

PLANNING COMMISSION  
MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, March 18, 2008 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, and Talley

Ex Officio & Staff: City Manager Godfrey, Youmans, Diem, Moore, Grisdale, Walsh, and Deskins

Frederick County Liaison: Rick Ours

**ABSENT:**            Willingham and Sublett

**VISITORS:**         Bob Ganse, Ron Mislowsky, Terry Hudson, Jamie Jackson

**CALL TO ORDER:** Chairman Masters called the meeting to order at 3:00pm.

**APPROVAL OF MINUTES:**

Mr. Weber, seconded by Mr. Adams, moved to approve the minutes of the February 19, 2008 meeting as presented. The motion carried 5-0.

**CORRESPONDENCE**

There was a revised agenda including:

1. Amended Staff report for Item 3A for Text Amendment TA-08-01.
2. Deleted Valor View Shopping Center from Administrative Authorizations.
3. Added Item 3C, presentation on New Urbanism

**CITIZEN COMMENTS**

Terry Hudson of 107 Oxford Ct, owner of Sweet Caroline's spoke in regards to the nightclub conditional use permit process. He felt that the current guidelines are too vague. Specifically he was speaking about the police calls. He stated that a business could be easily sabotaged under current rules of only four police calls a month and asked that all police calls be investigated. He shared an example of a neighbor who is an alcoholic that they have barred from coming into the business. When she is refused entry she calls the police. Mr. Hudson doesn't feel that these calls should be included under the four calls rule. He stated that he was told that the conditional use permit is being revised or possibly even eliminated. He felt that this would be best because the current policy hinders business. He explained that he had a show this past week in which he received a call stating he was not to have live music on that certain day of the week which he was unaware. He explained that it is much cheaper to book well known entertainment during the week. He

concluded by saying that he will be requesting a change to his current conditional use permit, but asked that the guidelines be revised.

### **REPORT OF FREDERICK COUNTY LIAISON**

Mr. Ours thanked Mr. Talley for being present at the County's last meeting. He stated that at that meeting the rezoning and site plan for the 12<sup>th</sup> elementary school was approved. The school will be placed in the Senseny Road area. Changes have also been made to the bylaws to cut down on last minute proffers. A definitive timeline has been put into place. He stated that tonight at 7pm at Sherando High School will be the first public meeting looking at a land use plan in the Route 277, Tasker Rd, and 522 triangle.

### **PUBLIC HEARINGS**

**RZ-08-03** AN ORDINANCE TO CONVENTIONALLY REZONE 0.09 ACRES OF LAND FROM COMMERCIAL INDUSTRIAL, CM-1 DISTRICT WITH HISTORIC WINCHESTER, HW DISTRICT OVERLAY TO CENTRAL BUSINESS, B-1 DISTRICT WITH HISTORIC WINCHESTER, HW DISTRICT OVERLAY AT 421 NORTH CAMERON STREET (*Section 173, Double Circle 1, Block L, Lot 5*). The Comprehensive Plan calls for light industrial use. B-1 zoning permits densities ranging from 30-68 units per acre. The proposed rezoning is to eliminate an isolated CM-1 zone that will remain subsequent to rezoning of surrounding properties.

Mr. Moore presented the request to rezone an isolated parcel of land improved with a two-story concrete warehouse from the existing underlying CM-1 zoning to B-1. The subject property is also in the Historic Winchester District and would remain so. This rezoning was initiated by the Planning Commission at its February 19, 2008 meeting. A current request for rezoning of adjacent parcels fronting on North Cameron and Clark Streets, if approved, would result in the subject parcel becoming an isolated CM-1 District

Mr. Moore explained that the existing lot and structure are nonconforming in many aspects. As in the related rezoning request RZ-08-01, the zoning standards associated with the existing CM-1 district are inconsistent with the existing urban development form in this area of the City. Such minimum standards include: lot area of 20,000 sq ft. per building; lot width of 125 ft; front yard of 35 ft; side yards of 10 ft; and rear yard of 25 ft. While the subject property would still be nonconforming, the proposed rezoning to B-1 would lessen a number of the existing nonconformities.

Mr. Moore concluded by saying that while inconsistent with Comprehensive Plan recommendation for light industrial use, the rezoning is consistent with the changing conditions in this area of the City and logically eliminates the CM-1 remnant that will remain subsequent to the current rezoning request of adjacent properties.

Chairman Masters opened the public hearing. No one was present to speak on the request.

Chairman Masters closed the public hearing.

Mr. Adams stated that he considers this property to be the "hanging chad" and will continue to be unless it is tied into RZ-08-01. He felt that if there was a recommendation for approval, that it should be conditioned upon the approval of RZ-08-01.

Chairman Masters asked for the status of RZ-08-01.

Mr. Moore stated that it was before the Council last week for first reading and will be presented for ordinance adoption at the April Council meeting.

Mr. Youmans stated that there were no objections to the rezoning at the first reading.

Chairman Masters wanted it noted that this rezoning will be bringing this small piece of property more into compliance than it has been. This will not strip the property of any usage.

*Mr. Adams, seconded by Mr. Weber, moved to forward Rezoning case **RZ-08-03** to City Council recommending approval subject to the approval of RZ-08-01, because the proposed B-1 zoning supports economic development and is consistent with changed conditions and zoning along the North Cameron Street corridor.*

*Motion carried 5-0.*

**RZ-08-04** AN ORDINANCE TO CONVENTIONALLY REZONE 10.894 ACRES OF LAND FROM EDUCATIONAL, INSTITUTIONAL AND PUBLIC USE, EIP DISTRICT, HIGH DENSITY RESIDENTIAL, HR DISTRICT AND INTENSIVE INDUSTRIAL, M-2 DISTRICT TO HIGHWAY COMMERCIAL, B-2 DISTRICT AT PROPERTY NOW OR FORMERLY KNOWN AS 2400 ROOSEVELT BOULEVARD, 2402-2404 ROOSEVELT BOULEVARD, 2417 PAPERMILL ROAD AND 2479 PAPERMILL ROAD (N/F Section 271, Double Circle 4, Lots 20A and 21A and Section 291, Double Circle 1, Lots 2 and 3 ) AND TO CONVENTIONALLY REZONE 1.142 ACRES OF LAND FROM EDUCATIONAL, INSTITUTIONAL AND PUBLIC USE, EIP DISTRICT TO HIGHWAY COMMERCIAL, B-2 DISTRICT AT 2333 ROOSEVELT BOULEVARD (Section 271, Double Circle 4, Lot 58A ). The proposed rezoning is to facilitate the planned extension of Hope Drive and to facilitate economic redevelopment in the area.

Mr. Youmans presented the City-initiated request to rezone the former Robinson Elementary School site and the Grace Community Church (former Shawnee Fire Hall) site from EIP to B-2. The rezoning is being pursued by the City with the endorsement of the Frederick County School Board, the owner of all but the church property. The church property was recommended for inclusion by the Planning Commission.

Mr. Youmans explained that the proposed rezoning is related to a subdivision of the Robinson School property and anticipated sale of the southern portion of that site to the City or the IDA for the easterly extension of Hope Drive and economic development on land along the south side of the roadway. The proposed B-2 zoning does not negatively impact the rights of Frederick County Schools to continue the education use on the northern part of the former Robinson School site nor does the B-2 designation affect the Church's use of the former Fire Hall property.

Mr. Youmans stated that while the Comprehensive Plan does not call for Highway Commercial use, the B-2 zoning supports economic development by greatly expanding the array of commercial uses that can be considered. EIP only permits public and semi-public uses and limited non-profit office uses. The intent of the EIP designation was to establish a "holding zone" for existing public and institutional properties

and allow for rezoning scrutiny by the Planning Commission and City Council in conjunction with any redevelopment scenarios.

Mr. Youmans explained that there are no proffers because this is a publicly sponsored rezoning request. Impacts arising from the rezoning are being handled as part of the subsequent subdivision which will include the extension of Hope Drive to provide improved east-west traffic movement. Other impacts, such as stormwater management will be addressed with site plans.

Chairman Masters opened the public hearing.

Mr. Bob Ganse, owner of Buffalo Wild Wings stated that it's his understanding that next year VDOT is continuing the road work from Weems Lane down Papermill Rd to Tevis St. He is concerned that VDOT would invest money in improvements on a portion of Papermill Rd that might then be vacated.

Mr. Youmans clarified that the planned VDOT project on Papermill Rd would terminate north of the railroad crossing. The Industrial Development Authority asked to not have this project extend farther to the south because they are planning on building a new crossing.

Chairman Masters closed the public hearing.

Chairman Masters asked to confirm this rezoning would not have a detrimental affect on the Grace Community Church.

Mr. Youmans stated that the B-2 standards make it more compliant than the EIP standards.

Mr. Weber asked if the Robinson School was planning to go away.

Mr. Youmans stated that it is no longer in use as a school, but the county still plans to use it for educational programs.

Mr. Adams felt that this would be a win-win situation and that having it B-2 zoned is in everyone's best interest.

*Mr. Weber, seconded by Mr. Adams moved to forward Rezoning **RZ-08-04** to City Council recommending approval because the conversion of EIP zoning to B-2 designation is consistent with the Comprehensive Plan's goal of improving east-west traffic movement and it supports economic development.*

*Motion carried 5-0.*

**CU-08-05** Request of S&J Enterprises/Buffalo Wild Wings Grill and Bar for a Conditional Use Permit for a nightclub at 5 Weems Lane (*Section 271, Double Circle 4, Lot 1*) zoned Highway Commercial, B-2 District

Mr. Moore presented the request for approval of a Conditional Use Permit (CUP) to allow nightclub use one night per week at Buffalo Wild Wings Grill and Bar. A nightclub is defined in the Zoning Ordinance as "(a)n establishment that provides live amplified music, Karaoke, DJs, and/or dancing between the

hours of 10 p.m. and 6 a.m.” Nightclub use is a conditional use in all districts in which it can be considered.

Mr. Moore explained that Buffalo Wild Wings has been offering karaoke consistent with the request for sometime now without the requisite CUP. Recent efforts by the Zoning and Inspections staff to identify nightclub uses in the City resulted in notification to the property owner that a CUP is necessary for such use. The business owner submitted this application in order to come into compliance. In a letter submitted with the application, the applicant requests to offer karaoke on Wednesday nights from 9:00 pm to 1:00 am. The same letter indicates that the normal operating hours end at 1:00 am. The applicant also requests the ability to change the night that karaoke is offered if necessary. Also submitted was a letter from the owners of the property indicating consent to the applicant’s request. This consent is specifically for one night per week of karaoke use only. As required, the applicant submitted a copy of the existing floor plans and elevations. These are not proposed to change in conjunction with this application. The small stage area is located along the East side of the building (closest to Papermill Rd). The other businesses located within the subject commercial center are generally closed prior to the hours that apply to nightclub use. Police senior staff was consulted on this application; they indicate no major problems associated with the business and no concerns with the proposed CUP.

Chairman Masters opened the public hearing.

Bob Ganse, owner of Buffalo Wild Wings, asked to continue doing what he’s been doing for the last 4 years. He was surprised to get the letter in the mail stating that he was in violation. He explained that Karaoke night has become a big boost to business bringing in a lot of University students.

Chairman Masters closed the public hearing.

Mr. Shore asked how long they have been doing the Karaoke night.

Mr. Ganse stated 4 years.

Mr. Shore asked if anyone has checked with the police dept as to whether it’s been a problem in the past.

Mr. Moore stated that he had communicated interim Chief Smith, who then consulted with his patrol staff. Police indicated that they had no concerns with the request.

Mr. Shore stated that if there have been no issues, then the 3 yr re-approval time should be fine.

*Mr. Shore, seconded by Mr. Weber moved to forwarded **CU-08-05** 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. Reapproval every three years;*
- 2. Taking into consideration the concerns of all of the neighbors and addressing them as they come up;*
- 3. 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;*
- 4. Strictly obeying all local and state laws, especially those pertaining to ABC licensing and payment of meals tax;*
- 5. Nightclub use is for Karaoke only and is limited to one night per week ;*

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.*

Chairman Masters asked if there was any discussion on the motion.

Mr. Adams stated that he felt Mr. Ganse shouldn't have to be here. He felt that the definition of "nightclub" and "club use" should be refined because the requested Karaoke use is non-offensive.

Mr. Moore stated that he and Zoning & inspections Administrator Vince Diem had been discussing possible revisions to the process. Mr. Diem has been looking into alternatives used by other jurisdictions that use an administrative process.

Chairman Masters agreed with Mr. Adams saying that the process should be refined.

*Motion carried 5-0.*

**TA-07-06 AN ORDINANCE TO AMEND ARTICLE 18, GENERAL PROVISIONS, OF THE WINCHESTER ZONING ORDINANCE, PERTAINING TO THE USE AND STORAGE OF RECREATIONAL VEHICLES AND EQUIPMENT, AND PERTAINING TO OFF-STREET PARKING REQUIREMENTS ON RESIDENTIALLY USED AND OCCUPIED PROPERTIES**

Mr. Diem presented the proposed Text Amendment stating it was the subject of a request from City Councilor, Michael Butler. The intent of the amendment is to significantly reduce the number of recreational vehicles that are found parked on front yards, creating visual obstructions and adversely impacting the appearance of the residential neighborhoods; and, to minimize the negative effects of vehicles parking on residential lawn areas.

Mr. Diem explained that draft 2 was prepared on February 13, 2008 after further review with Mr. Butler. The second draft proposed similar language as was found in draft 1; however, specifically identified the vehicles which create the most negative impact with regards to visual obstruction. During their discussion at the February 19, 2008 meeting, the Planning Commission determined that an 80" height limitation, as opposed to the previously suggested 60" height limitation would be more appropriate. By limiting the height of recreational vehicles that can be parked in front and corner-side yards to 80" or less (average height above surrounding grade), the visual impact and possibility of obstructing views is greatly reduced. This height allowance would include most low profile fishing boats, pop-up travel trailers, watercraft vehicles on trailers, and all-terrain vehicles with trailers.

Mr. Diem noted that the second aspect of this text amendment proposal is to minimize the amount of land disturbance and environmental impacts of vehicles parking on unimproved surfaces. An increasing number of residential properties are becoming less attractive as a result of vehicles parking on unimproved surfaces. Mud and dirt have replaced manicured lawns and landscaping and ruts that are created from tires become attractive breeding areas for mosquitoes.

Chairman Masters opened the public hearing. No one was present to speak on the amendment.

Chairman Masters closed the public hearing.

Chairman Masters stated that she has heard this proposal several times before and it just dawned on her to ask about semi-trailers parked in front of homes. She asked if those are addressed in this amendment.

Mr. Diem explained that they are addressed in the ordinances 18-6-5.2 and 18-6-5.2A. They are not allowed to be parked in front of residences unless they are making a delivery.

Mr. Adams felt that Mr. Diem has come along way with this amendment trying to please everyone. He felt that 80” is an acceptable height.

Mr. Weber asked if there has been any opposition in regards to this amendment.

Mr. Diem stated there has not.

*Mr. Weber, seconded by Mr. Adams, moved to forward Text Amendment TA-07-06, as identified as “Draft 3 – 02/19/08,” to City Council recommending approval because it would support consistency with existing Code of Virginia provisions for the purpose of Zoning Ordinances, so as to guard against environmental and public safety concerns commonly associated with the storage of motor vehicles on non-paved surfaces, as well as, the visual obstructions created by high-profile recreational vehicles.*

*Motion carried 5-0.*

## **NEW BUSINESS**

- A. **TA-08-01** Motion to Initiate – AN ORDINANCE AMENDING ARTICLES 1-2 AND 18-9 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITION OF FENCE; PERTAINING TO PERMIT REQUIREMENTS FOR FENCES AND ACCESSORY STRUCTURES

Mr. Grisdale presented the proposed amendment for initiation.

*Mr. Talley, seconded by Mr. Shore, moved to initiate TA-08-01. Motion carried 5-0.*

- B. Administrative Authorizations

1) **SP-08-11** PHR+A                      131 N Kent St      Parking Garage

*Mr. Weber, seconded by Mr. Adams, moved to authorize administrative approval for SP-08-11 including the requested waiver for green space. Motion carried 5-0.*

## **OTHER DISCUSSION**

### **New Urbanism Presentation**

Mr. Youmans explained that he and Mr. Deskins were asked by Council to prepare a presentation regarding New Urbanism in Winchester. He asked that the Commissioners listen to the presentation and provide any feedback.

Mr. Youmans and Mr. Deskins took turns presenting a slide show showing how the New Urbanism concept could benefit the City.

Mr. Talley stated that the presentation should stimulate a lot of good conversation.

Chairman Masters asked that the Commissioners be provided a copy of the presentation.

**ADJOURN**

With no further business to discuss, the meeting was adjourned at 4:50pm.

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Susan Masters, Chairman