

## PLANNING COMMISSION MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, August 19, 2008 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**PRESENT:** Commissioners Adams, Masters, Shore, Sublett, Talley, and Weber. Commissioner Willingham arrived late.

**ABSENT:** None.

**FREDERICK CO LIAISON:** Rick Ours

**STAFF:** Diem, Youmans, Moore and Walsh.

**VISITORS:** Jan Rogers, Gregory Scott, Mary Anne Anthon, Isaac Keith, Richard Teske, Steve Lemon, Harold Miller, Frances Orr, Ron Mislowsky, Tim Painter, Steve McVeigh. For additional guests, please see attached sign in sheet.

Chairman Masters called the meeting to order at 3:00PM.

### **APPROVAL OF MINUTES**

*Commissioner Weber, seconded by Commissioner Talley, moved to approve the July 15, 2008 meeting minutes as presented.  
Motion passed 6-0.*

### **CORRESPONDENCE**

#### **A revised agenda was presented that included additional items:**

3C **SP-08-24** – 2601 Valley Ave (Parsons Chrysler Kia)  
3D **SP-06-55** – 2270 Valor Drive (The Corners)  
3E **SP-08-25** – 326 Amherst St (Walgreens).

### **CITIZEN COMMENTS**

Jan Rogers of 536 Marion St. shared her concerns of having an Oxford House across the street from her home. Her daughter will be letting herself in and out of the house so she is concerned for her safety. She asked how a non-profit business could be opened in a residential community without at least notifying the neighbors. She stated that according to their website, the house is self-monitored, they rotate leadership monthly and there is no behavior monitoring. Within two months there have already been two police incidents. She encouraged the Commission to look into the laws that allow these types of homes to come into the community so easily.

Gregory Scott of 513 Marion St. stated that Mrs. Rogers did a good job explaining what is going on. He has done some further investigation with the help of an attorney and brought some of those points to the attention of the Commission. Their charter states that if it poses a safety or zoning issue, that Oxford House will not move into that community. He felt that both of these are concerns at this location. He pointed out that on their website it states that 20% of residents have relapsed. If there are eight (8) people in the house that would be two (2) that will relapse, which poses a safety hazard.

***Mr. Willingham arrived at 3:10 pm.***

Mary Anne Anthon of 610 Old Fort Rd. stated that in her research she couldn't find a definition of a halfway house. She felt from a zoning standpoint there has to be so many square feet per person. She believes that there are 3 bedrooms in that house and 7 men living there. She pointed out that if each of the men has a car, there are no places for them to park. If they have lost their license, there is no public transportation at this location. She asked why the neighbors were not notified.

Isaac Keith of 504 Old Fort Rd. stated that he exchanged an email with Mr. Malloy, CEO of Oxford House. He asked several questions such as if the residents were there voluntarily; this went unanswered. He asked if the residents have criminal backgrounds. He stated that Mr. Malloy responded by saying that all communities have residents with criminal backgrounds. He stated that Mr. Malloy directed him to their website which provided results of a profile done nationwide of the residents of Oxford House; in the state of Virginia 73% have served jail time and 70% are addicts. Mr. Keith stated that it doesn't say anything about sexual predators or if there are violent criminals, so he is concerned for the safety of children and others. He asked if there was any precedence for having their houses side by side. He added that lawsuits have been waged against Oxford House but were shut down because recovering addicts are now considered disabled under federal law. He felt someone with a disability is very different from someone that has participated in self destructive behavior.

Richard Teske of 505 Marion St. spoke in regard to his concern for property value. He explained that he and his wife are counting on the value of their home in the future to provide him with resources. He is concerned that this will add to the decline in value that is already being affected by the state of the economy.

Chairman Masters explained that because of federal law, these concerns would be best addressed not a local issue but a federal government issue. She suggested the concerned residents contact Senator Jim Webb and Congressman Frank Wolf to have them come and meet with the concerned community. She also suggested the City have an open forum. She appointed resident Jan Rogers as point of contact. She suggested that Mrs. Rogers contact the City to arrange a day and time to have this meeting. Chairman Masters then asked that Zoning Administrator Mr. Diem say a few words.

Mr. Diem explained that there is some confusion in the use of terminology. He gave the definition of a halfway house as identified in the Ordinance. He explained that a halfway house is only permitted through a Conditional Use Permit and only in a limited number of zoning districts within the City. However there is a difference between a halfway house and other uses such as a group home or a single family dwelling occupied by unrelated persons with disabilities. He explained that there are no limitations on the number of these types of uses in the City as a whole or in a particular neighborhood. The Federal Fair Housing Act and the Code of Virginia show no distinction between a single family home occupied by persons who are related by blood, marriage, or adoption or one occupied by persons with disabilities. He stated that the City can limit the number of occupants based on square footage in a dwelling and have enforced cases of overcrowding regardless of who is occupying the home.

Chairman Masters added that since Mr. Diem stated that State Code was involved, the residents should also contact State Senator Jill Holtzman Vogel and Representative Beverly Sherwood in addition to Senator Webb and Congressman Wolf.

Mr. Adams stated that he had received a number of calls over the past couple of weeks about his issue. He stated that this issue was addressed about a year ago when the Commission was looking at whether or not the Zoning Ordinance complied with federal and state law. It became clear that it did not comply at that time. The City went ahead with the process including public hearings and the Ordinance was changed so that it was in compliance. He has been telling people that if they think there is a zoning issue, they should contact Mr. Diem because he enforces the Zoning Ordinance.

In his opinion, he does not care if someone is in a halfway house, a group home or a private residence; nobody has a right to deal drugs, to be under the influence of alcohol that disrupts the neighborhood or to otherwise adversely impact it. If there is a problem with the residents at these particular locations, the police would be the next alternative. There are also attorneys that can assist with remedies for nuisances. The bottom line is that if there is a zoning issue, contact Mr. Diem. If there is criminal activity, contact the police. If there are other nuisances, contact an attorney.

Mr. Adams added that the best thing would be for the concerned residents to attend an informational session hosted by the City so that they could have a basic understanding of what can and can not be done. If they are doing it right, you can't complain. If they are doing it wrong, you have every right to complain.

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

Mr. Ours stated that a CUP was recommended for approval for Shenandoah Gas to increase their tower from 120ft to 180ft. There were two rezoning requests: one for Red Hawk Estates to rezone 85 acres from rural to residential with proffers to allow up to 240 residential units, and one for a distribution center on Rt. 11 near Rest Church Rd to

rezone 59 acres from RA to B3; both were tabled in order to address traffic concerns. He explained that the Commission has formed a group to review the issues brought up during the recent discussions concerning minimum lot sizes possibly being increased from 5 acres to 10 acres in the Rural Area District.

## **PUBLIC HEARING**

**RZ-08-09** Request of Briar Oak Investments III, LLC for revision of the Willows at Meadow Branch Development Plan per Section 13-4-5 of the Zoning Ordinance at 1881 Harvest Drive zoned High Density Residential, HR District with Planned Unit Development, PUD overlay.

Mr. Youmans presented the request for a revision to the Development Plan under the existing PUD overlay to permit an 11,227 s.f. Alzheimer's addition with 20 additional single-occupancy rooms to the existing assisted living facility.

He explained that it is listed as a rezoning however the zoning will not change. It does not reach the thresholds of increased density, reduced open space, or increased traffic generation that would necessitate treatment as a new rezoning application. Instead the request is reviewed pursuant to the Conditional Use Permit provisions of the Ordinance.

The proposal is to add a wing to the west (Sterling Dr) side of the existing building that would add 20 additional single-occupancy rooms (without cooking facilities), plus a dining room/kitchen to serve the residents, two sunrooms and some additional service-related space. Five additional parking spaces are currently planned consistent with the existing parking around the drop-off area in front of the building.

The proposed addition would eliminate part of an existing fenced recreational area containing a gazebo. The addition would form a new courtyard between it and the existing building. The remainder of the existing fenced recreational area would remain and portions of it would be improved and expanded. The existing site contains 59% open space. As proposed, the revised site would contain 55% open space. However, a net increase in recreational area would result with the proposed improvements.

### **Chairman Masters opened the public hearing.**

Steve Lemon, attorney for the applicant, stated that he is excited about the expansion to serve the community. He thanked the Commission for their time and stated he would be available for questions.

Harold Miller of 1891 Melvor Lane spoke to the issue of the retention pond owned by the Willow Lawn HOA. He explained that in 2005 the HOA spent approx. \$15,000 to bring it up to current standards; the maintenance costs approx. \$3000 a year. He felt that 11,000 sq ft of roof area would put a lot of storm water into the pond, not to mention the mud and debris that will wash into the pond during construction. He stated that the Willows

contributed less than 3% to bring the pond up to code yet they have two (2) places where their storm water drains into the pond. He presented a petition signed by 88 homeowners expressing concern on the impact this will have on the retention pond.

Frances Orr of 1833 Rosser Lane thanked Mr. Youmans for taking the time to speak with her about her concerns. She explained that her concern is keeping the pond clean during construction as well as the potential storm water going into the pond.

**Chairman Masters closed the public hearing.**

Mr. Shore asked what is going to be done to address concerns about the storm water pond.

Mr. Youmans explained that a detailed site plan will still have to be submitted, reviewed and approved. There will be scrutiny of the storm water management aspect as well as erosion and sediment control. Also, the engineering department will be doing routine inspections during construction. He acknowledged that there were some issues with monitoring and enforcement several years ago during other neighboring construction, however he feels that the City is now much better staffed and trained than previously. He again reiterated that the applicant will still need to go through the site plan process.

Mr. Adams stated that the applicant is not asking for anything special, everything is by-right development.

Mr. Youmans stated that there are more strict requirements on water quality and quantity than before.

Chairman Masters read in the petition stating that there are 88 signatures.

*Commissioner Weber, seconded by Commissioner Shore, moved to forward Development Plan Revision RZ-08-09 to City Council recommending approval as depicted on an exhibit entitled "Proposed Alzheimer's Addition to the Willow's at Meadow Branch" prepared by Collins & Kronstadt, Leahy, Hogan, Collins, Draper LLP and dated July 1, 2008, because the proposal, as modified, will not adversely affect the health, safety, or welfare of persons residing or working in the neighborhood of the proposed use and will not be detrimental to public welfare or injurious to the property or improvements in the neighborhood.*

*Motion passed unanimously 7-0.*

**OLD BUSINESS**

None

## **NEW BUSINESS**

- A. Recommendation to Council: **SV-08-03** AN ORDINANCE TO VACATE AND CONVEY TO C.H. SCHUTTE, INC. APPROXIMATELY 8.75 SQUARE FEET OF RIGHT OF WAY IN THE VICINITY OF 1000 VALLEY AVENUE.

Mr. Youmans presented the request to vacate a small portion of right of way where an existing building is encroaching. The vacation would permit the owner to make improvements to the building that is currently nonconforming due to the encroachment. A condition would be included that the vacated area would revert back to the City if the structure was demolished.

*Mr. Talley, seconded by Mr. Weber, moved to forward SV-08-03 to City Council recommending approval as contained in the draft ordinance dated July 28, 2008. Motion passed unanimously 7-0.*

- B. Administrative Authorizations:

1) **SP-08-29** Greenway Engineering 402 N Cameron St Laurel Center  
*At the August 12, 2008 work session, Mr. Talley, seconded by Mr. Weber, moved to grant admin authorization. The motion passed 4-0-1 (Mr. Adams abstained).*

2) **SP-08-30** Urban Engineering N Cameron/Baker St Our Health Phase II  
*At the August 12, 2008 work session, Mr. Shore, seconded by Mr. Weber, moved to grant admin authorization. The motion passed 3-0-2 (Mr. Adams and Mr. Willingham abstained).*

3) **SP-08-31** PHR+A 154 Commercial St Commercial St Used Cars  
*At the August 12, 2008 work session, Mr. Weber, seconded by Mr. Willingham, moved to grant admin authorization. The motion passed 5-0.*

4) **SP-08-33** Painter-Lewis 1720 Valley Ave Coca Cola Plant Renovation  
*Mr. Willingham moved, seconded by Mr. Weber, moved to grant admin authorization. Motion passed 7-0.*

- C. **SP-08-24** – 2601 Valley Ave (Parsons Chrysler Kia) – Applicant is requesting revision to previous approval which conditioned Valley Ave access to be entrance-only.  
*Mr. Shore moved, seconded by Mr. Talley, moved to grant admin authorization of the revised plan for a right-in, right-out access along Valley Ave. Motion passed 7-0.*

- D. **SP-06-55** – 2270 Valor Drive (The Corners) – Zoning Administrator consultation regarding 3' separation waiver request.  
*Mr. Diem consulted the Commission.*

- E. **SP-08-25** – 326 Amherst St (Walgreens) – discussion of possible alternative layout to previous approval.  
Mr. Youmans updated the Commission by presenting a possible layout that is being considered by the applicant since the requested rezoning that would have been necessary for the previously authorized plan to be implemented was denied by Council.

**OTHER DISCUSSION**

None

**ADJOURN**

With no further business to discuss, the meeting was adjourned at 4:33 pm.

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Susan Masters, Chairman