

PLANNING COMMISSION  
M I N U T E S

The Winchester Planning Commission held its regular meeting on Tuesday, November 17, 2009 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**PRESENT:** Masters, Adams, Shore, Sublett, Talley, and Weber (6)  
**ABSENT:** Wiley (1)  
**STAFF:** Youmans, Moore, Diem and Walsh  
**VISITORS:** Richard Hoffman, Kenisha Bridgemohan, Carlton Vaughan and Paul Dumra

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

**APPROVAL OF MINUTES:**

*Commissioner Weber moved to approve the minutes of October 20, 2009 meeting as presented. The motion was seconded by Commissioner Adams.*

*Motion passed 6-0*

**CORRESPONDENCE**

A revised agenda packet was presented that included:  
Item 4A, 2 – added SP-09-383 for consideration for administrative authorization  
Item 4A, 3 – added SP-09-386 for consideration for administrative authorization

**CITIZEN COMMENTS**

None

**REPORT OF FREDERICK COUNTY LIAISON**

A Frederick County Liaison was not present at the meeting.

**PUBLIC HEARINGS**

- A. **CU-09-298** Request of Kenisha Bridgemohan, dba Island Delights Caribbean Restaurant, LLC, for a conditional use permit for nightclub use at 821 North Loudoun Street, Unit A (*Map Number 134-05-6*) zoned Highway Commercial (B-2) District.

Mr. Diem presented the request for approval of a Conditional Use Permit to allow nightclub use at the site of the former Goodfellow's restaurant in the Northside Station shopping center.

In a letter submitted with the application, the applicant indicates that their business, which is currently located at 805 North Loudoun Street, has grown tremendously and they are looking to do much more in the near future. The proposed hours of operation are identified as Monday – Wednesday (10:00am – 11:00pm), Thursday – Saturday (10:00am – 1:30am), and Sunday (10:00am – 10:00pm). The entertainment is intended to include live bands, Karaoke, DJ's, radio, and television. Security is outlined as being proposed for inside and outside the business, with two-way radio communication. Pool tables will also be provided for additional entertainment and enjoyment by the patrons. They further propose that the use will have no adverse impact on the surrounding neighborhood through lighting, property maintenance, odors, fumes, noise, or dust. The applicant maintains that they have not had any call history with either the Police Department or the Fire & Rescue Department at their current location of 805 North Loudoun Street.

No structural changes are proposed to the configuration utilized by the previous business. They do intend, however, to make the necessary fire safety repairs as were identified in 2008 by the Fire Marshall's office. The location within the shopping center is at the northern end of the strip of businesses, backing up directly to an HR zoned apartment complex fronting on N. Braddock St. The location is somewhat isolated from the HR-1 zoned single and multi-family residences along Jackson Ave. A condition in the CUP for the former businesses required that the rear doors facing the apartment complex remain closed except as needed for deliveries and trash removal in order to mitigate any impacts of noise on the adjacent residents during the nightclub use. Aside from the convenience store/gas station at the front of the parcel along N. Loudoun St. the other businesses in the shopping center are small shops, offices and services which have traditional daytime operating hours. These would most likely not be affected by the permitting of nightclub use.

Mr. Diem presented the Commission with an estimate for the fire suppression costs provided by the applicant. He stated that staff is in full support of this request.

**Chairman Masters opened the public hearing.**

Paul Dumra, owner of the subject property, spoke in favor of the request. He hopes and expects that the applicants will run the business more professionally than those who previously occupied the space. He is in the restaurant business and believes the quality of the food and the focus on the restaurant will set this use apart. The club will just be something to go along with it, as opposed to the previous tenant that focused mainly on the club use.

**Chairman Masters closed the public hearing.**

Chairman Masters questioned the information contained in the applicant's letter that stated a maintenance company would be responsible for keeping the grounds free of trash and debris. She stated that a proposed condition would require the business owners to police the area after closing to make sure there is no trash or bottles. Also, the dates and times that are being requested in the letter differ from those proposed as conditions.

Mr. Sublett was in favor of leaving the conditions as they were. This is consistent with previous applications where businesses were given additional flexibility in their nightclub hours.

Commissioner Talley moved that the Commission forward **CU-09-298** to City Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The approval is subject to:

1. Review at the end of six months and reapproval every three years thereafter;
2. At no time, shall the sound emanating from Island Delights Caribbean Restaurant (821-A North Loudoun Street) as measured from an outside wall or party wall exceed 75 dBA;
3. The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;
4. A maximum of four (4) criminal offense police calls per month within or attributable to the establishment, after which the permit may be subject to revocation;
5. The applicant shall provide security personnel for inside and outside the business, who will maintain communication with one another via two-way radios to mitigate safety concerns that may arise;
6. Nightclub use to cease no later than 11:59pm Sunday through Wednesday night and no later than 1:30am Thursday night/Friday morning through Saturday night/Sunday morning;
7. All windows and exterior doors to remain closed during nightclub use and no aspects of nightclub use (including but not limited to customer age verification) to occur outside of the building;
8. Strict compliance with all local and state laws, especially those pertaining to ABC licensing and payment of meals tax, admissions tax, and annual business licenses;
9. The applicant is responsible for cleaning up any trash outside the facility after closing; and,
10. The CUP expires automatically if the nightclub use changes to another use, the nightclub use ceases for more than one year, or if the nightclub business changes ownership, in accordance with Section 18-2-3.8 of the Winchester Zoning Ordinance.

The motion was seconded by Commissioner Adams.

Mr. Weber asked how the applicant would be able to comply with the noise ordinance as indicated in their letter.

Mr. Diem stated that staff could meet with the applicants and measure their sound levels similar to how measurements were recently taken at other establishments. This would give the applicants a baseline for what 75 dBA sounds like.

Mr. Weber stated that he could agree with this.

*Motion passed 6-0.*

- B. **CU-09-302** Request of Fort Loudoun, LLC for a conditional use permit for conversion of ground floor nonresidential use to residential use at 26A Wolfe St (*Map Number 193-01-C-8*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

Mr. Moore presented the request to propose reconsideration to convert approximately 800 square feet of ground floor commercial tenant space fronting along the north side of Wolfe Street in an existing mixed use building on a parcel addressed as 28-30 S. Braddock St (also known as 22-36 Wolfe St) to a one-bedroom apartment.

The applicant has returned with a request for reconsideration of the proposal, which was presented to the Planning Commission in September 2008 and denied by Council in October 2008. In denying the request, Council reiterated its desire to maintain ground floor space for commercial uses. Subsequent to the denial, the applicant requested and was granted a CUP for conversion of a separate 800sf ground floor space to residential use. That request differed in that the unit was accessed from a rear alleyway to the north and did not have an entrance fronting on Wolfe St.

Within her letter addressing the intent and basis for reconsideration, the applicant cites a recent history of being unable to occupy the available commercial space with a tenant, despite advertising efforts and having reduced the rent by 33%. The applicant does note one prospective tenant, a tattoo parlor, but would prefer not to rent to that particular use. The applicant requests the granting of the CUP for residential use temporarily. No timeline for the temporary conversion is proposed, other than stating "until this economic crisis has passed." Should favorable consideration be given to the request, the Commission and Council may wish to better define the proposed temporary nature of the permit through an imposed condition.

**Chairman Masters opened the public hearing.**

No one spoke about the request.

**Chairman Masters closed the public hearing.**

Mr. Talley stated that this application is premature because there is a tenant willing to rent the space. Economic times are bad, but there is a business that wants to use it as intended. He felt that this is a case of discrimination. He stated that the residential use here would not be good for the City and that there would be a loss of business tax. He stated that he would be voting against the request.

Chairman Masters stated that this would be the start of a slippery slope. There is a lot of empty space right now. Everyone would want the same privilege.

Mr. Weber asked if there had been any study to compare the financial impacts of a situation like this. He wanted to know what kind of tax would be collected.

Mr. Youmans explained that business use that provides direct revenue to the City is preferable, but no study has been done to suggest what the impact of additional residents who might shop at downtown businesses would be. This situation should be discussed on a case by case basis. This structure is not a major commercial street and it does not have a large storefront window.

Mr. Shore suggested possibly shortening the period to one year.

Mr. Adams stated a temporary change of just one year may not be cost effective. The applicant will have to comply with the National Flood Insurance Program. He added that City Council wants commercial space on the first floor downtown. He agreed with Chairman Masters that this would be the first of many. He stated that he would not be supporting the request.

*Commissioner Sublett moved that the Commission forward CU-09-302 to City Council recommending disapproval because the use does not meet the intent of the Ordinance for ground floor spaces in the B-1 District.*

*The motion was seconded by Commissioner Adams.*

*Motion passed 6-0.*

**C. CU-09-308** Request of Richard Hoffman for a conditional use permit for a two-unit townhouse at 35 West Hart Street zoned Limited High Density Residential (HR-1) District.

Mr. Youmans presented the request for a Conditional Use Permit (CUP) for a two-unit townhouse at 35 West Hart Street. The applicant proposes to demolish the existing single-family dwelling, subdivide the parcel into two separately platted residential lots, and construct a new two-unit townhouse.

The applicant was required to seek a number of dimensional variances from the Board of Zoning Appeals to facilitate further consideration of his request. On September 9, 2009, the BZA granted the necessary variances associated with case BZA-09-211, including minimum required lot width, minimum required lot area, and corner side yard setback. Minimum side yard setback for a townhouse dwelling is 6' within the HR-1 District. The applicant did not request a variance for side yard setback; therefore, the new townhouse structure would not be permitted to exceed 18.25' in width. The main building setback of the existing structure is nonconforming as well; however, the applicant intends to establish a setback, as required, for the proposed structure(s). As identified within the submitted floor plans for the townhouse structure, the applicant intends to create 2 three-bedroom, two-story units.

The applicant intends to provide two off-street parking spaces for each unit, as required of 3-bedroom units by the Ordinance. The parking is proposed to be located in the rear yard with access from S. Braddock Street. An access easement will be needed over the west lot for the benefit of accessing the two parking spaces provided on the east lot. The originally submitted proposal for parking in the front yard would have violated the prohibition for townhouse parking to back out directly onto a public street. Instead, the townhouse structure will be situated closer to W. Hart Street more in line with other residential structures to the east and west, but still in compliance with the 20-foot minimum front setback.

Elevations and floor plans have been submitted depicting a two-story hip-roofed structure that gives it the appearance of a two-family structure rather than two townhouse units. The units measure 18' wide by 40' deep with a six-foot deep front porch.

The associated site plan showing details as to site grading, drainage, utilities, landscaping, lighting and frontage improvements has not yet been completed. Staff met with the applicant and his plan preparer on November 9, 2009 to discuss the project. Waivers of sidewalk, curb and gutter, and pavement widening along the longer semi-improved S. Braddock Street frontage will be requested and may be warranted given the limited space in which to construct these improvements. All frontage improvements would be required along the shorter W. Hart Street frontage and for a short distance around the street corner.

**Chairman Masters opened the public hearing.**

Richard Hoffman of Vancerright Circle thanked staff for their time and effort on this request. He felt the request for the waivers was reasonable because the land area along S Braddock Street is not there.

**Chairman Masters closed the public hearing.**

Mr. Weber stated he was concerned that people would be forced to walk on Braddock Street.

Mr. Sublett stated that it might technically be a street, but it functions like an alley. People are already used to walking along the pavement here.

Mr. Youmans stated that staff was supportive of the proposal to improve Braddock Street with curbing but not with sidewalk due to the limited space.

*Commissioner Shore moved that the Commission forward CU-09-308 to City Council recommending approval because:*

- 1. The proposal as submitted or modified will not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood; and,*
- 2. The proposed two-unit townhouse use would not alter the character of this HR-1 zoning district.*

*The recommendation is subject to waivers for sidewalk, curb and gutter, and pavement widening, and staff approval of a site plan and minor subdivision reflecting the change of use from single-family residential to a subdivided parcel for two-family townhouse use and occupancy.*

*The motion was seconded by Commissioner Talley.*

*Motion passed 6-0.*

**D. TA-09-323 AN ORDINANCE TO AMEND ARTICLES 1 AND 5.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO STANDARDS FOR VARIOUS TYPES OF DWELLINGS IN THE LIMITED HIGH DENSITY RESIDENTIAL (HR-1) DISTRICT**

Mr. Youmans presented the intent to provide regulatory relief for housing redevelopment and infill construction within the City's Limited High Density Residential (HR-1) District. It specifically introduces Accessory Two Family Dwellings, a newly defined form of two-family residential use that can be considered on a Conditional Use basis.

Recent applications for variances of the Winchester Zoning Ordinance pertaining to two-family dwellings in the HR-1 District have brought to light some regulatory challenges facing persons wishing to redevelop or construct anew in the HR-1 district. The various HR-1 neighborhoods throughout the City contain a blend of single-family detached, two-family, and townhouse type dwelling units.

Neighborhoods that are zoned HR-1 primarily serve as buffer zones between the more densely populated portions of the City – including the Residential Business (RB-1) District and the Central Business (B-1) District – and the sparsely populated single-family residential districts.

Within the existing HR-1 districts, there is a wide variety of dwellings and lots; a large number of which are nonconforming with respect to their use and/or lot dimensions.

As the housing stock in the City continues to age and, in some cases, become obsolete due to its nonconformity with the building code standards, additional requests of a similar nature may be anticipated in the future. The City has an opportunity to encourage the improvement of residential units that may eventually become a blighting influence on the neighborhood, while providing regulatory relief to property owners for re-development and increased density. As such, the text amendment proactively dovetails with other recent amendments aimed at spot blight abatement, increased homeownership, and reinvestment in downtown neighborhoods.

**Chairman Masters opened the public hearing.**

No one spoke about the request.

**Chairman Masters closed the public hearing.**

Mr. Weber stated that the Commission has been over this before and that the changes make sense for the City.

*Commissioner Weber moved that the Commission forward text amendment TA-09-323 to City Council recommending approval because it represents good planning practice and will allow expanded redevelopment opportunities for residential properties, while respecting the transitional single-family residential nature of the HR-1 zoning district.*

*The motion was seconded by Commissioner Sublett.*

*Motion passed 6-0.*

**OLD BUSINESS**

**A. CU-09-172** Request of DFC Architects, PC for a conditional use permit for a two family dwelling at 314 South Kent Street (*Map Number 193-01-T-3*) zoned Limited High Density Residential (HR-1) District with Historic Winchester (HW) District overlay

*Commissioner Shore moved that the item remain tabled.*

*The motion was seconded by Commissioner Weber.*

*Motion passed 6-0.*

**NEW BUSINESS**

A. Administrative Authorizations:

1) **SP-01-29** 139 N. Cameron St United Bank Landscaping Revisions

Chairman Masters read the following into the minutes: At the November 10, 2009 work session, Commissioner Wiley moved to grant administrative authorization, including a reduction of the

required percentage of green space, as presented by the Planning Director. The motion was seconded by Commissioner Shore. Motion passed 6-0-0-1 (Commissioner Talley absent).

2) **SP-09-383** Medallion 7 Financial LLC 27 W Gerrard St Triangle Diner Revision

Mr. Youmans presented the site plan that included additional parking for the diner along South Braddock Street where an older structure was recently demolished.

Chairman Masters stated that the driveway on South Braddock Street is a huge problem. It should be limited to right-in, right-out.

Commissioner Sublett stated that he does not see it as a problem.

Mr. Youmans stated that the property is in the B-1 District where there are not any driveway spacing requirements.

Commissioner Adams asked if a median could be installed in the future if the driveway did become a problem.

Mr. Youmans stated that the decision to install a median in the public street would be completely in the City's control. He stated that he will check with Public Services Director Perry Eisenach about a study to see if a median is warranted.

*Commissioner Weber moved to grant administrative authorization for SP-09-383.*

*The motion was seconded by Commissioner Sublett.*

*Motion passed 6-0.*

3) **SP-09-386** Greenway Engineering 1560 Amherst St Omps Pet Crematory

Mr. Moore presented the site plan for an 851 square foot building that would be constructed north of the existing funeral home. There are increased setback requirements due to adjacent residential zoning and these are provided for on the plan. He stated that staff had just received the plan the previous day and had not yet done a complete review, but wanted to get the Commission's initial input on whether or not they might require a public hearing.

Mr. Adams asked if the pet cremation process is different from other cremation processes.

Mr. Moore stated that staff is not able to answer that question. A determination has already been made by the Zoning Administrator that the use is by-right.

*Commissioner Weber moved that a public hearing be required for SP-09-386.*

*The motion was seconded by Commissioner Adams.*

*Motion passed 6-0.*

**ADJOURN**

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

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Susan Masters, Chairman