

Douglas S. Wright, Jr., chair, called the meeting to order at 4:00 p.m., on Wednesday, March 9, 2016, in the Conference Room, Fourth Floor, City Hall. Also present were commission members M. Brubaker, R. Campbell, D. Miller, J. Stone, R. Thomas, and J. Wheeler. 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: February 24, 2016 – Regular Meeting.

MOTION: (Wheeler/Campbell) I'll move approval.

DISCUSSION: None.

ACTION: APPROVED (Abstain - Stone)

View Street Diner Local Conversion District – Request for Extension.

Staff Report: (Staff report is in the meeting file.) The owners of this property are requesting further extension of their Local Conversion District Overlay. Little progress was made on the renovations due to illness of one of the owners. However, the applicants still plan to pursue opening a restaurant at this location. Staff had no objection to the extension request but noted that the ordinance requires construction to begin within a year and the use be in operation within two years. If this latest extension request is approved, six years will have elapsed since the Local Conversion District was approved without a commitment from the applicants to complete the project and open the restaurant. Staff recommended that the commission discuss with the applicant how much longer extensions will be granted.

Commission/Applicant Discussion: Alan Clingan, Jr., was present. Mr. Clingan indicated that it is their hope that the project will be completed within the timeframe of this extension.

Mr. Wright stated that Planning Commission members would like this project to move forward and be successful; however, there is the danger of setting a precedent for other Local Conversion District Overlay projects. They need to draw the line somewhere; this will be the last extension.

Mr. Clingan told the commission that currently MS Johnston has the construction plans, and the Clingans are actively seeking a used stainless steel hood. The kitchen is currently gutted.

Ms. Wheeler noted that the minutes from the last extension request state that the kitchen had been upgraded. Mr. Clingan stated that is false. Mr. Miller asked if the Clingans are still interested in reopening the restaurant. Mr. Clingan responded that they do not have too many other options for the building.

- MOTION:** (Stone/Miller) I move that we grant another one-year extension, that the statements heard today be taken seriously.
- DISCUSSION:** Mr. Thomas asked if the extension will begin from the first of March or until the first of January since the extension ran out December 31. Mr. Stone stated it was his intention for the extension to run from today's date. Mr. Miller agreed with the clarification.
- ACTION:** APPROVED (Unanimous)

Board of Zoning Appeals Agenda – March Hearing.

(A copy of the agenda is in the meeting file.) The only case on the agenda is a request for a special exception for retail and/or pawn shop at 1044 Virginia Avenue. The commission had no comments on the case before the Board of Zoning Appeals.

Comprehensive Plan Amendments – Community Facilities Element.

Staff Report: (Staff memo is in the meeting file.) As directed by the Planning Commission at the last meeting, staff presented the revised draft Community Facilities element with the additions and corrections proposed by the commission on February 24. The chart on page 2 of the staff memo lists the concerns raised by the commission and how staff addressed those concerns.

Commission members made the following comments/changes:

Page 9-2: Staff confirmed with Fire Chief that the current staffing level is 77 persons. This change was made to the text. (No changes)

Pages 9-2 and 9-3: Staff met with the Fire Chief last week and the Chief and planning staff agreed that the Future Emergency Services Need Map is no longer needed in the plan. New language gives the Fire Department more flexibility on where future stations can be located, giving the Fire Chief more latitude on where stations should be placed and not tied to specific areas on the map. Mr. Stone was opposed to the general idea of moving fire stations further out toward the perimeter of the city. Ms. Wheeler noted there is a sentence stating that it is easier to provide services from the “outside in.” Mr. Rohrbaugh said that from the Fire Chief’s perspective, stations located in the urban core—but not in the downtown—provide easy access both inward and outward vs. having stations strictly in the suburbs or all in the downtown. Mr. Wright requested that more creativity be put into the funding formula that would do more to stimulate recruitment of volunteers rather than supporting volunteer companies. Mr. Brubaker said the commission needs to be careful because some of the funding the City receives is from Washington County which is based on departments. If the City starts relying on volunteers

instead of departments, even that inadequate funding could go the wrong direction. He agreed that recruitment should be a priority. Mr. Brubaker stated that the word, “therefore” in the middle of the first paragraph under “Fire Department” be removed, and that sentence be broken up into two sentences: *“The Fire Department’s funding base for its volunteer fire services is based on the number of volunteer companies, rather than the number of certified and trained volunteer firefighters. therefore The actual number of available volunteers continues to fluctuate.”*

Mr. Wright suggested that a sentence could be added that possibly future studies need to be made to be sure funding achieves the ultimate goal of providing fire protection to the City.

Mr. Brubaker stated that the commission needs to give the Fire Chief and future administrators and elected officials of the city flexibility in terms of how stations are arranged. It is an axiom of fire station planning that the periphery of a downtown is the better way to respond to incidents both in and out. Mr. Stone was not in favor of moving either of the two remaining stations out of the downtown. Mr. Brubaker and Mr. Wright stated they did not have the expertise to take a position on this matter and felt it should be left to the professionals. Mr. Stone suggested the language should be removed. Other commission members were not comfortable removing the language. There was no commission support for a change to the funding formula so Mr. Wright withdrew that request.

Page 9-3: The first full paragraph, six lines down, Mr. Wright noted that no problem is stated. The deleted sentence notes response times being unacceptable which was the reference to the problem to be alleviated. Mr. Rohrbaugh was directed to rewrite this paragraph to ensure it makes sense.

Page 9-5: Mr. Rohrbaugh noted that he clarified that bulk trash pick-up is by appointment, and will remove the reference to twice a month.

Pages 9-5 and 9-6: Mr. Stone stated that on page 6, the scope of broadband is larger than the one megabyte stated/implied in the second bullet point. He suggested that the language be made more urgent. (Ms. Maher arrived.) Broadband service is a competitive advantage that is important to downtown. Mr. Stone was disappointed that the fiber optic service that is available to governmental and institutional users is not offered to businesses as well. Mr. Rohrbaugh stated that the language in the Broadband section is from the IT Director. Existing broadband services in the downtown are not adequate for businesses. He felt businesses would relocate if broadband service was better. Getting fiber to the door is the main stumbling block now. The standard should be one gigabyte or more, not one megabyte. This section should be re-written to show this as an urgent problem. The commission agreed that a statement should be added that broadband service is vital to the city and that one gigabyte service should be provided to every building in the downtown. Ms. Wheeler suggested it would read better if the third paragraph was moved to become the first paragraph under “Broadband.” She felt it would better emphasize the importance up front and then get into the details of the remaining paragraphs.

On page 2 of the memo, staff noted that when reviewing the action items from the 2008 plan, there was a question about why pursuing formal agreements for use of school facilities was taken out. Mr. Rohrbaugh stated that he conferred with the City Engineer, who also oversees the Parks and Recreation Division. While the City normally handles such use of school facilities on a case-by-case basis, the City Engineer believes it should still be a goal for future implementation, so this language was added back into the text (page 9-15, Action Step 9-10). School recreation facilities can then be counted toward the city's recreational assets.

Another issue on which staff requested clarification is whether Board of Education properties should be included in the 0.25 mile walking radius similar to public parks on the Future Park Needs map (Map 9-4). Staff updated Map 9-4 to include the quarter-mile walking radii taking into consideration school properties. The circle was removed for the Cortland tot lot which was deemed to be too insignificant to count toward any serious recreation facilities. Mr. Wright recommended that the language on underserved areas be rewritten to reflect the new map.

New language was added on page 9-12 which addresses Washington County's request to add language about developing an Antietam Creek Water Trail from the Leitersburg area downstream to the Potomac River. The trail was also added to Map 9-3. Ms. Maher asked if the commission would want to meet with County staff for a presentation on the Antietam Creek Water Trail. Commission members did not believe that was necessary. Mr. Wright suggested a new trail along Hamilton Run. Mr. Rohrbaugh will bring this idea to the City Engineer so it can be added to the items that the City's Bicycle Master Plan consultant will be studying.

Staff will make the requested changes and email the new draft to the Planning Commission for any final comments.

Land Management Code – 2016 Package of Amendments.

Staff Report: (Proposed text amendments are in the meeting file.) Staff presented the third iteration of Land Management Code amendments, which is a consolidation of the first two packets.

Page 2 – Amendment 2. After discussion, the Planning Commission decided to make no changes to staff's proposed language concerning special exceptions in the AT (Agricultural Transition) district. Change makes language consistent with other zoning districts.

Page 4 – Amendment 6. There is a typo in the sixth "Proposal." The page number referenced should be 4-82.

Page 5 – Amendment 7 (top of page). Mr. Wright suggested the new language would be better suited to Subsection b., rather than e. as proposed. Staff suggested adding the language to both sections. Commission members did not have any concerns about adding the language to both sections.

Page 5 – Amendment 9. Since the commission’s initial discussion, the City Attorney suggested a minor revision that did not change the content of the amendment (if the Zoning Administrator cannot grant a use, the applicant may go to the Board of Zoning Appeals without the negativity associated with a denial; added the phrase, “i.e., the case would be heard by the Board “de novo”). No comments by the commission.

Page 6 – Amendment 11. Mr. Stone questioned bees as being incompatible with residential neighborhoods. The majority of the Planning Commission did not agree with Mr. Stone’s point of view that “honey” should not be added in the definition of livestock.

Page 6 – Amendment 12. The proposed text would require a signature box on subdivision plats to make sure that homeowners associations are created prior to recordation of plats. No comments by the commission.

Page 7 – Amendment 13. Originally the Planning Commission was concerned about flea markets being all inclusive as far as indoor and outdoor flea markets. The definition proposed is from El Paso, Texas. As part of this amendment, the use was added to the Use Chart. Except for correction of a typo in the packet material, no changes were made by the commission. (Mr. Brubaker left the meeting.)

Page 8 – Amendment 14. This was confusing to the commission the first time members reviewed this amendment. At this meeting, commission members suggested adding the word “circumstances” to the end of the third line (“This includes *circumstances* when there is little or no ground disturbance.”). As amended, the commission had no concerns with this change,

Page 8 – Amendment 15. “Gasoline and diesel fuel, sale to the public” was added as a stand-alone use for clarity. The commission had no comments on this amendment.

Page 8 – Amendment 16. The correct page reference should be 4-13; otherwise there were no comments.

Page 8 – Amendment 17. Mr. Bockmiller indicated that the Economic Development Director requested that Simulcast Facilities ~~be added~~ be added as a permitted use in the CG zoning district. In addition, the City Attorney advised that the definition read that these uses “shall be defined as defined and regulated by the Annotated Code of Maryland.” The commission had no concerns about these changes. (Mr. Miller left the meeting)

Page 9 – Amendment 18. At the commission’s request, staff provided photographs of existing front yard parking lots. Existing front yard parking areas will not be required to be removed. Commission members had no concerns about this amendment.

Page 9 – Amendment 19. No changes were made since the commission’s first look at this proposal. Staff was directed to research whether greater buffering or setbacks should be provided. Staff looked into this and believes the proposed language is the best solution. The commission had no comments on this proposal.

Page 10 – Amendment 20. The Planning Commission had requested a graduated setback based on the height of the building. The setback was changed from 10 to 20 feet and additional text was added to the residential bulk requirements chart under Minimum Width of Side Yards (ft.): “~~10~~ 20 (or when property line is adjacent to the rear of a building, one additional foot for each foot of building height over 20 feet). The commission had no concerns about the added language.

Page 11 – Amendment 22. Added a cross-referencing note in the section, “Maintenance, Expansion, Expiration, Confirmation and Change of Nonconforming Uses.” This language is existing and this amendment cross-references that language in Section M. Mr. Wright pointed out that there are court cases which have overturned these types of regulations. Mr. Stone asked if there are a large number of these types of amortizations. Mr. Bockmiller stated that since this language became effective in 2014 the enforcement office has been notifying owners as they have been identified. The commission noted a typo on the third line of “e. Use of Semi-Trailers.” No additional changes were recommended by the commission.

Page 11 – Amendment 23. Staff consulted the City Attorney on this amendment who questioned whether an element of discretion could be built into the language rather than making it a mandatory proposition. Mr. Stone said there is a case in Maryland that says the City can be harsh, even if the applicant relied on erroneous advice from a city official, although he was not suggesting that type of language. The Planning Commission had no concerns with the amendment as written.

Page 12 - Amendment 24. Language was revised as directed by the commission during the first review. At that time, commission members had concerns about the three-foot setback. The revised language provides for a larger setback to allow the owner adequate space to make repairs. Commission members had no changes to the new language.

Page 12 – Amendment 25. This amendment addresses fences along collector roads where a property fronts on a lower classification road. Photographic examples were provided and discussed by staff. This amendment was passed down from the Mayor and Council for action. No language was proposed by staff, although suggestions included removing the last sentence of the first paragraph of Article 4, Section K.1.a.; or do nothing; or permit these types of fences

with evergreen shrubbery installed along the outside of the fence. Mr. Bockmiller will bring this back at the next meeting and will have the BZA case and right-of-way widths for the example at Eastern Boulevard/Moller Parkway/Potomac Heights. Mr. Bockmiller felt the existing language is the best solution in that it would kick in BZA review. This would apply only to privacy fences. Mr. Wright suggested language pertaining to maintenance, especially when the right-of-way has been diminished. He agreed that the existing language should be left alone. As part of a side discussion, Mr. Bockmiller offered to research whether Hillside Manor has a homeowners association.

Page 12 – Amendment 26. The last time this amendment was discussed, the commission directed Mr. Bockmiller to research the minimum square footage required for having the maximum number of children in a day-care home. He spoke with Ms. Harmon at the Department of Labor, Licensing and Regulation, the state agency that regulates home day-care providers. Ms. Harmon said there is no set square footage, it is on a case-by-case basis depending on the circumstances of the house. Ms. Harmon told staff she would be willing to meet with the Planning Commission to answer any questions the commission has about child day-care regulations. The Planning Commission agreed that it would be beneficial to meet with Ms. Harmon.

The following amendments were deferred to the 2017 package of amendments:

- Setbacks for party tents (Item B in the first package of 2016 amendments); and
- Chart for subdivisions with building setbacks that are different than the current ordinance requirements.

Regarding the prohibition of dwellings on lots that do not front a public street, this matter has been withdrawn; however, it may come back at a later date.

Adjourn.

It was moved and seconded that the meeting adjourn (6:08 p.m.)

3/30/2016

Approved



Debra C. Calhoun - Secretary