

Douglas S. Wright, Jr., chair, called the meeting to order at 4:00 p.m., on Wednesday, February 3, 2016, in the Council Chamber, Second Floor, City Hall. Also present were commission members M. Brubaker, R. Campbell, D. Miller, J. Stone, and R. Thomas. The following staff members were present: K. Maher, Planning and Code Administration Director; S. Bockmiller, Development Planner/Zoning Administrator; A. Rohrbaugh, Planner; and D. Calhoun, Secretary. (NOTE: Planning Commission revisions are indicated in red text.)

Approval of Minutes: January 27, 2015 – Regular Meeting.

MOTION: (Miller/Brubaker) Make a motion to approve.

DISCUSSION: None.

ACTION: APPROVED (Unanimous)

**Aschenbach Hagerstown LLC – Lot 6 – Garland Groh Boulevard,
Revised Sketch Plan.**

Staff Report: (Staff report is in the meeting file.) A site plan was received for a portion of this development. However, the site plan filed for review substantially deviated from the sketch plan that the commission approved in mid-2015. Staff felt it prudent to require a revised sketch plan for the Planning Commission’s review and approval before moving forward with the site plan.

The stormwater management approach has not changed, and the City Engineer has no concerns. A copy of the memo from the previous meeting is included with the staff memorandum in the meeting file.

The revised plan calls for a one-story “strip center-type” commercial building to the north of the existing Bulldog Federal Credit Union bank. To the west—between the bank and Walmart—would be a gasoline service station and a restaurant. Two commercial buildings are proposed for the rear of the site consisting of one 63,545 square foot building and a 17,782 square foot building. In addition to the main entrance to the development, there would be a right-in-right-out-only access in front of the gasoline service station and one between the existing bank and the commercial building to the north.

Staff had no concerns about this change, except there is no proposed connection to the Walmart property to the south. The developer was unable to negotiate a connection with Walmart. Staff believes it is important to design this development for future connection so that when the City may be in a position to require Walmart to connect, the improvements are in place on this site to accept them. This development should be designed with a frontage driveway that will connect

with the one crossing the rest of the commercial development. Staff recommended approval with the condition that the interior road network be adjusted to create a cross-property driveway in line with the one on the adjacent property and build the driveway to the common property line for future connection when it becomes possible.

Commission/Applicant Discussion: (Ms. Campbell arrived.) LeRoy Myers, Myers Building Systems, Inc., spoke to the commission concerning staff's request to leave room for a future access road to the Walmart site. Triad Engineering researched this matter but could not reach an agreement with Walmart, who would not consent to any cross-easements. Walmart also required a list of restrictions on types of uses that could be established on the property in exchange for the connection. The Aschenbachs already have agreements with several retailers, and Walmart is not willing to negotiate on the connection and list of restrictions. The proposed signal at the Bulldog Federal Credit Union intersection will be installed with Phase II and will be lined up with the Starbucks entrance across the street. Staff stated that Lot 6 could still be designed with the access road taken into consideration. Mr. Myers stated that the lot does not have enough depth at the point of the suggested connection point to allow for one of the uses proposed. Jason Divelbiss, attorney for the developer, noted that there is a reserve at the western corner of this property that Walmart needs for a truck turnaround. He noted that both of the properties in question are private properties with private internal roads.

Mr. Wright stated that he was not in favor of forcing the developer to provide for the connection. Staff stated that if the Planning Commission was inclined to approve the concept plan as submitted, it may want to require a connection at the western corner. Mr. Divelbiss observed that when the site plan comes in for the second phase, the circumstances may change (i.e., a different developer). Staff noted that the site plan for Phase I has been submitted and is currently working its way through the review process. In addition there is a final plat under review that will add the causeway portion of the property to Lot 6 (Aschenbach holdings).

Mr. Bockmiller wanted it entered into the record that if one of the possible tenants required over 75,000 square feet of building space, the big box design standards will fall into place. Mr. Myers assured Mr. Bockmiller that no store will ~~not~~ exceed 75,000 square feet.

MOTION: (Thomas/Campbell) I make a motion that we accept the revised sketch plan as proposed.

DISCUSSION: Mr. Wright did not see any benefit to the City by requiring the connection in the rear. Cross easements would still be necessary from Walmart.

ACTION: APPROVED (Unanimous)

Mr. Wright reminded commission members that more than one conversation at a time is distracting and commission members do not benefit from others' insight if everyone is talking at once. Discussions need to be structured so everyone has an opportunity to talk.

Land Management Code – 2016 Package of Amendments.

Staff Report: (Proposed text amendments are in the meeting file.) Review began where it left off at the last meeting; however, a new document was created for this discussion. Lettering began with “A” on the new document (which was “M” on the first document).

A. Track the creation of homeowners associations with subdivisions. The Homeowners Association (HOA) at Fairchild Heights was never created.

Create a signature block for subdivision plats that require recordation of the Homeowners Association (HOA) covenants’ location in the Land Records before the plat is recorded. Include the deed reference in the signature block to the HOA covenants on the plat. Planning Commission members had no concerns about the proposed amendment.

B. Enforcement when building permits are issued in error.

Codify that if zoning approval for a building permit or zoning certificate was done in error and the work is underway, the Zoning Administrator is prohibited from revoking the permit and enforcing the violated provision. Mr. Wright did not see the point of two separate laws that accomplish the same thing; he noted that there may be common law provisions that address this. Staff will research this further and check with the City Attorney to determine whether there is common law in effect for this situation.

C. Subjecting redevelopment of apartments to same standards as shopping areas.

Similar to what is expected when renovations are planned for shopping centers, existing multi-family developments would be required to bring the site up to code. For clarity, commission members wanted a separate section for multi-family developments in addition to the existing language for retail centers. Staff was directed to work on the language for clarity.

D. Inconsistent and interchangeable use of the terms “this article” and “this Ordinance.”

Change all relevant references to “ordinance” in the Code to “article.” The Planning Commission had no problem with this change.

E. Properties that have higher level streets in sides or rear are prohibited from having privacy fences up to property lines on those streets.

Properties that have higher level streets along the sides or rear are prohibited from having a fence up to a property line. The Mayor and Council asked staff to look at this. Options include removing the last sentence of the first paragraph of Article 4, Section K.1.a.; do

nothing; or permit with evergreen shrubbery installed along the outside of the fence. Mr. Brubaker asked staff to provide examples of these types of corridors for the Planning Commission's reference where this may be an issue. The Subdivision Regulations have been amended and do not allow rear facades of houses to face arterial roads. Another change would be to substitute the word "classification" for "level." This will be brought back for further discussion.

F. Structural consistency.

Make Article 4, Section B.2 and B.3 consistent with other land use type sections. Content will not change. No changes were made by the commission.

G. Inclusionary oversight.

Extend the regulation of signage in the Commercial districts to all districts, not just the Professional Office Mixed (POM) District. The same applies for the Industrial districts which only address I-MU at this time. Phraseology will be consistent with the recently adopted graphics regulations in Section I. No comments by the commission.

H. Ordinance is silent on gasoline sales – treat it as any other type of sales.

Commission members had no objection to adding a separate line item in the Use Chart for gasoline sales.

I. Article 5, Section A.3.d is an incomplete sentence. Intended to allow administrative approval of adjustments to recorded lots.

Add text to make a complete sentence. ("The combination or recombination of a portion of previously subdivided and recorded lots *may be approved by the Zoning Administrator* if the total number of lots is not increased, and the resultant lots are equal to or exceed the standards of this Ordinance.") No comments by the commission.

J. Leftover references to Adequate Public Facilities Ordinance (APFO).

Remove Article 5, Section C.6.h. No comments by the commission.

K. Minor clarifications.

- In Article 5, Section C.19, add word to last line of second paragraph on section on condominium plats ("Also, this review shall **before be for** the purpose of verifying

that the proposed use is permitted by the Zoning Ordinance, or if the *existing* use is illegal or nonconforming.”)

- In Article 5, Section I.1.c., add words to the last line: “A site plan shall be submitted to the Zoning Administrator for approval by the Planning Commission for all new construction greater than 5,000 square feet, including disturbed area, involving all construction and land development, except for new single-family, two-family and semi-detached dwellings *and additions thereto*, and additions to townhouses.”
- Add words to Article 5, Section I.4.h.4: “All off-street parking areas must be physically separated *from property lines and public street rights-of-way* by a landscaped buffer as specified in Article 5, Section I, Subsection 2.”
- In Article 3 (Definitions):

ACCESSORY BUILDING, USE OR STRUCTURE –

1. As pertains to *articles except Article 6*, a use or structure on the same lot or adjacent lot under the same ownership with and of a nature customarily incidental and subordinate to the principal use or structure. Typically, an accessory use occupies not more than 25% of the space occupied by the principal use and its permitted accessory uses. (*Zoning*)
 2. *As pertains to Article 6*, a building or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure. For the purposes of these regulations, an accessory structure shall be used solely for parking of vehicles and limited storage. (*Floodplain*)
- In Article 3 (Definitions):

ESSENTIAL UTILITY EQUIPMENT – Underground or overhead electrical, gas, communications, water or sewerage systems, including poles, towers or pole structures, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone stations, police call boxes, traffic signals, hydrants, regulating and measuring devices, water pumping stations, elevated storage tanks, ground storage tanks and the structures in which they are housed, substations and associated equipment and other similar equipment and accessories in connection therewith. It does not include:

3. Wireless telecommunications facilities, as regulated in Article 4, Section Q of this *chapter*.”

- In Article 4, Section M.11.c, Exemption for Buildings Constructed as Two-Family Dwellings: “The building is located in a zoning district that permits two-family dwellings, but is rendered noncomplying *or nonconforming* due to the property not meeting lot area, width, and other bulk requirements.”
- In Article 4, Section O.1.b.(2), clean up as follows: “This provision shall not apply to a Conversion District, Local Conversion District as enumerated in Section J.3. ~~or the CC-MU District.~~ [ADMINISTRATIVE NOTE: See Sub-section O.5].”
- In the plat requirement chart in Article 5, Section F.2.b (second line from top of page 5-33): “Notation explaining all associated planning and zoning files (BZA, FC, NCU, annexation, HDC, past subdivisions ~~or~~ *and* site plans).”
- In the plat requirement chart in Article 5, Section F.2.c., Proposed Layout, fifth line: “Building setback line for each street *and property line.*”

The Planning Commission had no comments on the miscellaneous corrections on the above amendments.

L. Recent Department name change from “Planning and Code Administration Division” to “Planning and Code Administration Department.”

Change all references to Planning and Code Administration to Planning and Code Administration Department. No objections by the commission.

M. Cross reference the prohibition on signs for home work stations to the Graphics section.

The commission had no comments on this change.

N. Should mixed-use districts be included in the requirement in Article 4, Section K.1.c (Supplementaries – Fences and Walls) which requires fences in commercial and industrial districts to have landscaping outside of them when adjacent to public streets?

This amendment was only added for discussion—staff had no proposal. Commission members asked that this be removed from discussion.

O. Article 4, Section M.1 speaks of a property owner being able to file a certification of nonconforming use with the Zoning Administrator. This basically puts approval of such in the hands of the applicant. There is no wording regarding how the review authority would or would not approve it.

Commission members had no objection to staff's proposed amendment which adds guidance for the Zoning Administrator to approve certifications for nonconforming uses.

The following items were not on the proposed list, but mentioned by staff:

- Forest Conservation and Fees. If someone applies for approval of fee-in-lieu, there are instances where the fee is approved, but the project is not built right away. The ordinance is adjusted annually based on cost of living increases. The proposal is to add language that the fee will be based on the fee that was in effect when the fee was paid. Commission members had no objection to the proposal.
- Clarification on flea markets. Staff asked if there should be a separate line item in the Use Chart for flea markets, or should they be treated as Retail uses. Commission members did not want to get into indoor flea markets, but agreed that a definition needs to be added for "flea market." Most of the concern was regarding outdoor flea markets, including frequency, parking, and type.

Commission members need complete copies of the updated Land Management Code by the next meeting on February 24.

Adjourn.

It was moved and seconded that the meeting adjourn (5:55 p.m.).

2/24/2016

Approved



Debra C. Calhoun - Secretary