

**PLANNING COMMISSION
MINUTES**

The Winchester Planning Commission held its regular meeting on Tuesday, October 21, 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, Willingham, Talley and Sublett.

Ex Officio & Staff: Griffin, Lewis, Youmans, Diem, Moore, Williams & Walsh

Frederick County Liaison: Absent

ABSENT: Commissioner Shore

VISITORS: Ken Cuave, Larry Belkin, Ron Mislowsky, Rick Leonard, Kevin McKew, Jesse Summer, Mike Wilson, Conrad Koneczny, Kimberly Sowers, Tom Sowers, Donald Crawford, Tim Painter and Bruce Santilli

CALL TO ORDER: Chairman Masters called the meeting to order at 3:05pm.

APPROVAL OF MINUTES:

Mr. Weber, seconded by Mr. Adams, moved to approve the minutes of the September 16, 2008 meeting as presented. The motion passed 6-0.

CORRESPONDENCE

There was a revised agenda packet presented including:

1. Three pieces of citizen correspondence regarding CU-08-13.
2. Added item 3B – Pre-Application discussion for revisions to stadium and tennis court areas at John Handley High School.
3. Added item 3C – Pre- Application discussion for reuse of building at 2100 S. Loudoun St.
4. Added item 3D – Motion to Initiate TA-08-08.

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON

None

PUBLIC HEARING

CU-08-13 Request of Old Post Office LLC for a conditional use permit for an adult activities center at 40 W. Piccadilly Street (*Section 173, Double Circle 1, Block G, Lot 1*) zoned Central Business, B-1 District with Historic Winchester, HW District overlay.

Mr. Moore presented the request to establish an adult activity center in the basement of the existing building for use by the tenant, New Lifestyles, which currently occupies the building's first floor and a portion of the second floor for clinical office space.

Photos, proposed elevations for exterior changes at the rear of the building, and the site layout were reviewed. A floor plan for the basement space where the activity center would be located calls for several office spaces, an art studio, a music therapy room, a catering kitchen, restrooms, storage rooms and a large multi-use space that opens out to the patio/courtyard area to the rear (north) of the building.

The applicant's letter states that the purpose is "to provide a safe, non-alcohol, and staff supervised area for casual social activities and recreation." Numerous examples of possible activities are listed, including games, entertainment, art, study areas, etc. The applicant notes that the events are limited to program participants and are not open to the public. The applicant addresses particular considerations for conditional uses as outlined in the Ordinance, noting that impacts such as dust, odor, fumes and vibration are not applicable to the proposed use. Traffic generation is anticipated to be limited as most program participants are not permitted to have cars and all live within walking distance. While the property is exempt from providing off-street parking, 13 spaces will be available onsite and parking garages are in close proximity.

Mr. Moore stated that consideration should be given to the possible impacts of noise and light with the proposed use. In particular, the patio/courtyard on the north side of the building is in close proximity to the two single family residences directly across the parking area. The applicant's letter indicates that noise generated by activities conducted inside the building will be contained within. The letter likens the noise levels anticipated in the patio area to be equivalent or less to those in the outdoor seating areas of a restaurant. The applicant anticipates that most group activities will be completed by 10pm on weeknights and by midnight on weekends. Staff suggests that conditions on hours of use and the playing of amplified music (i.e. stereo) should be considered, in particular with relation to use of the outdoor patio area. The applicant notes that lighting will be "limited to typical outside lighting for safety purposes." This statement is vague and the neighboring residential uses call for more detail to be paid to this potential impact. Staff suggests that a photometric plan should be required with the site plan to ensure that lighting is properly contained within the site.

The applicant offers additional information in the request letter pertaining to New Lifestyles, described as a clinical transition program for emerging adults, usually between the ages of 18 and 22. Details of the organization and services provided are contained within the letter. Particular to the request, it is noted that the students live in residential properties in the downtown area. In the final paragraph, the applicant notes that casual social gatherings can be problematic at some of these residential locations, in particular if the neighbors have children who go to bed early. The proposed activity center at this location in the B-1 District is considered as an alternative location to social and recreational activities at the students' residences.

Mr. Moore pointed out the language from Ordinance pertaining to the finding that City Council must make in order to issue a conditional use permit:

For a conditional use permit to be issued, a finding must be made that the proposal as submitted or modified will 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.

Mr. Moore stated that the Commission should consider the same standard in making their recommendation to Council. Should the Commission make a favorable recommendation, a number of suggested conditions were included in the staff report for the Commission to consider recommending in order to mitigate potential impacts.

Chairman Masters opened the public hearing.

Dr. Ken Cuave spent several minutes explaining the difference between his program and some other groups in the City that the public may be confusing his with. He stated that his facility limits the ages of the students. His program has professional level staff available 24/7; seven staff have Doctorates, five are pre-Doctorates (interns) and one has a Masters Degree. He stated that his program should not be confused with a self-run group home operation. His program is not a substance abuse rehab program. Some students may have a substance abuse history, but before they are accepted they will have to have completed a treatment program. New Lifestyles has random drug testing for those students with such a past. If an established curfew is broken, then testing is mandatory. If it is needed, staff will escort students to substance abuse group meetings such as AA.

Dr. Cuave explained that the activities center will give the students a place to go that is drug and alcohol free as they are not allowed to go to bars. He addressed the letters sent by concerned citizens by stating they are all confusing it with a rehabilitation center, worrying about security issues that may arise. He assured the Commission that this is one of his top concerns also. He stated that since they have moved in, there have been no incidents regarding security. Although the occupants are limited to staff and participants in the program, there will be times when visitors are allowed. This would be infrequent and would depend on the student's level attained in the program. The activities center would be open nightly and would be supervised at all times. No one would be permitted to hang around outside or even to sit on the porches.

Dr. Cuave stated that he had reviewed the staff report and had no problem with any of the recommended conditions, reiterating that loitering would not be allowed. He stated that all of their residence houses meet all Ordinance requirements; 6 occupants in homes with 2 bathrooms and 4 in homes with less than 2 bathrooms. He concluded by saying that he wants to have a positive impact on the community.

Chairman Masters asked if there was anyone else who wished to speak about the matter. Hearing none,

Chairman Masters closed the public hearing.

Mr. Sublett asked how many homes they have in the community and where they are located.

Dr. Cuave explained that there are 4 main homes and 2 transition houses. The four main homes are located at 411 S. Cameron St., 221 W. Boscawen, and 303 & 309 Amherst St. He explained that a transition house is for advanced level students and is not subject to the same extent of monitoring as the main houses.

Mr. Sublett asked if supervisors were at the houses at all times or if they were called in when situations arise.

Dr. Cuave stated that the staff worked in shifts; 7:30am to 3:00pm, noon to midnight and 10:00pm to 8am. There is staff in the houses anytime students are there between 7:30 am and midnight. Overnight, they are mobile and perform checks on each of the residences. There may be times when they are required to stay overnight in each house, but that is not common practice.

Mr. Sublett stated that the applicant's letter indicated that students either work or go to college. He asked what the breakdown of students working versus going to college is.

Dr. Cuave stated that of the 25 current students, seven are enrolled in college (six at Shenandoah, one at Lord Fairfax) and eight are currently working.

Mr. Sublett asked how often they test for drugs.

Dr. Cuave stated that it is random, but will definitely occur anytime there is a suspicion of use or if a curfew is broken.

Mr. Sublett asked how many have been dismissed for failed tests.

Dr. Cuave explained that he did not have that information with him, but it is a minimal number. He stated that one positive test is not necessarily grounds for dismissal.

Mr. Sublett asked what percentages of students do have a substance abuse background.

Dr. Cuave stated that approximately 25% of the current students have a history of substance abuse.

Mr. Adams reiterated that the applicant stated that the center would be used every night. He asked if everyone would come in at one time or if there would be constant coming and going.

Dr. Cuave explained that it would depend on the student's level of functioning in the program. Some would be required to participate and others would be free to choose.

Mr. Adams asked if the staff for the center would be the same throughout the week.

Dr. Cuave stated that the staff required would be based on the number of students present. It would probably range between 1 and 4 staff members.

Mr. Adams asked if the staff would escort the students home.

Dr. Cuave stated that the students are capable individuals and that escorting to and from the center would be atypical.

Mr. Adams stated that these types of activities usually have a lot of people just hanging out like young people do and that this tends to make people feel unsafe. He has to think of the neighbors and their property.

Dr. Cuave assured the Commission that he holds a high value on respect for others. Disturbing the neighbors and the community is grounds for dismissal from the program. He takes it very seriously.

Mr. Weber asked if he has ever had to discharge anyone from a house.

Dr. Cuave stated that he has, but it is very rare. This program has been in place in the City of Winchester since 1997. Students were not as well supervised then as they are now.

Mr. Weber asked for more information on what would happen to discipline a student for disturbing the neighbors or community.

Dr. Cuave stated that the normal procedure would be to send a warning letter to both the student and their parents that they are on notice for a disciplinary action and that any further incident would result in discharge. He stated that it is in the contract that the program fees are nonrefundable for such a discharge and that this acts as a great deterrent.

Mr. Talley asked if there would be a schedule for the center or would people just stop in.

Dr. Cuave stated that they have not worked out a schedule yet, but there will be hours based on staff availability.

Mr. Talley asked if the students will be escorted home to make sure they make curfew.

Dr. Cuave stated that it depends on the level of the student. Most are capable of walking home unescorted.

Mr. Adams stated that in his mind he pictures a big group headed out in the dark after the center closes. He stated that he is being facetious, but asked Dr. Cuave to explain the difference between these houses and, for example, a fraternity house.

Dr. Cuave stated that, first and foremost, there are no drugs and alcohol allowed. The level of supervision is also a key difference.

Chairman Masters stated that she felt the gate to the sunken garden needs to be locked after hours for safety and security reasons. She would also like to see the CUP be up for review in one year and then every three years thereafter, similar to what is generally required with nightclub permits.

Mr. Sublett stated that he is concerned regarding the gray area of supervision. He stated that the applicant mentioned that a failed test would be grounds for termination, yet there are no structured tests. He felt that this could have a negative effect on the community.

Mr. Adams stated that he is concerned based on what he has heard that the proposal does not meet the standard of no adverse impact and that he is not sure that it is an appropriate use considering the number of possible uses available.

Mr. Weber stated that the community is being asked to grant a huge amount of trust here. He stated that they need to be aware of potential impacts on surrounding businesses as well as residences. Many of these businesses have invested a great deal of time and money in the City. He stated that he would have trouble supporting the use.

Chairman Masters asked City Attorney Anthony Williams to add any comments about conditional use permits.

Mr. Williams stated that staff had done a good job in preparation of their report to the Commission. He directed the Board to re-read the section pertaining to the finding that must be made in order to issue a conditional use permit.

Mr. Weber, seconded by Mr. Willingham, moved to forward CU-08-13 to Council recommending disapproval because the proposal may adversely affect the health, safety or welfare of persons residing or working in the neighborhood or may be detrimental to public welfare or injurious to property or improvements in the neighborhood.

Motion passed 6-0.

NEW BUSINESS

A. Administrative Authorizations:

- 1) **SP-06-47** Painter-Lewis 1200 Maple Dr Discovery Museum
At the October 14, 2008 work session, the Commission granted admin authorization with the requested waivers pending endorsement of the Parks and Recreation Board. Motion by Mr. Willingham, second by Mr. Weber. Passed 6-0-1, with Mr. Adams abstaining.
- 2) **SP-08-25** PHR+A 326 Amherst St Walgreens
At the October 14, 2008 work session, the Commission granted admin authorization pending application for, and approval of, a reduction in required number of off-street parking spaces from the Board of Zoning Appeals. Motion by Mr. Willingham, second by Mr. Weber. Passed 5-1, with Mr. Adams in opposition. Chairman Masters had left the work session prior to the vote.

B. Pre-application discussion of proposed stadium and tennis area revisions at John Handley High School.

Ron Mislowsky with PHR&A explained the scope of the project; it will be a synthetic turf field with an underground water detention system to catch the water runoff. He stated that there will also be improvements made to the concession stand area, the addition of second floor press box, and a visiting team meeting/dressing room. There will be a new track installed. A new fence around the area will replace the temporary fence that is put up during football season. Dr. Rick Leonard stated that the public will still have access to the track. The fence will provide passive security by limiting the number of access points.

Mr. Mislowsky explained that in order to meet the deadline, they have to start the work in December. He asked that the Commission to consider Administrative Approval on the project because it is already too late to apply for the November public hearing. This will push them into December and not allow work to begin until after the first of the year.

Mr. Weber stated that he was concerned about the public not having an opportunity to comment on it.

Chairman Masters stated that the track and field do not really affect the neighbors, however the tennis court revisions may.

Mr. Adams suggested that the track and field and the tennis courts be separated into two site plans.

The Commission unanimously agreed and suggested that they come back to the work session in November for consideration of Administrative Authorization once staff has had a chance to review the plans.

C. Pre-application discussion of reuse of existing building at 2100 S Loudoun St.

Mr. Youmans presented the conceptual reuse of the building for automotive service use explaining that the site has lost its grandfathered status. The applicants are asking to keep the overhead doors and install screening to improve the site. They do not have the ability to alter the grade in order to relocate the bay access.

Mr. Weber asked what type of screening would be used.

Mr. Youmans stated that some type of evergreens would be planted.

Mr. Sublett asked what type of automotive service would be performed.

Applicants Jesse Summer and Mike Wilson explained that they would be performing radiator work and general automotive service.

Mr. Sublett stated that general repair is a perfectly good use for the building other than tearing it down. He was supportive of the reuse.

Mr. Willingham agreed, stating that the applicants are willing to make the improvements and that is much better than having a vacant building. He would simply ask that they look into dressing the building up a little.

Mr. Talley also agreed stating that reuse and recycling is a good thing.

Mr. Youmans stated that staff had suggested that the applicants come to the Commission prior to investing improvements to the site. Based upon the consensus that the reuse would be supported, the applicants can now move forward with a site plan.

D. **TA-08-08** Motion to Initiate – AN ORDINANCE AMENDING ARTICLE 14 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO EXCLUSIONS IN THE HISTORIC WINCHESTER (HW) DISTRICT

Mr. Moore presented the proposed amendment to the Ordinance. He stated that what the Commission is considering today is initiating the text amendment. The amendment would then be scheduled for a public hearing at the November meeting prior to forwarding a recommendation to Council. The Board of Architectural Review (BAR) will be presented with the proposed amendment at their upcoming meeting and would be invited to the November work session and public hearing to offer any input.

Mr. Moore explained that staff has noticed an increase in interest in pursuing state and federal tax credits for local projects, which is an exhausting process that requires more detailed information than application to the BAR. The idea is to eliminate a redundant process. These reviews are based upon the same standards from the Secretary of the Interior. The City's interest will be protected without needing the applicant to go through the additional local review.

Chairman Masters agreed to the proposal stating that if the applicant has received federal approval, there is no reason why they should not get local approval when the federal requirements are much harder.

Mr. Willingham was also in favor. He stated that this would remove a layer of bureaucracy because the standards are the same. He felt removing the barrier would be a positive thing.

Mr. Moore added that the exclusion would be limited to what has been approved in the state or federal application. For example, if the applicant wanted to later erect a sign that was not part of the previous approval, they would be required to apply to the BAR for that aspect.

Mr. Adams, seconded by Mr. Willingham moved to initiate TA-08-08.

Motion passed 6-0.

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:43pm.

Susan Masters, Chairman