

**PLANNING COMMISSION  
MINUTES**

The Winchester Planning Commission held its regular meeting on Tuesday, November 18, 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 Weber, Talley, Willingham and Sublett.

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

Frederick County Liaison: Rick Ours

**ABSENT:**            Commissioners Adams and Shore

**VISITORS:**        Lynn Koerner, Arnold Eldorado, Charles Pine and Bill Wiley.

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

**APPROVAL OF MINUTES:**

Mr. Weber moved, seconded by Mr. Talley, to approve the minutes as presented. Motion passed 5-0.

**CORRESPONDENCE**

There was a revised agenda packet presented including:

- Item 2A – CU-08-14 – Email from Lynn Koerner
- Item 3A – Motions for Administrative Approval of Site Plans
- Item 3B – Motion to Initiate Text Amendments 11-13

**CITIZEN COMMENTS**

None

**REPORT OF FREDERICK COUNTY LIAISON**

Mr. Ours gave the Commission an overview of discussion at the last Frederick County Planning Commission meeting including:

- Approved a rezoning on Martinsburg Pike for Frederick Block from RP (Residential Performance District) to B3 (Industrial Transition District) for the storage of materials.
- Several Ordinance Amendments
  - o Adding a Zoning District to implement the mixed use industrial office land use classification of the Comp Plan for Frederick County.
  - o Changes to buffer and screening requirements adjacent to railroad right-of-way.
  - o Building height restriction in the B3 (Industrial Transition District) to be increased from 35 feet to 45 feet.
  - o Removing general merchandise and apparel stores from the interstate overlay sign district.

- Enabling age restricted multi-family housing in RP (Residential Performance District).
- Approved a Conditional Use Permit for a bed and breakfast.
- Approved a master development plan for Snowden Bridge Development by Shockey.

## **PUBLIC HEARING**

**CU-08-14** Request of Shenandoah Mobile Company for a Conditional Use Permit to construct a wireless communications tower at 2625 Valley Ave (*Section 290, Double Circle 7, Lot 28*) zoned Highway Commercial, B-2 District with Corridor Enhancement, CE District overlay.

Mr. Moore presented the request for a 100' tall, monopole-type cellular tower to be located at the rear of the former thrift store/auto parts store at 2625 Valley Ave. The antennae are proposed to be enclosed within the tower which will double as a flagpole.

The applicant notes in a letter dated October 6, 2008 that they investigated 3 possible sites in the immediate area. One structure was determined to be too close to an existing site and too limited in elevation to provide the needed capacity coverage. Two other locations lacked sufficient ground space for the necessary support equipment.

In a separate letter also dated October 6, 2008, the applicant offers the proposed monopole tower for co-location with other wireless providers and notes that the tower is designed to accommodate a minimum of two carriers (themselves and one additional).

The RF Brief Overview submitted with the application includes coverage maps with and without the proposed facility. The Overview concludes that the proposed 100' height is the minimum required to accomplish the desired coverage and capacity.

The monopole design is preferred over alternative lattice designs. Additionally, the applicant is proposing a design that utilizes antennae which are fully enclosed within the pole, the same as with the two most recently approved locations at the Shentel store on South Loudoun St and the Handy Mart at the east end of Berryville Ave. The applicant is also proposing that this monopole will double as a flagpole like the tower at the aforementioned Berryville Ave location. The proposed location for the support equipment and the pole are at the rear of the existing building. The equipment enclosure and the base of the pole would be situated at the base of the existing slope that comes down from the townhouse development along Limestone Ct to the west, which is approximately 18' higher in grade at the property line. The applicant has provided photo simulations of how the proposed pole is expected to appear from several different surrounding locations.

The applicant is not proposing to remove any trees in the area. The support equipment will be screened within a 14'x22' area by an eight-foot high board fence enclosure meeting Ordinance requirements. Two small arborvitae plantings are proposed near the base of the monopole. While these will provide little or no effective screening, they are welcome as additional plantings on the site.

The applicant has provided the necessary documentation including the RF Brief Overview noted above as well as a Determination of No Hazard to Air Navigation from the Federal Aviation Administration (FAA).

In addition to examining frequency and power, the FAA Determination also notes that marking and lighting are not necessary for aviation safety. A letter from the Virginia Department of Historic Resources is also provided indicating no adverse effect on historic properties.

The Valley Ave CE District provisions which are applicable to this application are all met as proposed, including: encouraged creative design of equipment; discouraged use of lattice towers; required placement of support equipment in the rear yard, and; prohibited visibility of cellular panels from the street.

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.

**Chairman Masters opened the public hearing.**

Lynn Koerner, consultant for Shentel, stated that based on the comments from the work session there were questions as to whether additional structures in the surrounding area were looked at as possible locations. He provided a map showing other sites where towers were located explained that this tower is needed to relieve the capacity of the surrounding sites. He tried to find compatible heights or possibly using the existing flagpole at the Stutzman dealership, but there is limited ground space. He explained that he received a call from Fire and Rescue Chief Wright about sharing tower space to help with issues with public safety in the area, so it is a possibility that they may provide two additional spaces on the tower instead of just one. He stated that he has no issues with a bond and concluded by saying that he brought along Arnold Eldorado, an RF Engineer, for any technical questions the Commission may have.

Charles Pine of 707 Kennedy Dr stated that he is not against this particular tower, but he is afraid that once you install one that there will be many. He claimed to have no problem using his cell phone in the area and questioned if the tower was necessary. He thanked the Commission for their time.

**Chairman Masters closed the public hearing.**

Chairman Masters asked if the applicant had exhausted all possibilities of sharing space on other towers.

Mr. Koerner stated that the map he provided showed all existing towers. There are no open spaces available on them for antennae and there are not any buildings tall enough and with sufficient ground space for equipment.

Chairman Masters asked if this tower would assume some of the workload of the other towers.

Mr. Koerner explained that each one of the towers is providing service into the area. As call volume increases, this tower will help relieve the capacity issue and eliminate dropped calls.

Chairman Masters asked if there are any other towers located this close to a residential area.

Mr. Youmans stated that there are towers in residential districts but not in neighborhoods. One tower was approved for location adjacent to Tower Ave, however it was never constructed.

Mr. Sublett spoke in favor of approval stating that this is a B2 district and was prior to the apartments being constructed. The same land owner owns both pieces of the property. Based on what has been presented, he could see no harmful impact on the residents. The land owner is using this property how it was intended to be used. He felt that it was hard to say there will be an impact when there is no one to speak against this. He felt that the applicant has made a good faith effort to disguise the pole. His only concern is that the flag on the pole on Berryville Ave is too small and would ask that a condition be imposed requesting that the flag be in proportion to the pole.

Mr. Willingham stated that he received some phone calls from residents on Limestone Court. He felt that there may be a need for another tower; however, he did not feel that this was the place to put it. He suggested looking at alternate locations, perhaps along the Hope Dr area.

Chairman Masters stated that she was torn on this because it is a conditional use. She asked what some other conditional uses in the B-2 district might be.

Mr. Youmans stated that they are mostly things like nightclubs, which would have a noise impact, but that is not the case here. The only impact would be visual.

Mr. Sublett stated that in reading the comprehensive plan, the community has decided that they do not want dirty technology. He felt this to be clean and consistent with the future vision. He stated that everyone wants it, but not in their backyard. Sooner or later, it will have to be in someone's backyard. He could not think of anything else to disguise it. He felt that it is time to move forward.

Chairman Masters asked if this tower could possible start a trend of installing towers in the City.

Mr. Youmans stated that it was possible, however, unless Council changes it from a conditional use, each one will have to stand on its own merits.

Chairman Masters asked if a condition can be added that they will maintain the flag.

Mr. Youmans felt that it would be a good condition.

Mr. Weber asked if the residents of the apartment complex were notified about the flag pole.

Mr. Youmans explained that the owner of the property was notified as is required, but not necessarily the individual tenants. Additional notification procedures of sign placement and newspaper ads were provided.

Mr. Weber was concerned because the Commission did not know how the actual residents feel about the pole because the owner of the property that receives the letter and does not necessarily live there.

Mr. Youmans explained that it is always the case with public notification letters.

Mr. Willingham stated that he is not arguing that we do not need towers; just that this is not the right place for one. He explained that the one on Berryville Ave is in more of a commercial setting and blends in, where this one will be much more visible.

Chairman Masters stated that one of the issues is that all of Valley Ave is B2 that backs up to residential. There will be a need to put a pole in there somewhere.

Mr. Willingham asked the applicant how far south they looked.

Mr. Koerner he explained that when the RF department issues the search area, they pinpoint the area that is in need. They looked to the east toward Papermill , to the residential area to the west, south at the Stutzman site, and to the north to the Weems Lane area.

Mr. Sublett asked how tall the flag pole is at the Stutzman dealership.

Mr. Koerner stated that it is a 100 ft pole.

Mr. Talley asked if any new technology will be coming along to get rid of some of these towers.

Mr. Koerner stated that there are new things being developed all the time. Although he does not see anything in the near future, if something does come along, Shentel would take the pole down.

Mr. Sublett asked if Shentel left the tower, what would happen to the other tenants on the tower.

Mr. Youmans explained that the antennae would be removed but not the pole.

Commissioner Talley, seconded by Commissioner Sublett, moved that the Commission forward Conditional Use Permit CU-08-14 to City Council recommending approval as depicted on the submitted plans dated 8/21/08 subject to:

1. The applicant, equipment owner, or property owner providing bonding or other surety to ensure removal of all equipment within ninety (90) days once the equipment is no longer in active use; and
2. Staff review and approval of the site plan.
3. Maintenance of the flag is required to be provided by the owner; and,

The motion is based upon a finding that proposal as submitted 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; and, that the applicant has demonstrated compliance with the provisions of Section 18-2-1.2 for new cell tower proposals.

Commissioner Sublett, seconded by Commissioner Weber, moved to amend the motion to add a fourth condition:

4. The flag is to be proportional in size to the monopole.

The motion to amend passed 4-1 (Commissioner Willingham in opposition).

The original motion, as amended, then passed 4-1 (Commissioner Willingham in opposition).

**TA-08-08 AN ORDINANCE AMENDING ARTICLE 14 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO EXCLUSIONS IN THE HISTORIC WINCHESTER (HW) DISTRICT**

Mr. Moore presented the request to exclude projects that have received approval from the Department of Human Resources or the Secretary of the Interior from needing BAR (Board of Architectural Review) approval for the same changes. The exclusion would be limited to those in the Federal and state application. Anything not listed in that submission would still need to go before the local BAR. He added that during the work session, one of the BAR members spoke with concerns about the amendment, but noted that the concerns were his opinion and not necessarily the opinion of the BAR as a whole.

**Chairman Masters opened the public hearing.**

No one came forward to speak.

**Chairman Masters closed the public hearing.**

Mr. Willingham stated that he strongly supported this amendment. He felt that it would remove another layer of bureaucracy for people that want to redevelop their properties downtown.

Chairman Masters agreed with Mr. Willingham. She stated that she did not want to discount the local BAR, but she felt that federal approval trumped local in this situation.

Mr. Talley felt that anything to expedite is a positive, but he also stated that having the BAR is necessary. He did not want to step on any toes. He stated that as long as the BAR members are good with it, he would support it.

Commissioner Willingham, seconded by Commissioner Weber, moved to forward TA-08-08, as identified in "Draft 1 – 10/17/08", to City Council recommending approval because it removes a redundant level of review while still protecting the City's interest in Historic Preservation and Rehabilitation.

Motion passed 5-0.

**TA-08-09 AN ORDINANCE AMENDING SECTION 18-6-6.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SPECIAL EXCEPTIONS FROM OFF-STREET PARKING AND LOADING REQUIREMENTS**

Mr. Youmans presented the privately sponsored text amendment, explaining that the intent of the request is to permit converted use of structures in the block of W. Clifford Street between S. Loudoun St and S. Braddock St without invoking a parking requirement. The request would amend the Zoning Ordinance provisions for off-street parking and loading exemption such that properties in this block could be included among the parking-exempt street frontages.

The character of development in this area is one of compact historic structures containing a mix of residential and nonresidential uses. The change would exempt 4 properties along the north side of W. Clifford and 3 properties along the south side. Off-street parking is available on some larger sites such as the Adams property and the PERC Fitness properties near the east end of this

block. Both of these sites are already parking exempt as is the Only For You (Donato's) restaurant site.

The intent of the parking exempt district was to discourage demolition of historic structures for the sole purpose of providing off-street parking in conjunction with intensified use of structures in the Central Business, B-1 District. The Parking Exempt district generally extends in areas where the Winchester Parking Authority provides public parking. While there are no public parking lots or garages in the immediate vicinity, a surface lot is at the corner of Cork Street and S. Loudoun one block to the north.

**Chairman Masters opened the public hearing.**

No one came forward to speak.

**Chairman Masters closed the public hearing.**

Chairman Masters stated that she was not happy when the parking exempt district was extended 2 years ago, because she thought that the City needed to take a comprehensive look at the parking exempt district as a whole instead of in pieces whenever someone wants to make an amendment. She added that if this continues, there are going to be too many cars in old town with no place to park, having a negative impact on the City.

Mr. Sublett stated that he agreed that a closer look needs to be taken but that he would actually like to see the parking exempt district expanded. He explained that when you live in center city you cannot expect to pull up to the front door of your house, its part of living in an urban area. Residents may have to walk a block or a half a block because you have chosen to live there. He felt the priority is to have a healthy and vibrant economic area downtown so a better plan is needed.

Chairman Masters agreed that it needs to be expanded but asked how that should be done, block by block or all at once.

Mr. Youmans stated that there are very few parcels that are along that street that aren't already parking exempt.

Mr. Willingham reminded the Commission that there is another garage being built which will relieve some of it.

Commissioner Willingham moved, seconded by Commissioner Weber, to forward TA-08-09 to City Council recommending approval because it promotes economic development and represents good planning by avoiding the demand to demolish historic structures for purposes of providing required off-street parking.

Motion passed 5-0.

## NEW BUSINESS

### A. Administrative Authorizations:

- 1) **SP-08-41** Valley Engineering 1832 Amherst St WMC East Parking Garage  
At the November 11, 2008 work session, Mr. Talley, seconded by Mr. Shore, moved to grant admin authorization. The motion passed 5-0 (Chairman Masters and Mr. Sublett absent).
- 2) **SP-08-44** PHR+A 425 Handley Blvd Handley Bowl improvements  
At the November 11, 2008 work session, Mr. Weber, seconded by Mr. Talley, moved to grant admin authorization. The motion passed 5-0 (Chairman Masters and Mr. Sublett absent).

Mr. Sublett pointed out that the plans that were authorized at the work session called for a four foot high fence. A column, along with one section of fence, has been installed that it well over the four foot height. The Commissioners agreed that four foot was what had been authorized and asked that staff inform the applicant that if a taller fence was intended to be used, they would have to come back to the Commission for authorization.

- 3) **SP-08-46** City of Winchester 225 E Pall Mall St Pall Mall Corners  
At the November 11, 2008 work session, Mr. Willingham, seconded by Mr. Weber, moved to grant admin authorization. The motion passed 5-0 (Chairman Masters and Mr. Sublett absent).

### B. Motions to Initiate ordinances:

- 1) **TA-08-10** AN ORDINANCE AMENDING AND RE-ENACTING ARTICLE 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO CONDITIONAL USE PERMITS  
Mr. Weber moved, seconded by Mr. Willingham, to initiate TA-08-10 and schedule for public hearing at the December 16, 2008 meeting.  
Motion passed 5-0.
- 2) **TA-08-11** AN ORDINANCE AMENDING AND RE-ENACTING ARTICLES 1, 2, 3, 7, 8, 9, 11, 12, 15, 15.1, 16, 16.1, AND 18 PERTAINING TO THE PERMITTED AND CONDITIONAL USE STANDARDS FOR ALTERNATIVE ENERGY SOURCES  
Mr. Diem added Article 10 to the amendment that will be explained in draft 3.  
Mr. Weber moved, seconded by Mr. Talley, to initiate TA-08-11 and schedule for public hearing at the December 16, 2008 meeting.  
Motion passed 5-0.
- 3) **TA-08-12** AN ORDINANCE AMENDING AND RE-ENACTING ARTICLES 5, 7, 8, 9, AND 13 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DENSITY ADJUSTMENTS FOR MULTIFAMILY PROJECTS WITH LEED<sup>®</sup> FOR HOMES CERTIFICATION  
Mr. Willingham moved, seconded by Mr. Weber, to initiate TA-08-12 and schedule for public hearing at the December 16, 2008 meeting.  
Motion passed 5-0.

- 4) **TA-08-13** AN ORDINANCE AMENDING AND RE-ENACTING ARTICLES 8 AND 19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO PROVISIONS FOR UPPER-STORY HOUSING IN THE HIGHWAY COMMERCIAL, B-2 DISTRICT.

Mr. Weber moved, seconded by Mr. Willingham, initiate TA-08-12 and schedule for public hearing at the December 16, 2008 meeting.

Motion passed 5-0.

- 5) **TA-08-14** AN ORDINANCE AMENDING ARTICLE 20 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO PROCEDURES FOR FILING AN APPEAL TO THE BOARD OF ZONING APPEALS

Commissioner Weber moved, seconded by Commissioner Talley, to initiate TA-08-14 and schedule for public hearing at the December 16, 2008 meeting.

Motion passed 5-0.

### **ADJOURN**

With no further business to discuss, the meeting was adjourned at 4:50pm.

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Susan Masters, Chairman