

PLANNING COMMISSION  
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, May 17, 2011 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**PRESENT:** Chairman Adams, Vice-Chairman Shore, Commissioners McKannan, Slaughter, Talley, and Wiley (6)  
**ABSENT:** Commissioner Beatley (1)  
**EX-OFICIO** Councilor Tagnesi and City Manager O'Connor  
**STAFF:** Youmans, Moore, Diem and Walsh  
**VISITORS:** Tim Painter, Stephen Arnold, Ron Mislowsky, Terry Hudson, Zack Varkaris, Lawton Saunders, Jesse Levenson, and Scott Rosenfeld.

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

**APPROVAL OF MINUTES**

*Commissioner Talley moved to approve the minutes of the April 19, 2011 meeting as presented. The motion was seconded by Commissioner Slaughter.*

*Motion passed 5-0.*

**CORRESPONDENCE**

A revised packet was presented that included the following:  
Recommendation for approval of the Capital Improvement Program  
Addition of Item 4C3 – SP-11-285

**CITIZEN COMMENTS**

None

**REPORT OF FREDERICK COUNTY LIAISON**

Mr. Youmans advised that Chris Mohn was not able to make today's meeting due to illness. Chairman Adams gave an overview on what would be discussed at tomorrow's Frederick County Planning Commission meeting.

**PUBLIC HEARINGS**

**A. TA-11-204 AN ORDINANCE TO AMEND AND REENACT ARTICLE 18, SECTION 18-19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO HOME OCCUPATIONS**

Mr. Diem presented the request to expand the provisions of Home Occupations to include the employment of up to three additional persons who are not residents of the principle dwelling; use of an accessory structure as the principle location of the home occupation; and identification of such home occupation by a freestanding or building mounted sign not to exceed four square feet in area.

Mr. Arnold has personally operated a musical instruction home occupation from his private residence for a number of years; and, has enjoyed the many benefits of working from home. In an effort to expand his home occupation at the residence, he sought a number of variances through the Board of Zoning Appeals, which were subsequently denied in full. He now comes before the Planning Commission and City Council with the intent of modifying the home occupation standards, so that he and other persons who have established – or who seek to establish – home occupations may benefit from expanded provisions.

Mr. Arnold recognizes the inherent risks associated with by-right inclusion of the changes that are being proposed for consideration; and therefore, has indicated a preference that the provisions only be enabled through a Conditional Use Permit process. Each case could then be considered on the specific merits of the application, site location, neighborhood density, availability of off-street parking, and other concerns which may be voiced by members of the public during the public hearing processes associated with the CUP review and approval process.

**Chairman Adams opened the public hearing.**

Stephen Arnold stated that there are benefits to allowing this to go through. Small businesses will be able to grow before they have to accept the financial obligations of become a commercial operation. He himself has nine off-street parking places and free parking in front of his house. He stated that he would be available for questions.

**Chairman Adams closed the public hearing.**

Vice-Chairman Shore stated that it seems like what the applicant wants is reasonable; however, it would be a major change to the Zoning Ordinance. He shared statistics from the Planning and Zoning 2011 Annual Report on the number of home-based businesses in Winchester. Home-based businesses are not an anomaly. An Ordinance change allowing signs could mean a major change in what is seen in residential neighborhoods, which could cause property values to decline. He stated he thinks it is a bad idea across the board.

Commissioner Slaughter stated that what is currently in place works well. Once a business gets to a point where it is ready to hire an employee, they should have to move into a commercial space. He asked if the applicant had an opportunity to look at commercial space.

Mr. Arnold stated that income from this type of use is not sufficient to support leasing.

Commissioner Slaughter asked Mr. Arnold if he thinks this or if he knows from looking.

Mr. Arnold stated that he has talked with Jim Deskins and looked at some spaces downtown.

Commissioner Slaughter asked Mr. Arnold if he could go to the students instead of them coming to him.

Mr. Arnold stated that this does not work the best for music teachers.

**Commissioner Wiley arrived at 3:18PM.**

Chairman Adams stated that adding employees will add traffic when residents are looking for places to park. He had no issue with doing business in an accessory structure or with the sign. After adding employees it is no longer a home occupation by definition.

Commissioner Talley stated that he could sympathize because his wife has a home-based business. However, as a business grows it needs to move to a commercial space. This would be a bad impact on the neighborhood.

Vice-Chairman Shore added that there are houses in B-1 and RB-1 Districts that would allow this use by right.

*Vice-Chairman Shore moved to forward TA-11-204 to City Council recommending denial, as the proposed text amendment will create an opportunity for a change of use of a residential structure; thus, potentially and adversely affecting the overall quality of life and overall character of the district.*

*The motion was seconded by Commissioner Talley.*

Commissioner McKannan was opposed to denying this request. If it would make a small business more prosperous it afforded a look.

Chairman Adams stated that there had to be a middle ground. He suggested eliminating Section A (allowing employees) from the amendment.

*Commissioner Slaughter moved to amend the original motion to eliminate Sections A & C and allow Section B.*

*The motion was seconded by Commissioner Shore.*

*Motion to amend failed 3-3 (Commissioners Talley, McKannan, and Wiley in opposition).*

Chairman Adams called for a vote on the original motion made by Vice-Chairman Shore.

*Motion to recommend denial passed 4-2 (McKannan and Wiley in opposition).*

**B. TA-11-222 AN ORDINANCE TO AMEND AND REENACT ARTICLE 18, SECTION 18-8-7 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIGNS IN THE RO-1 DISTRICT WITH HW OVERLAY**

Mr. Diem presented the request to modify the provisions pertaining to freestanding signage in the Residential Office (RO-1) District, where standards associated with the Historic Winchester (HW) overlay district are also applicable.

Mr. Rosenfeld contends that there are more similarities between properties that are zoned Central Business (B-1) District, with HW overlay and properties that are zoned RO-1 with HW overlay, than properties that are zoned RO-1 with no HW overlay provisions. A number of properties meet this designation, yet do not benefit from having the same freestanding signage benefits more commonly associated with the B-1 District. For that reason, the applicant seeks to amend the Zoning Ordinance to create consistency in the freestanding signage provisions between the two zoned districts, which are contiguous to one another and maintain the HW overlay.

Typically, the types of uses most commonly associated with the RO-1 District include medical offices and other professional services that could provide better destination identification by clients and patients who are seeking the office locations. Arguably, an increase in signage area for freestanding signage would enable easier site identification. However, the applicant's original proposal would lower the

freestanding signage area from 25 square feet down to 20 square feet. The HW overlay provisions would ensure that the freestanding signage is consistent with the Historic District Design Guidelines utilized by both the Zoning Administrator and the Board of Architectural Review in granting certificates of appropriateness for their design; and, thus would be compatible with the streetscape and surrounding architecture of the office buildings for which the signs are intended to identify.

In light of the adopted HW District Design Guidelines, and based upon the type of signage approved by the BAR in the HW District portions of the B-1 District, a Draft 2 'City Alternative' has been prepared by staff for consideration as a lesser change to the signage provisions for RO-1 properties that are also situated within the HW District. The alternative amendment would double the height limit for freestanding signage, allowing signs up to twelve feet tall rather than 20 feet tall as called out in the applicant's proposal. Few, if any, 20-foot tall signs have ever been approved in the HW portion of the B-1 District by the BAR. These taller signs are generally situated in the portions of the B-1 District not encompassed by the HW District, such as Gerrard Street, S. Loudoun Street and Millwood Avenue.

**Chairman Adams opened the public hearing.**

Scott Rosenfeld stated that he was supportive of Draft 2 and was available for questions.

**Chairman Adams closed the public hearing.**

Commissioner Wiley asked how old the historic district guidelines are and where they came from.

Mr. Diem explained that they date back to 1999 and come from the Secretary of the Interior Standards of Rehabilitation. The standards are not site specific, they could apply anywhere in United States.

*Commissioner Talley moved to forward TA-11-222, identified as Draft 2, dated 5/10/2011 to the Common Council of the City of Winchester, recommending approval as the proposed modification will ensure consistency in the architectural streetscape and overall historic character of parcels that are zoned RO-1 with HW overlay; and, represents good planning practice, in general.*

*The motion was seconded by Commissioner Wiley.*

*Motion passed 6-0.*

**3. OLD BUSINESS**

- A. **CU-11-126** Request of Zach Varkaris/Azzet LLC dba Tippy's Taco House for a conditional use permit for nightclub use at 147 North Loudoun Street (*Map Number 173-01-F-22*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

Mr. Diem briefly reviewed the request, which was presented April 19, 2011 meeting and then tabled subsequent to the public hearing at the because the applicant was not present.

Vice-Chairman Shore stated that the consensus was that there should be a limit on the number of nights other than weekends he suggested 10-12 nights per month other than Friday and Saturday.

Chairman Adams added that the maximum four (4) police calls were too many. That would equate to a fight a week before private security would be required.

Commissioner Wiley stated that he commends the business for moving downtown. He stated that it will bring Old Town further back to life and that there will be growing pains integrating residential with commercial, but it is prudent to continue bringing business in the area.

Vice-Chairman Shore asked Mr. Saunders what he thought about the conditions being placed on this business, being that he was one of the people that spoke at the public hearing on this item.

Mr. Saunders stated that they have to be good neighbors and responsible business owners. Four (4) police calls are too many and more than 10-15 nights is too much.

*Commissioner Wiley moved to forward CU-11-126 to City Council recommending approval because the use, as conditioned, should not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The recommendation is subject to:*

- 1. Application shall be subject to review after a period of 6 months, and reapproval of the CUP is required every three years;*
- 2. The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;*
- 3. The applicant is required to limit the noise within the establishment to no more than 95 dBA between the hours of 10:00pm and 6:00am. At no time, shall the sound emanating from establishment as measured from an outside wall or party wall exceed 75 dBA;*
- 4. All windows and exterior doors to remain closed during nightclub use and no aspects of nightclub use to occur outside the building;*
- 5. A maximum of three (3) criminal offense police calls occurring on or attributable to the property per month, after which private security is required and/or the permit may be subject to revocation;*
- 6. Nightclub use to end no later than 1:00am on Saturday and Sunday mornings (Friday and Saturday nights); in addition, up to twelve other nights per month (Sunday through Thursday) are permitted with the use to end no later than 12:00 midnight on those nights, with the exception of New Year's Day which would have a 1:00am ending time;*
- 7. The CUP expires automatically if the nightclub use changes to another use, the nightclub use ceases for more than one year, or the property changes ownership;*
- 8. Strict obedience with all local and state laws especially those pertaining to ABC licensing and payment of business, meals, and admissions taxes; and,*
- 9. The applicant is responsible for cleaning up any trash outside the facility after closing each evening.*

*The motion was seconded by Commissioner Slaughter.*

*Motion passed 6-0.*

#### **4. NEW BUSINESS**

- A. TA-11-125 AN ORDINANCE TO ADOPT ARTICLE 13.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO COTTAGE HOUSING DEVELOPMENT DESIGN STANDARDS**

Mr. Diem stated that this is the latest version of the cottage house amendment that the Commission has been discussing in the previous the last months

*Vice-Chairman Shore moved to initiate TA 11-125 and to schedule a public hearing on the amendment in June.*

*The motion was seconded by Commissioner Talley*

*Motion passed 6-0.*

## **B. Capital Improvements Program (CIP)**

Mr. Youmans briefly reviewed the proposed CIP that was discussed in detail during the work session. He stated that the Commission should consider a recommendation to Council based on the Comprehensive Plan.

*Commissioner Talley moved to recommend approval of the Capital Improvement Program, because the recommended projects, particularly those identified for funding beginning in 2012, are generally consistent with the adopted Comprehensive Plan.*

*The motion was seconded by Commissioner Wiley.*

*Motion passed 6-0.*

## **C. Administrative Authorizations:**

1) **SP-11-273** Painter-Lewis PLC 146-148 N Loudoun St Blind Faith Bldg Renovations  
*Commissioner Shore moved to grant administrative authorization for SP 11-273. Motion was seconded by Commissioner Wiley. Motion passed 6-0.*

2) **SP-11-275** Painter-Lewis PLC 2339 Middle Rd Cedar Hill Apartments  
*Commissioner Wiley moved to grant administrative authorization for SP 11-275. Motion was seconded by Vice-Chairman Shore. Motion passed 6-0.*

3) **SP-11-285** PHR+A Shenandoah University Gore-Funkhouser Addition  
*Commissioner Talley moved to grant administrative authorization for SP 11-285. Motion was seconded by Vice-Chairman Shore. Motion passed 6-0.*

4) **SP-11-297** Winc Parks & Rec Jim Barnett Park Preston Field alterations  
*Chairman Adams read the following into the minutes: At the May 10, 2011 work session, Commissioner Wiley moved to grant administrative authorization for SP-11-297. The motion was seconded by Vice-Chairman Shore. Motion passed 6-0.*

## **ADJOURN**

With no further business to discuss, the meeting was adjourned at 4:34PM.

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Nate Adams, III, Chairman