

Douglas S. Wright, Jr., chair, called the meeting to order at 7:01 p.m., on Wednesday, January 28, 2015, in the Council Chamber, Second Floor, City Hall. Also present were commission members M. Brubaker, R. Campbell, J. Stone, R. Thomas, and J. Wheeler. **J. Stone** The following staff members were present: K. Maher, Planning Director; S. Bockmiller, Development Planner/Zoning Administrator; A. Rohrbaugh, Planner; and D. Calhoun, Secretary. **(NOTE: Planning Commission revisions are indicated in red text.)**

### **PUBLIC REVIEW MEETING**

#### 2014 Land Management Code Text Amendments

Mr. Wright called the public review meeting to order and explained the format for the public meeting.

Staff Presentation: (See PowerPoint slides in meeting file.) The presentation was broken into four packages and the material was presented by Ms. Maher and Mr. Bockmiller.

#### Storefront Protection Zone (SPZ):

- Intention is to enhance the vitality of the downtown as a pedestrian friendly center of commerce, education, and entertainment and to promote the occupation of storefronts by certain higher-intensity business/commercial uses.
- Allowed uses would include retail, restaurants, brewpubs, drinking places, art galleries/studios, fitness/recreation sports centers, amusement and recreation establishments, banks, hair salons and barber shops, tattoo shops, promoters of performing arts or sports, visitor welcome centers, museums.
- Exceptions include internally oriented spaces, single-user auditoriums, single-user institutional buildings, buildings without storefronts, and properties outside the SPZ.
- Storefronts in existing buildings within the SPZ must be maintained to at least 40 feet in depth.
- Storefronts shall be included in new multi-occupant commercial, institutional, and mixed-use buildings in the SPZ.
- Added definitions that apply to this package of amendments.

#### Historic District Commission (HDC) Hardship Provisions:

- The intent is to create flexibility in the process for review of “major economic development opportunities” in the downtown involving new construction.
- Would provide guidance to the HDC on “public benefit” hardship applications when reviewing demolition requests. (Mr. Campbell arrived.)

- Expands the hardship provision for “denial not being in the best interests of a majority of the persons in the community.”
- Clarifies that a “major improvement program which will be of substantial benefit to the city” means that the project is in a government CIP or budget and the government agency has complete designs for the capital project.
- Adds a standard for review of public benefit hardship.

Graphics (Signs):

- Revisions were spurred by complaints over certain types of graphics being used; observations that some of the graphics provisions are too constraining; a desire to make the graphics provisions easier to understand; and a desire to provide consistency between parts of the City Code addressing signs/graphics.
- Adds definitions for “temporary graphics,” “window graphics,” and “marquee graphics.”
- Adds minimum standards for design, construction, installation, and maintenance of graphics.
- Requires removal of prohibited temporary graphics within 180 days of the effective date of the Code amendment.
- Requires internally illuminated graphics on the interior of the window to be subject to the size limitations for building-mounted graphics for the building or business.
- Permits sandwich board signs for street-level businesses under certain circumstances.
- Exempts wall-mounted directory graphics under certain circumstances.
- Exempts theatre marquees in CC-MU district from size limitations and directs them to be reviewed on a case-by-case basis.
- Increases square footage for building-mounted graphics if storefront or lease space has two entrance walls and if the building fronts two or more public streets.
- No limitation on number of wall-mounted graphics permitted provided total square footage falls under maximum permitted.
- Each pad site in a shopping center would be permitted to have one freestanding graphic.
- Increases the maximum square footage from 36 square feet to 48 square feet for freestanding graphics in residential districts if the building is set back more than 25 feet.
- Projecting graphic requirements were made consistent across all zoning districts.
- Changes maximum square footage for building mounted signs from certain letter heights and 2/3 of width of wall to:
  - Higher intensity zoning districts: 1.5 square feet per linear foot for buildings or stores 50 feet or less wide, two square feet per linear foot for buildings or stores over 50 feet wide.
  - Lower intensity commercial and industrial use zoning districts: one and one.
- Decreases the minimum time image on secondary changeable copy/image signs can be displayed from ten seconds to six seconds in nonresidential districts.

- Adds detailed provisions on the type of temporary graphics permitted – anything not listed would be prohibited.
- Adds a process for graduated progress to conformity for nonconforming, multi-tenant freestanding graphics.
- Window graphics will be subject to HDC review.
- Adds a prohibition against adding a digital sign to a nonconforming graphic until it is fully brought into conformity.

*Miscellaneous Packet:* These amendments are intended to deal with minor adjustments that needed to be made after the ordinance was adopted in 2013 and recent policy determinations.

- HDC membership – allows two voting members of the HDC to live outside the city limits.
- Artist Live-Work Space – adjusted the definition to remove APFO restrictions and added it as a permissible use in the IR and I-MU districts in older buildings.
- Added definitions for “retail bakery,” “brew pub,” “retail confectionery,” “correctional institution,” “hookah lounge,” “professional and workmanlike manner,” and “vapor lounge.”
- Modified definition of livestock to include keeping five or more adult rabbits or similar animals outside the dwelling.
- Modified definition of Light Manufacturing to remove size limitations. The size limitation for certain districts was shifted to the Use Chart.
- Clarification on the measurement procedure for the distance between land uses.
- Added standards for residential development in the CL district.
- Clarified what constitutes “construction” for PUDs which is used in the approval expiration determination. An email comment was received from Mike Shifler of the Land Use Council requesting consideration of alternative language.
- Allow residential properties which abut nonresidential districts to same height fences in side and rear yard as permitted in the nonresidential district.
- Removed provisions for PODs since those are covered in Chapter 184.
- Require all construction to be done in a professional and workmanlike manner; including a prohibition of tarps as building materials.
- Require dumpster enclosures on any new dumpster added to an existing development – if substantially visible from a public street.
- Clarified the 35% maximum size limitation calculations for expansion of a nonconforming use (the area to be measured is the area occupied by the use and excludes areas occupied by parking, etc.).
- Prohibit the BZA from approving certain uses for changes to nonconforming uses, including: adult entertainment businesses, bonding probation and parole offices; drinking places; homeless shelters; hookah or vapor lounges; kennels; sales of fireworks; tattoo

parlors, massage parlors, steam baths or saunas; transitional housing for persons being treated with substance abuse issues.

- Removed requirement for recreational vehicle parking on new construction in CC-MU district.
- Removed requirement for a site plan for wireless communication facility support pads or cabinets if they are located within an existing fenced enclosure.
- Added height limitations for wireless communication facilities in our new districts.
- Added permitted locations for tobacco shops and hookah and vapor lounges (CC-MU, CG, CR) with a 500-foot separation requirement between the uses.
- Added retail bakeries and retail confectioneries to Retail and Wholesale Trade use category.
- Allow by right Light Manufacturing if 25,000 square feet or less in the CC-MU district.
- Allow Light Manufacturing over 25,000 square feet as a special exception in the CC-MU, POM, and I-MU districts and by right in IR and IG.
- Removed bailbonds and probation and parole offices from list of permitted uses in CC-MU.
- Added multi-family dwellings constructed for that purpose prior to October 1, 1956, as a permitted use in R-MOD and R-MED (had been nonconforming).
- Added business service centers and quick printing services as permitted uses in CC-MU, N-MU, CL, CG, CR, POM, and LC.
- Added freestanding convention and conference centers as permitted uses in CC-MU.
- Clarified use listing for “Public Administration, except Correctional Institutions” to make it clear it includes publicly and privately managed facilities.
- Added “New Construction Mansion House Apartment,” “New Construction Stacked Apartment,” and “Mixed-Use Building of Commercial and Residential” units to CL district.
- Added Adult Day-Care to N-MU and removed Child Day-Care use from CR.
- Added Outdoor ATMs and Vending Machines to CL, CG, CR, CC-MU, N-MU, and I-MU
- Require new townhouses to have alleys or open space areas abutting the rear yard of units.
- Require a photometric plan (site lighting) to be included with a site plan submission.
- Added minimum lighting standards (0.5 candle power) for pedestrian areas to and from parking lots to meet site plan standards.
- Require minimum open space formula for new multi-family development site plans similar to what is required for subdivisions.
- Updated Forest Conservation Ordinance to match changes to state law – exemption for impervious areas within Priority Funding Area is back.

There were no questions by the Planning Commission. The meeting was opened up for public testimony.

Public Testimony:

**Edward Kuczynski, Esquire, 55 Jonathan Street, Hagerstown, representing Jeffrey Smith.**

Mr. Smith owns a number of properties and operates several businesses: 1044 Virginia Avenue (former Southern States building/warehouse) and 435 East Baltimore Street. On behalf of Mr. Smith, Mr. Kuczynski requested that two items be added to the Miscellaneous package of amendments. Both of Mr. Smith's properties are zoned IG, with no active industrial tenants. When Mr. Smith originally purchased 1044 Virginia Avenue it was with the intention of operating his printing business. Several years later Mr. Smith sold the retail printing portion of his business to another printer who eventually moved out. Mr. Smith continues to operate Bindery Solutions at this address. The vacant portion has been used by an automotive parts distributor and other tenants. Currently that space is occupied by Shelia's Jewelry and Loan. Shelia's started out as an internet-based business and the store area was used for storage and distribution. Shelia has since discovered a market for selling items out of the store and also moved into loans, similar to a pawn shop, which has resulted in a zoning violation being issued to Mr. Smith. Industrial uses are not viable—these types of buildings lend themselves more toward retail uses. At the Baltimore Street property, Mr. Smith has had difficulty finding and retaining tenants. Many of the potential tenants who express an interest in the building are retail uses which are not permitted in IG zoning.

Mr. Kuczynski requested that in IG zoning retail/wholesale operations would mirror the IR zoning district: special exception with a 25% limitation for retail uses. This would avoid the rezoning process, but require a special exception and let the applicant present to the Board of Zoning Appeals (BZA) why a proposed retail use would be logical. It would allow the BZA to look at each specific situation to make sure it fits. Mr. Smith has a prospective tenant that would like to sell antiques which is not a permitted use.

In addition, Mr. Kuczynski requested that pawn shops be permitted in both the IR and the IG zoning districts, which is specific to Ms. Lohman's situation. Her business has become successful. Mr. Kuczynski compared Ms. Lohman's business to a lending institution. The pawn shop is just a component of her business since she still buys and sells used items on the internet. The building in question has a storefront, adequate parking, and there are commercial uses in the neighborhood.

**Dean Martin, Sign Here, 345 East Antietam Street, Hagerstown.** Mr. Martin thanked the staff for doing its homework and allowing him to be a part of the process. Mr. Martin pointed out several issues with the proposed language when applied to actual sign projects. He asked that a larger square footage per linear foot be allowed for the calculations for wall signs. He also

questioned how window graphics will play into the total square foot equation. Ms. Maher clarified that there are separate square footages for projecting signs and wall signs. Anything flush mounted, including window signs, would be included in the wall sign calculations. Mr. Martin has a current project with Anne Arundel Dermatology and they may need to appeal that requirement. He asked if considerations could be made for signs between now and when the ordinance goes into effect.

**Nancy Allen, 924 Oak Hill Avenue, Hagerstown.** Ms. Allen asked the commission to include the Pen-Mar Association of Realtors in the decision-making process. With regard to the Storefront Protection Zone Package, best intentions have a way of resulting in different outcomes. With all good intentions of trying to entice a certain clientele it could restrict some other businesses from locating downtown. Adding another layer of regulation to downtown may alter a new business's decision about relocating downtown. The City needs to keep in mind how these regulations may play out in the long run. Pen-Mar Association of Realtors has a wealth of information on the area's demographics that could be helpful to the commission.

Staff entered into the record email correspondence from Randy Cohen who owns a number of properties on All Star Court. He is ready to start developing his property at Interstate 70 and Route 40 and has concerns about the lack of flexibility which would allow some sort of storage use in his development. He indicated in his email that he will be submitting written testimony sometime before the record is closed.

Ms. Maher entered into the record the certificate of advertisement for this hearing and the Planning Commission's file by reference.

**MOTION:** (Stone/Thomas) I move we leave the record open for ten (10) days to receive additional comments.

**DISCUSSION:** None.

**ACTION:** APPROVED (Unanimous)

The public review meeting was closed.

## **REGULAR MEETING**

### **Roll Call.**

All commission members were present, with the exception of D. Miller.

**Bharat & Sons Estates – 1441 Wesel Boulevard – Retail Center; Site Plan Case No. ZS-2014-05 and Forest Conservation Plan Case No. FC-2014-01.**

Staff Report: (Staff report is in the meeting file.) This application is for the demolition of existing improvements and construction of a one-story retail building containing 21,048 square feet in gross floor area. Lot is a quarter-circle shaped property that is partially wooded. Stormwater management will be provided in an underground facility under the parking lot which will provide both quantitative and qualitative control. Parking will be provided for 93 vehicles. The site is 2.25 acres in size and fronts Wesel Boulevard, with a common access driveway shared with the Ashley’s Furniture/Big Lots property. There is and will be no direct access to Wesel Boulevard. The current flashing signalized intersection will be restudied once the center opens. Wall packs and seven light poles will provide lighting for the site (photo-grammetric plan was provided).

The forest stand delineation shows that 1.07 acres of forest is located on this 2.25-acre property. At the concept plan review on November 12 the commission was informed that the proposed plan is to clear the site, remove all 1.07 acres of forest to which the Planning Commission had no objection. Given the topography the site and the need for a retaining wall across the front of the property, which was also discussed during the concept plan review, street trees were deemed to be impractical to install for this development. As a result the applicant is proposing to meet their entire mitigation requirement (37,598 square feet or 0.86 acres) through a fee-in-lieu contribution to the Forest Conservation Fund of \$11,279.40.

The shape and size of the site in relation to its presence in a CR (Commercial Regional) zoning district make the property undersized for typical development in this area. As such, the applicant requested design waivers to several parking lot landscaping standards in order to make the project feasible. This layout was reviewed and discussed with the applicant at the Planning Commission’s concept review and the submitted site plan is very consistent with the concept plan provided at that time.

The site plan was submitted to the City’s review agencies and all have approved the site plan, with the exception of minor edits required by the Water Department. Assuming the commission approves the applicant’s design waiver requests, staff recommended that the site plan and forest conservation plan be approved, contingent upon satisfaction of the outstanding Water Department comment.

Commission/Applicant Discussion: Mr. Wright asked about sidewalks along Wesel Boulevard and whether there has been any discussions with the developer about requiring them. Mr. Wright was disappointed that sidewalks were not discussed with the developer since the City is trying to improve walkability; and at some point the City will be paying to put a sidewalk in this location

because the Planning Commission did not address it at this meeting. Based on the topography, Mr. Stone felt there might be an issue trying to get a sidewalk in front of this property. Mr. Wright asked staff to start thinking about pedestrians, and to include Engineering. People walk along Wesel Boulevard all the time. City staff has been looking at these drawings for quite some time and to ask the developer and their engineer to figure out how to get sidewalk in at this stage of the game is too late.

David Trostle, Frederick, Seibert & Associates, engineers for the project, reviewed the waivers requested for this project:

1. *“Each row begins and ends with a landscape island.”* Mr. Trostle pointed out that the three parking spaces in question will be located behind the proposed building and are separated by painted islands on either side of the set of parking spaces. Because this portion of the site will be shaded by the building and trees, trees might not grow in this area causing a maintenance problem.
2. *“Parking strip at least six feet in width between buildings and parking lots/associated pedestrian[sic].”* Due to the nature of this commercial business it would not be feasible to put a landscaping strip in the front. To compensate, landscaping was “beefed up” in other areas.
3. *“Street trees provided along all public rights-of-way, per Plate M-010 through M-016 and 216-10 of City Code.”* Mr. Trostle stated that trees have been added along the parking lot. There is a steep bank along the Wesel Boulevard frontage, which requires a retaining wall. In addition, there is an existing force main that will prohibit street trees from being planted. Their approach will be similar to how the frontage was handled at the Bergman Eye Center along Eastern Boulevard: an earth tone retaining wall with plantings on the top and along the base.
4. *“Minimum ten (10) foot perpetually maintained natural or planted buffer yard along all adjoining property lines.”* The rear of the site currently has a natural wooded buffer/forest and any development of the adjacent property will require a planted buffer to the Harbor Freight site because it is industrially zoned. The developer believes the intent of this requirement has been met.
5. *“Periphery of lot adequately screened and landscaped to prevent adverse impacts on adjacent lots.”* Again, the adjacent lot is zoned industrially so it is the developer’s position that this commercial property will not have any adverse impact on future industrial development. Also, as in the front of this site, the developer is required to construct an eight- to ten-foot retaining wall due to the elevation difference of this site with surrounding properties. This wall will be constructed of a material that is aesthetically pleasing to the adjacent industrial property. Mr. Trostle reiterated that any industrial use on the adjacent property to the rear of the subject site will be required to buffer this property per the ordinance requirements for industrially zoned properties.

Waivers 4 and 5 are related in that this site will sit higher than the land in the back. The industrial property, when developed will be required to add a buffer from the subject property. Mr. Brubaker asked why the developer cannot meet the requirements of Waiver 2. Mr. Trostle stated that Harbor Freight did not want any trees in the parking lot to block the visibility of their store. Harbor Freight had to be persuaded to have landscaping in the parking lot at all. If the six-foot strip is required in front of the building there will not be enough room for displays in the front of the building. Everything would have to be bumped out six feet toward the parking lot and they would lose about four or five parking spaces. The plan currently exceeds City parking requirements, but the number provided is the number Harbor Freight requires per their standards. The retaining wall is about 10 to 12 feet from Wesel Boulevard, but part of that is taken up by a drainage swale and the street lights in the right-of-way. Mr. Brubaker did not agree with the developer's request for waivers premised on Harbor Freight's contention that parking lot landscaping is not part of their business plan. Mr. Stone disagreed stating that there is a rationale for the waiver in that due to the grade, this particular section of landscaping would not be visible from Wesel Boulevard. Mr. Bockmiller added that the commission has been flexible with these types of buildings for the planting strips required in the front of the building. This is a 2.5-acre site which is undersized for the CR district.

Mr. Brubaker was concerned that there are requirements in the ordinance from which the commission routinely grants waivers. He questioned the necessity for landscaping requirements if they are going to be waived. Mr. Stone suggested that this matter could be put on the list of text amendments. Ms. Wheeler stated that she would prefer to leave the language in and grant the waivers so that these items are at least on a list of considerations when engineers are putting together site plans for review in Hagerstown.

**MOTION:** (Stone/Wheeler) I'll make a motion that we approve the requested landscape design waivers.

**DISCUSSION:** None.

**ACTION:** APPROVED (Unanimous)

Mr. Wright asked who is responsible for maintenance of the common driveway. Mr. Trostle stated that there is an "HOA" that pays for upkeep, plowing, etc. Mr. Thomas asked about the materials for the retaining wall along Wesel Boulevard. Mr. Trostle stated that the wall will be constructed of materials similar to those used at the eye care office building on Eastern Boulevard or of materials that will match the proposed building and the dumpster enclosure.

**MOTION:** (Stone/Thomas) I'll make a motion to approve the site plan.

**DISCUSSION:** Mr. Wright indicated that he would be voting against the motion because of the sidewalk issue, although he does not want to stop the project, but he will in the future if sidewalks are not shown on the site plan. Mr. Brubaker said in the past he has agreed with Mr. Wright that sidewalks are

important in the city, citing the site plan for North Market Plaza; however, in this instance, the topography is an issue and he could not justify the extra expense. Requiring sidewalk in front of this site may result in an isolated stretch of sidewalk along Wesel Boulevard. In general, though, Mr. Brubaker said he agrees with Mr. Wright’s position on the requirement of sidewalks throughout the city.

**ACTION:** APPROVED (YES – Brubaker, Campbell, Stone, Thomas, Wheeler; NO - Wright)

Regarding the Forest Conservation Plan, Mr. Bockmiller stated that the request is to meet the entire requirement through a fee-in-lieu contribution. The plan is to clear all 1.07 acres of the existing woods as part of the development proposal and because of the site constraints the developer will not be eligible to get street tree credit.

**MOTION:** (Stone/Wheeler) I’ll move that we approve the fee-in-lieu to satisfy the forest conservation requirement.

**DISCUSSION:** None.

**ACTION:** APPROVED (ABSTAIN - Wright)

**Adjourn.** It was moved and seconded that the meeting adjourn (8:42 p.m.)

April 8, 2015

Approved



Debra C. Calhoun - Secretary