

Douglas S. Wright, Jr., chair, opened the meeting at 7:00 p.m., on Wednesday, August 28, 2019, in the Conference Room, Fourth 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.

REGULAR MEETING

Roll Call.

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

Approval of Minutes:

June 26, 2019.

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

DISCUSSION: Mr. Thomas pointed out typographical errors on page 4 (under "Barry Martin, third line from the bottom should read "restrict *what* could be done . . ."); and on page 9 (second line should read ". . . the easement *as* initially . . ." and the last word on the third line should be *approved.*"). The maker and seconder agreed to the corrections to the minutes.

ACTION: APPROVED WITH CORRECTIONS (Unanimous)

July 31, 2019.

MOTION: (Davis/Wheeler) Move to approve.

DISCUSSION: None.

ACTION: APPROVED (ABSTAIN - Thomas)

August 14, 2019.

The minutes were not ready for approval.

Development Review:

**Jason Popielasz – 354 Dual Highway – Car Sales Facility, Minor Site Plan,
Case No. SA-2019-06.**

Staff Report: (Staff report is in the meeting file.) This property has been before the Planning Commission numerous times for a car sales facility. During each review the commission provided consistent feedback on what it would find acceptable as far as design waivers and reductions in order to permit this use on this property. The plan submitted by Mr. Popielasz is consistent with previous discussions. Since the application was filed, Mr. Popielasz has acquired the property.

Specifically, this proposal calls for:

- Pulling up three feet of asphalt along the western edge of the property (facing the liquor store) and installing low level shrubbery.
- Pulling up all asphalt within the right-of-way of West Washington Street and installing one street tree and low-level landscaping.
- Removal of the freestanding sign post from within the right-of-way of West Washington Street (signage will be mounted on the building).
- Installation of a three-foot tall wood fence along the east side of the lot (facing the Coin-Op Warehouse parking lot), extending from the garage building forward to the right-of-way of West Washington Street.
- Replacing the asphalt sidewalk between the driveway apron and the east property line to match up with the sidewalk in front of Coin-Op Warehouse.
- Removal of two sheds currently located behind the garage.

Employee parking will be behind the garage in front of the existing sheds. Customer parking will be in front of the small sales office building near the front of the site.

In addition to the above, staff recommended that any approval of this plan be subject to the following:

- Shrubs along the west side property line shall be spaced every eight feet and be permitted to grow up to 24 inches in height;
- Building-mounted signage shall not exceed 30 square feet, or the existing cabinet, whichever is greater. Larger signage shall require a variance from the Board of Zoning Appeals. If, in the future, freestanding signage is added, it shall be kept out of the public right-of-way.

- Landscaping shall be installed by May 15, 2020, if the use is commenced before that. Staff noted that fall planting is riskier and recommended that the developer be given until the spring planting season to install the required landscaping in order to ensure a higher survival rate of the plantings.
- Drawing shall be revised showing two parking spaces for customers at 9' x 18' in front of the sales building; the spaces shall be striped accordingly on the pavement.

Applicant/Commission Discussion: Jason Popielasz was present and had nothing to add to the staff's presentation. Ms. Wheeler pointed out that the address change to 354 Dual Highway should be added to the drawing.

MOTION: (Stone/Davis) I move that we approve this subject to the conditions that are laid out in the email memo of August 28 and with a waiver of any site plan conditions which this does not conform to because of the size of the property.

DISCUSSION: None.

ACTION: APPROVED (Unanimous)

Planning Commission Business:

2019 Land Management Code Amendments.

Review of the proposed amendments picked up on page 5:

Issue 5. Accessory Buildings in Residential Districts. Staff is attempting to tighten the definition of accessory structure. The intent of the proposed amendment is to craft language that would prohibit accessory structures being turned into living units, such as not allowing toilet facilities to be installed in accessory structures. Instead of "toilet facilities" commission members suggested prohibiting accessory structures from being used for "residential purposes" or "sleeping purposes." Staff was more comfortable with the term "sleeping purposes" as opposed to "residential purposes."

In a related matter, staff received an inquiry from a property owner in the North End who would like to build a two-story accessory structure that would be consistent with the scale of the house and size of the property. Currently accessory structures cannot exceed one story in height or be larger than 900 square feet. The proposal is to allow two-story accessory structures on lots containing 20,000 square feet or more if it complies with all required principal structure setbacks without a variance. The new language would also permit larger accessory structures on lots 20,000 square feet or more up to 1,800 square feet in gross floor area, provided it is built in accordance with principal structure setbacks without a variance, and a special exception is

approved by the Board of Zoning Appeals. Variances would not be granted for square footage. The Planning Commission agreed with adding this prohibition.

Commission members discussed accessory structures and how larger annexed properties might be affected. An owner of an annexed property used for agricultural purposes might want to construct a barn to be used in conjunction with their agricultural use. Suggestions to address this concern included adding special conditions to an annexation of this type or creating a new zoning category to address the larger lots on the fringes of the City. Staff will deal with the larger lots in future amendments.

Issue 6. Curb Cuts in the CC-MU and N-MU District. The Zoning Ordinance currently states that curb cuts are prohibited in the CC-MU and N-MU districts. Access is required from an alley. Staff suggested that this requirement be moved to Article 5 to give property owners the opportunity to apply for a waiver from the Planning Commission. Commission members had no concerns about this proposal.

Issue 8. Reuse of Expired Nonconforming Dwellings via Local Conversion Districts. Staff has run into circumstances where people want to reintroduce expired nonconforming uses. The property at the corner of Maryland Avenue and West Howard Street contains three apartments and a commercial space (former Bubba's Deli). This building sat vacant for ten years and even if a Local Conversion District Overlay was applied to this property, they would be limited to two apartments. Applicants would need to prove when the building was built and bring in experts to prove their case. The nonconforming configuration would need to have been in place by 1956 or sooner. Ms. Maher noted that this is an item of interest to elected officials in that this new owner was completely surprised that they could not use the Maryland Avenue/West Howard Street property as it is currently laid out. This would be a Local Conversion District Overlay with two public hearings and two notifications to adjacent property owners. Planning Commission members were okay with the proposal as written.

Issue 9: Revision of the Cell Tower Section of the Zoning Ordinance. The City's wireless communications regulations are 18 years old. The proposed revisions update this section to current standards. Staff pointed out two items: upgrade to 5G technology will not impact the zoning ordinance since it will typically use existing utility poles which are usually in a street right-of-way; and priority of location (see page 3 of handout #9). New towers would not be permitted in any residential zoning districts unless approved by the Board of Zoning Appeals. 5G co-locations can usually be accommodated within existing regulations.

Mr. Bockmiller pointed out that the ordinance directs the towers to INST zoning or higher priority properties. These areas are more attractive to tower companies. The thought is to allow these facilities in INST districts with standards. Ms. Maher added that staff had to add modifications for existing facilities since the FCC is requiring a quick turnaround on

modifications to existing towers. Most of the proposed language was modeled after the City of Brunswick which hired legal counsel to come up with appropriate language. Mr. Bockmiller added that if a tower company wants to build a marquee tower, the graphic would be exempt from the maximum square footages of the sign regulations.

Mr. Stone had concerns about the indemnification language on the second page of handout #9. He felt this was a new standard for land owner responsibilities and that it would go beyond what land owners would be liable for concerning damages that a dangerous activity on their property might cause. His concern was that it would be a red flag that would hinder communications companies from locating their equipment. Ms. Maher noted this language was taken directly from Brunswick’s ordinance and was crafted by their legal counsel. Ms. Maher suggested just using the first sentence under “Indemnification.” Staff will check with the City Attorney to see if there are alternative protections for the City. Mr. Wright pointed out that the language does not mean property owner; it applies to the owner of the cell tower. Mr. Stone stated that with that clarification he no longer had an objection. Staff will consult with the City Attorney anyway.

Issue 10. CC-MU Design Standards. Staff suggested moving the design standards to Article 5 to allow the Planning Commission to grant waivers if requested. Commission members had no concerns.

Issue 11. Presence of “Regulated Activity” in Forest Conservation Ordinance. Staff received feedback that this definition should be in the Forest Conservation section. Planning Commission members recommended that it remain where it is.

Issue 12. Adjust Definition of “Use.” Commission members felt this was best addressed in the definition of a nonconforming use rather than the definition of “use.”

Issue 13. Add “Winery” Where Breweries and Distilleries are Listed in the Use Chart. Planning Commission members agreed with this addition.

Issue 7. Mixed-Use Buildings by Right in the CG and CR Zoning Districts. Staff set this up so it is a micro PUD for raw land, creating design standards, maximum area requirements, and use expectations. This would not be an overlay zone. The use would be permitted development as long as the site is developed per the standards in the CG and CR districts. The idea is to promote good design and a desirable mix of uses on lots smaller than 15 acres. Mr. Wright was not in favor of it in the CR zoning district. Mr. Bockmiller explained this amendment was designed to target moderate-sized properties. The Doub property is too large and would not qualify for this proposal. Mr. Bockmiller stated in the next text amendment package there will be revisions to the PUD district. Since a PUD is an overlay zone it would trigger public hearing requirements. This allow would allow it to become a use of right up to a certain size. According to staff, the language has not been developed yet, but it will not allow a developer to just build an apartment

**Planning Commission
MINUTES – Regular Meeting**

**August 28, 2019
City of Hagerstown, Maryland**

on part of their property. There will need to be an integrated, cohesive plan. The building would need to have a mixture of uses and be at least three stories to create the streetscape environment. This could be a way to retrofit the city's older 1950s and 1960s era shopping centers.

The chair suggested staff talk to Montgomery County for suggestions. Commission members were okay with the concept but needed more time for thought on the matter.

The second packet of amendments (Phase II) is almost ready for distribution, which will include a second discussion about sign regulations proposals.

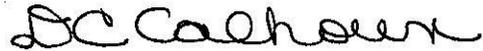
Announcements.

None.

Adjourn. It was moved and seconded that the meeting adjourn (8:35 p.m.)

9/25/2019

Approved



Debra C. Calhoun – Secretary