

**Planning Commission
MINUTES – Regular Meeting**

**December 10, 2014
City of Hagerstown, Maryland**

Douglas S. Wright, Jr., chair, called the meeting to order at 7:00 p.m., on Wednesday, December 10, 2014, in the Conference Room, Fourth Floor, City Hall. Also present were commission members M. Brubaker, D. Miller, J. Stone, R. Thomas, 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.

REGULAR MEETING

Roll Call.

All commission members were present.

Approval of Minutes:

August 13, 2014 – Workshop Meeting.

Typographical errors were noted on pages 1, 2, and 3. (Mr. Thomas arrived.)

MOTION: (Miller/Brubaker) I'll move to approve the minutes as corrected.

DISCUSSION: None.

ACTION: APPROVED (ABSTAIN - Stone)

August 27, 2014 – Regular Meeting.

Two corrections were noted on page 2.

MOTION: (Stone/Thomas) I make a motion to approve.

DISCUSSION: None.

ACTION: APPROVED (Unanimous)

South Market Plaza – Garland Groh Boulevard at Middleway Drive, Forest Conservation Plan, Case No. FC-2008-01.

Staff Report: (Staff report is in the meeting file.) At the July 9 meeting the Planning Commission gave preliminary approval for the forest conservation plan approach for this project. This was done in order to allow the site to be moved forward for clearing in conjunction with the

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impending construction of the improvements to Garland Groh Boulevard and the Fulton tract to the north. The Planning Commission required the applicant to return with a final forest conservation plan for approval by the end of 2014.

The preliminary approach was based on a site size of 9.6 acres and a planting requirement of 2.89 acres. The applicant proposed to meet that requirement by planting 13 Green Vase Zelkova street trees along Garland Groh Boulevard (0.646 acres); 5 Green Vase Zelkova street trees in an easement along the former Hollyhock Road (0.248 acres); 8 Autumn Glory Maple street trees on Middleway Drive (0.292 acres), with the difference (1.704 acres) being made up with off-site retention on a mountain tract west of Hancock, Maryland, that is owned by the developer. When off-site mitigation is proposed, a 2:1 ratio is required.

The official proposal is consistent with the approach described above. No fee-in-lieu is proposed. The forest conservation plan shows an easement on the five Hollyhock Road trees and the required easement language. Staff recently requested that the applicant amend the plan to use a variety of species for the street trees in the event of blight. The applicant has agreed to this change and the new trees have a larger canopy than originally shown. This nets out to 2,500 square feet of forest conservation compliance over and above the requirement. A revised plan was submitted at the meeting showing “Thornless Honey Locust” as the additional tree variety.

Staff recommended approval, subject to a revised selection of trees that does not rely solely on the use of Green Vase Zelkova trees along Garland Groh Boulevard and the former Hollyhock Road, and subject to correction of the street names on the plan.

Commission/Applicant Discussion: Mr. Wright was concerned that there will be no sidewalks on Middleway Drive. The proposed trees will be planted in an area where the sidewalk could be constructed. Mr. Wright believed it would be a mistake not to include sidewalk along Middleway Drive, even though there is a sidewalk on the other side of the road. He would not be in favor of approving this plan with trees in this location. Mr. Bockmiller said his recollection was that there was a grade issue and sidewalks were deemed not necessary by the City Engineer given the pedestrian patterns.

Fred Frederick of Frederick, Seibert & Associates, Inc., engineers for the project, stated that well over a year ago his firm worked with Rodney Tissue, the City Engineer, and AC&T, the adjacent property owner. Mr. Tissue wanted the sidewalk on the north side. There is a sidewalk along the drive farther south. The City Engineer’s office studied pedestrian traffic and felt walkers from the south would be using the drive further to the south rather than walking north and then going south. Mr. Wright was adamant about requiring sidewalks along Middleway Drive, especially since there will not be a traffic signal at the intersection of Middleway and Garland Groh Boulevard. He felt it was too much to ask of pedestrians to dodge two-way traffic while crossing from one side of Middleway to the other. Regarding the traffic signal, Mr. Frederick indicated

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that a light is proposed for this intersection when it is warranted, although it was his impression that the light would be installed right away.

Mr. Bockmiller pointed out that the site plan is not in front of the commission for approval. The only reason the forest conservation plan is on the agenda is because the Planning Commission required that it come before the commission for approval before the end of 2014. Commission members discussed whether or not to act on the forest conservation plan because of the sidewalk vs. street trees issue along Middleway Drive. It was pointed out that the developer needs to know whether sidewalks will be required in this location. At the initial meeting, the commission did not lean one way or the other. Mr. Bockmiller noted the existing retaining wall and added that there is not enough room for both sidewalk and street trees. Mr. Wright stated that this is raw land and the site plan has not been finalized.

A straw vote was taken on the matter of whether sidewalk should be required on the south side of Middleway Drive. All members present voted yes with the exception of Mr. Stone (5-1).

Mr. Stone indicated that taking the location of this area into consideration he would not be in favor of requiring street trees. Mr. Bockmiller noted that this is two separate issues. The developer can get street tree credit for the street trees. If they are not required, the forest conservation credit will need to be recalculated.

A straw vote was taken on the matter of whether street trees should be eliminated in order to have space for the sidewalk. All members voted in favor of eliminating street trees along Middleway Drive (6-0).

Mr. Frederick said his client is in no rush to have the site plan approved and can wait until the site plan is ready. The site plan has been submitted for review by City review agencies in generic form.

MOTION: (Stone/Miller) Make a motion that we table this matter on the theory that it will come back to us as part of the site plan.
DISCUSSION: None.
ACTION: APPROVED (Unanimous)

Mike’s Tavern – 636 North Prospect Street – Kitchen Addition and Outdoor Seating Area, Minor Site Plan, Case No. SA-2014-09.

Staff Report: (Staff report is in the meeting file.) The applicant received approval from the Board of Zoning Appeals to expand the existing nonconforming use tavern to include a 33-foot,

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6-inch by 41-foot, 4-inch outdoor seating area/deck which will include a 100-square foot addition to the building and a 180-square foot walk-in cooler. There will also be an approximate 605-square foot area covered with a roof. This covered roof area equals 35% of the footprint of the tavern building. Historically, staff has not included uncovered seating areas toward parking requirements as their use is subject to any given change in weather conditions. According to testimony presented at the Board of Zoning Appeals hearing in November 2014, there will be no table service in the outdoor seating area, however, patrons can order food in the building and bring it outside if they choose.

Given the size and configuration of the proposed addition, additional parking will not be required per the ordinance. A five-foot tall vinyl privacy screen with lattice on the top will be provided along the front and side edges of the deck. The privacy fence will be approximately three feet above grade. The deck will be approximately ten feet from the side property line and landscaping will be installed per the ordinance buffer requirements for commercial development adjacent to residential property. A trash enclosure will be constructed behind the building and the exposed concrete block fill on the rear slope of the property will be covered with additional topsoil and ground cover. The parking lot will be restriped.

All review agencies have approved the site plan, with the exception of the Planning and Code Administration Division. Planning staff recommended that a condition be added to the plan that no outdoor sound amplification of any type be permitted at any time, given the immediate proximity of the residence to the south.

Staff recommended approval with the condition mentioned above.

Commission/Applicant Discussion: Commission members agreed that the impact of the deck will be on the second floor of the adjacent residential dwelling to the south. Mr. Wright asked that more arborvitae be shown on the south property line. Roger Schlossberg, developer, argued that planting more bushes will provide more places for criminal activity to occur. Mr. Schlossberg also stated that if the storage containers shown on the plan have not been removed already, they will be gone in the near future. Mr. Thomas suggested planting bushes with thorns in between or below the taller shrubs. The commission also wants a note on the plan that the existing storage containers will be removed and also required that there be no amplification on the deck.

MOTION: (Brubaker/Miller) I make a motion that we approve the site plan with the conditions that the arborvitae between the plaza and Mrs. Brooks' house be planted on six-foot centers; it should be clear on the site plan that the storage containers will be removed; no amplification; and that any lighting scheme be shielded from the property to the south.

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DISCUSSION: Mr. Wright pointed out that there is a wrong house number on the site plan (two are labeled as “638” North Prospect Street). Mr. Brubaker amended his motion to add that the correct house number be added to the southernmost lot as “636.” Mr. Miller agreed to the amendment.

ACTION: APPROVED (Unanimous)

2014 Land Management Code Text Amendments.

(All proposed text amendments are contained in the meeting file.)

Package 1: Miscellaneous (From September 10 meeting):

- Package includes revisions from prior reviews on May 28, June 11, and September 10.
- Staff added language that defines the area permitted to be used in calculations for the 35% maximum expansion of nonconforming uses. The ordinance is not clear, and staff does not believe it is the intent of the ordinance to include supporting uses such as parking and landscaping in the calculations. The Planning Commission was okay with the changes proposed in Package 1.

Package 2: Street Graphics (From July 30 meeting):

- Package 2 reflects revisions as a result of reviews on July 30. Four new items have been added since July 30, including:
 - Staff added a definition for “Theater Marquee” (page 1 of Package 2) and proposed review procedure in the CC-MU on pages 4 and 5. As written, the Historic District Commission would review marquees on a case-by-case basis to determine how a marquee relates to the building in question and an appropriate size.
 - Added general graphics provisions from Chapter 204, Signs, and Chapter 68, Property Maintenance Code (pages 2 through 4). These changes were added for consistency.
 - A statement was added to clarify that these provisions do not apply to off-premise signs which are regulated in Chapter 204 of the City Code.
 - Decreased the interval for the digital signs “static image” provision to six seconds in all districts except residential districts.
 - Mr. Wright noted a typo on the top of page 3. One of the “excepts” in (3) should be deleted.
 - Ms. Wheeler questioned the language pertaining to political signs (c. on page 9). This section does not mention a limitation on how long the signs can be displayed. Ms. Maher stated that the City Attorney advised that there cannot be any time limits on political signs. Ms. Wheeler suggested that since all the other

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temporary graphics have limitations, it should be mentioned that there is no limitation for political signs.

Package 3: Use Chart and Light Manufacturing Definition:

- Revisions reflect prior review comments from September 10. There have been no subsequent changes.

Package 4: Storefront Protection Zone Provisions:

- Revisions reflect prior review comments from September 10, October 8, and November 12. There have been no subsequent changes.

Package 5: Historic District Commission Hardship Review:

- Revisions reflect prior review comments from September 10 and November 12. There have been no subsequent changes.

Package 6: Miscellaneous Amendments:

- Revisions reflect prior review comments from the November 12 meeting. There have been no subsequent changes.

The 2014 Land Management Code Text Amendments will be advertised for a public hearing on January 28, 2015.

CortPark Concept Plan.

Mr. Stone stated that the Planning Commission voted to reject the applicant's changes to the amenities plan for CortPark. It was his recollection that the vote was 3-1 for rejection (Brubaker, Thomas, Wheeler – voted to reject; Stone – voted against the motion to reject). Findings of Fact were signed by him as the presiding chair for the case; however, the Findings were never formally adopted by the commission. It was Mr. Stone's position that those Findings of Fact need to be formally adopted since the matter is being appealed to Circuit Court.

Ms. Maher stated that the Findings of Fact were reviewed by the three commission members who voted to reject the revised amenities plan via email. Those members concurred that the Findings adequately reflected their decision. Staff had placed formal approval of the Findings on the agenda; however, after consulting with the City Attorney, the matter was removed from the agenda. Mr. Stone stated that an argument could be made that the three people who voted to reject the plan, never in fact, on behalf of the commission, adopted those particular Findings since they were not presented at the meeting when the vote was taken. The City Attorney's position is that the decision is not rendered until the Findings come out. The decision was made

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when the Findings were delivered to the applicant. The Petition for Judicial Review was filed prior to receiving the Findings of Fact. Mr. Stone pointed out that there is nothing in the commission's By-laws that require written Findings of Fact. Ms. Maher stated that she could only pass on what the City Attorney recommended. Mr. Wright said because the case is being appealed it is in the City Attorney's hands, and the commission should let the City Attorney decide what needs to be done and when. Staff will double check and pass on Mr. Stone's concerns. Commission members felt it may be too late.

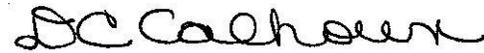
Holiday Gathering.

Staff will provide refreshments in Room 407, beginning at 5:00 p.m.

Adjourn. It was moved and seconded that the meeting adjourn (8:15 p.m.)

3/11/2015

Approved



Debra C. Calhoun - Secretary