

PLANNING COMMISSION
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, March 15, 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 and Wiley (5)
ABSENT: Commissioners Talley and Beatley (2)
EX-OFFICIO: Councilor Tagnesi and City Manager O'Connor
STAFF: Youmans, Diem, Moore and Walsh
VISITORS: Jonathan Cole, Timothy Stultz and Marilyn Heath

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

APPROVAL OF MINUTES

Vice-Chairman Shore moved to approve the minutes of the February 15, 2011 meeting as presented. The motion was seconded by Commissioner Slaughter.

Motion passed 5-0.

CORRESPONDENCE

A revised packet was presented that included updated staff reports for the following:
Item 2A – CU-11-62
Item 2B – CU-11-76
Item 2C – TA-11-66

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON

Mr. Youmans stated that the liaison, Commissioner Mohn, had informed him that he was unable to attend.

PUBLIC HEARINGS – New Business

A. **CU-11-62** Request of Jonathan Cole dba T.C. Tooties Historic Sports Pub for a conditional use permit for nightclub use at 2235 Valor Drive (*Map Numbers 270-06-4-L, M & N*) zoned Highway Commercial (B-2) District.

Mr. Moore presented the request for a nightclub use at the existing restaurant business pursuant to Section 9-2-8 of the Winchester Zoning Ordinance.

Staff discovered in June 2010 that the business was conducting nightclub use without the requisite CUP. Staff first attempted to work informally with the business manager, Mr. Cole, to address the issue through application for a CUP. When the manager did not follow through with the application and the business continued to host nightclub activities, a formal notice of violation was issued in November 2010. Through continued efforts at working with the manager, this application was filed in February 2011.

In his letter received February 15, 2011, applicant Jonathan Cole states the intent to have live music in order to increase business revenue. The applicant does not specify intent to limit such events to certain nights of the week nor the anticipated frequency of such events.

Recent nightclub approvals in somewhat close proximity include Buffalo Wild Wings (renewal) at 5 Weems Lane and the Mi Ranchito restaurant at 2018 S. Loudoun Street. Neither of these permits included conditions pertaining to the number of nights per week for nightclub use and both required the nightclub use to end no later than 1:30am on any night. This request differs somewhat in that there are residential uses in closer proximity, including two nonconforming single family dwelling immediately to the north.

Perhaps more comparable in terms of a nightclub in a commercial center with close proximity of residential uses is the Island Delights restaurant at 821 N. Loudoun Street. Issued in December 2009, that permit did not condition a limit on the number of nights per week, but stipulated the following in terms of ending times: "Nightclub use to end no later than 11:59pm Sunday through Wednesday nights and no later than 1:30am Thursday night/Friday morning through Saturday night/Sunday morning."

Staff requested input from the Winchester Police Department on the application. The Chief of Police consulted with his staff and ran a call history check, from which he reported the following:

"In looking at the data we had only about 20 'disruption/disorderly' calls from June 2010 until now but the trend does seem to be upward recently. Only in November did they exceed that 4 threshold we usually allow, they had 5 calls, but also had 4 in February. You will be able to see that it seems to be a hub of activity but I don't think there is anything at this point that the Council would want to act on."

At the March 8, 2011 Planning Commission work session, the applicant clarified that the live acts are limited to the southern (smoking) dining/bar area as identified on the submitted floor plan. This may alleviate some concern about impact on the residences to the north, as the separated non-smoking area provides an additional buffer. The applicant has also indicated that the business is considering expansion into the tenant space immediately to the south and has asked for consideration that the CUP be granted with an allowance for this expansion.

Chairman Adams opened the public hearing.

Jonathan Cole, owner of T.C. Tooties, stated that they have had band nights in the past and out of all of them, they have only had two incidents without having doormen or bouncers. He has called the police on his own to try and prevent incidents from happening.

Timothy Stultz, owner of the adjacent rental properties read a letter from his tenants, Keith and Diane Troxil. In summary, they stated that loud music on Tuesday, Thursday, Friday and Saturday nights goes on until 2AM. They had to call the police on two occasions. They have found persons drinking in their backyard and drug paraphernalia that the police had to remove. If this request is approved they asked that the entertainment end earlier on weekdays.

Mr. Stultz also provided several pictures of the Island Delight on North Loudoun Street to show the differences in locations. He also visited some of the residents that live behind Island Delights to get their feedback on the impact of having a restaurant so close to a residential unit. The Island Delight faces away from the apartments where the residents live, however they still have to turn their televisions up twice as loud to deflect the noise. T.C. Tooties actually faces his tenants making the noise that much worse. He also spoke about the parking issue created by having this restaurant in the end unit forcing overflow into Applegate parking lot.

In conclusion Mr. Stultz stated that based on the report given by staff, he felt that the abuse of the permit demonstrated lack of courtesy. Based on that, compounded with the police calls and the potential loss of rental income for him, he asked that the request not be granted at this time. Instead, he suggested that they have six (6) months to a year of supervised probation. If after that time there have been no issues, then the request should be granted.

Chairman Adams closed the public hearing.

Vice-Chairman Shore asked about the zoning at this location.

Mr. Youmans explained that it is zoned B-2, Highway Commercial, and has been since the 1970s. This means that the homes that exist there are nonconforming in this district.

Chairman Adams stated that we are here to address the live, amplified music. He stated that the use is already allowed by right at that location up to 10PM. The Conditional Use Permit would allow the implementation of conditions to protect the residents. He stated that he was offended by the fact that it took from June 2010 to February 2011 to file the application. He stated he was concerned that it took code enforcement to get the application filed. He stated he is concerned with the reports of trespassing, trash and noise.

Commissioner Wiley stated that he agreed with Chairman Adams. He stated that the City dropped the ball when it came to notifying the neighboring property owners of this use in their neighborhood. He stated that this will hopefully result in the applicant moving in the right direction.

Vice-Chairman Shore asked Mr. Cole how i.d. checking is handled without doormen or bouncers.

Mr. Cole stated that he does not have bouncers or door watchers because he wants the environment to remain friendly. The waitstaff takes care of verifying ages. He stated that he cannot control all of the reported issues. He stated that he has his staff collect trash from around the property and that many of the alcohol containers collected are not products that he sells. He stated that just today he observed two possibly homeless men walk through the parking lot, through Mr. Stultz's residential properties, and out to Weems Lane. These trespassers had nothing to do with his business. He stated that he is the only bar owner in town that pays for cab rides home and back to the bar the next day. He stated that, if noise complaints were made to the police, he was never told to turn it down. He found it hard to believe that his business emitted more noise than the fire station across the street, deliveries early in the morning at other businesses in close proximity, and the constant traffic up and down Weems Lane.

Chairman Adams asked if screening can be required.

Mr. Youmans stated that there is nothing in the ordinance that requires screening, however there is nothing that would preclude the Commission from conditioning some sort of barrier if it addresses impacts identified with the proposal.

Commissioner Slaughter asked what the process would entail if a noise complaint was made.

Mr. Diem explained that the complaint would go to the Police Dept (PD). They have a sound meter, so they can go out and test the level of noise emanating from the business. The PD would notify staff of the violation and it would be taken back to Council in the form of a public hearing.

Commissioner Slaughter moved to forward CU-11-62 to 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. Review in six months and reapproval required every three years thereafter;*
- 2. Nightclub use to end no later than 11:59pm Sunday through Wednesday nights and no later than 1:30am Thursday night/Friday morning through Saturday night/Sunday morning;*
- 3. Compliance with the submitted floor plan, with no live acts to be located in the northern dining/bar area. The use may expand one tenant space to the south without reapproval;*
- 4. The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;*
- 5. A maximum of four (4) criminal offense calls per month within or attributable to the establishment, after which private security may be required and the permit may be subject to revocation;*
- 6. At no time shall the sound emanating from the use as measured from an outside wall or party wall exceed 75 dBA;*
- 7. All windows and exterior doors to remain closed during nightclub use and no aspects of nightclub use to occur outside the building;*
- 8. Strict obedience with all local and state laws, especially those pertaining to ABC licensing and payment of meals tax;*
- 9. The CUP expires automatically if the nightclub use ceases for more than one year or if the business changes ownership; and,*
- 10. The applicant is responsible for cleaning up any trash outside the facility after closing.*

The motion was seconded by Commissioner Wiley.

Chairman Adams stated that he would be interested in a screening requirement. No motion was made to amend the recommended conditions.

Motion passed 5-0.

- B. CU-11-76** Request of Emad Khezam and Ali Tajalli for a conditional use permit for a hookah establishment at 932 Berryville Avenue (*Map Number 176-07-3*) zoned Highway Commercial (B-2) District.

Mr. Diem explained that the applicants are not present.

Mr. Diem presented the request to establish and operate a Hookah Establishment, as defined in the Zoning Ordinance, at the subject property, which is located at 932 Berryville Avenue.

The applicants have returned with an application for a Conditional Use Permit, after having successfully submitted a privately-sponsored text amendment for the definition and conditional use permitting provisions for Hookah Establishments. Mssrs. Khezam and Tajalli have selected the location for the proposed Hookah Establishment as 932 Berryville Avenue, which is the former site of the Burroughs

Steak House restaurant. The space is located on the ground floor of a multiple-tenant commercial building, with the entrance facing the Food Lion grocery store to the north.

Several concerns were raised by the public and members of Planning Commission and City Council during the review and approval process for the text amendment incorporating the use and definition. Primarily, the concerns raised were with regards to promoting the use of tobacco to young adults between the ages of 18 and 25, as has reportedly been commonplace among Hookah Establishments in the United States. As the use is only permitted through the conditional use permit process, the Planning Commission has the ability to recommend the imposition of specific conditions to City Council for the operation of the use that has been applied for. A particular benefit to the site chosen by the applicant, is that is somewhat obscured from through traffic moving east and west on Berryville Avenue.

Chairman Adams opened the public hearing.

Marilyn Heath of 221 Roszel Road stated that her husband is an ear-nose-throat physician and that she is a former respiratory therapist and the mother of two teenage boys, so she is very concerned with this type of business coming into the city. This appeals to college students because it is a cheap night out, costing about \$15 an hour. Not only is the smoke dangerous but hookah bars spread disease by communal use. She asked how they planned to clean these hookahs between uses and if the piping would be changed as well. She stated that a new mouthpiece alone is insufficient. She stated that she knows this from previous work with respiratory machines. She asked how they planned to regulate the tobacco being used in the hookahs.

Chairman Adams stated that Council has indicated a preference for allowing the use with a conditional use permit. He inquired about the possibility of requiring additional signs in the business regarding health impacts.

Vice-Chairman Shore stated that Harrisonburg allows the use by-right and now wishes they made it require a CUP. He would be interested to know what kinds of problems they have experienced. He stated that the provided floor plan is inadequate. He stated that the applicant did not suggest how many devices would be used at this location and suggested considering a limit on the number allowed.

Chairman Adams echoed Vice-Chairman Shore's concern and added that he also would like to know how they plan to restrict the types of tobacco and if they plan to replace the piping after each use.

Chairman Adams stated that he was not comfortable closing the public hearing without hearing from the applicants first. He suggested tabling the case until next month without closing the public hearing.

Commissioner Wiley moved to table CU-11-76 until next month's meeting and to continue the public hearing.

The motion was seconded by Commissioner Slaughter.

Motion passed 5-0.

Mr. Diem stated that he would prepare and send a certified letter to the applicants to ensure that notification is made.

C. **TA-11-66** AN ORDINANCE TO AMEND SECTION 13-1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO COMMERCIAL USES AND DENSITY PROVISIONS FOR PLANNED UNIT DEVELOPMENTS

Mr. Youmans presented the publicly-sponsored request to proactively amend the PUD provisions of the Zoning Ordinance to remove unnecessary constraints on mixed land use within a PUD project and to increase the maximum permitted residential base density from 10 units per acre up to 18 units per acre.

At the March 8, 2011 work session, it was suggested that a maximum cap on commercial use should be retained, perhaps in the range of 50-65% instead of the current limit of 5%. Draft 2, dated March 15, 2011, retains a commercial cap, but bumps it up to 55%.

Consistent with the New Urbanism principles of the proposed update to the Comprehensive Plan, this ordinance, if adopted, would immediately remove some barriers to mixing commercial uses into a proposal for development utilizing the PUD overlay provisions. The current ordinance contains a five percent (5%) cap on commercial uses. City Council would ultimately control the mix of commercial and residential use taking into account any impacts arising from the rezoning proposal.

The ordinance would also significantly up the maximum permitted density which, under the current ordinance, varies depending upon the density allowable with the underlying zoning. The variable zoning standard would be abolished and the new standard would be a maximum of 18 units per acre, although developments that achieve certain levels of LEED certification would still be eligible for a density bonus ranging from 20-50% of the base density. Since the PUD zoning is approved by means of a land rezoning process, City Council would ultimately be able to control the permitted density taking into account any impacts arising from the rezoning proposal.

Chairman Adams opened the public hearing.

No one spoke regarding the amendment.

Chairman Adams closed the public hearing.

Commissioner Slaughter stated that he is in favor of Draft 2.

Chairman Adams stated that he agrees.

Commissioner Slaughter to forward TA-11-66 to City Council recommending approval as contained in Draft 2, dated March 15, 2011, because the amendment would allow higher densities and permit more flexible mixed use development consistent with the proposed Comprehensive Plan, thus representing good planning practice.

The motion was seconded by Commissioner McKannan.

Motion passed 5-0.

PUBLIC HEARING – Old Business

- A. **TA-11-06** AN ORDINANCE TO AMEND ARTICLES 1, 3, 4, 5, 5.1, 6, 7, 8, 9 AND 16.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITIONS OF ACCESSORY STRUCTURE, DOMESTIC EMPLOYEE AND FAMILY, AND CERTAIN CONDITIONAL USE PERMITTING PROVISIONS RELATED THERETO

Mr. Diem presented the request to allow for the inclusion of live-in companions, au-pairs, and other similar domestic employees within the definition of “family;” and to provide an opportunity for their accommodation within subordinate dwelling units located inside an accessory structure.

A recent discovery of a zoning ordinance violation revealed that the current ordinance standards do not allow for any type of at-home care providers, in addition to a family of four. For example, if a husband and wife have two children, the ordinance as it is currently written, would preclude them from hiring an au-pair. Another potential scenario would be if the husband and wife, along with one or more children and an elderly parent or grandparent would not be permitted to hire a live-in companion or care-provider for the elderly relative.

In consideration of the adverse impacts of the national economy, it may be prudent to consider other options that would not require the husband and wife in either scenario to continue paying the high costs of child care or an assisted living/nursing home arrangement. There may be an opportunity to be more flexible within the zoning ordinance, allowing relief in certain situations, as it pertains to in-home care by an unrelated person(s).

The text amendment addresses both the inclusion of live-in companions, care providers, and au pairs; as well as, an opportunity to allow members of a family to reside in subordinate dwelling space within an accessory structure (i.e., carriage house).

Chairman Adams opened the public hearing.

No one spoke regarding the amendment.

Chairman Adams closed the public hearing.

Chairman Adams suggested using the term Chain of Title instead of Deed of Record regarding the recordation of the conditional use permits.

Mr. Diem concurred with the suggestion.

*Vice-Chairman Shore moved to **TA-11-06** as contained in Draft 5, dated March 15, 2011, to City Council recommending approval as these amendments will address a potential concern within the City while effectively continuing to prevent against overcrowding and undue density of land.*

The motion was seconded by Commissioner Slaughter.

Chairman Adams asked if the motion could state that wherever the term “deed of record” occurs in Draft 5, it is to be replaced with “chain of title” instead.

Vice-Chairman Shore and Commissioner Slaughter agreed to the revision to the motion.

Motion passed 5-0.

NEW BUSINESS

A. Administrative Authorization:

- 1) **SP-11-105** DFC Architects, PC 320 Westside Station Dr Orchard Ridge Sales Center
Chairman Adams read the following into the minutes: *At the March 8, 2011 work session, Commissioner Talley moved to grant administrative authorization for SP-11-105. The motion was seconded by Commissioner Wiley. Motion passed 5-0.*

B. Comprehensive Plan Discussion

Mr. Youmans gave overview on modified chapters of the Comprehensive Plan.

Commissioner Slaughter moved to schedule a public hearing on the Comprehensive Plan at the April 19 Planning Commission meeting.

The motion was seconded by Vice-Chairman Shore.

Motion passed 5-0.

Mr. Youmans announced the appointment of Jennifer Beatley to the Planning Commission at the March Council meeting. She was unable to make this meeting due to a scheduling conflict. Staff will schedule an orientation session for her in the coming weeks. When the time and date is set, staff will notify the Commission in case any other members wish to attend.

ADJOURN

With no further business to discuss, the meeting was adjourned at 5:36 PM.

Nate Adams, III, Chairman