

PLANNING COMMISSION  
MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, June 17, 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, Shore, Talley and Sublett. Commissioner Willingham arrived late.

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

Frederick County Liaison: Absent

**ABSENT:**            None

**VISITORS:**           Archie McKay, Meredith Ward, Mark Baker, Seth Roderick, Pete Crosby, Ron Mislowsky, Mike Bryan, Mrs. Preston Moffett, Carolyn Lewis, Delmar Bayliss, Scot Marsh & Adrian Pullen

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

**APPROVAL OF MINUTES:**

Mr. Weber, seconded by Mr. Talley, moved to approve the minutes of the March 18, 2008 meeting as amended. The motion passed 6-0.

**CORRESPONDENCE**

There was a revised agenda including:

1. Item 2c – Updated staff report and proffer statement for RZ-08-08
2. Item 2b – Updated staff report and proffer statement for RZ-08-07

**CITIZEN COMMENTS**

None

**REPORT OF FREDERICK COUNTY LIAISON**

None

*Mr. Willingham arrived at 3:10 pm*

## **PUBLIC HEARINGS**

**RZ-08-06** AN ORDINANCE TO CONDITIONALLY REZONE 1.02 ACRES OF LAND FROM CENTRAL BUSINESS, B-1 DISTRICT WITH HISTORIC WINCHESTER, HW OVERLAY TO CENTRAL BUSINESS, B-1 DISTRICT WITH HISTORIC WINCHESTER, HW OVERLAY WITH PROFFERS AT 326-328 AMHERST STREET AND TO CONDITIONALLY REZONE AN APPROXIMATELY 0.1 ACRE PORTION OF A PARCEL FROM CENTRAL BUSINESS, B-1 DISTRICT WITH HISTORIC WINCHESTER, HW OVERLAY TO CENTRAL BUSINESS, B-1 DISTRICT WITH HISTORIC WINCHESTER, HW OVERLAY WITH PROFFERS AT 104 SELMA DRIVE AND TO CONDITIONALLY REZONE AN APPROXIMATELY 0.3 ACRE PORTION OF THAT SAME PARCEL FROM RESIDENTIAL OFFICE, RO-1 DISTRICT WITH HISTORIC WINCHESTER, HW OVERLAY TO CENTRAL BUSINESS, B-1 DISTRICT WITH HISTORIC WINCHESTER, HW OVERLAY WITH PROFFERS.

Mr. Youmans presented the request to conditionally rezone some of the RO-1 zoned portion of the Selma Medical land which is situated immediately north of (behind) the present B-1 district encompassing the present-day Dellinger Motors site. Zoning on this 0.3-acre area already permits parking for medical office use, but not parking for the pharmacy which is proposed on the property that is already zoned B-1 and allows pharmacies by right. One proffer submitted with this request limits use to parking and access for pharmacy and retail use or for parking otherwise associated with uses permitted on the Selma property. A second proffer formally maintains the existing access easement provided across the subject land for the benefit of the adjacent Morgan Street properties

The second part of the request imposes a proffer restriction on the 0.3-acre portion of the Selma site as well as the Dellinger land and a small strip of the Selma land adjacent to the Dellinger land, which today has no proffers associated with the current B-1 zoning. This newly imposed proffer limits truck delivery and trash collection activities to the hours of 8am-5pm.

Chairman Masters opened the public hearing.

Ron Mislowsky added that they will not be disturbing the trees that are currently there and plan to improve the access.

Archie McKay, 115 Morgan St, stated that he was against the rezoning and was opposed to business traffic in that area. He felt that the City was going against a previous rezoning in 2001 that would only allow residential office use. He wants the City to honor that agreement. He added that the drive thru will be right beside the residences and could possibly be open 24 hours. He felt this was unacceptable.

Chairman Masters closed the public hearing.

Mr. Shore asked if the 0.3 acre portion is intended to be where the dumpster would be placed.

Mr. Mislowsky stated that it would be parking only. He addressed Mr. McKay's comments by saying that there is nothing prohibiting 24 hour traffic now. Selma could open a 24 hr clinic that would pose the same problems.

Mr. Youmans added that there is nothing prohibiting Mr. Dellinger from operating a 24 hour towing services.

Mr. Shore asked about screening.

Mr. Mislowsky stated that there would be screening in addition to the dense evergreens that are already in place.

Mr. Adams felt that this re-zoning would eliminate neighboring impacts. It's better to have parking areas than more intensive use.

Chairman Masters felt that there is a downside to everything but the proffers address most of the impacts.

Mr. Weber added that, regarding the impression that was given about the 2001 rezoning, that he could not recall the Commission ever saying "this is what it is" during his time serving on the Commission. He stated that if there were hard and fast comments made, they will have to be addressed.

Mr. Youmans stated that he has no recollection of a statement made during any rezoning where it was stated that it was not subject to a future change.

*Mr. Willingham, seconded by Mr. Talley motioned that the Commission forward RZ-08-06 to Council recommending approval of the rezoning request as depicted on an exhibit entitled "Rezoning Exhibit RZ-08-06 Prepared by City Planning, May 13, 2008" subject to the proffers in the Revised Proffer Statement dated May 30, 2008, because the rezoning represents good planning practice by mitigating the potential negative impacts associated with commercial development in an area bordering a residential area of the City. The rezoning also promotes New Urbanism by replacing auto-based uses with neighborhood convenience retail within walking distance of adjacent residents.*

Mr. Adams addressed Mr. McKay's concerns by saying that this is not the final step in the process for this applicant. He encouraged Mr. McKay to attend the hearing on the site plan.

*The motion passed unanimously 7-0.*

**RZ-08-07 AN ORDINANCE TO CONDITIONALLY REZONE 4.849 ACRES OF LAND AT 139, 143, 147, 151, 155, 159, 163, 167, 167½, 169, 171, 175 AND 179 LINDEN DRIVE, AND 0.581 ACRES OF LAND AT 227 LINDEN DRIVE, AND A 3.613 ACRE PORTION OF LAND AT 1830-1890 AMHERST STREET, ALL FROM LOW DENSITY RESIDENTIAL, LR DISTRICT TO MEDICAL CENTER, MC DISTRICT.**

Chairman Masters recused herself from the discussion.

Mr. Moore presented the request to rezone properties along the west side of Linden Drive from LR to MC to support expansion of the medical center campus. A roadway connection to Linden Drive and a parking garage near Hurst House are proposed in the associated Master Development Plan.

A revised Master Plan entitled “*Winchester Medical Main and Lakeside Development Precincts MC District Master Plan*” prepared by Valley Engineering Surveying Planning, dated May 2, 2008, and revised June 16, 2008, is submitted with the application. The Plan calls for a number of future uses, including a proposed North Tower expansion that, if fully built, could rise as high as 72’ above grade. A single-level Heart and Vascular Center is proposed as an addition to the SW corner of the main hospital building. Toward the northern end of the Lakeside Development Precinct, expansion of the Outpatient Diagnostic Center, which is currently under construction, is proposed, as well as a three to five story Medical Office Building.

Mr. Moore presented information from the updated proffer statement, noting the following points:

- 1) A count of traffic utilizing the new connection to Linden Drive ninety (90) days after opening the connection.
- 2) Four additional traffic counts to be performed at the City’s request, with no more than one per 12-month period and none after Dec 31, 2018.
- 3) An additional traffic count with no time restriction within ninety (90) days if/when the connection between the Central Energy plant and the northern limits of Campus Blvd is opened.
- 4) A contribution toward the cost of roadway improvements attributable to the new connection to Linden Drive. The contribution would be a percentage of the construction costs of the improvements based upon the percentage of peak hour Linden Drive traffic that is generated by the new connection, not to exceed \$75,000.

Vice-Chairman Adams opened the public hearing.

Meredith Ward and Seth Roderick with Valley Engineering were available for questions.

Vice-Chairman Adams closed the public hearing.

Mr. Shore asked if the \$75,000 was a reasonable amount for improvements that might have to be made.

Mr. Moore explained that Public Services Director Perry Eisenach had been in on the discussions and did not feel that it was necessarily unreasonable, although he had suggested the applicant consider a means of adjusting for future increases in construction costs, such as the CPI factor.

Mr. Moore stated that the applicant had consulted with the owners and that they had budgeted the set amount of \$75,000 and did not wish to change the proffer.

Mr. Roderick added that they tested the area and there doesn’t seem to be any reason to anticipate cut through traffic due to all the stop signs.

Mr. Adams stated that he felt \$75,000 is just a drop in the bucket for road improvements.

Mr. Roderick explained that the city has stated no desire to widen Linden to a four lane road so the dollar amount is not unreasonable.

*Mr. Shore, seconded by Mr. Willingham motioned to forward RZ-08-07 to City Council recommending approval subject to conformance with the general layout and phasing as depicted on the exhibit entitled “Winchester Medical Main and Lakeside Development Precincts MC District Master Plan” prepared by Valley Engineering Surveying Planning, dated May 2, 2008, and revised June 16, 2008, AND subject to incorporation of the additional proffers offered by the applicant in the document titled “Linden Drive-WMC Rezoning Request” and stamped “Received, June 17, 2008” into the formal proffer statement. Approval is recommended because the request, as proffered, adequately addresses potential impacts associated with the rezoning, represents good planning practice in the master planned growth of the medical center campus, and is consistent with the Comprehensive Plan.*

Mr. Adams stated that he would support the request at this time, but he hoped the applicant would consider the amount proffered for improvements as the request moves forward to Council.

*The motion passed 6-0-1 (Chairman Masters abstained)*

**RZ-08-08 AN ORDINANCE TO CONDITIONALLY REZONE AN 8.7 ACRE PORTION OF LAND FROM LOW DENSITY RESIDENTIAL, LR DISTRICT TO MEDIUM DENSITY RESIDENTIAL, MR DISTRICT AT 470 MERRIMANS LANE**

Mr. Youmans presented the request to conditionally rezone the eastern portion of the Moffett residential property from LR to MR with proffers ensuring dedication and construction of Meadow Branch Avenue and assurances that residential development will be of an orderly manner and not entailing driveways connecting directly to Meadow Branch Ave.

A revised proffer statement, dated June 12, 2008 was provided by the applicant addressing the potential impacts arising from the rezoning. The first proffer (1.1) ensures that a 70- to 80-foot wide right of way for Meadow Branch Ave will be dedicated to the City at no cost within 90 days of the City requesting it.

The second proffer (1.2) provides that the owner will build two lanes of the four lane Meadow Branch Ave prior to the first occupancy permit being issued for a dwelling on the rezoned portion of the Moffett property if Meadow Branch Ave is extended to the Moffet property on both the north and south sides. The specific wording of the proffer reads:

*1.2 Provided that Meadow Branch Avenue has been extended and constructed to both the Northern and the Southern boundaries of the Property subject to rezoning and provided that a Certificate of Occupancy has been issued for the first dwelling located upon any portion of the Property subject to rezoning, the owner shall, within 180 days of written request by the City of Winchester, construct a half section of Meadow Branch Avenue as a two lane undivided roadway across the Property subject to rezoning.*

The third proffer (1.3) prohibits direct lot access to Meadow Branch Avenue from any of the houses in the rezoned area. This is already prohibited in the Land Subdivision Ordinance, but the proffer would preclude residents of any lots petitioning City Council for an exception to permit direct access at a later date.

The fourth proffer (1.4) calls for the owner to install a two-board wooden fence to distinguish the area for future construction of Meadow Branch Avenue from the properties that dwellings would be constructed upon. This helps to reduce the potential impact where new homeowners tend to extend their landscaping into public rights of way.

Chairman Masters opened the public hearing.

Ron Mislowsky with PHR&A was available for questions.

Carolyn Lewis, 522 Merrimans Lane, was opposed to the rezoning. She asked that the Commission look at the entire property in terms of preserving green space and recreational areas before making a decision. She showed a plan that was passed around among the neighbors showing a proposed master plan for the area. She also had a concern regarding the placement of the public hearing signs, stating that they were no where close to the proposed rezoning area.

Delmar Bayliss of 500 Merrimans Lane expressed his approval on the rezoning, stating it's been a long time coming.

Chairman Masters closed the public hearing.

Chairman Masters stated that she has no knowledge of a master plan for the area and that the Commission cannot ask for one. Additionally, the drawing was for something that might happen on part of the land that is not related to the rezoning request. As far as the placement of the signs, she referred that to Mr. Youmans.

Mr. Youmans stated that there was no good place to put the signs. The Ordinance requires that the sign be posted on each developed street at which the property fronts. The portion of the property on Merrimans Lane is the only place that meets this criterion. If the sign was placed where the rezoning was to occur, it would have been out of public view and would not meet the Ordinance requirement.

Mr. Adams felt that the language in section 1.2 of the proffer statement was not clear. The way it reads, the road would not be built until both the north and south sides are complete.

Mr. Mislowsky explained that development would begin after either section is built.

Mr. Weber stated that according to the wording both sides of the road would have to be complete before a Certificate of Occupancy could be issued. He emphasized north AND south while reading the section out loud.

Mr. Mislowsky explained that the LR section would have to be developed in order to afford the road. He added that the City would have the right-of-way before the development.

Mr. Adams suggested using the word "either" instead of "both".

Mr. Shore stated that it's his understanding that the Smith side could be constructed and the City could call in the bond while the applicant does nothing.

Mike Bryan, attorney for the applicant, stated that was true, but it seemed that an important point was somehow being lost. That point is that the right-of-way would be dedicated to the City regardless of whether or not the rezoned portion were to be developed. .

Mr. Weber stated that as it's written, the proffer doesn't clearly reflect the plan.

*Mr. Weber, seconded by Mr. Adams motioned to table RZ-08-08 to give the applicant an opportunity to re-word section 1.2 of the proposed proffer statement.*

*Motion passed 4-3 (Willingham, Talley, and Masters opposed)*

**CU-08-10** Request of Dan McCoig for a conditional use permit for conversion of ground floor nonresidential use to residential use with home occupation at 35 West Piccadilly Street (*Section 173, Double Circle 1, Block F, Lot 8*) zoned Central Business, B-1 District with Historic Winchester, HW overlay.

Mr. Diem presented the request for a Conditional Use Permit to convert an existing ground floor nonresidential use to a residential use with home occupation offices at 35 West Piccadilly Street. Rev. and Mrs. McCoig are individually interested in operating home occupations within the residence. Their intention is to create office space on the ground floor of the residence in the spaces that front directly onto West Piccadilly Street. The appearance of the space, from the public right-of-way, would be that of a commercial office space. Due to the provisions within the Uniform Statewide Building Code, it is less difficult to consider the entire dwelling a residential use and occupancy with a home occupation, than it would be to differentiate between the first and second floors through structural improvements. The character of the interior space would be changed dramatically to accommodate that type of mixed use, based on the existing floor plan and openness of the main stairwell and foyer.

Chairman Masters opened the public hearing.

Rev. McCoig stated he was available for questions.

Chairman Masters closed the public hearing.

Mr. Willingham asked if it could be leased to someone wanting to use it for commercial use.

Mr. Diem explained that the building code would prevent that without extensive modifications.

Mr. Shore asked if it could be sold to someone for residential use.

Mr. Diem explained that it would require another Conditional Use Permit.

Mr. Shore stated that it will be great that this old building will be back into service.

Mr. Adams asked that the conditions should be amended to read "home occupation suites should be on the ground floor."

*Mr. Adams, seconded by Mr. Willingham motioned to forwarded conditional use request CU-08-10 to City Council recommending approval with the following conditions imposed;*

- a.) That the residential use of the subject property be limited to single family dwelling unit;*
- b.) The conditional use permit shall become null and void in the event of any transfer of ownership;*
- c.) Home occupation suites shall be located on the ground floor.*

*The motion passed unanimously 7-0.*

**TA-08-02 AN ORDINANCE AMENDING ARTICLE 21 OF THE WINCHESTER ZONING ORDINANCE PERTAINING VIOLATIONS AND PENALTIES**

Mr. Diem stated that there have been no changes since the work session.

Chairman Masters opened the public hearing.

No one was present to speak.

Chairman Masters closed the public hearing.

*Mr. Weber, seconded by Mr. Willingham motioned to forward Text Amendment TA-08-02 as contained in "Draft 1, dated 4/18/08" to City Council recommending approval because the increased fines and penalties, as adopted by the General Assembly, represent the severity of health and safety concerns attributed to residential overcrowding.*

*The motion passed unanimously 7-0.*

**TA-08-03 AN ORDINANCE AMENDING ARTICLE 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SPECIAL EXCEPTIONS FROM OFF-STREET PARKING AND LOADING REQUIREMENTS**

Mr. Diem stated there have been no changes since the work session.

Chairman Masters opened the public hearing.

No one was present to speak.

Chairman Masters closed the public hearing.

*Mr. Weber, seconded by Mr. Talley motioned to forward Text Amendment TA-08-03 as contained in "Draft 1, dated 4/18/08" to City Council recommending approval because it provides an opportunity for economic redevelopment within a recently re-zoned area, recognizes the pre-existing limitations for off-street parking, and acknowledges the existence of municipal parking availability within 300 feet of the subject area.*

*The motion passed unanimously 7-0.*

**TA-08-04** AN ORDINANCE AMENDING ARTICLE 1, ARTICLE 8, ARTICLE 10, AND ARTICLE 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITION OF PET DAYCARE CENTER, CONDITIONAL USES IN THE HIGHWAY COMMERCIAL (B-2) DISTRICT, PERMITTED USES IN THE COMMERCIAL INDUSTRIAL (CM-1) DISTRICT, AND REQUIRED NUMBER OF OFF-STREET PARKING SPACES

Mr. Diem stated there have been no changes since the work session.

Chairman Masters opened the public hearing.

No one was present to speak.

Chairman Masters closed the public hearing.

*Mr. Weber, seconded by Mr. Talley, motioned to forward Text Amendment TA-08-04 as contained in "Draft 2, dated 5/21/08" to City Council recommending approval because it provides an opportunity for additional commercial enterprise within the City and represents good planning practice*

*The motion passed unanimously 7-0.*

**TA-08-05** AN ORDINANCE TO AMEND ARTICLE 9 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO MULTIFAMILY USE IN THE CENTRAL BUSINESS, B-1 DISTRICT

Mr. Diem stated there have been no changes since the work session.

Chairman Masters opened the public hearing.

No one was present to speak.

Chairman Masters closed the public hearing.

*Mr. Shore, seconded by Mr. Weber motioned to forward text amendment TA-08-05 as contained in "Draft 1, dated May 14, 2008" to City Council recommending approval because the ordinance provides opportunities for higher quality, higher density residential use in the older sections of the City in a streamlined manner that represents good planning.*

*The motion passed unanimously 7-0.*

**SD-08-02** Request of the City of Winchester for preliminary subdivision approval for a subdivision with right of way dedication at 2479 Papermill Road zoned Highway Commercial, B-2 District.

Mr. Moore presented the request for both approval of the preliminary subdivision by the Commission and recommendation to Council for approval of the final subdivision to dedicate right-of-way across property of Frederick County Public Schools for the future extension of Hope Drive and realignment of Papermill Road.

Chairman Masters opened the public hearing.

No one was present to speak.

Chairman Masters closed the public hearing.

*Mr. Talley, seconded by Mr. Weber motioned to approve Preliminary Subdivision SD-08-02 subject to:*

- 1. Staff review and approval of the plats;*
- 2. Deed of Dedication and list of Covenants and Restrictions for City Attorney review; and,*
- 3. No conveyance of the parcel of land is to occur until such time that Hope Drive is fully designed and either built or bonded per Section 5-11 of the Subdivision Ordinance.*

*The motion passed unanimously 7-0.*

### **NEW BUSINESS**

**SD-08-02** Request of the City of Winchester for final subdivision recommendation for a subdivision with right of way dedication at 2479 Papermill Road zoned Highway Commercial, B-2 District.

*Mr. Weber, seconded by Mr. Willingham motioned to forward Subdivision SD-08-02 to City Council recommending approval subject to:*

- 1. Staff review and approval of the plats;*
- 2. Deed of Dedication and list of Covenants and Restrictions for City Attorney review; and,*
- 3. No conveyance of the parcel of land is to occur until such time that Hope Drive is fully designed and either built or bonded per Section 5-11 of the Subdivision Ordinance.*

*The motion passed unanimously 7-0.*

**Motion for a written recommendation to Council in regard to exceptions per Section 8-1 of the Land Subdivision Ordinance for deferral of the design and installation of frontage improvements at 521-535 Hillman Drive.**

Mr. Youmans presented the request for exceptions to allow an internal boundary line adjustment on the Apple Storage property without requiring the applicant to make frontage improvements on Hillman Drive at this time.

*Mr. Shore, seconded by Mr. Talley, motioned that the Commission forward the request for exceptions per Section 8-1 of the Land Subdivision Ordinance to City Council recommending approval for deferral of the design and installation of frontage improvements at 521-535 Hillman Drive with the condition that full improvements will be made in conjunction with any future expansion on the site.*

*The motion passed unanimously 7-0.*

**SP-07-05** 571-579 Adams Drive – Zoning Administrator consultation regarding 3' separation waiver request

Chairman Masters noted for the record that the Commission had been consulted regarding the waiver request at the June 10, 2008 work session.

**ADJOURN**

With no further business to discuss, the meeting was adjourned at 4:10pm.

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Susan Masters, Chairman