

PLANNING COMMISSION  
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, August 16, 2011 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**CALL TO ORDER:** Chairman Adams called the meeting to order at 3:00 pm.  
**PRESENT:** Chairman Adams, Vice-Chairman Shore, Commissioners Beatley, McKannan, Slaughter, Talley, and Wiley (7)  
**ABSENT:** None (0)  
**EX-OFFICIO:** Councilor Tagnesi and Interim City Manager Gerhart  
**STAFF:** Youmans, Moore, Diem, and Deskins  
**VISITORS:** Steve Lenox, Jennifer Green, Beth Elgin, Mary Gage, Jack Gage, Thomas Byrd

**APPROVAL OF MINUTES**

*Commissioner Talley moved to approve the minutes of the July 19, 2011 meeting as presented. The motion was seconded by Vice-Chairman Shore.*

*Motion passed 7-0.*

**CORRESPONDENCE**

Pertaining to case RZ-11-412 – A list of uses allowed in HR district was provided to the Commissioners

**CITIZEN COMMENTS**

None.

**REPORT OF FREDERICK COUNTY LIAISON**

Commissioner Chris Mohn reported that they last met on August 3. They held a public hearing and recommended approval of the 2012-2017 Primary and Interstate road improvement plans. They also recommended approval of the previously-tabled Carmeuse/Clearbrook rezoning, including a waiver request. Those items were forwarded to the Board of Supervisors. Their meeting scheduled for August 17 has been cancelled. They will next meet at the beginning of September.

**PUBLIC HEARING**

**A. RZ-11-412 AN ORDINANCE TO REZONE 0.2 ACRES OF LAND AT 448 AND 450-452 NORTH LOUDOUN STREET (*Map Numbers 173-01-J-14 & 15*) FROM LIMITED HIGH DENSITY RESIDENTIAL (HR-1) DISTRICT WITH HISTORIC WINCHESTER (HW) DISTRICT OVERLAY TO HIGH DENSITY RESIDENTIAL (HR) DISTRICT WITH HW DISTRICT OVERLAY. The Comprehensive Plan calls for facilitating the rehabilitation of existing substandard housing units and infilling with higher residential densities.**

Mr. Youmans reviewed the request to rezone two properties to HR where multifamily use can be considered with a multitude of variance approvals. Mr. Lenox owns #448 N. Loudoun which currently has 3 apartments. He is interested in purchasing the EDA-owned property at 450-452 N. Loudoun St and converting it to multifamily use. The applicant converted his conventional rezoning request to a conditional one, with proffers on August 8, 2011.

The newly adopted Comprehensive Plan calls for facilitating the rehabilitation of existing substandard housing units and infilling with higher residential densities. The “infilling” part of this statement is contrary to the intent of the current HR-1 District which was specifically established to “*stabilize and protect the traditional single-family characteristics of the district.*” The intent statement for HR-1 also reads: “*certain additional uses may be allowed, as long as the character of the district is not altered by levels of traffic, vehicular parking, lighting, noise, and visual displays which are not compatible with residential development.*” The current HR-1 zoning that was established in 1997 by City Council allows two-family use and two-unit townhouse use with a Conditional Use Permit. It does not permit conversion to multifamily. The proposed HR zoning would allow conversion to multifamily by right, provided minimum zoning standards such as lot width and lot area are met.

The applicant has proffered that, if City Council rezones the two parcels, then he will undertake certain actions as conditions of the rezoning. Notably, the applicant proposes to demolish the rear 421 square-foot single-story addition at the rear of 450-452 N. Loudoun St. This will create compliant rear yard and establish air and light in a congested rear yard area where nearby structures are situated close to adjoining side and rear yards. The removal of this impervious coverage will also make the site more compliant with green area requirements for multifamily use and reduce stormwater impacts.

The applicant is also proffering to establish an access easement on the rear of 448 N. Loudoun St for off-street parking and alley access to serve the apartments at 450-452 N. Loudoun Street. This would help to reduce the impacts of added on-street parking along the N. Loudoun Street frontage. A site plan showing off-street parking and green area improvements would need to be approved if the rezoning and variances requests are approved.

Board of Architectural Review (BAR) approval would also be needed for any exterior alterations including parking lot lighting, new fencing of the landscaped courtyard, and any alterations to the structures. The applicant is proffering no changes to the storefront appearance of 450-452 N. Loudoun St and no changes to 448 N. Loudoun Street.

Proffers pertaining to the maximum number of units, number of bedrooms, and number of occupants all hinge upon subsequent BZA approval. The applicant is proffering to limit the use of 448 N. Loudoun St to 3 units with no more than two persons per bedroom and in no case more than 6 persons for the whole property. The applicant is proffering to limit the use of 450-452 N. Loudoun St to 4 units with no more than two persons per bedroom and in no case more than 9 persons for the whole property. The 5,550 square-foot parcel at 448 N. Loudoun St is close to, but not quite large enough to meet the 5,600 square-foot minimum lot area requirement for a two-family in the current HR-1 District and a little further shy of the 6,000 square-foot minimum lot area requirement for a two-family in the proposed HR District.

The 3,182 square-foot parcel at 450-452 N. Loudoun St is nowhere close to large enough to meet the 5,600 square-foot minimum lot area requirement for a two-family in the current HR-1 District and only a little more than half of the 6,000 square-foot minimum lot area requirement for a two-family in the proposed HR District.

There are a number of proffers pertaining to energy efficiency of new fixtures and appliances proposed. These proffers, together with the types of quality materials that the applicant is using in the rehabilitation, help to ensure a certain minimum quality of dwelling occupancy.

**Chairman Adams opened the public hearing.**

Applicant Steve Lenox of Frederick County stated that he owns 448 and is negotiating to buy 450 from the EDA. He stated that he is not a big-time developer. Instead, he is a small investor who got together with some friends. He closed on 448 prior to the City acquiring the boarding houses.

He stated that he does not do this full time. He works in security. He stated that he only works with property that he would live in or allow his family to live in. He has been here 10 years and has seen Old Town trying to make it. He thinks that it is at a point now where it can make it.

He stated that he is willing to provide proffers and deed restrictions. He stated that, regarding the Historic District, he is going to keep everything the same even though he thinks the old store front on 450 is ugly.

He stated that there are problems in the area, but that he did not do that. He thinks his application should be viewed on its own merits. He stated that this is a unique situation. Mr. Youmans has to give you the setbacks, but the fact is that it is a postage stamp lot.

He stated that there is a chance to add value as multifamily with greenspace and parking. The property will not get fixed to be single family because no one will invest in it.

He stated that he put 448 on Craigslist and received over 40 responses in one day. Many were graduate students, the exact people he was looking for.

He stated that there are still drugs in the area. His wife sat in his truck outside the property and saw three deals go down in an hour outside a single family home. He stated that this is not an issue of single family versus multifamily. He stated that to say that nine people with long-term leases that are paying the substantial amounts of money, have had credit checks on them, and are the perfect demographic for what we want in the community are the same as people who may be coming out of jail into a boarding house is not correct. They are not the same. The problems have not been about density.

He stated that these are upscale properties they are renovating. it is hard to quantify the cool factor. This is where antique meets cool. He is doing things like leaving an antique heat register but not using it and instead using modern heating. He said he can work with the existing footprint and add lots of energy efficient aspects. He stated that he is working in concert with the City vision and this is a test case for small investors in working with the City. He asked that if we do not do this, then what is it going to be?

Jennifer Green of 125 West Germain Street stated that she owns a property in the neighborhood as does her brother. She bought there 10 years ago and her brother bought seven years ago. She stated that she does not live there now as she got married and moved. However, she did live there for four years. She works at Shenandoah University and rents her property to a university professor. Both she and her brother bought there because it was a single family home neighborhood. Granted, it needed work, but they saw that the neighborhood was trending away from high density. She stated that she realizes we need to work to change the neighborhood. She stated that her concern is not with the quality of renovation, but with the density and the City services that go along with it. She stated that she does applaud Mr. Lenox's desire to change the tenor in the neighborhood, but the increased bodies in that space concerns her.

Beth Elgin of 446 North Braddock Street stated that she moved here eight years ago. She stated that she feels the same way as the previous speaker. She moved here eight years ago hoping that it would turn into more of a single family home area. She stated that we do not need any more apartment buildings. We have plenty of that already.

Mary Gage of 440 North Braddock Street asked what constitutes a rooming house or a boarding house. Chairman Adams read the definition of a boarding house from the Zoning Ordinance. He stated that the issue is the rezoning request from HR-1 which does not allow multiple-family to HR which would allow multiple-family.

**Chairman Adams closed the public hearing.**

Commissioner Wiley asked about the handout of uses.

Mr. Youmans explained the differences between the uses allowed in HR-1 and HR.

Commissioner Wiley asked about group homes.

Mr. Youmans stated that they have to be allowed by-right if single family homes are.

Mr. Diem stated that is correct. Up to eight persons with one or more residential counselors in a group home are treated as a single family home. No local regulations or conditional use permits would apply to a group home, other than building code provisions.

Chairman Adams stated that HR allows for the ability to have boarding houses.

Mr. Youmans stated that the EDA will include a deed restriction to prevent boarding house use. Chairman Adams stated that that would only apply to the property owned by the EDA, not the property that the applicant already owns. He stated that it would be better to exclude boarding houses now.

Mr. Youmans stated that the applicant can voluntarily change his proffers up to the City Council public hearing.

Vice-Chairman Shore asked if the EDA decided on restrictive covenants.

Mr. Deskins stated that the EDA met this morning and that the consensus was that they will deed restrict anything required by the City and anything otherwise proffered.

Commissioner Wiley stated that this is the right direction. The one sticking point is 448 because it is not included in a deed restriction.

Chairman Adams stated that he is all for the project as presented. We need to just make sure that any impacts are addressed.

Commissioner Slaughter asked about parking if the properties were sold separately.

Mr. Youmans stated that the proffers include parking that will be available for 450-452 on 448 through an easement that will transfer with the property.

Chairman Adams stated that there are a lot of issues and that another month may be needed to work on this.

Mr. Lenox stated that a month will not work for him.

Chairman Adams asked if Mr. Lenox had reviewed the list of uses.

Mr. Lenox stated he has the list.

Chairman Adams stated that, for example, HR-1 does not allow boarding houses, but HR does with a conditional use permit. This property had a history of being a boarding house and that is a concern. This is the kind of issue what we are talking about that might need more time to address. That is why we are suggesting that we should take a month to look at it.

Mr. Lenox again stated that a month will not work for him. He is a small guy. A month is like light years to him.

Chairman Adams stated that he still has the Board of Zoning Appeals to go through.

Mr. Lenox stated that he is willing to sign additional proffers right now to match 450-452.

Commissioner Wiley asked Mr. Lenox to look at the list of uses. He stated that based on the discussion here today, section 5-2 is what is of concern, especially 5-2-8, 11, and 12.

Vice-Chairman Shore asked if the applicant can verbally amend the proffers here.

Mr. Youmans stated that if he wanted to he could. The Commission should reference any verbal amendment in a motion.

Commissioner Wiley asked Mr. Lenox if that sounded okay.

Mr. Lenox stated that it is fine. He stated that he is willing to amend the proffers to exclude uses and to also include the approval of the variances as a condition. He stated that he will proffer the following: no laundromats, no museums and galleries, no nursing homes, no tourist homes, no bed and breakfasts, no halfway houses, no rooming and boarding houses, no boarding facilities, no funeral homes, and no transmitting and receiving facilities for telecommunications. He stated that he is willing to proffer those verbally right now on both 448 and 450-452.

Commissioner Talley stated that he would prefer to have these in writing.

Commissioner Slaughter stated that this is a major action and we have concerned residents here. He would be in favor of postponing this rather than rushing through it in 10 minutes

Chairman Adams stated that he tends to agree and the reason why is that he does not feel he should be up here negotiating. He stated that he thinks the applicant should meet with Mr. Youmans and come up with a specific proposal for the proffers and that way we could address it next month. He stated that he can sense a lot of frustration from Mr. Lenox.

Mr. Lenox stated that that is an understatement.

Vice-Chairman Shore stated that he thinks from the discussion with Jim Deskins at the work session that there is value to this and would hate to see this transaction lost for the EDA. He stated that Mr. Deskins had explained the economics of this. This area will never go back to a single family neighborhood because you can not afford to sell these properties as single family. He would hate to risk the transaction just because we want to see in writing what the applicant just proffered verbally.

Mr. Youmans stated that he had provided information to many inquiries for property owners on North Loudoun Street and it speaks volumes that most of them did not come out. He stated that we can handle what is happening here interactively and report back to the Commission next month prior to the first reading at City Council and well before the public hearing at Council.

Chairman Adams stated that with the level of frustration, he is not sure if the applicant fully understands what he is proffering at this point or not. He stated that it would sere everybody to cool down a little bit and take the time to present this in a manner in which we could then make an informed decision.

Commissioner Wiley asked if the uses the applicant verbally proffered out a few minutes ago could be repeated.

Mr. Moore read the following list: Sections 5-2-1, 2, 4, 5, 7, 8, 11, 12, 13 and 14.

*Commissioner Wiley moved that the Commission forward RZ-11-412 to City Council recommending approval as depicted on an exhibit entitled "Rezoning Exhibit RZ-11-412, Prepared by Winchester Planning Department, August 9, 2011" because the request is generally consistent with the recommendation in the Comprehensive Plan which calls for facilitating the rehabilitation of existing substandard housing units and infilling with higher residential densities. The recommendation is subject to the attached proffers received August 9, 2011 and as amended verbally to restrict selected uses under Section 5-2 of the Zoning Ordinance and subject to BZA approval of the needed variances.*

*The motion was seconded by Vice-Chairman Shore.*

Commissioner Talley asked Mr. Lenox if he was comfortable understanding all that had happened here.

Mr. Lenox stated yes.

Chairman Adams stated that he is not opposed to the project, but he is voting the way he is because he does not like the process that just occurred just now.

*Motion passed 4-3 (Adams, Beatley, and Slaughter in the negative).*

**Chairman Adams left the meeting.**

**Vice-Chairman Shore announced a five minute recess.**

**The meeting reconvened at 4:30pm.**

**NEW BUSINESS**

**A. SV-11-411 AN ORDINANCE TO VACATE A PORTION OF NORTH KENT STREET RIGHT-OF-WAY ADJACENT TO 202 EAST PICCADILLY STREET AND 204 NORTH KENT STREET AND CONVEY IT TO THE OWNERS OF THE ADJACENT PROPERTIES**

Mr. Moore reviewed the request of Tom and Joy Frerotte of Chop Stick Cafe LLC to vacate a portion of North Kent Street right-of-way where they have constructed certain improvements including a pergola covering an outdoor seating area and a trash enclosure in the public sidewalk.

Mr. Moore stated that the applicants received BAR approval in 2010 for certain improvements. There was a misunderstanding at that time as to where the property line is. The applicants then constructed the improvements, but not in accordance with the BAR approval. When working with the applicants to resolve the discrepancy, it was discovered that the building is built to the property line and, as such, the improvements are in the right-of-way. The applicants submitted this request as a potential option to remedy the zoning violation. Additionally, the structures were constructed without requisite building permits.

Mr. Moore stated that the submitted drawings show a 4' area between the improvements and the curb, however there are certain obstacles including a sign post, a tree and tree well, utility meter covers, and the slope of the accessible ramp located within this 4' area that prevent it from being a clear, traversable path. The result is a tight maneuvering area for pedestrians and the arrangement would likely present additional difficulties for individuals with mobility impairments or someone pushing a stroller, for example. Mr. Moore stated that staff does not support the request because the encumbrance of the right-of-way requested to be vacated obstructs safe pedestrian movement in the area. He stated that he discussed possible remedies other than right-of-way vacation with the applicants, including reducing the area encumbered and seeking a text amendment to allow for consideration of businesses using a certain amount of adjacent right-of-way similar to provisions in place for the primary and secondary downtown assessment districts. The applicants wished for the vacation request as filed to still be considered.

Commissioner Talley asked if last year's request was more extensive.

Mr. Moore stated that the previous BAR request was for a smaller dining area with fencing.

Commissioner McKannan stated that he had spoken to the owner who told him that he had been beaten up at the corner and that loitering had been reduced since the improvements were made.

Commissioner Talley stated that he observed the area and saw a mother and her child walk in the street because of the things on the sidewalk and then scramble to get out of the way when a car pulled up into a parking space.

Vice-Chairman Shore asked if the layout meets BAR approval.

Mr. Diem stated that his understanding was that the previous approval did not involve a permanent attachment, like the roof structure, and that it would have been removed in the winter months.

Commissioner Beatley stated that outdoor seating makes sense for this business, but it could probably be redesigned to not block so much of the sidewalk.

Commissioner Slaughter stated that he agreed, but there are other ways to proceed rather than seeking a vacation of the right-of-way.

*Commissioner Slaughter moved that the Commission forward SV-11-411 to City Council recommending denial because it is in conflict with provisions of the Comprehensive Plan calling for a safe, walkable environment and represents poor planning practice. The motion was seconded by Commissioner Beatley.*

*Motion passed 6-0 (Chairman Adams not present).*

**B. SV-11-435 AN ORDINANCE TO VACATE A SIX FOOT WIDE STRIP OF WEST CLIFFORD STREET RIGHT-OF-WAY ADJACENT TO 221 ROSZEL ROAD AND CONVEY IT TO THE OWNERS OF THE ADJACENT PROPERTY**

Mr. Youmans reviewed request by Peter Johnson & Marilyn Heath to acquire a 6-foot wide portion of the semi-improved W. Clifford St right-of-way along the south side of their residence.

In a letter dated July 19, 2011, the applicants explain their request and note the existence of a 56-foot wide public right of way. The present-day standard width for local street (Category I) rights-of-way is 50 feet. There are no known plans to extend W. Clifford Street, but it could serve as an important connection to any future subdivision of the adjoining Byrd property, much in the manner that North Avenue served as a connection to the Glen Lea Subdivision.

The existing 56-foot wide right-of-way terminates near the southwest corner of the Johnson/Heath residence which is only 4.9 feet away from the side property line. If the 6-foot portion is vacated and conveyed to them, it would provide about 12 feet of corner side yard where the MR District would otherwise require 20 feet today. The access to the parking at the rear of the Johnson/Heath residence appears to encroach onto the adjoining Byrd land.

The request does not reduce the public right-of-way below the acceptable width to qualify as a local public street. It also does not impair access to the public alley behind the homes on Courtfield Ave nor impede access to the Byrd driveway.

Mr. Youmans stated that staff does not believe vacation of the 6 foot strip would impair future development of Senator Byrd's land or other property to the west.

Commissioner Talley stated that it looks like the vacation would not harm the City in any way.

*Commissioner Talley moved that the Commission forward SV-11-435 to City Council recommending approval since it is not in conflict with any provision of the Comprehensive Plan or good planning otherwise. The motion was seconded by Commissioner Slaughter.*

*Motion passed 6-0 (Chairman Adams not present).*

**Chairman Adams returned to the meeting.**

**C. Resolution to initiate: TA-11-450 AN ORDINANCE AMENDING ARTICLES 1, 8, 9, AND 10 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO NIGHTCLUB DEFINITION AND USE PROVISIONS**

Mr. Diem reported that staff is requesting to withdraw the request at this time based on discussion at the work session last week. The item may be presented again later in conjunction with a related amendment to noise provisions in City Code.

**D. Administrative Authorizations:**

- 1) **SP-11-341** 1818 Robert LC 1811 Roberts St (& Jubal Early Dr) Roberts St Plaza

Commissioner McKannan announced that he would be abstaining from this item. Mr. Moore explained that the related rezoning requested was approved by Council last week. The plan utilizes an access break on Jubal Early that the owner obtained from VDOT several years ago. A boundary line adjustment as shown on the plan will need to be approved prior to site plan approval.

*Commissioner Talley moved to grant administrative authorization for SP-11-341. The motion was seconded by Commissioner Wiley. Motion passed 6-0-1 (Commissioner McKannan abstained).*

- 2) **SP-11-461** Evergreen Health & Rehab Center 380 Millwood Ave Revision

Mr. Moore reviewed the request to revise parking areas and create a fenced garden area at the rear of the building. The plan will need to be revised to include curb definition in most areas where edge of pavement is currently called for.

*Vice-Chairman Shore moved to grant administrative authorization for SP-11-461. The motion was seconded by Commissioner Talley. Motion passed 7-0.*

**ADJOURN**

With no further business to discuss, the meeting was adjourned at 5:10pm.

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Nate Adams, III, Chairman