

PLANNING COMMISSION  
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, August 21, 2007 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**PRESENT:** Planning Commissioners: Masters, Weber, Shore, Willingham, Sublett, Talley

Ex Officio & Staff: Councilors Major, Griffin, and Masters. Staff members Lewis, Williams, Diem, Grisdale, Moore, Youmans, Van Diest, Deskins

Frederick County Liaison: June Wilmot

**ABSENT:** Adams

**VISITORS:** Henry Buettner, Chuck Phares, Tom Crawford, Ruby Solak, Mary Dale Jackson, Charlene Romano, Shawn Roop, Jim Madden, Sam Leinbach, Clark Neff Jr., Amy Capitano, Janette Ogg, Tracy Marlatt, Ann Deaner, Jennifer Shea-Roop, Todd Thompson

Mr. Weber, seconded by Mr. Willingham, moved to approve the minutes of the July 17, 2007 meeting with corrections made to the last page. *The motion was unanimously approved.*

**CORRESPONDENCE**

A revised agenda was presented to include the actions of the administrative authorizations, the discussion of SP-07-34 – Impressions Plus Revision, and the announcement of the CPEAV conference in October.

**CITIZEN COMMENTS**

None

**REPORT OF FREDERICK COUNTY LIAISON:**

June Wilmot, Chair of the County Planning Commission, reported on the following:

- Residential Development – County has 13,000 units either approved or approvable, so there is no immediate need to expand the Urban Development Area (UDA)
- Transportation – Mr. Bishop, formerly Transportation Planner, is now the Transportation Assistant Director for the Planning Department
- CVEAP Training- Encouraged the City Planning Commissioners to attend

## **PUBLIC HEARINGS**

**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, 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.

***ACTION: Forwarded to Council recommending approval***

Zoning Administrator Vincent Diem stated this is a comprehensive effort to address issues in the ordinance and to redefine the terms used in the ordinance as authorized by the Code of Virginia.

Chairman Masters opened the public hearing and asked if there was anyone wishing to speak in reference to the request.

Don Crawford of 113 Morgan Street (Angerona Terrace Neighborhood) stated that no one knows how many group homes are in the City. From doing research, he can determine 30 exist in Winchester. He stated they fall into four categories: halfway house, group home for the handicapped, home for drug/alcohol problems and new life styles. The new life style homes do not fall under the protection of the ADA. They are a business in a residential area. Mr. Crawford stated the ordinance is a good idea. If it is tough enough, it should be passed. He added that he did not find any sex offenders in the homes that were researched but maybe that should be added to restrict them from being close to children. He would like to see the ordinance more extensive to have higher fines, require sprinkler systems, or fire exits for third floor bedrooms. Mr. Crawford stated that finally, the Zoning Administration need to make it easier on residents. There needs to be one point of contact for the zoning and fire regulations.

Ruby Solak of 348 W. Whitlock Avenue stated she has a 19 year old daughter with autism. As a parent of a child with autism, she is happy there are group homes in Winchester. Ms. Solak has also worked with the Northwestern Community Services and was concerned for the lack of housing for the people who use the services. She applauds the Commission for looking at this. Her concern is that there is a lot of misinformation about what these illnesses are. If you have been exposed to the illnesses, you have a better understanding. Ms. Solak wants the disabled to have an opportunity to live in their community. She added that she lives two doors down from a group home.

A young citizen from Back Mountain Road stated that this limits the use for halfway houses for the disabled. He feels this is wrong and is against the human rights of liberty and the pursuit of happiness. He visited the homes and found that these people are happy to live there with people who can help them. If we limit the homes, what happens to the people?

Mary Dale Jackson of 310 Amherst Street stated she lives across from two New Life homes. She is aware of the need for helping people who need to get out of homelessness and young people trying to get a start. She lives in a diverse area. Ms. Jackson wants to raise the concern about more group homes coming into the neighborhood. One doctor is working with the neighborhood but additional homes in the neighborhood have not been addressed. Ms. Jackson stated there is a difference in being rehab-friendly and being overtaken. The property values fall and families move. She asked the commissioners to think of them as they decide.

Charlene Romano of 311 Amherst Street stated she has a 5 year old son who is borderline Aspersers Syndrome. It is possible that he will need a home in the future. However, she is concerned about having places available but also saving the integrity of the City. Ms. Romano stated that the students at the home next door sit out after midnight screaming with vulgar language, smoking, playing loud music, etc. The doctor has addressed the issues and has given neighbors contact information to call when it happens again. What if other owners won't work with the neighbors?

Shawn Roop of 448 N. Braddock Street stated he had to get the tall height of his front yard fence approved by the Board of Zoning Appeals because of the need to protect his family from drug activity associated with nearby boarding houses. A limit should be put on the number of people per bathroom for sanitary reasons. Mr. Roop stated he has experienced problems with drug paraphernalia in his yard, larceny, people parking on his yard and sex offenders in the area. He stated that people coming out of prison can rent a room on North Loudoun Street because it is less expensive. He doesn't have a problem with treatment centers just the landlords that have 15 people in one house using a community bath and kitchen. Mr. Roop stated he has 3 small children that he wants to keep safe. The neighborhood did not have break-ins or assaults until these people came into the area. He added that his wife cannot walk down Loudoun Street after 3 p.m. without being harassed.

Jim Madden of Miller Street stated that he has lived there for 50 years. He stated that a home behind his house was recently purchased for a group home. Mr. Madden stated that Council President Gaynor said protecting the neighborhoods is the top priority. After doing some research, Mr. Madden found out that people with AIDS and migrant farm workers are included in the protected populations. Mr. Madden had many questions regarding how many homes are in the area, who pays for them, who manages them and are they inspected. He stated that transient activity bothers him because there are different people in every two weeks.

Sam Leinbach of 317 Fairmont Avenue stated he is concerned about the property values. He is concerned we are setting up programs with no oversight. He added that someone should be involved or this could be a disaster in the community.

Chairman Masters closed the public hearing at 4:02 p.m.

Chairman Masters asked if an unqualified person can have a group home. Mr. Diem stated that so long as they are a property owner, there is nothing to prevent it. However, there are specifications by the Department of Social Services to maintain a Group Home.

Chairman Masters asked if there were any building inspections required. Mr. Diem stated that a halfway house, as defined in the City's Zoning Ordinance, is not covered in this code and they must have a Conditional Use Permit. Since we don't require a family of up to 12 people to have upgrades done on a home, we cannot require it of a group home.

Mr. Weber asked if the City had any idea of the number of homes in the area. Mr. Diem stated that there is not a mechanism in place to count group homes. Since we do not require families to be counted, we cannot have protected populations be counted. It would be beneficial for group home owners to inform Staff of their intent and the number of occupants. Without this information, citizens will likely ask City staff to investigate an overcrowding situation.

Mr. Willingham asked if we have done everything we can to protect the neighborhoods. Mr. Diem stated that keeping in mind he is not an attorney, he would say yes. This is a difficult thing to look at and the limits are significant.

Mr. Weber stated that the proposed changes may not do everything for everyone and motioned to move TA-07-02 forward to City Council recommending approval as contained in the attached "Draft 3", dated 06/26/07 because the amendment allows for corrections to be made to the provisions regarding certain definitions, use and occupancy of dwelling units, and violations and penalties resulting from residential overcrowding, and thus represents good planning practice. He suggested that the Zoning Administrator continue to find ways to tighten it more. *The motion was seconded by Mr. Willingham and approved unanimously.*

**RZ-07-08 AN ORDINANCE TO CONVENTIONALLY REZONE AN APPROXIMATELY 0.70 ACRE PORTION OF LAND FROM INTENSIVE INDUSTRIAL, M-2 DISTRICT TO HIGHWAY COMMERCIAL, B-2 DISTRICT AND AN APPROXIMATELY 0.50 ACRE PORTION OF LAND FROM INTENSIVE INDUSTRIAL, M-2 DISTRICT TO COMMERCIAL INDUSTRIAL, CM-1 DISTRICT AT 1930 SOUTH LOUDOUN STREET AND TO CONVENTIONALLY REZONE AN APPROXIMATELY 0.18 ACRE PORTION OF LAND FROM INTENSIVE INDUSTRIAL, M-2 DISTRICT TO HIGHWAY COMMERCIAL, B-2 DISTRICT AND AN APPROXIMATELY 0.14 ACRE PORTION OF LAND FROM INTENSIVE INDUSTRIAL, M-2 DISTRICT TO COMMERCIAL INDUSTRIAL, CM-1 DISTRICT AT 1936 SOUTH LOUDOUN STREET.**

***ACTION: Forwarded to Council recommending approval***

Planner Will Moore presented the request and gave a description of the properties.

Chairman Masters opened the public hearing.

Chairman Masters asked if there was anyone wishing to speak in reference to the request.

The applicant, Mr. Henry Buettner of Tire Distributors, stated that the proposal takes away the heavy zoning thus making it more conforming with the other properties.

Chairman Masters closed the public hearing at 4:28 p.m.

Mr. Weber asked about the property boundary lines. Mr. Moore stated the boundary line goes along the existing structures. Mr. Buettner stated the existing structures have been rehabilitated for safety. They were being used by transients from the railroad. He has no other use for the site except for parking.

Mr. Willingham moved to forward Rezoning **RZ-07-08** to City Council recommending approval because the scaling back of heavy industrial zoning is consistent with the Comprehensive Plan and the proposed B-2 and CM-1 zoning supports economic development. The motion was seconded by Mr. Weber and unanimously approved.

**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.

***ACTION: Forwarded to Council recommending approval***

Planning Director Tim Youmans presented the request and gave a description of the properties. He stated there are letters and a petition from the residents of Greystone Terrace in the revised agenda packets.

Mr. Weber asked if it is possible to reverse the proffers in the future. Mr. Youmans stated it would be possible but the request would have to go through the same public hearing rezoning process as the initial rezoning.

Chairman Masters opened the public hearing and asked if there was anyone wishing to speak in reference to the request.

The applicant, Mr. Chuck Phares, stated this has been a long, difficult process. He thanked the commissioners for individually coming to the site. Mr. Phares gave a history of the house and the warehouse property. He stated the parking is awkward but it works well in his business plan. He is trying to enhance the property. This is a well written Conditional Rezoning request that everyone has worked hard and long on. Mr. Phares stated it is a win-win for the City, for himself, and the residents of Greystone Terrace. He added the proffers give the residents permanent protection and the opposition is probably out of the fear of the unknown.

Clark Neff Jr. of 1467 Greystone Terrace stated he was born and raised here and runs a business here. He understands the needs but as an owner, he put his business where it is zoned. As a homeowner, the traffic between 4pm and 7pm is dangerous. Mr. Neff has no objection to the parking

lot but once the proffers are allowed, it becomes the next property and continues on down. He stated the residents are working families who probably can't afford to move. The zoning is supposed to protect the neighborhood. He added that their homes are their nest eggs and their investments but every few years they have to come here to protect their neighborhood. He asked that zoning be allowed for the parking lot but leave the house as a house.

Mr. James Martin of 312 Millwood Ave spoke in favor of the rezoning.

Amy Capitano of 1439 Greystone Terrace stated she has lived there for 8 ½ years. It is an established neighborhood. She asked what the City's position is to protect the existing neighborhoods because this will set precedent. It would be short-sighted to not consider the development on the other end of the street. Eventually, the only access will be at Millwood. The retail stores including anything in the two-story garage, the 30 homes on Greystone and the houses on Opequon Ave will all be using the same access at Millwood. The other end of the street will have two large anchor stores and two small stores with only two access points. This will flood Millwood with traffic. She stated this is not a logical extension of a neighborhood. It is not consistent and does not make sense to barricade a neighborhood.

Ms. Capitano asked if the only criteria of a rezoning is to have the same next door, where does it end. B-1 is forever. She added these proffers can be changed if a new owner comes to you to loosen things up. The proffers only mean something right now, not forever. This is setting a dangerous precedent for our neighborhood. Ms. Capitano stated that she has spoken with Councilor Butler and he used words like "guarantee" and "never" but there is nothing to keep that from happening but the Commissioners. We want to protect the only thing we have left. She stated that her one house and one car is her investment and asked if her voice should be less heard because of it. She respectfully requested the commission to deny the proposal.

Janette Ogg of 1455 Greystone Terrace stated each residence is an oasis. She has fears that the neighborhood will be swallowed by commercial development. She asked what will stop the rezoning. She asked the commission to put themselves in the place of the residents of Greystone.

Shawn Roop, owner of 407 Millwood Avenue stated if the line is not drawn now, we won't have this great neighborhood anymore. He noted that he does not currently live there.

Tracy Marlatt of 1447 Greystone stated the traffic issues plus the trains are a concern. It is not the existing businesses that are a problem, it is the future. She stated it is not about the house, it is what we are creating with B-1 zoning. The protection goes both ways. She stated concern about increased traffic. She asked what the comprehensive plan says for the area. She added the petition was dated July 31, 2007 but not turned in until later because it was still being circulated in the neighborhood when she went on vacation August 1, 2007. She also stated that at a neighborhood meeting, she was asked to speak for the residents who could not attend the 3 p.m. meeting.

Amy Capitano spoke again to say she agrees that some things are needed but she does not want to live by them. She does not want to live by a Social Services office or a charitable donation spot. She added these items should not be part of an entrance to a residential street.

Chuck Phares addressed the garage that the neighbors are concerned about. He stated the garage is for when he retires. To put a business in the garage, a person would have to submit a site plan to the City that includes a formula for parking. The parking on the property is set. He added there is no additional room on the property for more parking. Mr. Phares stated the opposition is frustrating to him. He and his wife want a strong Greystone area. The two closest neighbors did not sign the petition. He stated the commissioners are professional planners who plan the future. He feels this plan is good for everybody.

Ann Deaner of 1467 Greystone Terrace stated that she is a retired school teacher who bought a beautiful home next to the Shokes property. At the time of the purchase, she was guaranteed the Shokes property would never change. However, the Shokes property did change and she stated nothing is guaranteed. She added that this experience has changed what she does with her home.

Jennifer Shea-Roop, owner of 407 Millwood Avenue, stated the off-street parking makes sense but more businesses do not. There are a lot of children in the neighborhood. The neighborhood needs to be preserved. She added that development is good, but a line needs to be drawn.

Chairman Masters closed the public hearing at 5:52 p.m.

Chairman Masters stated that she would like to address some of the concerns she heard during the public hearing. She stated that the Planning Commission meeting time is a balance between the 7:30 a.m. Planning and Development Committee meeting and the 7:30 p.m. Council meeting times. She stated the proffers go with the land and that getting unproffered land would be unfavorable. She added that the commission cannot ask anyone to add proffers to their request. The proffers are a gift someone offers. Chairman Masters stated that the commission strictly acts as an advisor to City Council. The Council does not do everything the commission says to do. She stated the parking requirements are set and the garage was built appropriately as an accessory structure.

Mr. Weber stated that he is concerned that the Comprehensive Plan calls for Medium Density residential use in this area. He also stated he felt both the residents of the area, particularly those living on Greystone Terrace, and Mr. Phares, had made strong cases for their respective positions, but Mr. Weber was inclined to make a motion to favor conventional rezoning at 389 Millwood Avenue, but to leave the zoning at 393 Millwood Avenue as Medium Density Residential. Before making such a motion, however, he would wait to hear what the other Commissioners had to say.

Mr. Shore asked how many times proffers have been changed. Mr. Youmans noted the recent proffer revisions to the property at the corner of Harvest Dr and W. Jubal Early Dr and stated the process to do it is there but it's no easier than starting from scratch. Mr. Shore confirmed that it was a fairly small amount of land being rezoned.

Mr. Talley stated that he is neither pro-business nor pro-residential; he wants what is best for the City. He added that residents and business owners have a right to improve their property. Mr. Phares wants to know what he can do. He added that forty uses have been proffered out leaving only 23 uses. Mr. Phares has a right to make improvements. He added that he did not know what would happen in the future and asked if RB-1 zoning would help. Mr. Youmans stated that if the whole Millwood Crossing project was starting from scratch that zoning designation would be worth considering but it is already beyond that point and the conditional B-1 is more restrictive than unconditional RB-1.

Mr. Willingham asked if the Planning Commission could get the process started to put in a traffic light to help with problems.

In response to comments by Mrs. Masters regarding proffers, Mr. Youmans clarified that the current or future applicants would have the right to tear down one or both of the structures. But, in order to be able to rebuild them, the destruction of the current structures would have to be due to something that was not the result of the owner's actions.

Mr. Shore moved that the Commission forward Rezoning **RZ-07-07** to City Council recommending approval because the proposed B-1 zoning supports economic development and the proffers, AS AMENDED, associated with the rezoning of 393 Millwood Avenue, mitigate the potential impacts of B-1 zoning on adjoining residential areas. The motion was seconded by Mr. Talley and approved 5-1-0 with Mr. Weber voting against it.

Chairman Masters stated the request will be forwarded to the August 29, 2007 Planning and Development meeting and then it will go through two readings and a public hearing at the City Council meetings.

### **NEW BUSINESS**

**SP-07-37** Discussion of a revision to the Impressions Plus plan pertaining to the construction of the asphalt trail. – Mr. Todd Thompson

Mr. Thompson stated he is very pro Green Circle but he is frustrated that nothing is happening. He wanted to give the Commission the \$7,000.00 for paving the trail to use in the future and continue with changes he has planned for his business. Mr. Thompson stated he is trying to downsize and consolidate his business. Mr. Youmans stated that if the Commission agrees to accept the money, it would be awkward. Mr. Williams agreed that if this is approved it would change the terms of the agreement.

Chairman Masters asked if this was previously agreed upon. Mr. Thompson stated that he did agree to do the paving of the trail. It was decided that Mr. Thompson would move forward with the original agreement to pave the trail.

Chairman Masters read the following administrative authorizations acted upon at the Work Session on August 14, 2007.

**SP-07-27** Valley Engineering 125 Medical Circle / Winc. Med Imaging bldg & parking. At the August 14, 2007 Work Session, the Commission ordered a public hearing for the site plan.

**SP-07-28** Valley Engineering 300 Campus Blvd / WMC Outpatient Diagnostic Ctr  
At the August 14, 2007 Work Session, Mr. Adams, seconded by Mr. Weber, moved to authorize administrative approval and grant a waiver of 3-foot separation at the mobile medical coach area. The motion passed on a vote of 7-0-0.

**SP-07-30** Painter-Lewis 103 E Piccadilly St / George Washington Hotel parking  
At the August 14, 2007 Work Session, Mr. Willingham, seconded by Mr. Adams, moved to authorize administrative approval. The motion passed on a vote of 7-0-0.

**SP-07-33** Triad Engineering 1002 Amherst St / Med-dent parking lot expansion  
At the August 14, 2007 Work Session, Mr. Shore, seconded by Mr. Willingham, moved to authorize administrative approval. The motion passed on a vote of 7-0-0.

**SP-07-34** Painter-Lewis 111 Featherbed Ln / Impressions Plus revision  
At the August 14, 2007 Work Session, Mr. Willingham, seconded by Mr. Shore, moved to authorize administrative approval subject to construction of the asphalt trail per the previously approved site plan. The motion passed on a vote of 7-0-0.

**SP-07-35** Ricketts Construction 1944 Valley Ave / O'Sullivan Films bldg.4 addition  
At the August 14, 2007 Work Session, Mr. Weber, seconded by Mr. Talley, moved to authorize administrative approval. The motion passed on a vote of 7-0-0.

**SP-07-37** Artz & Associates 320 Hope Dr / Madison Center Commercial Ctr  
At the August 14, 2007 Work Session, Mr. Talley, seconded by Mr. Weber, moved to authorize administrative approval. The motion passed on a vote of 7-0-0.

**SP-07-39** PHR&A 425 Handley Blvd / JHHS rear loading & parking revisions  
At the August 14, 2007 Work Session, the Commission ordered a public hearing for the site plan.

**SP-07-40** Painter-Lewis 2109 Valley Ave / Medina Commercial Property  
At the August 14, 2007 Work Session, Mr. Willingham, seconded by Mr. Weber, moved to authorize administrative approval. The motion passed on a vote of 7-0-0.

Mr. Moore stated that no action has been taken on the Linden Heights property.

Chairman Masters announce the CPEAV conference in Charlottesville, October 7-9, 2007 and encouraged the commissioners to attend. Mr. Youmans stated the department has the funds available to send two people to the conference.

**OLD BUSINESS**

None

**ADJOURN**

With no further business to discuss, the meeting was adjourned at 6:53 p.m.

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Susan Masters, Chairman