether it was a group home or whether it was one of a number of labels they were calling it. So, Mr. Williams added, he thought it was quite important for Mr. Diem to accomplish this. One of the important things to mention is, Mr. Williams and Mr. Diem ran into a case where it was important for our maximum occupancy ordinance be related to nothing but the maximum occupancy itself and not to who was occupying the dwelling or to whether or not it was a recovering substance abuser or anyone else. It's a maximum occupancy ordinance that deals with nothing but the number of people located in that dwelling per square foot. It became important to indicate in the ordinance that we are adopting it in the interest to protect the public's health, safety and welfare unless Mr. Diem could establish there was some criteria that made substance abusers

different in terms of the number of people housed from anyone else. Mr. Diem was able to reach the balance of adjusting the maximum occupancy ordinance while maintaining the ability to control to the extent the law allows the location of group homes in the City.

Mr. Adams stated that we currently have an effective ordinance dealing with maximum occupancy, is that correct. Mr. Williams stated that the City does but it made reference to family in it and that is where we came to an impasse. He added the original version of the maximum occupancy ordinance said X number of people living together as a family and it gave a definition of family. When you are talking about maximum occupancy in terms of health, safety and welfare, you are looking at the number of people per square foot. Unless you can quantify why one particular group is more hazardous in X number of square feet than another, you need to eliminate that criteria.

Mr. Adams asked in regards to the group home aspect of it, are we talking about protecting people who are addicts, users, or currently using. Mr. Williams referred to a Fact Sheet prepared by Mr. Grisdale. He explained the definition of a group home to be a residential facility for mentally retarded or developmentally disabled persons who may required personal care and supervision and who may be considered to be potential candidates for independent living. Mr. Williams added that he thought Mr. Adams was referring to a halfway house. A halfway house is a residential facility for persons on release from more restrictive custodial confinement where supervision, rehabilitation and counseling are provided to mainstream residents back into society thus enabling them to live independently. Halfway houses do not enjoy the protection that is provided a group home. Group homes are provided protections in that we cannot treat them any different than we do a regular family dwelling.

Mr. Youmans stated that the group home definition in the ordinance answers that question specifically in that mental illness and developmental disability shall not include any current illegal use of or addiction to controlled substances. If they are a current user of a substance, they are not covered under the group home definition. Mr. Youmans added that he has been asked a lot of questions regarding this matter.

Mr. Adams asked if there was anything the Planning Department would like to add before he inquires if there are any questions from the public. Mr. Youmans reiterated that since there was not a quorum, the meeting is really not a Planning Commission meeting but it is really a staff presentation to the group as individual commissioners and others in the room. He wanted to make sure everyone understood that this is not a public hearing. It will become a public hearing next month at the regular Planning Commission meeting which is the third Tuesday in August. Mr. Youmans wanted to reiterate that this is an amendment to the City's Zoning Ordinance and not a rezoning request to change the zoning in any geographic area of the city. Mr. Youmans recognized guests from Fairmont Avenue and Loudoun Street. He stated that this does not pertain to specific areas of any geographic area of the City. This is the general code that speaks to land use and includes the provisions such as group homes, single family residences and how they can be utilized and what the occupancy limits are. This was supposed to be a public hearing today but it cannot be because of the lack of quorum.

Mr. Williams stated that one of the things mentioned earlier was that there were various over crowding issues being addressed and that is absolutely correct. Mr. Diem was approached by

several Council Members with different issues in their areas involving over crowding. Trying to address three different over crowding issues has made this very difficult for Mr. Diem to pull off. Mr. Williams felt this balances what Mr. Diem was trying to do.

Mr. Adams stated that without anyone making a statement about the propriety or impropriety about this particular Text Amendment because that should be saved for the public hearing, he requested any questions be addressed to him to get answered if they can.

James Dowling of 410 Glen Lea Court stated he is now more familiar with the difference in a group home and a halfway house but he is getting stuck on the comments about the non current users of controlled substances. How do you determine if someone is a non-current user or not? Mr. Adams acknowledged it was a good question but that he was not sure if anyone had an answer to it. He added it is something that we could try to address at the public hearing. Mr. Williams stated that he believed the language came out of the Federal Fair Housing Regulations. He added that Mr. Diem was trying to make it as consistent with both the State Code and the Federal regulations as possible. He just adopted the language the federal government adopted in that particular section.

One citizen asked if we are addressing group homes or halfway houses. Mr. Youmans stated the halfway house is not one of the definitions being amended here. The halfway house is defined in an article in the Zoning Ordinance and that definition stays in tack so that use remains a use that City Council would still require a Conditional Use Permit and scrutinize that use. City Council cannot scrutinize the location or concentration of group homes. They are different and are treated different in the ordinance. Mr. Youmans added that as far as any particular facilities in a neighborhood, he could not tell the guests if they were halfway houses or group homes. We are still trying to learn more about some of these facilities that have been identified.

Melissa Elliot asked if there are any regulations on how many halfway houses can be in a certain amount of area. Mr. Youmans stated that for halfway houses, City Council has the discretion to say there are too many concentrated in an area as part of their Conditional Use Permit review. They can scrutinize that use and say it is inappropriate because of concentration. We have a 300 foot spacing standard in the current ordinance that runs along with the federal legislation that applies to group homes as defined in the State Code. We cannot regulate the concentration of group homes inside the City, nor can any other jurisdiction in Virginia. Mr. Youmans confirmed that halfway houses still have that kind of scrutiny.

Ms. Elliot asked if there were any requirements that they have to follow to be a halfway house. Mr. Williams stated that halfway houses are regulated under the State and Federal governments. He could not tell Ms. Elliot what the requirements are. He added they do have licensing requirements and receive funding for being a halfway house. They are restricted on where they are located and what services they provide.

A citizen asked what can we do if the property owner insists that it is not a group home but people are being treated there and money is being collected for the services. Mr. Williams stated that it is an enforcement issue. He understands that is the biggest challenge because Mr. Diem can't have his people inside the house to see what is going on but it is his responsibility to build a case to show what they are doing is not what they say they are doing externally.

These amendments are part of the arsenal he is hoping to obtain to combat what you are talking about. The citizen asked what can the public do to help him between now and the next meeting. Mr. Williams stated they can help by documenting these issues in their neighborhoods. The more people watching the house will help to build a case so they can be charged with civil or criminal penalties depending on the violation. He suggested the reports need to be as consistent and detailed as possible.

A citizen asked how they can prevent a row of houses being developed into group or halfway homes. Mr. Adams stated to bring it to the City's attention so they can look at the enforcement. They have other ways to determine what is going on such as the amount of trash being picked up, water usage, and things like that if they can't get into the house to see how many people are living there. The citizen asked if it can be determined through the city how they apply whether it is a group or halfway house and what they are supposed to be.

Mr. Talley arrived at 3:33 pm.

Mr. Moore stated a halfway house which requires a Conditional Use Permit have a certain application to be submitted. A group home which would operate as defined is a little bit different in that the same provisions we are trying to address with this ordinance which prevent us from imposing any further restrictions on a group home than as a single family resident dwelling. That in itself, prevents us from requiring a group home to come to the City and register. We would have to require every single family to come register as well. However, there are other ways that we can go about to determine overcrowding.

A citizen stated that if people are coming back to the next meeting, they should go to the Oxford House website beforehand. Oxford House is very aggressive about the group homes in the community. The website discusses what is legal and illegal. Most people would find there are many things they disagree with about putting group homes in residential communities. However, that does not mean we exclude them, it means we as citizens need to get past the things that are legal we don't like and not even discuss them because there is no point in doing so. We need to be able to discuss what can be done to restrict these things. Mr. Williams stated that is precisely what prompted Mr. Diem to him. There is a landmark case that Oxford House had that guided how this was drafted because there are some things that are legal and some that are not. Unfortunately, some of the things that are legal are not what we wish they were. Mr. Youmans added that builds on the policy. If we cannot be more restrictive with group homes than with single family residences because of the law, we don't want to be any less restrictive. The 8 person limit allows us to regulate group homes to some point.

Stan Stowes suggested the City look at how to handle the homes that were set up before this ordinance. When he approached the City about opening a group home, he was advised at that time the limit was 12 people per facility. Currently, he has two of them that are under 12.

A citizen stated that some of the treatment centers are calling themselves a school and asked if they would be considered a group home, halfway house or a dormitory. Mr. Adams stated that it would be up to enforcement that has the vehicle to call a duck a duck. The important thing is to report it to the City for appropriate action.

Mr. Adams cut off the questions at this point. He added that at the beginning of the meeting, it was announced that it was only an informative session and it would carry over to the public hearing next time.

Mr. Adams was interrupted when a citizen asked what legal recourse a person would have to prevent a sexual offender entering a halfway house that is located around small children. Mr. Adams stated that she should contact Tim Youmans or Vincent Diem in the Zoning Department before the public hearing next month. Mr. Youmans added that she would want to talk to Mr. Diem.

Mr. Adams stated that we will have the public hearing next time when people could speak either pro or against the text amendment and we could address the issue, have a discussion and make recommendations. Mr. Adams thanked everyone for coming. He added that he hoped the information was helpful to understand the intent and purpose of the text amendment. He also stated he hoped they would come back to the Planning Commission meeting next month so that we could address the issue at that time. The meeting will be on the third Tuesday.

Mr. Adams stated that it appears at this time we may have a quorum so the public hearing could proceed. He asked that a roll call be done to confirm the quorum. He explained that the reason we did the information session and not a public hearing on the last item was to allow the public an opportunity to be heard.

Mr. Talley	Here
Mrs. Masters	not present
Mr. Weber	Here
Mr. Willingham	not present
Mr. Adams	Here
Mr. Sublett	not present
Mr. Shore	Here

Mr. Youmans informed Mr. Adams that he now had a quorum.

Mr. Weber, seconded by Mr. Shore, moved to approve the minutes of the June 19, 2007 meeting. The motion passed 4-0-0.

CORRESPONDENCE

There was a revised agenda to include SP-07-16, Shoppes at Tevis, for administrative authorization. The Commissioners were also given a revised last page of RZ-07-07 staff report and additional letters from community members regarding the rezoning case.

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON

A Frederick County Liaison was not present at the meeting to give a report.

PUBLIC HEARINGS

RZ-07-07 AN ORDINANCE TO CONVENTIONALLY REZONE A 0.103 ACRE PORTION OF LAND FROM MEDIUM DENSITY RESIDENTIAL, MR DISTRICT TO CENTRAL BUSINESS, B-1 DISTRICT AT 389 MILLWOOD AVENUE AND TO CONDITIONALLY REZONE A 0.397 ACRE PARCEL FROM MEDIUM DENSITY RESIDENTIAL, MR DISTRICT TO CENTRAL BUSINESS, B-1 DISTRICT AT 393 MILLWOOD AVENUE.

Mr. Youmans referred to updated staff report that gave a brief overview of a similar request made by the applicant in 1996.

Mr. Youmans proceeded to give a description of the request. He stated that the parking lot parcel at 389 Millwood is currently spilt-zoned such that the rear part is already B-1, and the front part still MR zoning. The MR portion of this parcel is proposed as a conventional rezoning to B-1. The lot containing the house and two-story garage/storage building at 393 Millwood is proposed as a conditional rezoning from MR to B-1. Since 393 Millwood Ave would then be adjacent to residential zoning, proffers are offered which would mitigate potential impacts of commercial use on the neighboring properties.

Mr. Youmans stated that it is important to recognize the two parts of this request. He stated the request at 389 Millwood is an unconditional or conventional rezoning without proffers. The review of this portion is to go to B-1 zoning without any restrictions on the uses that could be considered there long term. The applicant currently uses it as a parking lot and has indicated they would continue that use. The request for 393 Millwood is to conditionally rezone with proffers. The proffers go with the land. Anything the applicant offers in conjunction with the request go with the land regardless how many times the property is sold or a use change occurs. Future owners or operators have to adhere to the proffers that are made and accepted by City Council.

Mr. Youmans stated that the B-1 district is a very intensive district unless it is limited by proffers in terms of what the uses are and the intensity of development. It allows all residential uses, commercial uses, and construction up to 75 feet tall. This portion of the B-1 district is not in the parking exempt district so any future construction on 389 Millwood would be restrained due to parking requirements. It is also not in the historical district so no protection is available for the historical buildings on site. Currently, there are not any overlay districts in the area.

Mr. Youmans explained the proffer statements being proposed by the applicant. He stated that the first proffer identifies the uses that would be prohibited that would be otherwise allowed. In this proffer, a Conditional Use Permit could not be considered. The applicant would like to have restaurant use but only restaurants that would be 800 square foot or less. This does not eliminate a small restaurant with or without a drive through. It does require that any use has to be in the existing structure. The second proffer prevents the building of any additional

structures on the property. He reiterated these proffers go with the property at 393 Millwood not 389 Millwood.

Mr. Youmans stated the request is similar to, but not identical to, the request made by the applicant in 1996 for the two properties. He stated the big difference is the proffer from 1996 did not restrict the future uses to the current structures on the property. However, the 1996 proffers did include a 35 foot height restriction, increased side yard setbacks, screening, and a 10 foot parking offset.

Mr. Adams opened the public hearing.

Chuck Phares stated that no one could account for why the split zoning was made originally on the property but that it was the only access to support the business. He was told that it was a matter of housekeeping to make the other portion B-1 as well. He added that this was not his request to begin with, it was recommended by the Planning Department.

Tracy Marlott of 1447 Greystone Terrace stated that she was the one who asked about the variance. She added that Mr. Phares seems to be a very honorable man but her concern is the future. He has done a great job in eliminating 90% of the businesses that could use the property. However, in a discussion with Mr. Phares, she has a concern with churches. In today's age, a church could be a wide variety of things. A self-serving laundry mat would not be acceptable around the corner from where she lives. She questions what will happen when Mr. Phares no longer owns these properties. The concern is that it is encroaching on the neighborhood. We like Greystone as it is. It is not as historic as Old Town or Washington Street or Stewart Street, but it is her understanding that it was the first professional neighborhood. We want to keep the flavor of the neighborhood. She added that she trusts Mr. Phares and wishes him success but, she is concerned about the future. She questioned if there was time to work on some of the problems.

Mr. Youmans stated that from talking with the applicant, there was some interest in tabling the request. Mr. Adams asked if the Commission tables the request but keeps the public hearing open, would the applicant have an opportunity to probably advance more mitigating proffers or at least suggest things that would minimize the adverse impact to the adjacent properties. He added that if it was tabled and the public hearing was still open, the public would still be able to comment. Mr. Youmans stated that Mr. Adams was correct in that the public would be able to come back to the Planning Commission to provide updated comments. The applicant of a conditional rezoning can amend his proffers at anytime including up to the final approval by City Council. He added that even if the Planning Commission public hearing was closed, the applicant has the right by State Code to amend his or her proffers at the last minute.

Amy Capitan of 1439 Greystone asked if any thought has been given to the increase in the traffic that they already have to contend with because of Winchester Wheels on the opposite end. She added the residents were not even allowed to get a speed bump. She is concerned about the future uses and the traffic caused by them whether it be a church or whatever. She wanted to know how the traffic would be controlled to prevent it from barreling down Greystone.

Mr. Adams asked if there were any comments from the Commissioners on whether or not to close the hearing.

Mr. Weber stated that he would be inclined to keep it open and table RZ-07-07 so the applicant can amend the proffers. He added that he shares some of the concerns he heard today. Mr. Weber wanted clarification from Mr. Youmans on the possible table motion in the staff report that Mr. Youmans mentioned earlier as being and/or but the report did not say that. Mr. Youmans stated he structured it this way so that the Commission could consider it both ways depending on their comfort level with the two parts of the Rezoning. He added that part A pertains to the rezoning at 393 Millwood and part B pertains to 389 Millwood. If the person making the motion is comfortable with one but not the other; he may want to choose only one of these. If that person is comfortable with the rezoning of both parcels, the action would be to say both.

Mr. Talley stated that he agrees with tabling the request. He added that at first he wanted to disapprove the request because he couldn't see what the future would do but, he would like to table it to see what other proffers would be offered.

Mr. Adams agreed with what Mr. Tally said and stated that the word “and” should be used in the motion to explore the concerns on both parcels.

Mr. Talley, seconded by Mr. Weber, moved that the Commission table Rezoning RZ-07-07 to provide the applicant an opportunity to: a) amend the proffers associated with the conditional rezoning of 393 Millwood Ave in a way that more adequately mitigates the potential impacts of B-1 zoning on adjoining residential areas; b) amend the conventional rezoning of 389 Millwood Ave to mitigate the potential negative impacts of unconditional rezoning to B-1.

The motion passed 4-0-0. The public hearing is still open.

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Mr. Adams that stated for the record, at the beginning of this meeting, we did not have a quorum so we held an information system for TA-07-02. Mr. Adams announced to the public present that it would be an information system and not a public hearing. Some of the people may have left as a result of that since we will have the public hearing next month.

OLD BUSINESS

CU-07-06 Request of Milano's LLC for a conditional use permit for a nightclub at 107 West Boscawen Street zoned Central Business, B-1 District with Historic Winchester, HW overlay.

Mr. Youmans stated that the application has been effectively withdrawn since the applicant returned the public hearing sign to the Planning Department and the property owner formally rescinded their signature from the application.

NEW BUSINESS

Administrative Authorizations

SP-07-16 – Shoppes at Tevis located at 240-296 E. Tevis St.

Mr. Weber, seconded by Mr. Talley, moved to approve the request. The motion passed 4-0-0.

SP-07-xx – Chipotle Mexican Grill located at 2012 S. Pleasant Valley Rd

Mr. Weber, seconded by Mr. Shore, moved to approve the request. The motion passed 4-0-0.

OTHER DISCUSSION

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:53 pm.

Susan Masters, Chairman