

Douglas S. Wright, Jr., chair, opened the meeting at 7:00 p.m., on Wednesday, June 26, 2019, in the Council Chamber, Second Floor, City Hall. Also present were commission members C. Davis, J. Stone, R. Thomas, and J. Wheeler. The following staff members were present: K. Maher, Director of Planning and Code Administration; S. Bockmiller, Development Planner/Zoning Administrator; M. Flick, Planner; and D. Calhoun, Secretary. (NOTE: Planning Commission revisions are indicated in red text.)

PUBLIC REVIEW MEETING

2019 Comprehensive Rezoning.

Mr. Wright opened the public review meeting at 7:00 p.m. and explained the public review meeting procedure.

Staff Presentation: Ms. Flick presented the staff report (see copy of PowerPoint presentation and other materials in meeting file). After her presentation, Ms. Flick entered into the record the Certificate of Advertisement, the Planning Commission’s file by reference, and two letters of support received prior to the public review meeting.

Commission Discussion/Questions: Mr. Wright questioned why medical facilities, such as the Potomac Center and Western Maryland Hospital were included under the “Institutional” zoning classification. Ms. Maher responded that they are institutional uses in very large buildings. RMOD (Residential – Moderate Density) zoning would make it difficult to reuse the buildings if they would ever become vacant. Mr. Wright noted that the list of institutional uses does not include the City of Hagerstown sheds and the wastewater treatment plant; however, Washington County’s Highway Department is included. Ms. Maher stated that the industrial use of a wastewater treatment plant would not be included in the Institutional zoning district but the City sheds will be added. Mr. Wright pointed out that on the last map, the label for the new one should be “proposed” instead of “existing.”

Public Testimony:

Paul Banister, 29 Moller Parkway, Hagerstown, Maryland. Mr. Banister had concerns about the property at Northern Avenue and Potomac Avenue. It had been rezoned from Agricultural to POM (Professional Office Mixed Use) about 15 years ago. The proposed rezoning is CL (Commercial Local) and the same concerns apply with regard to traffic in the area. In addition, the property has no access to Leitersburg Pike on the west side, the lower portion is in the floodplain and cannot be developed. There is only a small part of the property that can be

developed. Traffic control measures for the property on the corner will affect Mr. Banister's ability to access his property. There are many accidents at this intersection. Rezoning to CL will affect the character of the neighborhood. He believed the POM zoning is a lower classification than the proposed CL. There are professional offices north of the Long Meadow Shopping Center. Mr. Banister also complained about the method of notification of the public hearing by the City. He did not believe it was proper that only two property owners were informed of the meeting.

Lawrence Heck, 28 Moller Parkway, Hagerstown, Maryland. Mr. Heck agreed with Mr. Banister that notification to property owners was not sufficient. The entire neighborhood should have received notification of this meeting. He asked about the time line so they can consult with an attorney to appeal this rezoning. In general he agreed with Mr. Banister's comments. Not much of the parcel would be useful except to help mitigate traffic.

Gerald Cump, 11802 Pheasant Trail, Hagerstown, Maryland. Mr. Cump owns three properties on East Baltimore Street and wanted to make sure none of the properties were being designated as a historic district and that none of his mixed-use properties would become uses that were not permitted in the proposed N-MU zoning district. Staff and commission members informed Mr. Cump that the properties are not in a historic district and that they would not become nonconforming uses. With that, Mr. Cump indicated he had no concerns and was in favor of the zoning changes for East Baltimore Street.

Rhonda and Peter Jones, 211 South Locust Street, Hagerstown, Maryland. Ms. Jones and Mr. Jones own 55-57 East Baltimore Street and 211 South Locust Street. The zoning is proposed to change from CG to N-MU. They wanted to know what would happen to the existing automobile upholstery business and also whether auto/truck repair and auto sales would be permitted under the new zoning. Mr. Bockmiller noted that with the zoning change the automobile upholstery business would become nonconforming. The proposed N-MU zoning district is for areas that are "close in" and in a residential area. A majority of the buildings in the areas proposed for N-MU have apartments in them (Baltimore and Potomac areas). The N-MU zoning district has almost no setbacks whereas the CG zoning district has a front setback of 15 feet and 10 feet on the sides and rear. The idea behind the rezoning was to make the areas more consistent with the existing built-use environment. Approximately 60 to 70 percent of the properties are nonconforming uses. If they would become vacant for more than two years, under the CG zoning district, residential uses would not be permitted.

Jason Divelbiss, Esquire, 11125 Bemisderfer Road, Greencastle, Pennsylvania.

Mr. Divelbiss was representing five different clients, as follows:

- *South Side of Hebb Road* – The property owner, Lyles Properties LLC, is opposed to this recommendation. The property contains 31 acres and the proposal is to go from RH to

RMED. The developer has had multi-family expectations for this property ever since it was annexed. Rezoning the property to RMED would be counter to the developer's investment-backed expectations.

- *North Burhans Boulevard/Church Street* – The owner, 2012 Church Street, is in favor of the proposed rezoning from IR to CG for the reasons cited in the staff's presentation.
- *South End Shopping Center* – Mr. Divelbiss's client, Great Southern Wood, contract purchaser of the parcel, is in favor of the rezoning from CG to IG. Mr. Divelbiss noted there is a pending subdivision plat that would create the lot that is proposed for IG zoning.
- *Hagerstown Industrial Park* – The owners of 920 Eldridge Drive and 950 Willow Circle are in favor of this rezoning and agree that the character of the uses are more in keeping with IG uses than IR.
- *AC&T on Frederick Street* – Mr. Divelbiss asked the commission to consider an addition to the list of properties in the comprehensive rezoning. The owner of the AC&T is negotiating with the City of Hagerstown to acquire the abandoned 40-foot railroad right-of-way on the south side of their property. The railroad right-of-way is split zoned between CG and IG. In order for AC&T to use this strip of land as part of its store the right-of-way portion would need to be entirely zoned CG. Mr. Divelbiss noted that across Frederick Street the same railroad right-of-way is completely zoned CG. The split zone continues north beyond the AC&T property. Mr. Divelbiss is hoping to have the quit claim completed prior to the Mayor and Council's public hearing on the proposed rezonings. Mr. Wright felt it was more appropriate to bring up the addition of this property at the Mayor and Council's public hearing.

Andrew Wilkinson, Esquire, 19638 Leitersburg Pike, Suite 200, Hagerstown, Maryland.

Mr. Wilkinson was present on behalf of two separate clients, as follows:

- *North Half of Linwood* – The owner of this property is in support of the City's proposal to rezone the property from RMED (Residential-Medium Density) to IG (Industrial General). The residential plan has been completely abandoned. IG zoning will allow expansion of Sweeney Drive and Hagerstown Business Park. (Letter of support is in the meeting file.)
- *YMCA at the Corner of Eastern Boulevard and Leitersburg Pike/Maryland Route 60* – On behalf of the YMCA, Mr. Wilkinson wanted to pass on that agency's support of the proposed rezoning from POM (Professional Office-Mixed Use) to CL (Commercial

Local). visionHagerstown 2035 recognizes these three properties as vacant and notes for long-range planning that this area should be commercial and not business. CL zoning would be in keeping with the 2035 plan. Mr. Wilkinson recognized the concerns raised by the neighborhood. Access issues will be addressed at the site plan stage and will be reviewed by the State Highway Administration at that time. The primary goal is to make vacant property tax productive. (Letter of support is in the meeting file.)

James Castillo, 3711 24th Street, North Arlington, Virginia. Mr. Castillo was present on behalf of the Doub Farm Project. He has been working with staff and also with SHA with regard to access issues. The property was annexed into the City with CR and POM zoning. CR was chosen because it was the closest to the County’s HI zoning. Mr. Castillo noted that he has talked to staff about adding a PUD overlay to the back portion of the property to create a transition between the proposed commercial development and the existing residential uses on Landis Road. There used to be a floodplain in the area of the zoning division between CR and POM but the areas has been remapped and it is no longer a floodway according to Corps of Engineers.

Arthur Boyce 308 West Patrick Street, Frederick, Maryland. Mr. Boyce represents the Harrison Family, owners of the north side of Hebb Road which is proposed to be rezoned from RH (Residential-High Density) to POM. He questioned the rationale for the change. Staff noted that the area has been identified in the Comprehensive Plan as an area for business development, mixed use. The property has been vacant for many years and does not appear to be going anywhere as RH. Staff stated that the zoning change is not related to sewer capacity. Mr. Boyce indicated that he was not opposed to the change and was not willing to take a stand now.

Barry Martin, Copy-Quik, 710 Oak Hill Avenue. Mr. Martin was present on behalf of 710 Oak Hill Avenue and the former liquor store property at 725 Potomac Avenue included in the “Potomac/Maple” comprehensive rezoning area. Behind the printing business at 710 Oak Hill Avenue there is an auto repair business and an abandoned liquor store. Mr. Martin has an interest in acquiring the former liquor store property, but the proposed N-MU zoning would restrict ~~would~~ **what** could be done there and at 710 Oak Hill Avenue. The Copy-Quik building is 8,000 square feet. In order to keep his options open Mr. Martin asked that the zoning at 710 Oak Hill and the former liquor store remain CG.

Paul Banister, 29 Moller Parkway, Hagerstown. Concerning the YMCA property at Eastern Boulevard and Leitersburg Pike, Mr. Bannister asked what uses would be allowed in the proposed CL zoning district, in particular fast food restaurants. Ms. Maher stated that a restaurant up to 3,000 square feet could be constructed in the CL district.

The public review meeting was closed.

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MOTION: (Stone/Thomas) I make a motion that we keep the record open for ten days.
DISCUSSION: None.
ACTION: APPROVED (Unanimous)

Comments received during the public review meeting and the ten-day comment period will be reviewed at the next meeting. At that time, the commission will make a recommendation to the Mayor and City Council.

REGULAR MEETING

Roll Call.

Commission members S. McIntire and C. Ploscaru were absent.

Approval of Minutes:

June 12, 2019.

The minutes were not ready for approval.

Development Review:

City Chapel – 227 East Washington Street – Tent, Minor Site Plan, Case No. SA-2019-03.

Staff Report: (Staff report is in the meeting file.) This site plan is for a religious facility that will operate within tents and temporary sanitary facilities; however, it will not be a temporary use. The applicant proposes to use this site as proposed indefinitely until the church can raise funds for a “brick and mortar” facility at some time in the future. The property is located in the CC-MU zoning district, and religious facilities are a permitted use in this district. The property is owned by Meritus Medical Center, Inc. (Meritus).

The proposal involves two 20 x 40-foot tents; one Moon Bounce for children; one portable toilet; and the use of an existing improved parking lot formerly used by Meritus. As best as staff can ascertain, the proposal complies with all applicable planning and land development codes, the City Engineer’s codes, and water and wastewater department requirements. However, staff refused to administratively approve this plan which is why it is in front of the Planning Commission for review. Staff cited these reasons for not approving it at the staff level:

- This plan has highlighted a “hole” in City ordinances that does not require a permanent use to operate from permanent improvements. (Permanent meaning indefinite use with no fixed expiration date). This concern is in no way related to the specific nature of this particular proposal as a religious facility. A similar proposal could be proposed for any number of uses that would be equally or be more impactful on the surrounding area. This has identified the likely need to address such development through amendments to the Land Development Ordinance.
- Concern that development of ongoing uses without requiring permanent improvements will have an unfavorable impact on property values and quality of life in the surrounding area.
- Inability to secure the facilities would attract nuisance activities when not occupied by the tenant.
- Proposed plan for seating and foot traffic on a covered grass hill could lead to vegetation destruction or death and create future storm water management and erosion control violations.
- This particular location is especially concerning as it is a highly visible location at a gateway to the downtown area that the City, County and State are all investing millions of dollars to revitalize. To permit ongoing uses to operate solely from tents and temporary sanitary facilities is counterproductive to the public investment in the immediate area and is not good planning for the community city-wide.

The site plan was routed and all review agencies have approved it with the exception of the City Engineer and the Planning and Code Administration Department. Since this is a permanent use, permanent signage will be required.

Staff recommended exploration of Ordinance amendments that would prohibit or severely restrict ongoing uses typically housed in “brick and mortar” facilities from operating indefinitely from tents and temporary water and sewer facilities. Currently there is nothing in the Land Management Code that prohibits permanent uses to operate as proposed. The Chief Code Official has comments in terms of the site plan such as handicapped parking.

Applicant/Commission Discussion: Mr. Stone did not believe that the spirit and intent of the ordinance is being followed and felt the proposal was noncompliant. A permanent facility cannot be permitted without toilet facilities and other site amenities. He believed the commission could approve or disapprove a plan if it is or is not in keeping with the intent of the ordinance. Mr. Thomas was concerned about the safety of the tent and whether it is braced and anchored properly. Mr. Wright asked what would happen if the City Engineer’s concerns about erosion come to fruition and erosion issues need to be addressed. Mr. Bockmiller indicated that there are measures in place where an inspector could be sent out. Erosion problems could be addressed if necessary.

Pastor Zachary Camp and Pastor Anna Camp, 112 East North Avenue, Hagerstown, Maryland, were present. City Chapel is a church with the intent of being a church providing outreach with the goal of bettering the lives of people who attend. Since 2017 they have been using the space for outreach events. For the past ten Sundays they have been holding services in a 20 x 40-foot anchored down tent. The intent is to continue to use the space for church activities. There have been no problems so far and in the winter months they plan to provide heat. Pastor Z. Camp stated that his wife, Pastor A. Camp, has addressed the handicap concerns. Based on Pastor A. Camp's internet research and discussions with Americans With Disabilities Act (ADA) officials, churches are exempt from handicap requirements. However, they believe it is in their best interest to provide handicap accommodations. They plan to address the handicap parking changes. Concerning the potential erosion problem, he is in the lawn care business and would be able to address that issue should it arise.

The Pastors Camp have been paying \$90 a week for a permit to have the tent installed for the weekend. The tent is erected on Friday and is torn down on Sunday. They have an occupancy permit from the Fire Marshal who comes every Saturday to inspect the tent after it has been reinstalled. Ms. Maher stated that staff was under the impression that the tent would remain up permanently. Pastor Z. Camp said the concerns raised are erased when the tent is removed each week.

Mr. Wright indicated his concerns center more around handicap access and soil conservation. If the Fire Marshal and the Building Inspector will be regularly inspecting the site, as far as the site plan, he could not find anything to fault except the fact that the site must remain in compliance with the other ordinance. One concern was noise being generated from the site and Pastor Z. Camp said he received an exemption from the Mayor and City Council from the noise ordinance every Sunday from Easter until the first Sunday in November. Mr. Thomas stated his concerns center around the tent being safe and secure for the participants. Pastor A. Camp explained the Fire Marshal's requirements. Pastor Z. Camp clarified that the tent is a professional event tent.

Ms. Wheeler asked if this use was for a weekly flea market, would this process have to be followed. Mr. Bockmiller responded yes. Tents of this nature are usually for a temporary event such as a carnival. Ms. Wheeler asked if there would be additional issues if the church added a third tent. Mr. Bockmiller stated that if the church expands beyond what is shown on the site plan under review they would have to process another site plan.

Ms. Wheeler asked the pastors if their intent was to take the tent down each week. Pastor Z. Camp noted that if the tent remains up all summer the UV rays will destroy it. He believed that all the concerns raised in the original meeting have mostly been addressed. The tent is set up on Friday because it serves as an advertisement for the church. Ms. Maher pointed out that the tent will need to be inspected each time it is put up. The inspectors do not work on weekends and there will be an inspection fee involved each time.

MOTION: (Stone/Davis seconded for purposes of discussion) I'll make a motion to disapprove the site plan on the grounds of the idea of conducting a permanent activity out of a temporary structure is just incompatible with the Zoning Ordinance as a whole.

DISCUSSION: Ms. Wheeler indicated she was struggling with the fact that the tent will not be on the site for a portion of the week. If the tent were staying up, she would have no problem opposing the application. Mr. Thomas agreed with Ms. Wheeler adding that the tent is a hybrid permanent operation. Just because the tent is removed for several days to protect it from the sun or vandalism, the tent is still a temporary structure. Ms. Wheeler asked why this is being handled as a minor site plan. Ms. Maher explained it is because of the area. Mr. Wright indicated that he would vote against the motion. He believed there are other ordinances in place to protect the city as far as continuity, visibility, soil erosion, handicap, and others. He agreed that the matter does need to be addressed for the future. It is a canvas building vs. a stone building. If it was a stone building, and did not look good we would not have a chance to look at it. Currently we have a site plan that will work. Removing the tent each week will head off issues with degradation of the tent material and other loitering type issues associated with a permanent tent.

ACTION: FAILED (Yes – Thomas, Stone; No – Davis, Wheeler, Wright)

Ms. Maher noted that the building permit will be valid for 180 days. She suggested that the commission could contemplate a site plan for 180 days to coincide with the building permit. That would allow time to see how the use works out. Ms. Wheeler stated she would be willing to make that motion. That would address her concerns. Ms. Wheeler asked if they would have to submit another minor site plan after the 180 days. Ms. Maher said yes, but there would be no filing fee for the second application.

MOTION: (Wheeler/Davis) I move that we approve the site plan for a 180-day window based on the building permit and contingent on Engineering, Electric, and Chief Code Official.

DISCUSSION: Planning has a few minor issues that can be worked out.

ACTION: APPROVED (Yes – Davis, Thomas, Wheeler, Wright; No – Stone)

Hager's Crossing Replat – Release Forest Conservation Easement and Approve Plat, Minor Plat, Case No. S-2019-05.

This matter was discussed with the Planning Commission at the May 8 meeting. At that time the commission was amenable to allowing the developer to remove the forest conservation easement from five lots in Hager's Crossing (Lots 374-378) in order to add additional acreage to the lots so

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they can be developed. The plat is now ready for approval. Staff asked for a motion from the commission abandoning the easement is **as** initially accepted when the subdivision was originally approved**d**.

MOTION: (Davis/Thomas) So moved (to abandon a ten-foot strip of the forest conservation easement on those five lots).

DISCUSSION: None.

ACTION: APPROVED (Unanimous)

Planning Commission Business:

None.

Announcements.

None.

Adjourn. It was moved and seconded that the meeting adjourn (9:20 p.m.)

8/28/2019

Approved



Debra C. Calhoun – Secretary