

**Planning Commission
MINUTES – Regular Meeting**

**May 31, 2017
City of Hagerstown, Maryland**

Douglas S. Wright, Jr., chair, opened the meeting at 7:00 p.m., on Wednesday, May 31, 2017, in the Conference Room, Fourth Floor, City Hall. Also present were commission members R. Campbell, P. Corderman, J. Stone, R. Thomas and J. Wheeler. The following staff members were present: K. Maher, Director of Planning and Code Administration Department; S. Bockmiller, Development Planner/Zoning Administrator; A. Rohrbaugh, Planner; and D. Calhoun, Secretary.

REGULAR MEETING

Roll Call.

The chair noted that commission member D. Miller was absent.

Approval of Minutes:

April 26, 2017 – Regular Meeting Minutes.

MOTION: (Wheeler/Thomas) I'll move approval of the minutes.

DISCUSSION: None.

ACTION: APPROVED (ABSTAIN - Campbell)

May 10, 2017 – Workshop Meeting Minutes.

MOTION: (Wheeler/Thomas) I'll move approval of the minutes.

DISCUSSION: Mr. Wright asked that an attribution be corrected at the bottom of page 3, second to last sentence. Instead of "Mr. Rohrbaugh suggested . . . "it should be Mr. Wright suggested" Ms. Wheeler and Mr. Thomas agreed to the correction to the minutes.

ACTION: APPROVED (ABSTAIN – Campbell, Stone)

Mr. Bockmiller reported that a sketch plan for the Burger King/Krispy Kreme project is imminent, and according to the developer's calculations, parking variances will not be necessary. (Mr. Corderman arrived.)

Development Review:

400 Jonathan Street – Proposed Redevelopment for Restaurant, Minor Site Plan, Case No. SA-2016-11.

Staff Report: (Staff memo is included in the meeting file) This minor site plan is for site improvements at 400 Jonathan Street, zoned RMED with a Local Conversion District Overlay. The existing structure was built in the 1900s. Because the commercial space has been vacant for some time, it lost its nonconforming status. The applicant/owners, Khadene Wilson and Dexon Brunson, received approval for a Local Conversion District Overlay in 2016 to allow the building to be reused for a restaurant. The site plan proposes a plan for interior renovation of the building as well as exterior improvements, including a dumpster enclosure, striped parking spaces, the widening of the driveway apron, and landscaping along Jonathan Street.

The rezoning was also approved with the following conditions:

- The old metal sign pole along Jonathan Street shall be removed;
- Parking spaces shall be striped in the parking area; and
- The dumpster and enclosure shall be placed adjacent to the proposed handicap-accessible entrance.

Staff noted that the improvements shown on the site plan appear to meet the conditions of the rezoning. The landscaping plan for the site is generally consistent with alternative landscaping standards found in Section I.4.e. of the Subdivision/Land Development Ordinance. The disturbed area is under 5,000 square feet; therefore, stormwater management and forest conservation do not apply to this project.

The rezoning to Local Conversion District Overlay was approved in July 2016, and the Zoning Ordinance requires applicants to begin construction within one year of rezoning approval. Because the one-year mark is fast approaching and the applicant is making progress on the project, Staff recommended that the commission grant a one-year extension to the applicant to allow for construction and the opening of the business.

Full approvals from review agencies have been received from the City Engineer, the Water and Wastewater Divisions, and the Fire Marshal. The Electric Division had an outstanding comment regarding the need for electrical load information. The Planning and Code Administration Department had minor outstanding comments on the plan, including identification of the plantings for the flower box along Jonathan Street and approval of a reduction in the drive aisle width by the Planning Commission from 24 feet to 22 feet, 1¾ inches.

Because there are several components to ultimate approval of the site plan, Staff recommended that the Planning Commission, if it is inclined to move forward with the plan, take the following actions in this order:

- Motion to grant a time extension of one (1) year to May 31, 2018 to allow the applicant time for construction and to commence with the approved restaurant use (*Article 4, Section J.3.e.(3)*)
- Motion to grant a modification of the minimum parking lot aisle width from 24 feet to 22 feet, 1.75 inches (*Article 5, Section I.4.h.*)
- Motion to approve the site plan subject to the satisfaction of comments provided by the Light Department and Planning and Code Administration Department.

Commission Discussion: Commission members discussed the extended time frame and recommended that the new expiration date be July 25, 2018 rather than May 31, 2018.

Concerning the extension:

MOTION: (Thomas/Stone) I move that we extend the time frame for a year from the present expiration date to July 25, 2018.
DISCUSSION: None.
ACTION: APPROVED (Unanimous)

Concerning the reduction in the parking lot aisle width, Mr. Wright suggested using 22 feet rather than 22 feet, 1¾ inches.

MOTION: (Stone/Wheeler) So moved (to 22 feet).
DISCUSSION: None.
ACTION: APPROVED (Unanimous)

Concerning approval of the minor site plan, Mr. Wright recommended that the official drawings be amended to include a revision date, in addition to the other comments mentioned by staff.

MOTION: (Stone/Campbell) Move for approval, subject to approval by Light, Planning and Code Administration, and correction of the date block.
DISCUSSION: None.
ACTION: APPROVED (Unanimous)

Planning Commission Business:

Proposed Text Amendment – Car Repair in I-MU Zoning District.

Staff Report: (Copy in the meeting file) The City received a zoning text amendment application requesting that Article 4, Section Z (Land Use Chart) of the Land Management Code be amended to permit automobile repair in the I-MU District. This came about after staff was approached for a zoning certificate for the property at 327 East Wilson Boulevard for a car repair business. Since it is not a permitted use in the I-MU Zoning District, staff was unable to provide the certificate. The applicant had recently purchased the property with the intent of using it for automobile repair. Automobile repair is permitted in the CG, CR, IR, IG districts by right and by special exception in the CL District and the Conversion Overlay district.

The proposed language would add a new line to the use chart for I-MU as follows:

“Auto(motive) Repair & Maintenance (8111) in buildings constructed prior to 2010 with outdoor storage and service areas screened with opaque fencing and landscaping in accordance with Article 5.”

This language was developed after discussion with staff. Staff did not view this use as being conducive to the planned nature of I-MU Districts which is essentially POM (office park) zoning with some limited retail, restaurant, warehousing, and indoor light manufacturing. None of the uses in the category of “Automobile and Transportation-Related Use” in the use chart are permitted in the I-MU District. There are two existing I-MU Districts in the city: a large portion of the Harrison Tract (off of Edgewood Drive) is unimproved and a 7.25-acre area on the south side of Wilson Boulevard consisting of several already developed properties.

The proposed language with this amendment would permit the use within the Wilson Boulevard district. Since there are no buildings constructed prior to 2010 on the larger, unimproved portion of the Harrison Tract on Edgewood Drive, this text amendment would not impact the current array of use options for the development of that tract.

Staff plans to advertise this text amendment for a public review meeting at the end of June.

Commission Discussion: Some commission members had concerns about the opaque fencing requirement, particularly for a fenced area along East Wilson Boulevard. Based on the front setback of 35 feet for this property, Mr. Bockmiller stated that a fence would not be permitted in the front yard without a variance. He added that the Zoning Ordinance has a definition for junk yards that specifies the number of inoperable vehicles that are permitted. Otherwise, commission members had no objections. The building has been abandoned for several years.

2016 Annual Report to Maryland Department of Planning.

Staff Report: (Copy in the meeting file) Ms. Maher presented highlights of the CY 2016 Annual Report that the City is required to prepare for the Maryland Department of Planning. The subject areas of the report are mandated by state law and must include information about development review, building permits for new housing, comprehensive plan updates, special projects and activities to implement the Comprehensive Plan, annexation activities, rezonings, and land use regulation text amendments.

Commission members had the following comments on the draft Annual Report:

- Page 1, I.A. – The first sentence is too long; move “amendment” in the second line to immediately after “Comprehensive Plan.”
- Page 3, III.A.1. – Add a period after “Food Lion property” in the second line.
- Page 6, VI.A.2. – The second sentence has no end.
- Page 8, 4. – In the middle of the paragraph, the direction should be “east” and not “south” (“ . . . Hotel/Conference Center farther east along Dual Highway.”)
- Page 10 – Ms. Wheeler questioned what the changes to the rental registration program were. Staff indicated there were no changes to the program, the text changes were made to clarify the intent.

Floodplain Management Ordinance Amendment.

Staff Report: (Copy in the meeting file.) Minor amendments to the Floodplain Management Ordinance (Article 6, Land Management Code, and related definitions in Article 3) will be presented to the Mayor and City Council for introduction in June, adoption in July, with an effective date to coincide with the new Federal Emergency Management Agency (FEMA) floodplain maps (August 15, 2017). Staff presented the amendments to the commission for review and comment. Amendments to the Floodplain Management Ordinance do not require a Planning Commission public hearing or recommendation. However, staff wanted to make the commission aware of the amendments and provide an opportunity to offer comments to the Mayor and Council if necessary. Most of the amendments were prescribed by FEMA; however, there is one content change that limits the amount of variance for buildings in floodplain to 600 square feet.

There are eight amendments associated with definitions (Article 3) and 18 associated with the Floodplain Management Ordinance (Article 6). A marked up copy is included in the meeting file. Staff reviewed the changes with the commission. A public hearing with the Mayor and Council will be held in June. In answer to a question by the commission, Mr. Bockmiller indicated that the impact of the new flood maps is minimal and some areas have become smaller.

On page 5, language suggested in No. 8 is optional. Staff asked for the commission’s input on whether to keep the proposed language or to leave it stand as is. Staff stated that the proposed language is more restrictive and believed it might be beneficial to have a “work around.” Commission members concurred with staff and were in favor of leaving the language as it currently exists.

Except for omitting the optional language on page 5, the commission had no comments on the changes to Article 3 and Article 6.

Abandonment of Simplified Plats.

Staff Report: (Copy in the meeting file) Recently a 7,500-square-foot tract of land on Pope Avenue, zoned RMOD, was donated to Habitat for Humanity. The tract had a nonconforming three-unit block of townhouses on two 25-foot-wide lots. A few years ago, it was subdivided by simplified plat to place each house on its own lot. The existing interior property line was vacated and no longer exists. The resulting lots are narrow, and drawn irregularly to conform to irregular party walls between the units. Several years ago, the units burned and the building was demolished. Since townhouses are not permitted in the RMOD District, and the requirement for reconstruction was not implemented to keep the nonconformity viable, the nonconforming use status was lost. As a result, Habitat owns three narrow, irregular lots that cannot be built upon because simplified plats are “not for development purposes.” Any property in the past that was recorded by simplified plat and later came in for development was required to process a final plat.

Habitat planned to construct two semi-detached dwellings on the property (two units total in one building) along the previously abandoned interior lot line. Staff analyzed the Land Management Code in depth in an attempt to find a solution; however, within the current Code, there is no way to do this. This also raises the issue of what to do with such properties in the very rare occurrence that this happens. Another example of such a situation is the condemned block of narrow townhouses on East Franklin Street, which were subdivided in the past, but likely could not be reconstructed within the existing property lines. Staff noted that the East Franklin Street example is in an RMED District which permits townhouses, so there is no “use” issue here, but lot width and area problems created by a simplified plat to subdivide existing conditions.

As it currently exists, the Code would permit the property to be re-platted to create one single-family detached dwelling lot to be improved with a single-family detached dwelling. The only way to address this issue and not create new issues within the ordinance is to create an exemption that would allow a simplified plat to be abandoned and re-establish the previously existing interior property lines that were in place prior to the simplified plat. In the Habitat

example, a new final plat would be processed that abandons the existing two interior property lines and re-establishes the previously existing interior lot line between two 25-foot-wide lots. With this condition recreated, Habitat could apply to the Board of Zoning Appeals for setback variances to construct single-family detached dwellings on each lot, or apply for variances to lot area and width requirements to construct semi-detached dwellings on each lot.

Staff believed that the method described above would address the unique condition of abandoned substandard and expired nonconforming use townhouse lots created by a simplified plat without opening a “Pandora’s Box” of issues. It will avoid creating regulations that allow developers to get around current requirements that otherwise only permit single-family detached dwellings from being constructed on undersized lots. The current regulations only permit single-family dwellings to be built on undersized lots to avoid Constitutional “takings” claims. The proposed approach allows the previously existing lots to be recreated through the subdivision process and avoids the existing regulations that prohibit the Board of Zoning Appeals from approving lot area and width variances in order to increase permitted density. Only property lines that existed when the simplified plat was created may be re-created.

Since this is an issue of importance for Habitat, staff is planning to add this request to a public review meeting for the text amendment that would allow auto repair in the I-MU zoning district. Staff noted that this experience has drawn attention to the issue of whether new subdivisions and condominium plats should be created when dealing with nonconformities. Subdividing to permit permitted uses on substandard lots is one issue and not a problem; however, when there is the potential for the expiration of a nonconformity then that creates lots that cannot be used for the purpose intended. Staff would then question whether subdividing a nonconforming use should be permitted at all. This issue could be added to the next annual package of amendments that will be brought to the commission for discussion in the next several months.

Commission Discussion: Mr. Bockmiller added that nonconformity is only an issue in the RMOD zoning district since townhouses are permitted in the RMED zoning district. The proposal would allow review by the Board of Zoning Appeals for a duplex on the undersized lots. Mr. Wright asked staff to make sure there would no adverse repercussions. Mr. Bockmiller stated that because the amendment would be limited to nonconforming and noncomplying townhouses and buildings with interior lot lines, it is very focused. He asked if the commission had any thoughts on approving these types of subdivisions in the first place or should these nonconforming properties remain as multiple units on one property. Mr. Stone felt it would be best done on a case-by-case basis. He did not want to rule out simplified plats and felt that the first part of the proposal outlined by staff is straightforward.

Commission members still wanted to promote homeownership and deal with the mishaps as they occur and did not recommend a change to current practice.

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Adjourn. It was moved and seconded that the meeting adjourn (8:21 p.m.)

6/14/2017

Approved



Debra C. Calhoun - Secretary