

**Robert W. Hershey, chair, called the meeting to order at 4:30 p.m., on Thursday, January 26, 2012, in the Fourth Floor Conference Room, City Hall. A roster of the members of the commission and the technical slots they fill are on file and available upon request. Also present were commission members M. Gehr, V. Hrabal, M. Mallery, and K. Sanford. S. Bockmiller, Development Planner/Zoning Administrator and D. Calhoun, Secretary, were present on behalf of the Planning Office.**

**APPROVAL OF MINUTES: January 12, 2012**

**MOTION:** (Gehr/Mallery) I'll move to adopt.  
**DISCUSSION:** None.  
**ACTION:** APPROVED (Unanimous)

**DESIGN REVIEW**

None.

**WORKSHOP:**

None.

**NEW BUSINESS:**

None.

**OLD BUSINESS:**

**Proposed Changes to Certificate of Hardship Language**

John Lestitian, Director of the Department of Community and Economic Development, and Kathleen Maher, Planning Director, were present to discuss the Certificate of Hardship language that currently exists in the Zoning Ordinance. Mr. Lestitian asked the HDC to appoint two of its members to work with Planning staff to develop new language to address hardship cases. Specifically, Mr. Lestitian would like the committee to develop language to the effect that the Mayor and Council would decide whether an economic development project would be a benefit to the community. Ultimately, the hardship request would be acted upon by the HDC. This relieves the commission of the burden of determining whether a project is a benefit to the community. After the committee meets, Mr. Lestitian would like the group to report back to the HDC, and from there bring a final product back to the Mayor and Council for discussion.

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Commission members recalled that the Certificate of Hardship provision is used very infrequently, and the majority of the requests that have been processed were for undue financial hardship. Over a 22-year history, commission members could only think of a handful of instances where an applicant proceeded to a Certificate of Hardship, and most, if not all, were based on financial hardship.

Mr. Lestitian would also like to address streamlining the Certificate of Hardship process. Currently, an applicant must file a Certificate of Appropriateness and be denied before they would be eligible to apply for a Certificate of Hardship. Mr. Lestitian explained that this adds an extra layer of review with a predictably negative result.

Mr. Sanford observed that the commission has allowed demolitions in the past. Hagerstown's historic district commission is probably the most lenient one in the state of Maryland. The only project he could remember denying was the Silverman project on South Potomac Street. Mr. Hershey was concerned that once the Mayor and Council deem a project to be in the public interest, the burden of proof will now be on the HDC, rather than on the applicant. As a result, the HDC will have to justify the public good or not. Commission members felt that if the Mayor and Council and staff believe a project is a key to economic development, that it boxes the HDC into a corner.

Mr. Bockmiller stated that the staff has been discussing some ideas. As Mr. Lestitian mentioned, they are trying to draw the HDC into the process. This is an issue that the joint committee could work on. Mr. Lestitian said that from a staff perspective, staff agrees that this body is reasonable in their determinations. Instead of viewing it as cornering the HDC, he suggested that commission members should view it as repositioning the HDC. From his standpoint, that could be a good thing.

Mr. Hershey hypothesized what if a developer applied to demolish the A-rated resource at the corner of West Antietam and South Potomac Streets. The development proposal includes a demolition of the existing building and plans for a new building with offices, storefronts, and a front plaza. The existing building is an A resource; the developer's plans may be a public benefit and may be endorsed by the Mayor and Council, but demolition flies against the HDC's charge of protecting historic buildings. He wondered how that would play out. Mr. Gehr noted that if state or federal monies are involved, those agencies would not allow the building to be demolished. Mr. Lestitian said he did not have the answers to those questions; however, that is what the joint committee would have to explore, including the "what ifs." He noted in Washington, D.C., there have been many facade-ectomies.

Mr. Lestitian stated that there is no set time frame for completing the joint study. He suggested that the committee work on the review over the next few weeks. The Mayor and Council will likely ask for a work session on the HDC in February. He would like to be able to report that he has met with the HDC and that the joint committee has had at least one meeting in developing language. He recommended that the joint committee meet twice and report back to the full commission.

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Mr. Sanford relayed that in talking with Dr. Paula Reed, the commission's architectural historian, that she expressed the opinion that most of the historic district commissions in Maryland do not use a hardship clause. He felt the hardship section should be stricken from the ordinance. Mr. Sanford had serious concerns with Mr. Lestitian's proposal. In his mind the repositioning of the HDC sounds like an end run around the commission. If you have an endorsement from the Planning Commission and the Mayor and Council on a project, the HDC would be under immense political pressure to go along with the recommendation, which backs the HDC into a corner. Mr. Sanford felt the commission should lean on its track record. Ms. Mallery suggested that the joint committee should do some "what if's" and discuss what would happen.

Mr. Gehr and Mrs. Mallery volunteered to serve on the joint committee. Mr. Gehr noted that he would only be able to attend meetings after 4:00 p.m. Mrs. Mallery agreed to serve with the caveat that she might pull out if she feels she is in over her head. Staff will contact the joint committee members about scheduling a meeting next week. [Since the meeting, Mr. Pembroke was selected to the committee in place of Mrs. Mallery.]

Mr. Sanford asked where this proposal originated. Why is the City tinkering with something that has not been used much in 22 years. Mr. Lestitian said it is his initiative and based on EDC guidance and dealing with organizations he felt it was something that needed to be examined.

**ANNOUNCEMENTS**

None.

**ADJOURN:** It was moved and seconded that the meeting adjourn (5:05 p.m.).

Date

Debra C. Calhoun - Secretary