

Douglas S. Wright, Jr., chair, called the meeting to order at 4:00 p.m., on Wednesday, April 13, 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: S. Bockmiller, Development Planner/Zoning Administrator; A. Rohrbaugh, Planner; and D. Calhoun, Secretary.

Approval of Minutes: March 30, 2016 – Regular Meeting.

Ms. Wheeler asked that clarifying language be added to page 5, first paragraph under “Alley Quitclaim Request – 700 Block West Washington Street,” that in addition to Ms. Allen’s concern about losing access to her parking lot from the adjacent alley, that her goal was also to manage traffic in the area, minimize pedestrian traffic and associated loitering and littering, and unauthorized parking on her lot. She asked that “manage the traffic” be added as part of the justification for the alley quitclaim request.

MOTION: (Campbell/Thomas) I’ll move for approval, as amended.
DISCUSSION: None.
ACTION: APPROVED (Unanimous)

Dolores Harmon, Regional Manager – Office of Child Care.

Dolores Harmon and Marion Mitchell of the Maryland Office of Child Care were present.

Staff Report: Up until a few years ago, the City deferred the issue of home day-care to the state agency that regulates day-care. During a recent update to the Land Management Code the commission and staff believed the number of children permitted by the state in home day-care was too intense. The City’s ordinance was amended to allow up to four children, not including any children of the provider or relative. Home day-care was limited to single-family residences, duplexes, and townhomes. Recently staff began to look at whether the ordinance requirements should be loosened up. (Mr. Stone arrived.) According to the state office that regulates child care facilities, the number of children permitted in a home day-care depends on individual circumstances as to whether a provider can have the maximum number of children. The staff proposal is to relax the City’s current regulations to allow up to eight children and up to two children in an apartment unit. The proposed amendment also addresses nonresident employees, which are permitted under certain circumstances under state law.

Discussion: Mr. Stone asked when a person must have a license to provide day-care. Marion Mitchell stated a license is not required if someone is providing care for relatives; however, any children not related to the provider would require the provider to be licensed.

Explaining the licensing process, Ms. Mitchell stated that applicants need to provide the number of children they would like to care for. After an inspection of the home, the state determines whether a provider can have the maximum number of children. Regardless of whether children are related to the provider, eight is the maximum number of children allowed in one home day-care. After the inspection, the state can lower the number of children requested depending on the outcome of that inspection. Providers who care for children under the age of six years old are covered in the eight allowed. Ms. Harmon stated that most homes in the City are not large enough to accommodate eight children under the state guidelines. (Mr. Brubaker arrived.)

Mr. Bockmiller stated that staff's proposal is not to match the state, but to make it come somewhat closer to the state regulations. The state will not issue a license if a situation violates the local zoning ordinance. Ms. Wheeler asked what the distinction is between babysitting and home day-care. Ms. Harmon stated that "babysitting" is providing care fewer than 20 days per month. (Mr. Miller arrived.)

Mr. Wright suggested that the proposed language be amended to read "Home day-care of up to eight children ~~not including the children or relatives of the resident provider~~ as licensed by the state of Maryland." Commission members concurred. Ms. Wheeler asked how many licensed home day-cares are located in the city. Ms. Harmon stated there are approximately 80 licensed home day-cares inside the City limits.

One provision in the proposed language states that a provider can care for up to two children in an apartment unit, regardless of whether they are relatives. Ms. Campbell believed that a maximum of two children in an apartment unit was too low. Staff noted that the idea of regulating apartments separately stems from the nature of apartments where there are residents potentially living above and below a unit thereby increasing the impact on neighbors. The thought was that if someone is caring for children in an apartment unit, that number should be fewer. Another consideration is that most apartment units do not have direct access to the outdoors.

Mr. Stone said the language should be consistent, but the number should be higher for an apartment unit than the two suggested by the draft language. Ms. Mitchell stated that usually in an apartment the applicant has children of their own--very seldom do they get an applicant who does not have children. When the state considers someone for a license, the size of the apartment would be part of the vetting. Mr. Stone felt the state license would control the number of children as a result of the inspection process. Mr. Wright asked about the average number of children in an apartment day-care. Ms. Harmon estimated that five children is the average for an apartment.

Mr. Brubaker asked how the state counts children that are in school. Ms. Mitchell said school children are counted the same. At any one time a provider cannot exceed the number for which

they are licensed. Ms. Harmon said the providers are charged with managing the number of children in their homes in the case of snow closings, holidays, etc.

Concerning the number of children cared for in an apartment that are not members of the household, commission members agreed that number shall not exceed two children. Mr. Stone pointed out that this would be the upper limit, since the state may not license that number.

Mr. Bockmiller stated that another issue being addressed by this amendment is employees. State licensing is set up to require back-up providers that come in and cover for the resident provider when the primary provider is unavailable due to illness, appointments, vacations, etc. Typically home-based businesses do not have outside employees.

The proposal is that a home day-care may utilize nonresident employees for occasional back-up staff only, covering onsite operations for the resident staff during vacations, emergencies, appointments, etc., as required by their state licenses. Otherwise a home day-care shall not employ persons who do not reside on the property. Ms. Mitchell pointed out that if providers have more than four children under the age of two that another adult must be present. Based on the above, that situation would not be permitted in the City if the second adult is not a resident of the home.

908 Hamilton Boulevard – Request for Waiver (Dumpster Enclosure).

Mr. Wright recused himself from this discussion and left the room. Mr. Stone, took over as chair for this portion of the meeting.

Becky Buchanan, Ridgecrest Property Management, was present on behalf of the property owner.

Staff Report: (Staff memo is in the meeting file.) Mr. Bockmiller stated that last year the ordinance was amended to require that any new dumpsters be enclosed. The subject property is improved with an apartment building. The owner recently placed a dumpster along the alley to the rear of the property for the purpose of consolidating trash collection for the building. Before doing so, the owner approached the City Engineer's office about going to a dumpster collection system. However, the City Engineer's office was not aware of the new requirement for having a dumpster enclosure. Since the dumpster was installed, neighbors along the alley have been contacting the City with complaints about the truck damaging their properties.

The property is in the Oak Hill Historic District. If the enclosure requirement is not waived by the Planning Commission, the Historic District Commission would have to approve the design of the enclosure.

Mr. Stone asked Ms. Buchanan how the trash had been handled prior to installation of the dumpster. Ms. Buchanan indicated that trash cans were piled in front of the property. She indicated that the minimum enclosure requirements would not permit the trash hauler to service the dumpster. Ridgecrest's goal is to keep the community clean and free of trash. Commission members discussed the soon-to-be effective trash collection codes, which basically state that trash cans cannot be in public view.

Mr. Miller questioned what type of enclosure would be required for the dumpster. Staff explained that the enclosure could be vinyl fencing, wood fencing, or masonry. Another benefit of enclosures is that they trap any material that might fall out of the dumpster.

Michael C. Barnes, 905 Potomac Avenue, Hagerstown, Maryland, told the commission the rear of his property is in the immediate vicinity of the subject property. When the trash trucks service the dumpster at 908 Hamilton Boulevard, they drive over City curbs and mash up the curbs of the neighbors. The truck broke up the stamped concrete driveway of a neighborhood resident. The dumpster is unsightly. He has lived in this area for 43 years. In addition to this apartment building there are four other apartment buildings equal to or in excess of the number of units at 908 Hamilton Boulevard. There has never been an issue of locating a dumpster in an historic district that the neighbors have to look at.

Mr. Brubaker observed that the issue is the tenants have not been duly instructed on how to properly dispose of their refuse. The owner and the management company have not staged the trash cans in the proper locations. It is a matter of getting the tenants to follow directions. The easy way out is to move the collection point in the back and let the neighborhood suffer the consequences. He stated he was not in favor of granting a waiver.

Mr. Barnes demanded the commission procedurally move on the matter and that the Planning Commission not grant a waiver. Mr. Stone asked Mr. Barnes to leave the table. As background, Mr. Bockmiller said there is nothing in the ordinance that gives the Planning Commission the authority to require removal of the dumpster. If the Planning Commission grants the waiver, nothing will change; if it rejects the waiver, they will have to install an enclosure in accordance with HDC design approval. The role of the Planning Commission does not include whether the dumpster should be removed. Mr. Stone observed that the City created the problem for the apartment owner since the City passed the trash code legislation.

Mr. Bockmiller asked if there is enough turning radius in the alley for the truck to service the dumpster if it was installed behind the existing parking. He questioned whether placing the dumpster in the yard would make it easier for the truck to reach it. Mr. Thomas pointed out that the utility pole in front of the dumpster would make it difficult for the trash truck to empty the dumpster.

MOTION: (Brubaker/Wheeler) I make a motion that we require an enclosure and that if it cannot be worked out, they need to work with the City Engineer and work with the Code people and see if something can be worked out.

DISCUSSION: Ms. Buchanan stated that according to the City's minimum requirements for a dumpster enclosure, until you put the amount of space out from the dumpster there is not enough room. Ms. Campbell asked Ms. Buchanan what their plans would be if an enclosure is required. Ms. Buchanan stated that they would not continue with the dumpster and will put the trash cans back behind the building. Mr. Stone asked Mr. Barnes if he understood the consequences if a dumpster enclosure cannot be accommodated on the site with the result being trash cans being reinstated on the property. Mr. Barnes said he had no issue with that and it would be consistent with other apartment buildings in the area.

ACTION: APPROVED (YES – Brubaker, Miller, Thomas, Wheeler; No – Campbell, Stone; ABSENT - Wright)

Mr. Bockmiller noted that the Planning Commission could consider a waiver to reduce the amount of the buffer space inside the enclosure if the details were fleshed out in advance.

Mr. Wright resumed the chair.

250 Eastern Boulevard North – Stormwater Parcel LLC – Annexation – Review of Appropriateness of Zoning, Case No. A-2016-01.

Staff Report: (Staff memo is in the meeting file.) The subject property is located between the Ewing Oil property to the north along Eastern Boulevard North and the Stone Soup LLC medical office building (formerly Food Lion) to the south. The total area of annexation is approximately 1.03 acres.

The property was originally developed as a stormwater management facility in the 1990s that served the property to the south. When the Light Business Park was developed, stormwater management for the former Food Lion was diverted from the property in question to the stormwater facility in the Light Business Park on Cameo Drive. Because it is no longer a functioning facility, the owner would like to re-grade and fill the property so it can be developed for a commercial use in the future. Because the property is contiguous to the Corporate Boundary annexation will be necessary in order for the property to be served by City water. The owner has requested annexation of the property now so that it will be ready for development. The owner has no specific building plans at this time but has expressed an interest in a restaurant use on this property.

Prior to annexation, the owner asked the City to review a grading plan for the property at the same time that the annexation is being processed. Planning staff reached out to the Washington County Plan Review & Permitting Division, and the County has no objection with the grading plan being reviewed by the City before annexation. Staff noted that approval of a site plan for development cannot happen until the annexation becomes effective. Once the site is graded and developed, stormwater management will be handled by both the Light Business Park facility and on-site environmental site design in accordance with the City Ordinances.

Under Washington County zoning the property is zoned BG (Business General); if annexed, the property would be zoned CG (Commercial General). The zoning classifications are consistent with one another; therefore, no express approval of a zoning change is required from the County Commissioners. The Land Use Plan in the 2002 Washington County Comprehensive Plan identifies “Commercial” for the property. The Future Land Use Plan in the City’s 2008 Comprehensive Plan identifies this area as “Business-Employment,” and the Comprehensive Plan update, *visionHagerstown 2035*, will be recommending “Commercial General” for this property.

Applicant/Commission Discussion: Mr. Bockmiller clarified that mass grading would be permitted during the annexation process to fill the stormwater management pond depression. Any site plan for a future user could not be approved until after the annexation becomes effective. Access would be worked out with the owner of the Stone Soup property. An alternative would be gaining access to this site from Cameo Drive. Mr. Rohrbaugh observed that it would behoove the applicant to work with Stone Soup to get cross easements for access and parking via that site.

- MOTION:** (Stone/Campbell) So moved (to recommend the appropriateness of CG zoning for the property once it is annexed).
- DISCUSSION:** None.
- ACTION:** APPROVED (ABSTAIN - Brubaker)

Planning Commission’s Annual Report to Maryland Department of Planning.

(Copy of staff memo and the report are in the meeting file.) The Planning Commission was pleased with the report as submitted and had no additional comments.

MOTION: (Campbell/Stone) I move that the commission approve the Annual Report, subject to a few minor pieces of input from Commissioner Wheeler (regarding grammatical corrections, typos, etc.).

DISCUSSION: None.

ACTION: APPROVED (Unanimous)

Comprehensive Plan Amendments – Community Facilities Element Update.

Staff Report: (Staff memo is in the meeting file.) Since the commission last viewed this draft element, staff made revisions to address comments and concerns.

Page 9-3 – Future Fire Protection. The second paragraph was reworded to address balancing how fire protection is handled when conducting efficiency assessments. Mr. Stone reiterated his belief that fire protection services need a downtown presence. He asked if this paragraph could be reworded so it does not appear that the commission is giving tacit approval to what could end up being the relocation of fire services out of the downtown area. Mr. Brubaker did not feel the Planning Commission had the authority to tell the Fire Chief where stations need to be located. He believed the Fire Chief should be involved in the decision. Mr. Stone disagreed that the location of fire stations is up to the Fire Chief. Ultimately there is an elected body that decides these things. There should be some method other than a formulaic approach to efficiency. Mr. Brubaker stated that the Fire Chief has the option of making a recommendation, but any decisions would be based on the presented facts, figures, arguments, etc. The Planning Commission is not in a position to say one way or the other and agreed with the wording presented by staff. Mr. Wright added that the decision to move or not to move a fire station will go through a number of filters and will be studied in a variety of ways. He suggested that in the second line of this paragraph, add a description of “700 block” of Potomac Avenue since Potomac Avenue is a long street.

Page 9-5 – Broadband. Mr. Rohrbaugh stated that the third paragraph was moved to the first paragraph to emphasize its importance, as requested by the commission the last time this was discussed. The Planning Commission had no concerns about this change.

Page 9-6 – Broadband. The second bullet was simplified to say “identify existing broadband network resources.” Planning Commission members had no concerns about this change.

Page 9-12 – Park Equity Analysis. More specific language on park equity analysis was added, including the addition of “Some residential areas *in Hagerstown still* lack adequate park space” in the first line since the plan includes areas in the Medium-Range Growth Area. In the fourth line, the sentence was further defined by adding “. . . a quantitative tool designed to show

neighborhoods that are underserved by parks *and open space . . .*” The commission had no comments on these additions.

Page 9-13 – Other Institutional Uses. Language was added citing the proposed Hagerstown Cultural Trail to further emphasize the link between the museum and downtown. Commission members had no comments on this addition.

Mr. Rohrbaugh will have the Environmental Resources and Sustainability Element for the commission to review at the April 27 meeting.

Land Management Code – 2016 Package of Amendments.

Staff Report: At the last meeting commission members and staff reviewed the fourth draft of the 2016 package of amendments to the Land Management Code. Commission members requested several small changes. Staff will adjust the home day-care language discussed earlier in this meeting and bring the package back to the commission for one last review prior to scheduling a public review meeting at the end of May.

Adjourn.

It was moved and seconded that the meeting adjourn (5:24 p.m.)

4/27/2016

Approved



Debra C. Calhoun - Secretary