

Douglas S. Wright, Jr., chair, called the meeting to order at 7:00 p.m., on Wednesday, November 9, 2011, in the Council Chamber, Second Floor, City Hall. Also present were commission members M. Brubaker, D. Miller, J. Stone, and J. Wheeler. The following staff members were present: K. Maher, Planning Director; S. Bockmiller, Development Planner/Zoning Administrator; A. Rohrbaugh, Planner; and D. Calhoun, Secretary.

PUBLIC REVIEW MEETING

Kennel and Conversion District Text Amendments, Case No. ZT-2011-01

Staff Presentation: Ms. Maher made the staff presentation on two proposals to amend the Land Management Code text. The first proposal concerns allowing kennels with certain restrictions in the C2 (Commercial General), C4 (Regional Shopping Center), and I-MU (Industrial Mixed Use) districts. Currently kennels are only permitted in the IR (Industrial Restricted) and IG (Industrial General) districts. Economic Development staff has received queries regarding a possible day-boarding or “doggie day-care” facility which led to research on how other communities accommodate these uses. Staff’s research revealed that the City of Hagerstown’s regulations are more restrictive than other communities. The proposed conditions include 1) the use area must be setback at least 100 feet from any nearby property containing a residential dwelling unit, religious organization’s place of worship, educational service facility, residential care facility, hospital, assisted-living facility, or nursing home; 2) exterior exercise/play areas must be enclosed with solid fencing, at a minimum of six feet in height; 3) the total number of dogs permitted at any one time shall not exceed one dog per 100 square feet of combined interior/exterior lease area.

Amendments to the City’s Conversion District Overlay zone are meant to make this zoning tool more flexible for adaptive re-use of challenging, white elephant properties in the city. Conversion District overlay zones are allowed in R1, R2, R3, R4, C1, C2, D-MU, IR and IG districts. Currently, the Zoning Ordinance requires that a conversion district property contain a multi-story, pre-1950 building, and it may be occupied by uses allowed in the underlying zoning, multi-family housing, and business uses permitted in the C1 zoning district and/or offices. No more than 50 percent of the floor area may be occupied by commercial uses. In addition, the floor area of the buildings may not be expanded, except for life safety purposes. Since this tool was created in the early to mid-1990s, only three properties have received the designation.

The proposed amendments to the Conversion District Overlay text include:

- Structures must now be in existence prior to October 1, 1956, which is consistent with other deadlines in that it was the date when zoning was first adopted in the city.

- Additional principal-permitted uses are being added, including: artist live-work space (a definition is also being added for this to the Article 31, Definitions); child day-care services; educational services; museums; motion picture and sound recording industries; fitness and recreational sports complexes; professional, scientific, and technical services; and light manufacturing (including the addition of a definition in Article 3).
- The "Special Design Requirements" section would: 1) eliminate the existing residential requirements; 2) delete reference to phasing in of commercial components of Conversion Districts; and 3) add language that C1 size limitations on retail trade and restaurants shall only apply where the underlying zoning district is Residential or C1.
- Lot area requirements for Conversion Districts will be 20,001 square feet to differentiate them from Local Conversion District overlays.
- Two definitions are being added to Article 3 for "artist live-work space" and "manufacturing, light" as noted above.

Mr. Wright asked that a restriction be placed on the dog day-care facilities to prohibit dogs in the outdoor yards between the hours of 9:00 p.m. and 7:00 a.m. This restriction would be out of respect for nearby residences. Ms. Maher noted that there has been no discussion on time limits for outside runs and questioned whether this could be enforced. After discussion, the rest of the commission agreed with Mr. Wright and asked that the language be modified to prohibit use of outdoor runs between the hours of 9:00 p.m. and 7:00 a.m. This condition will be added to the C2, C4, and I-MU districts.

Regarding the proposed amendments to the Conversion District, Mr. Wright wanted to make certain that a new owner could not demolish a building that has a Conversion District Overlay. He had concerns about introducing a light manufacturing use in residential areas and did not believe it was appropriate. He asked if the light manufacturing uses could be restricted to the IR and IG only and not be allowed in residential areas. Mr. Bockmiller noted that in a Conversion District Overlay, it is a discretionary decision that is decided by the Mayor and City Council. It is not a special exception which is presumed to be appropriate by the Board of Zoning Appeals. In addition, conditions can be placed on a use in a Conversion District Overlay.

Ms. Maher stated that staff is proposing to delete the requirement for 50/50 residential and commercial usage of a building covered by a Conversion District Overlay because some of the buildings that could be used for Conversion Districts are not suitable for residential purposes. As written, the Zoning Ordinance is not flexible enough and the Conversion District Overlay is not being used by developers.

Mr. Brubaker asked that staff provide the entire Conversion District section for the Planning Commission's work session on this matter. There were no other questions about the proposed amendment by the Planning Commission.

Public Testimony:

No one was present to offer testimony either in favor of or in opposition to the proposed rezoning request. Ms. Maher stated that correspondence via email was received from the person who would like to open the kennel business. This person was in favor of the amendment but was out of town and unable to attend the hearing (see meeting file for a copy of the correspondence).

Ms. Maher entered into the record the Certificate of Advertisement and the Planning Commission's file by reference.

MOTION: (Stone/Miller) I would like to move to keep the record open for ten days to receive additional comments.
DISCUSSION: None.
ACTION: APPROVED (Unanimous)

REGULAR MEETING

Roll Call

Commission members D. Gysberts and R. Thomas were absent.

Approval of Minutes: October 12, 2011 - Workshop Meeting and October 19, 2011 - Special Meeting

Mr. Stone requested that staff research whether the September 14 minutes have been approved.

Concerning the October 12 minutes:

MOTION: (Stone/Miller) I move that we approve the October 12 minutes.
DISCUSSION: None.
ACTION: APPROVED (ABSTAIN - Wheeler, Wright)

Concerning the October 19 minutes:

MOTION: (Wheeler/Brubaker) I move approval of the minutes.
DISCUSSION: None.
ACTION: APPROVED (ABSTAIN - Miller, Wright)

Referring to the October 12 minutes, Mr. Wright questioned why staff approved a site plan for the Professional Center on Eastern Boulevard even though the disturbed area was greater than 2,500 square feet. Ms. Maher explained that the project was processed as a staff-approved site plan, but that it was brought to the Planning Commission for review and approval. Mr. Bockmiller added that the review process was simpler; there was just a difference in the way the plan was approved.

**Walgreen's - 1631 Dual Highway, Site Plan and Alternate Landscaping Plan,
Case No. ZS-2011-10**

Staff Report: The proposed site plan is for a Walgreen's pharmacy which will result in the redevelopment of an existing used car lot at 1631 Dual Highway. The property contains 0.89 acres and the proposed building will be 11,900 square feet, mostly in a single story, however, a portion of the building will contain a mezzanine. Thirty-two parking spaces are required and 42 are being provided. Forest conservation does not apply to this property since it is less than 40,000 square feet in area. The layout and landscaping of the site is consistent with the sketch plans previously reviewed by the Commission with the exception of a recent requirement by the State Highway Administration that the driveway entrance from the Dual Highway, previously shown at the extreme west corner of the property be moved approximately 30 feet closer to the South Edgewood Drive intersection.

Rather than requesting a long list of landscaping waivers, the applicant is asking the commission to approve the landscaping shown as an alternate landscaping plan which meets the intent of the ordinance. When the Planning Commission reviewed the alternate landscaping plan on July 27, 2011, it had no objection to the alternate landscaping concept. The area between the curb and the retaining wall will be used as a planting bed. Mr. Bockmiller noted that since the packet memo was written, the Fire Marshal's comments concerning the fire hydrant have been addressed. In addition, the C-SAFE Coordinator with the Police Department submitted a comment about the potential tree height which could impact surface lighting of the parking lot. The Planning Office recommended approval contingent upon satisfaction of the outstanding Water Division, City Engineer, and Planning Office comments.

Planning Commission/Engineer Discussion: Mr. Wright questioned the lack of signage or decoration on the Howell Road side of the building. Mr. Bockmiller noted that no signage is proposed for the south side. Signage consists of wall signs on the two major road frontages and a freestanding sign. The commission also observed that drivers coming from Funkstown on South Edgewood Drive will be unable to make a left turn onto Howell Road to easily access this site. The commission also discussed the Police Department's security concerns about trees obscuring the site lighting. The commission decided to approve the site plan without alterations

to the trees cited by the Police Department because staff was directed to explain the commission's decision to Officer Kendle of the Police Department.

MOTION: (Stone/Wheeler) I move that we approve the site plan subject to the outstanding comments from the City Engineer, Planning, Fire Marshal, and Water, and that part of that approval is to approve the alternate landscaping plan that is part of it as complying with the intent of the ordinance.

DISCUSSION: Mr. Brubaker asked for clarification on the height of the shrubs. He was concerned about headlights from parked cars causing confusion with oncoming traffic along Edgewood Drive and the Dual Highway and wanted to make sure that the shrubs will be tall enough to block the headlights of the parked cars. Staff noted that it would take a season or two before the shrubs would be tall enough to block the glare of headlights. Commission members agreed with Mr. Brubaker and it was decided that a condition will be added that the shrubs along Edgewood Drive and Dual Highway be a minimum of two feet tall above the surface of the parking lot at installation. Mr. Stone amended his motion to reflect the discussion; Ms. Wheeler seconded the amendment.

ACTION: APPROVED AS AMENDED (Unanimous)

Pangborn Corporation - 529 Pangborn Boulevard, Rezoning, Case No. ZM-2011-02

The public review meeting on this rezoning application was held on October 26, 2011. During the ten-day period the record remained open, staff received a letter and exhibit from the applicant's attorney amending their definition of the "neighborhood" for the purposes of making the "change in the character of the neighborhood" argument (see meeting file memo). The public hearing on this application is scheduled for November 22, 2011. Staff had no recommendation on the proposed rezoning. Ms. Maher stated that the staff believes that a mistake was not made at the time of the 2010 comprehensive rezoning when N-MU was applied; however, staff does agree with the change in the character of the neighborhood argument (see staff analysis).

Mr. Stone stated that it was his belief that the applicant provided adequate evidence of mistake in the original zoning. At the time of the rezoning in 2010, the Mayor and Council believed that the Pangborn Corporation buildings had economic viability. The evidence supports the case that it was a mistake based upon incorrect assumptions to rezone the property to N-MU. Mr. Stone also agreed with the applicant's arguments for change in the character of the neighborhood.

Mr. Brubaker asked the applicant's attorney to explain further the argument for mistake. Mr. Miller objected to the applicant's attorney providing additional comments in that he felt the commission had all the information it needed from the applicant. He stated that he did not have an objection to the application for rezoning. Mr. Brubaker wanted Mr. Divelbiss to have an opportunity to add clarifying remarks. Mr. Miller agreed and Mr. Divelbiss was permitted to speak.

Jason Divelbiss, attorney for Pangborn Corporation, stated that the argument for change is the same as the argument for mistake. The buildings were there and when they were demolished, it created a change. The assumption was that they would remain. For the existing buildings, the NMU would not have been a logical choice.

MOTION: (Stone/Miller) I make a motion that we recommend in favor of the rezoning on grounds of both mistake and change and the mistake for the reasons that I stated and also set forth in the applicant's portion of this statement. Otherwise I do not have a problem adopting the staff recommendation with that exception. I think that POM is the appropriate zoning classification.

DISCUSSION: Ms. Wheeler stated that when the commission previously discussed this, the feeling also was that the city had just completed the comprehensive rezoning, and it was such a short time before the property owner was requesting to change the zoning. It was her recollection that the commission felt it was stronger to say a change had occurred because only two years had lapsed since the comprehensive rezoning became effective.

ACTION: APPROVED (ABSTAIN - Brubaker, Wright)

Proposed 2012 Meeting Schedule

A copy of the proposed 2012 meeting schedule is in the meeting file. The Planning Commission had no objections to the schedule as proposed.

Board of Zoning Appeals Agenda - November Hearing

The commission had no comments or recommendations to pass along to the Board of Zoning Appeals.

Land Management Code Text Amendments

Page 4-70, (4) - the existing setback requirements are being revamped to make them more compatible with Traditional Neighborhood Design (TND). Mr. Stone questioned the ratio of commercial to residential development in Planned Unit Developments (PUD). Mr. Bockmiller stated that if the commercial part of the ratio is too small, it is not advantageous to incorporate commercial uses into the project. Mr. Stone was concerned about the 20% minimum in all base districts. Commercial development should not be forced on residentially based properties. He has no qualms about a completely residential PUD. Mr. Brubaker agreed with Mr. Stone, especially with some of the smaller parcels. He did not see a need to increase the minimum size of PUDs. Mr. Stone suggested that the purpose should be to encourage mixed residential and commercial developments and that the actual configuration is up to the Mayor and City Council, similar to how landscaping waivers are handled. The legislative body should have as much flexibility as possible. Mr. Bockmiller would prefer the language to be more than an encouragement. After discussion, it was the consensus of commission is to leave the minimum lot area for a PUD at five acres.

Page 4-70, (4), last list item - Should be "All *other* base districts"

Page 4-70, (6) - A five-foot setback will be required for porches or steps from the right-of-way. Mr. Bockmiller noted that any development would be required to provide sidewalks.

Page 4-71, (7) - Mr. Wright asked that the reference to vinyl fencing be deleted. Vinyl breaks easily and the connections are not solid.

Page 4-72, c - This section will be altered under the Conversion District text amendments to reflect the changes discussed during the public review meeting earlier in this meeting.

Page 4-74, (I) - Ms. Maher noted that this subsection would be eliminated with the Conversion District text amendments.

Page 4-81, Supplementary District Regulations - Staff attempted to simplify this section by putting it into a chart.

Page 4-82, a - Add a provision that would allow front yard fences as long as they are constructed of decorative material. There were no objections by the commission, except that the reference to vinyl fencing material should be deleted from the second paragraph of this subsection. Staff will research fences constructed of a solid composite material. This would apply to historic districts.

Planning Commission
MINUTES - Regular Meeting

November 9, 2011
City of Hagerstown, Maryland

Page 4-84, 7 - Concerning yard sales, staff is attempting to get ahead of situations where people have yard sales every weekend. The new language would limit people to four yard sales a year, with a limitation of three consecutive days per yard sale. Items for sale cannot be specifically purchased for resale. Currently the ordinance does not address yard sales and this would provide a framework.

Page 4-85, 9 - The Building Official has regulations about sea containers; this language would fill in the gaps. This change would not apply to semi trailers being used for storage on construction sites.

Page 4-89, 3 - The expiration of a nonconforming use is being proposed for two years instead of one. Even in the best economic situations it is hard to find a new use. The proposed two years is not out of line with other jurisdictions.

Page 4-90 - In order to create flexibility for nonconforming uses, new language has been added that would allow a property owner to rebuild outside of the original building footprint. Mr. Stone asked that the city codify its current practice that special exception uses are deemed to meet the requirements/grandfathered to give it special exception status. This would not apply if the use is expanded. If a use was lawfully in existence, and the new zoning allows the use as a special exception, a rezoning cannot make it a nonconforming use.

Page 4-90, 10 - The last sentence is awkwardly worded and needs to be rephrased. At the end of the fourth line, the word "current" should be defined, i.e., specify where and what standards apply. The beginning of the second line should read ". . . containing a *valid, legal* nonconforming use . . ." This would allow people to rebuild a nonconforming use rather than all it to fall apart.

Discussion on the Land Management Code revisions will resume on Page 4-93 at the next meeting.

Adjourn: It was moved and seconded that the meeting adjourn at 9:15 p.m.

Date

12/14/2011

Debra C. Calhoun
Debra C. Calhoun - Secretary