

PLANNING COMMISSION
MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, May 15, 2012 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

CALL TO ORDER: Chairman Shore called the meeting to order at 3:00 p.m.

PRESENT: Chairman Dave Shore, Vice-Chairman William Wiley, and Commissioners Carroll “Beau” Correll, Jr., Kevin McKannan, and Stephen Slaughter, Jr. Commissioner John David Smith arrived late. (6)

ABSENT: Commissioner Jennifer Beatley (1)

EX-OFICIO: Councilor John Tagnesi and City Manager Dale Iman

FREDERICK CO LIAISON: Commissioner Chris Mohn

STAFF: Planning Director Tim Youmans, Planner Will Moore, Acting Zoning & Inspections Administrator Aaron Grisdale and Secretary Paula Le Duigou

GUEST PRESENTER: Frederick County Deputy Planning Director Mike Ruddy

VISITORS: Richard Bell, Richie Pifer, Sr., Ron Mislowsky

APPROVAL OF MINUTES

Commissioner McKannan moved to approve the April 17, 2012 minutes as presented. The motion was seconded by Commissioner Slaughter.

Motion passed 5-0.

CORRESPONDENCE

Mr. Youmans stated that there was a revised staff report for item 2A, CU-12-95.

CITIZEN COMMENTS

None.

REPORT OF FREDERICK COUNTY PLANNING COMMISSION LIAISON

Commissioner Mohn stated that they had a full agenda at the May 2, 2012 meeting. He stated that the Commission recommended denial for a rezoning request in the Clearbrook area and recommended approval for two other items: a Master Development Plan and a subdivision waiver request. He stated that there had also been discussion of language pertaining to some possible Ordinance amendments. The Commission’s next meeting is tomorrow, May 16, 2012.

PUBLIC HEARINGS

- A. **CU-12-95** Request of the Economic Development Authority for a conditional use permit for a neighborhood convenience establishment at 443 North Loudoun Street (*Map Number 173-01-I-25*) zoned High Density Residential (HR) District with Historic Winchester (HW) District overlay.

Mr. Moore presented the request to convert an existing, multi-bay accessory building on a residential property into a rental self-storage commercial use utilizing the conditional use provision for a neighborhood convenience establishment.

The underlying zoning of the subject property is HR. Properties directly to the north are zoned similarly. Properties to the south and east (on the opposite side of N Loudoun St) are zoned HR-1. Properties to the west (on the opposite side of Lafayette Place) are zoned MR. The subject property and all immediately surrounding properties are also with the HW District overlay.

In recent years, the subject property has been the subject of zoning and code enforcement efforts by the City. In an effort to resolve some the problems associated with the property, the EDA purchased the foreclosed property. The EDA intends to transfer ownership of the property to an interested purchaser, Peyton Street Properties, LLC (“purchaser”) who wishes to change the residential use and occupancy from the previous nonconforming boardinghouse to likely either a two-family or three-unit, multi-family dwelling. Additionally, the purchaser wishes to convert an existing, multi-bay accessory structure to a rental self-storage commercial use utilizing the conditional use provision for a neighborhood convenience establishment (“NCE”), which is defined in the Zoning Ordinance as follows:

- 1-2-68 NEIGHBORHOOD CONVENIENCE ESTABLISHMENT: An establishment with a floor area of four thousand (4,000) square feet or less, which offers general services or merchandise for sale or rent to the people of the area for their day-to-day needs.

In the revised letter of intent received May 9, 2012, the purchaser describes the proposal. Eight units at approximately 180sf each would be provided. Access to the NCE would be primarily from Lafayette Place, a public alley at the rear of the property. A 14-15 foot apron area between and parallel to the structure and the improved alley will serve as loading area. Loading for the units on the east side of the structure will also be available from the gravel parking interior to the site.

The letter includes additional details pertaining to planned improvements to the structure, including the installation of security lighting on the east, north, and west sides of the structure. The purchaser accurately acknowledges that certain exterior changes, including the proposed lighting, shall be subject to review and approval by the Board of Architectural Review.

The purchaser also proposes that advertising shall primarily be through limited signage permitted on the building and otherwise through word-of-mouth and handouts/fliers in the immediate neighborhood. Based on discussion at the 5/8/12 Planning Commission work session, the purchaser also has proposed that any mass advertising (i.e. Craigslist, classified ads, etc) would reference “Neighborhood Storage, Downtown Winchester.” While nothing would preclude availability of a unit to out-of-area renter, this language should help to direct the advertisement to

those in the immediate area and better support the use as meeting the intention of the NCE provision. Hours of access to the rental units are proposed to be limited to 7:00am to 9:00pm.

The purchaser also describes the indication of need for such a use in the neighborhood. The letter accurately describes the immediate vicinity as one with a high density of residential uses, including single family, two-family, and multi-family. The purchaser asserts that storage options are critical to current and potential residents in areas of such a high density of residential housing. The purchaser also indicates personal experience in owning and operating a multi-unit self-storage facility in the area, including familiarity with management of such a facility. Additionally, the purchaser lives in the immediate vicinity and owns and operates a commercial real estate property and asset management company.

The EDA previously secured certain dimensional variances from the BZA pertaining to the reuse of the property. Additional variances are required to be considered based on the proposed combination of uses, including setback, side yard, rear yard, and off-street parking area buffer. These were scheduled to be heard by the BZA on May 9, 2012. A proposed condition associated with the variance requests pertains to a 3 foot parking buffer along the off-street parking area on the property and the installation of screening per Section 19-5-6.4 of the Ordinance.

Mr. Moore stated that a number of draft conditions were included in the staff report for the Commission to consider should it give favorable consideration to the request.

Commissioner Smith arrived at 3:05 pm

Commissioner McKannan asked Mr. Moore about condition number three and the definition of onsite advertising.

Mr. Moore said that it was what took place at the property. He said that the Zoning Ordinance has certain parameters for signs that are being considered and they would have to meet those requirements for approval.

Commissioner McKannan said that the wording of the condition concerning onsite advertising needed to be more clearly stated.

Commissioner Correll said that if they are silent to other forms of advertising, it gives the broadest range of options and will have many more avenues to utilize.

Commissioner McKannan discussed the use of the word “and” and how it affected the definition.

Mr. Moore suggested that the word “and” could be deleted and replaced with a semicolon to clarify the intent.

Commissioner McKannan said that he liked that a lot better.

Chairman Shore stated that the word “on site” could be removed.

Commissioner McKannan said that he wanted to make sure that it was clear for the applicant.

Mr. Moore stated the language was simply an initial draft and that the Commission was free to revise as it sees fit.

Commissioner Correll asked how many CUPs there were that authorized the NCE provision.

Mr. Moore said that he was aware of two in the last two to three years; one was a retail market use and the other was a laundry facility.

Commissioner Correll asked if either of those limit in any way their advertising.

Mr. Moore stated that he could not recall, but in those instances the use was clearer than with a storage use. In this case, staff felt that the advertising aspect could help clarify whether the use met the intent of the NCE provision as to providing goods and services to people in the surrounding area. He stated that that was why they had asked the applicant to help with the language.

Commissioner Smith said that he was pleased that staff had taken the revisions into consideration.

Chairman Shore opened the public hearing

Richard Bell, 119 Peyton Street, addressed the Commission. He stated that he and his wife own the LLC that holds the adjacent property and they have been in negotiations with the EDA for nine months; intending to acquire and remodel the residence. He said that they were not in the storage unit business but they want to make it work for community. He stated that he was fine with direction that all is going with the staff report and revisions.

Mr. Bell said that as for the onsite advertising, he envisioned nothing more than a sign that references what it is and how to contact him. He said that it was their intention to serve downtown, but he also recognized that there may be a need for someone who lived downtown but moved to Stephens City and needed to use storage while their house was being renovated.

Mr. Bell said that they did not want to create troubles and they recognized that under the conditional use process, it is subject to review. He said that in all likelihood, if it was not working for the City, it would probably not work for them either.

Commissioner Slaughter said that he was concerned with the concept itself, but because of the applicant's reputation, he felt a lot better about this request. He said that he felt that this was a stretch of what the Zoning Ordinance allows, but at the same time, it was a unique situation and if it works as a neighborhood storage unit, it could work very well.

Commissioner Slaughter said that he had gone to the site, and he could see potential issues since the access is through an alley, and his first concern was with the precedent that would be set with this. He said that he did not think that this was something that they wanted to see in the entire City.

Commissioner Slaughter asked that the minutes reflect that a favorable motion from him for this request would be limited to this particular request and that future applications of this type will be judged upon their individual merits and not be automatically approved because this one was.

Commissioner Slaughter stated that Mr. Bell's letter had mentioned that he would prohibit hazardous materials being stored. He asked if there would be any language restricting hazardous or flammable materials in the CUP conditions.

Mr. Bell stated that they would limit storage of those types of materials in the rental agreement, but if someone stored a vehicle, there would be gasoline in the vehicle. He stated that what they would not want someone to do as an example would be to have an ammunition reloading operation there, or storing lead paint until it can be disposed of, anything that they would be viewed as inconsistent with general household storage.

Mr. Bell stated that as for the proximity of the adjacent structure, Mr. Moore had mentioned before the meeting that there would be required compliance with the building official because the property lines present proximity issues, such as whether or not fire rating would be required. He said that whatever they do they will be sure that they are in compliance.

Commissioner Slaughter said that there would still be additional approvals that may still take place.

Mr. Moore said that staff had spoken with the building official and this use may or may not require a change of use under the building code. He said that if it did, it may be necessary to fire rate that southern wall and along with that there may be some restrictions from the building code or fire marshal pertaining to storage.

Mr. Moore said that if there are any such restrictions, it would create a safer environment than it is today. He said that in its current state, it could be used by tenants who could store hazardous materials.

Commissioner Slaughter stated that given those things, most of his concerns have been addressed, and would be inclined to support the application and condition C.

Commissioner Smith asked Mr. Moore if over the past ten years, had there been a storage facility within a one mile radius of the area.

Mr. Moore stated that there are some other storage uses in the immediate downtown area between Loudoun and Cameron Streets.

Commissioner Smith asked if there had been any concerns with them. Mr. Moore stated that there were none known to staff.

Commissioner Correll asked what would happen if Mr. Bell decided to sell the property one day, would he be forced to find a buyer for both the residential and commercial use?

Mr. Moore said that they could buy both and/or discontinue the storage facility.

Commissioner Correll asked Mr. Bell if he was willing to accept those terms and Mr. Bell stated that it was all one tax parcel with no means to subdivide the lot. He said that he could not see it being anything other than common ownership.

Mr. Bell said that with the shared driveway, which is exclusive to the two adjacent properties, is an easement and, not that he would do it since he owns both, but it could be terminated. He said that they might be able to reword to provide access but not go through the whole alley.

Mr. Youmans said that it could be subject to site plan approval.

Chairman Shore closed the public hearing

Chairman Shore said that he thought that this was a good use, allowing Mr. Bell to buy this property, and that it is a creative use. He said that if the Commission chooses option C of the proposed conditions, since staff and the applicant agree, it would allow them to look at any future applications on their own merits.

Commissioner Wiley stated that Mr. Bell does a good job of taking care of properties throughout the City, keeping them in line with the historical standards. He said that based on the nine months needed to negotiate the sale, he hoped that the EDA would find a way to streamline the process and to make it quicker to move some of the properties.

Commissioner Wiley moved that the Commission forward CU-12-95 to City Council recommending approval because the use, as proposed, 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. *Conditions, if any, associated with the variances approved by the BZA;*
2. *Approval of the related site plan pertaining to both the neighborhood convenience establishment and the residential use, including waivers of paving requirements to allow gravel for the rear off-street parking area and curbing requirements along the common drive;*

Commissioner Correll asked if each condition would be voted on individually.

Chairman Shore stated that the motion would be voted on as read.

3. *On-site advertising shall be limited to permitted signage; broadcast advertising, whether print, internet or otherwise, shall be targeted toward customers residing in the downtown Winchester area through specific reference to the use as "Neighborhood Storage, Downtown Winchester";*
4. *Hours of access to the rental units shall be limited to between 7:00am and 9:00pm.*
5. *The subject property and the neighborhood convenience establishment shall be owned and operated by either the same entity or by entities with common principal or managing members;*
6. *The owner/operator taking into consideration the concerns of all of the neighbors and addressing them as they come up; and,*
7. *The CUP expires automatically if the use changes to another use or if the use ceases for more than one year, in accordance with Section 18-2-3.8 of the Winchester Zoning Ordinance.*

The motion was seconded by Commissioner Smith.

Commissioner Correll stated that the only issue he had was with regard to condition 3. He said that he felt this matter was precedent-setting for people applying in the future and who will want to see uniform standards as to advertising.

Commissioner Correll moved to amend the motion to permit option 3A and the applicant not be limited in any way to advertising not on site, however the applicant decides.

Chairman Shore asked Mr. Youmans what the procedure would be at this point. He asked if the initial motion have to agree.

Mr. Youmans said that the Commission had a motion and a second, with a request to amend. He said that a second to the amendment would be needed and, if seconded, then another vote just on the amendment would be required.

Chairman Shore asked if there was a second to the amend motion.

Commissioner Smith asked if they needed to vote on the previous motion first.

Mr. Youmans stated that procedurally if someone wanted to offer an amendment they can, if there is a second they would vote on it and if there is no second then the amendment fails and they would go back to the original motion.

Commissioner Smith seconded the amendment.

Mr. Youmans stated that they could now have a discussion on the secondary motion.

Commissioner Slaughter stated that he felt that each situation is different, so while this application is in an alley and residential area, the Commission is calling for extra things like they would with a night club permit. He said that there may be another application that comes in at some time where the situation is completely different. He said that every CUP could have different conditions and that is why he felt comfortable with the language as presented.

Commissioner Correll stated that he had some concerns about providing the business owner with as many means as possible for advertising in order for it to be successful. He said that just because the location of the storage facility is in a residential area, it cannot guarantee that he will have all the customers that he needed. He stated that wanted to give the business owner all the tools to use his marketing prowess to fill the units up.

Commissioner Smith said that the BZA already had in place sign permitting codes, and while he can understand the adjustments that Commissioner Correll was asking to make, he felt that the Commission needed to take individual applications into account when making their determination. He said that he based his decision of restrictions on the reputation of Mr. Bell, who always worked to stay within the guidelines of the City.

Motion to amend failed 2-4 (Chairman Shore, Vice-Chairman Wiley, and Commissioners McKannan and Slaughter in the negative).

Chairman Shore then asked for a vote on the original motion.

Motion passed 6-0.

B. TA-12-187 AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 8, 9, 10, 11 AND 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS, USE PROVISIONS AND PARKING PROVISIONS FOR ARENAS, AMPHITHEATERS, AND STADIUMS

Mr. Youmans outlined the proposed amendment.

This publicly sponsored text amendment would allow for Conditional Use consideration of large venue entertainment establishments in a number of commercial and industrial districts. The ordinance creates definitions for the three new uses and includes provisions for off-street parking, including the opportunity to utilize time-shared parking provisions.

The Zoning Ordinance provides for definitions of uses allowed by-right and with a conditional use permit in various zoning districts within the City of Winchester as well as prescribed off-street parking requirements. Currently, the Zoning Ordinance does not include use provisions for arenas, amphitheaters, and stadiums.

At its April 17, 2012 meeting, the Planning Commission initiated this text amendment based upon the finding that it represents good planning practice by providing additional opportunities for economic development, while promoting social sustainability. The adopted Comprehensive Plan and the stated goals of the Common Council of the City of Winchester include a focus on economic development for the purposes of sustainability. This proposed text amendment would provide for uses which could foster additional economic development and social sustainability.

Specifically, the proposed text amendment will allow for consideration of arenas, amphitheaters and stadiums as Conditional Uses in the B-1, B-2, CM-1, and M-1 Zoning Districts to support economic development and enhanced social sustainability. Amendments to Article 1 pertain to definitions for each of the three uses. The archaic definition for Amusement Enterprise is replaced with a definition for Arena. For each of the three venues, there is a threshold defined, below which, the use would either be considered as accessory to another primary use or otherwise allowed by right within the district. For example, amphitheaters that are not standalone would be accessory to the use otherwise proposed. Arenas under 30,000 square feet would be considered theaters, auditoriums, conference centers, indoor recreation, or some other use provided for in the subject zoning district. For stadiums, facilities having seating for up to 300 spectators would not be defined as a stadium. As an example, the stadium seating at the Handley High School tennis courts would be considered accessory to the permitted public school use.

Draft 1 of the proposed ordinance dated March 29, 2012 includes a specific distance provision that each of the three entertainment structures must be separated from LR and MR residential districts. For structures in the B-2, CM-1, and M-1 districts, the minimum separation is 300 feet. In the more compact B-1 district, the minimum spacing is set at 200 feet. This distance is measured from the structure to the closest MR or LR zoning district boundary.

Article 18 is amended to add the uses to the parking provisions where they are not otherwise addressed. The ordinance already has parking standards for Stadiums and Amphitheaters even those the uses are not specified as a use allowed in any of the City's current zoning districts. The notable change in Article 18 is to add all three uses to the grouping of uses for which time-shared parking arrangements can be considered. The three uses are added to the list of uses that otherwise have low weekday daytime parking demand, but high evening and weekend parking demand.

Chairman Shore opened the public hearing

No one spoke regarding the request.

Chairman Shore closed the public hearing

Commissioner Slaughter stated that this makes good planning practice. E stated that he liked the way staff has handled this and the flexibility that it provides.

Commissioner Slaughter moved to forward TA-12-187 to City Council recommending approval because it represents good planning practice by providing for uses which could foster additional economic development and social sustainability.

The motion was seconded by Vice-Chairman Wiley.

Motion passed 6-0.

NEW BUSINESS

A. SV-12-151 AN ORDINANCE TO VACATE APPROXIMATELY 4,500 SQUARE FEET OF PUBLIC RIGHT-OF-WAY AT THE SOUTH END OF ROBERTS STREET AND CONVEY IT TO THE OWNER OF THE ADJACENT PROPERTY

Commissioner McKannan announced that he was abstaining from this item.

Mr. Youmans presented the request of Mr. Richard W. Pifer (as 1818 Roberts L.C.) that would eliminate the southernmost segment of Roberts Street as a public street where the applicant owns land abutting the right of way on all three sides. The physical travelway would remain to serve the adjoining private property.

This request had been approved by City Council on August 12, 2003, but the applicant failed to follow through on the Minor Subdivision to effectuate the conveyance within the one-year timeframe spelled out in State Code. The applicant would now like to proceed with the conveyance.

The applicant owns all of the private property served by this dead-ended section of Roberts Street and there is no public purpose in retaining public ownership of this right-of-way and the roadway improvements within the right of way. The applicant had previously secured a rezoning of the property fronting along the east side of the subject section of Roberts Street and a site plan for a commercial development with right-in/right-out access from/to westbound W. Jubal Early Drive is awaiting approval. The vacation should be conditioned upon the applicant assembling the vacated right-of-way in with the adjacent private property.

Back in 2003, City Council established a sale price of \$2.50 per square foot subject to the applicant establishing all necessary easements. City Council should confirm whether or not the same sale price will be set for this 2012 ordinance.

Chairman Shore asked Mr. Pifer if he had anything to add.

Mr. Pifer stated that he was available for questions.

Commissioner Smith moved to forward SV-12-251 to City Council recommending approval because there is no long-term need for the public right-of-way. The approval is subject to establishing necessary easements and subject to approval and recordation of a Minor Subdivision assembling the vacated right-of-way in with the adjoining property.

The motion was seconded by Vice-Chairman Wiley.

Motion passed 5-0-1 (Commissioner McKannan abstained).

B. Overview of the Senseny/Eastern Frederick Urban Area Plan (SEFUAP), an update to Frederick County's 2030 Comprehensive Plan

Mr. Mike Ruddy, Deputy Director for Frederick County Department of Planning and Development, gave a synopsis of the process and the resultant plan to the Commission. This was followed by a brief question and answer session with the Commissioners.

Chairman Shore stated that it was an impressive plan and thanked Mr. Ruddy for taking the time to visit and present the plan to the Commission.

C. Administrative Approval

- 1) **SP-12-230** PHR+A 1850 Apple Blossom Dr Carmike Cinemas

Mr. Moore reviewed the site plan to demolish the existing theater attached to the Apple Blossom Mall and construct a new 12-screen theater which would extend into part of the existing parking area. The site as a whole would still have well in excess of the required number of parking spaces. A slight realignment of the Frontage Road intersection with the mall's ring road and a new 3-way stop condition should help to improve safety at the intersection.

Commissioner Slaughter moved to grant administrative authorization for SP-12-230.

The motion was seconded by Commissioner McKannan

Motion passed 6-0.

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:20 p.m.

Dave Shore, Chairman