

PLANNING COMMISSION
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, November 20, 2007 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Planning Commissioners: Chairman Masters and Commissioners Adams, Weber, Shore, Talley, Willingham, and Sublett

Ex Officio & Staff: Youmans, Moore, and Van Diest

Frederick County Liaison: George Kriz

ABSENT:

VISITORS: John Lewis, Mr. Shoup, Jimmy Kilbourne, Tim Wiess, Daniel Brereton, and Mike Artz, Jim Stutzman, Dave Ganse, Dale Massey

CALL TO ORDER: Chairman Masters called the meeting to order at 3:02 p.m.

APPROVAL OF MINUTES:

Mr. Weber stated the second paragraph on page three of the October 16, 2007 minutes incorrectly listed the size of the parcel and requested it be corrected. He then motioned to approve the minutes as corrected. The motion was seconded by Mr. Talley then unanimously approved by voice-vote.

CORRESPONDENCE

Mr. Youmans stated a revised staff report for item CU-07-10 was added to the packet. He also distributed a December calendar to use for the scheduling of the Comp Plan Work Sessions.

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON: George Kriz

- A couple of small items on the agenda including an accessory structure on single family lots and a small grocery store in an industrial area.
- Tabled a pharmacy and the Artillery Business Center.
- Opequon Crossing was withdrawn.

PUBLIC HEARINGS

SP-07-51 Request of Painter-Lewis PLC for site plan approval for a parking lot at 19-25 S. Braddock Street zoned Central Business, B-1 District with Historic Winchester, HW overlay.

Mr. Moore presented the proposal for a parking lot to serve the Cambridge Building on Braddock Street. Mr. Moore explained the applicant was granted a Certificate of Appropriateness from the BAR to demolish the previous structure with the understanding a new structure would be built. The BAR has since then granted a new COA to put in the parking lot. Off-street parking in the B-1 district is by right.

John Lewis from Painter-Lewis PLC was available to answer any questions. He stated Mr. Shoup, the owner of the property, was also available for questions.

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

Seeing none, Chairman Masters closed the public hearing.

Mr. Talley asked what calculates the number of spaces. Mr. Moore stated that the parking is being provided and is not required. The location is in the parking-exempt district in the downtown area so the parking has not been required.

Mr. Adams asked what impact does the site plan have on the safety issues for traffic on Braddock Street. Mr. Moore stated all site plans are reviewed by the various departments in the City and this one passed. We have had communication with Gary Longerbeam of the Parking Authority on the number of parking spots lost. Although, he did not indicate any concern regarding the loss of parking spots, he would like to address the issue during the construction process.

Chairman Masters asked the applicant if citizens will be allowed to park in these parking spaces during the evening hours. Mr. Shoup stated he had not thought about it before. Most of the time, the spot will be assigned to the people in the building.

Mr. Adams stated that he thinks this represents one of the problems that exist when one of our agencies makes a decision based on representations being made at that time. Ultimately, this is a by-right use. They have a right to do this although he is not happy with it because he thinks something better could be used for that spot. In the future, it might be best for the BAR to see representation being made as conditions of a COA, not just representative to what will be done in the future. He thinks this will benefit everybody because we are losing one structure, although it may not have been the best looking, it is more concrete than an empty lot that becomes an eye sore and a potential danger to the public at large. He would encourage the BAR and BZA and any other board to tie these things together in the future so we don't have situations like this come back to us where there is a by-right use not intended to be the use that resulted from the decision of that board.

Chairman Masters stated that she echoes Mr. Adams, comments 100 percent. That is the reason why the Planning Commission asks applicants if the pretty picture is attached to the application or is it just another pretty picture. It makes it cleaner when the nice drawings are indeed attached to the applications. It makes it imperative that the kind of structure goes forward. It was not attached so therefore it is no longer an issue. It has also gone back in front of BAR and they have given this idea the approval.

Mr. Shore stated that he didn't know if the Planning Commission could initiate something like that or suggest Mr. Williams to look into this because it is a really big issue. It is the same thing that was talked about in Council about Rose taking down those buildings. (Note: reference to Rose Memorial on S. Kent St).

Mr. Talley moved to approve SP-07-51 because Off-street parking serving permitted and conditional uses in the B-1 District is itself a permitted use. The plan appears to be in conformance with dimensional standards and other Ordinance requirements.

Mr. Weber stated he finds it hard to support the motion simply because of the issues already talked about, the ones about safety and the interaction with the BAR.

Mr. Willingham stated he concurs with Mr. Weber and will not be supporting it.

Mr. Shore stated he agrees with both positions but we do not have a choice.

Chairman Masters stated the motion could be to table and request the applicant to look at the property again to make sure he has done everything he can to fulfill whatever it is or we can motion to approve. By law, she did not see where a by-right application can be denied. She asked Mr. Youmans if she was correct. Mr. Youmans confirmed she was.

Mr. Adams stated the upper parking lot is a given. But the bottom lot is an issue dealing with public safety and cleanliness. He thinks any property owner has the obligation to make sure their property is safe regardless if they turn it into a parking lot or make an empty lot out of it. He doesn't like what is happening to the lower lot. It may be by-right but he is not sure it is right.

A discussion took place questioning the Robert's Rules of Order. Mr. Youmans stated the commission could consider an amendment to the motion that is on the floor. One of the amendments could be to table but you would either have to make an amendment to the motion or take action on the motion that is on the floor. The motion could be amended to table but it would not be debatable.

The motion to approve SP-07-51 was seconded by Mr. Shore then passed with a 4-3 vote. Mr. Adams, Mr. Weber, and Mr. Willingham voted against the motion.

CU-07-09 Request of Painter-Lewis PLC for a Conditional Use Permit for a replacement auto body shop at 2725 Valley Avenue zoned Highway Commercial, B-2 District with Corridor

Enhancement, CE District overlay. The proposed body shop would replace one at 2700 Valley Avenue.

Mr. Sublett excused himself from the discussion.

Mr. Youmans presented the site plan and exhibits for the replacement auto body shop that was presented at the work session. He stated no changes have been made. The applicant is applying for a 3-foot variance on the front of the property for better traffic flow.

John Lewis of Painter-Lewis, PLC stated he appreciated the commission's time at the work session but he would like to base the application on the merits of what has been received instead of tabling it.

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

Jimmy Kilbourne stated he has lived at the corner of Lake and Saratoga for 30 years. He will not be affected as much as others further down from him. He was surprised not to see anyone from the houses directly behind the proposed location but they have called him and asked him to come down on the general principle of the issues even though it won't be in his backyard. The concern is they have operated a successful body shop for 30 years since he has been there now its just locked up and relocated. By the same token, he appreciates the fact that owners of property and business operators should be able to expand and grow to create new jobs. He thanked the commissioners for the chance to speak.

Seeing no more citizens wanting to speak, Chairman Masters closed the public hearing

Chairman Masters stated she believes very strongly that when they approve a Conditional Use Permit, the applicant must be held, as it is moved through the process, to the highest level of the ordinance. She knows there have been issues with screening and an applicant asking if they can use what is already there. Her thought is no, the applicant will do their own screening along the boundaries.

Chairman Masters asked what other uses could be put on the property and what would be the impact to the residential area to the back. Mr. Youmans stated B-2 allows for a large array of uses. On Valley Avenue, most of what has been seen is new/used vehicle sales, retail uses or services, and fast food restaurants. These are things allowed by-right and could be more intensive.

Mr. Talley stated he is concerned that more residents were not present at the meeting. He wanted to make sure the residents were shielded from noise and lights along the back of the property.

Chairman Masters stated since the applicant has ample parking across the street, she would like to see a reduced pick up/drop off time to 10 p.m. – 7 a.m. to make it quieter at night.

Mr. Adams stated he thinks this is a very good plan and it is a win-win situation for the neighborhood and Mr. Stutzman. The relocation, while improving the facilities under current

standards, will help protect the neighborhood and be further away from the neighbors. The more we can do to help protect the neighbors from paint fumes and noise, the better it is. He thinks this plan comes a long way in doing that.

Mr. Weber moved to forward Conditional Use Permit **CU-07-09** to City Council recommending approval as depicted on the submitted floor plans and elevations dated 9/20/07 prepared by Architect David W. Ganse, AIA and the related site plan (**SP-07-50**) dated September 7, 2007 prepared by Painter-Lewis, P.L.C. The approval is subject to following:

- 1) Complete screening of all outdoor vehicle storage areas;
- 2) No loudspeakers nor other potentially offensive audio devices situated along the rear of the building nor oriented in the direction of the adjacent residential area;
- 3) Down-cast pole-mounted lighting and screening along the rear areas being provided and properly maintained with concerns, if any, by adjacent residents being promptly addressed;
- 4) Delivery and pick-up of inoperable vehicles to and from the rear parking and vehicle storage areas not occurring after 10PM nor prior to 7AM.
- 5) Approval of a Certificate of Appropriateness for new construction in the Valley Avenue CE District;
- 6) Existing auto body and painting operations at 2700 Valley Avenue being discontinued within one week of an occupancy permit being issued for the replacement facility; and,
- 7) Site plan approval.

The motion is based upon a finding that proposal as submitted and conditioned will not affect adversely the health, safety, or welfare of persons residing or working in the neighborhood of the proposal and will not be detrimental to public welfare or injurious to the property or improvements in the neighborhood.

The motion was seconded by Mr. Willingham then approve with a 6-0 vote. (Sublett abstained).

CU-07-10 Request of Goodfellow's for a Conditional Use Permit for a nightclub at 821 N. Loudoun Street zoned Highway Commercial, B-2 District.

Mr. Moore presented the request. He stated the nightclub would be located in the old "Visions" location so modifications to the site would not be needed. The applicant has volunteered to stop all nightclub activities by 1 a.m. The applicant has also not listed particular days of the week for the nightclub use to allow for flexibility in scheduling events to see what works best for business. The CUP for the nightclub would be scheduled for a review after 1 year and then for re-approval after 3 years.

Daniel Brereton, president of Goodfellows, was available to answer any question.

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

Tim Wiess, vice-president of Carter Bank & Trust, stated his bank plans to open the office on the adjoining property and the parking lot is approximately 50 feet away from this establishment. We plan to open in 2008 and will employ at least 6-8 employees. His concern is the approval of the CUP would taunt the atmosphere of a professional, commercial location that has been known as a banking facility. He is also concerned about the public safety for the

customers and the employees. They do have extended hours that the bank will be open, 7 a.m. to 7 p.m., 6 days a week. There will also be commercial deposits made after hours through a drop box that will be open 24 hours, 7 days a week. With the history of police visits, we would like to ask a conditional use permit not be granted for this type of establishment.

Seeing no more citizens wanting to speak, Chairman Masters closed the public hearing

Chairman Masters asked Mr. Youmans to show her on the map where the bank will be located. Mr. Youmans pointed out the property location. He explained there had been a split rail fence separating the property. He also added staff is not aware of any problems occurring in the past.

Mr. Moore stated he understands the concern of the gentleman but the Conditional Use Permit is strictly for the live entertainment between 10 p.m. and 1 a.m. There is a by-right use for a restaurant with a bar use that could operate as late as 2 a.m. without the live entertainment aspect. What the Commission needs to consider is would having the live entertainment between those hours have an impact on the adjacent property.

Mr. Willingham moved to forward **CU-07-10** 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 approval is subject to:

1. Review at the end of one year and reapproval every three years thereafter;
2. Taking into consideration the concerns of all of the neighbors and addressing them as they come up;
3. Keeping the rear doors that face toward the adjacent residential development closed at all times except during the minimal time needed for deliveries and trash removal;
4. A maximum of four (4) valid police calls per month, after which private security is required and/or the permit may be subject to revocation;
5. Strictly obeying all local and state laws, especially those pertaining to ABC licensing and payment of meals tax;
6. Nightclub use to end no later than 1:00 AM; and,
7. The CUP expires automatically if the nightclub: changes ownership; changes to another use; or ceases for more than one year.

Mr. Adams stated this is a test for us in terms of not limiting the number of nights per week. Three years of bad neighbors can be three years of a very long time. Although he supports this to see how it works, he is looking for the one-year review period to see if there are any problems to see if we need to tweak this. If it needs tweaked, it needs tweaked. With that in mind he will vote in favor of this experiment but it's up to the applicant to make sure it succeeds.

Mr. Shore stated he is concerned this will set the precedent for non-downtown clubs. If its not, it could have a chilling effect on the development of clubs downtown, specifically what he would see as a much better deal to be downtown but than to have a limited use nightclub. It's going to be a business decision and he wonders if we are going to see clubs moving out of the downtown or the development of new ones.

Mr. Willingham stated that we do give them the opportunity to ask for the number of nights that they would like. In his opinion, we should not reduce the amount. He doesn't think we should restrict their ability to do business. If they are downtown and they don't have additional nights, they can ask for them. That is part of the conditional use permit. There is that flexibility downtown to have additional nights.

Mr. Sublett stated that nightclubs are going to have to conform to the noise ordinances that are in place. If they are not conforming to the noise ordinances then they are breaking the law. He further stated we should start looking at letting them play until 1:30 because that is generally the standard across the United States. If you are required by the ABC Board or whoever to close at 2 o'clock, you can serve alcohol and play music until 30 minutes beforehand. We have arbitrarily said 1 o'clock but the people are still going to be at the business. The people are not going to leave. We should have much more uniform rules across the board and then review at the end of one year and have the police enforce the ordinances as written.

Mr. Moore stated that the applicant had offered the 1:00am ending time voluntarily and that staff had not requested it.

The motion was seconded by Mr. Sublett then unanimously approved by voice-vote.

RZ-07-10 AN ORDINANCE TO REMOVE A ZONING PROFFER PERTAINING TO BUILDING USE RESTRICTIONS ASSOCIATED WITH A CONDITIONAL REZONING OF 2 N. CAMERON STREET CONDITIONALLY ZONED CENTRAL BUSINESS, B-1 DISTRICT WITH HISTORIC WINCHESTER, HW OVERLAY.

Mr. Adams excused himself from the discussion.

Mr. Youmans presented the request to remove the proffer associated with the building located at 2 N. Cameron Street.

Chairman Masters opened the public hearing. Chairman Masters asked if there was anyone wishing to speak in reference to the request. Seeing none, she closed the public hearing.

Mr. Shore moved to forward **RZ-07-10** to City Council recommending approval because the rezoning is consistent with the Comprehensive Plan recommendation to promote office employment and upper-story office development. *The motion was seconded by Mr. Weber then approved by voice-vote 6-0-1 (with Mr. Adams abstaining).*

RZ-07-11 AN ORDINANCE TO CONVENTIONALLY REZONE A 0.627 ACRE PARCEL OF LAND FROM EDUCATIONAL, INSTITUTIONAL AND PUBLIC USE, EIP DISTRICT TO CENTRAL BUSINESS, B-1 DISTRICT AT 126 NORTH CAMERON STREET. The Comprehensive Plan calls for adjustment of City Ordinances to facilitate downtown improvements.

Mr. Moore presented the request. He stated this will simply be a swap between the George Washington Hotel and the City for parking.

Chairman Masters opened the public hearing. Chairman Masters asked if there was anyone wishing to speak in reference to the request. Seeing none, she closed the public hearing.

Mr. Shore left at 4:31 p.m.

Mr. Weber moved to forward **RZ-07-11** to City Council recommending approval because the rezoning is consistent with the Comprehensive Plan recommendation to facilitate downtown improvements. *The motion was seconded by Mr. Adams then unanimously approved by voice-vote.*

SP-07-61 Administrative Approval for Millwood Crossing located at 381-393 Millwood Avenue

Mr. Adams moved to approve SP-07-61. *The motion was seconded by Mr. Weber then unanimously approved.*

TA-07-07 RESOLUTION INITIATING AN ORDINANCE TO REPEAL SECTION 16-25 OF THE WINCHESTER CITY CODE, AND TO RE-ENACT AND AMEND ARTICLE 1, DEFINITIONS AND ARTICLE 18, GENERAL PROVISIONS, OF THE WINCHESTER ZONING ORDINANCE, PERTAINING TO THE DEFINITION OF INOPERABLE MOTOR VEHICLE, AND PERTAINING TO THE OPEN STORAGE OF INOPERABLE MOTOR VEHICLES.

Mr. Talley motioned to initiate TA-07-07. The motion was seconded by Mr. Willingham then unanimously approved by voice-vote.

TA-07-08 RESOLUTION INITIATING AN ORDINANCE TO AMEND ARTICLE 18, GENERAL PROVISIONS, OF THE WINCHESTER ZONING ORDINANCE, PERTAINING TO ACCESSORY USES AND STRUCTURES.

Mr. Willingham moved to initiate TA-07-08. The motion was seconded by Mr. Weber then unanimously approved by voice-vote.

TA-07-09 Discussion of and resolution initiating AN ORDINANCE TO AMEND ARTICLE 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TIME-SHARED OFF-STREET PARKING

Mr. Willingham moved to initiate TA-07- 09. The motion was seconded by Mr. Talley then unanimously approved by voice-vote.

Chairman Masters read the following Administrative Authorizations approved at the November 13, 2007 Work Session.

- 1) **SP-07-56** 1328-1460 Commerce St Rosenberger's Revision
At the November 13, 2007 Work Session, Mr. Weber, seconded by Mr. Talley, moved to authorize administrative approval. The motion passed on a vote of 6-0-0.

- 2) **SP-07-57** 555-565 Adams Dr Diamond Auto Spa drive-thru
At the November 13, 2007 Work Session, Mr. Weber, seconded by Mr. Shore, moved to authorize administrative approval. The motion passed on a vote of 6-0-0.
- 3) **SP-07-58** 1460 University Dr Shen Univ track & soccer field
At the November 13, 2007 Work Session, Mr. Shore, seconded by Mr. Talley, moved to authorize administrative approval. The motion passed on a vote of 6-0-0.
- 4) **SP-07-59** 501-519 W. Jubal Early Drive Harvest Drive Medical Offices
At the November 13, 2007 Work Session, Mr. Weber, seconded by Mr. Talley, moved to authorize administrative approval. The motion passed on a vote of 6-0-0.

OTHER DISCUSSION

The commission discussed and scheduled dates in the month of December for the Comp Plan Work Sessions.

ADJOURN

With no further business to discuss, Mr. Willingham motioned to adjourn at 5:22 p.m. The motion was seconded by Mr. Weber then unanimously approved by voice-vote.

Susan Masters, Chairman