

MINUTES
PLANNING COMMISSION REGULAR MEETING
Wednesday September 9, 2015

I. PLANNING COMMISSION PRE-MEETING (Beginning at 4:30 p.m.)

Location: NDS Conference Room, Charlottesville City Hall, 2nd Floor

Members Present: Chairman Dan Rosensweig; Commissioners Lisa Green, Kurt Keesecker, Genevieve Keller, Jody Lahendro, John Santoski, and UVA representative Bill Palmer

Call to Order: the meeting was called to order by Chair Rosensweig at 5:00 p.m.

Dan Rosensweig called the meeting to order and noted updates to be made to past minutes. The commission requested an overview of the Market Plaza application and the history and status of this application was provided by Ms. Robertson.

It was asked how the proposal would differ from the agreement in place for the Pavilion. The differences of this agreement were noted. It was noted that this is an unusual situation because the sales contract is not yet complete.

Adjournment: At 5:27 p.m. the Chair adjourned the meeting in order to reconvene in City Council Chambers at 5:30 to continue with the Commission's regular monthly agenda.

II. REGULAR AGENDA (Beginning at 5:30 p.m.)

Location: City Council Chambers, Charlottesville City Hall, 2nd Floor

Members Present: Chair Rosensweig; Commissioners Lisa Green, Kurt Keesecker, Genevieve Keller, Jody Lahendro, John Santoski and UVA representative Bill Palmer

Call to Order: the meeting was called to order by Chair Rosensweig at 5:30 p.m.

A. Commissioner's Reports:

Commissioner Lahendro reported that he did not attend the Parks and Rec Advisory Board meeting on August 19th because of a conflict with another meeting. He did attend the Tree Commission meeting August 26th. There is a subcommittee of the tree commission that has started to survey the entrance corridor to the city to identify opportunities to increase the tree canopy, review the tree planting that has taken place by the city over the last year (it was pointed out that they have planted over 200 trees) and discuss possible CIP requests. Parks & Rec has \$18,000 in which they are going to start treating trees vulnerable to the Emerald Ash Borer and the Tree Commission will be assisting them in developing criteria for trees to be treated through the city. The tree commission has been asked to review the arboretum plan for the William Taylor Plaza.

Commissioner Keller said she has no report but wanted to acknowledge (as a former chair) and the time and commitment it takes to serve as chair. Dan, I am sure all of my colleagues join in acknowledging that service and appreciate what you have put into it and look forward to you joining us in the ranks wherever you land.

Commissioner Keesecker reported that at the 8.18.2015 BAR meeting final approval of the public plaza on West Main moved forward. There were plans for a little small restaurant there and those plans were approved, BAR approved the design for 2nd floor offices to be added to the former Vinegar Hill theater site, the project at 1000 West Main had a proposal to change some of the window materials and that was not approved, and a project on North First Street was resolved.

Commissioner Santoski reported the MPO Tech meeting is coming up and he will be attending.

Commissioner Green reported she missed the PACC Tech meeting and there is another one in November.

B. Chair's Report Chairman Rosensweig reported that the Housing Advisory Committee met this month and continued to coordinate the implementation of the housing needs and preferences survey to low income residents of the community as part of an overall study being done by RCLCO. A number of nonprofits are working together to collect 100's of surveys from low income residents in the community and input the data themselves so we will have a much more robust holistic study of housing needs in the community. Thanks to the non-profits who stepped up to help. The Streets That Work Code Audit group has been meeting and you all are invited to a special event to provide feedback on the ongoing Streets That Work initiative September 15, 2015 from 7-9 pm at City Space. The workshop will include stations and a small group activity to help guide prioritization of certain streetscape elements for each street type. We are looking at the streets holistically across the city to get community input on what we want to see in the right of way. He introduced Alex Ikefuna, the new NDS Director, and hopes his colleagues feel very lucky and fortunate to have Mr. Ikefuna join us. We look forward to working with you over the next few years and if you hear something in the meeting tonight feel free to come up and let us know. Chairman Rosensweig extended thanks to Ms. Robertson, Ms. Creasy and Mr. Haluska for your professional support, dedication and long hours as you helped to make his life relatively easy.

C. Mr. Keesecker served on the nominating committee and provided the report. He nominated John Santoski for Chairman and Kurt Keesecker for Vice Chairman.

A motion was approved to accept the nominees by a vote of 6-0.

John Santoski chaired the remainder of the meeting.

3. Annual Meeting – includes all the data from items taking place over the year. Staff will be working on this document.

D. NDS Department Report: given by reported Missy Creasy, reminding everyone about the Streets That Work on event on September 15, 2015. We are encouraging citizens to attend. A planning commission work session will take place on September 22, 2015 with a discussion on

small area planning. Ms. Creasy said she is working to get materials together for this, as well as the materials for process in looking at a small area plan. She will be sending an email later on this week to get additional feedback to make sure she is giving you all additional information that is helpful in framing that discussion. Brian Haluska and wife have adopted a baby girl, Grace, and we look forward to meeting her soon.

D. Matters from the Public

1. Logan McKinley, 106 Leigh Place: He is the president of the Willoughby Property Owners Association which owns the majority of the land adjacent to that property. He thought there was going to be an appeal to the previous denial. He asked if that is not happening tonight. He said the property owners association has not been involved in the process and no one has contact them at all especially since it was previously denied. He doesn't know what they are appealing because none of the facts have changed. It seems that some have come to light since not having permission from the adjacent property owners. He would like to reaffirm the neighborhoods concern and desire to uphold the previous denial. He wants the developer to know that they are active and they want to be involved but they want to make sure the development meets the property that is there and insures our roads and our families can be safe.
2. Jeff Maurer, 100 Long Lane: He said he understands that the developer has updated his plan. He may have cut that back to try and build up to what he wants in a piece meal fashion. He cautioned the commission to keep in mind that that might be his ultimate objective to stand up what has already been denied. Also the HOA is not going to grant him the access that he is going to need to do the development as we understand it. He said the neighborhood has stated on numerous occasions that it would be fine with us if he developed that in accordance with the character of the neighborhood as it already exists and his plans continue to ignore that.
3. Patrick Crussr, 106 Lide Place: He said it is important to understand the site for development. It is an incredibly steep site with critical slopes on the area they are working on. Although it is steep, the plan is to put three story apartments on top of a garage next to houses that are single story houses on top of a basement. It is very difficult to avoid blocking views and these houses are literally next door so there are ecological impacts, slopes, a river at the bottom of the property that is already impacted and this neighborhood does not fit into our neighborhood at all, if expanded in the future, it will double the traffic entering our neighborhood street which would be terrible.

F. CONSENT AGENDA

(Items removed from the consent agenda will be considered at the end of the regular agenda)

1. Minutes - July 14, 2015 – Regular Meeting
2. Minutes - August 11, 2015 – Pre-meeting
3. Minutes - August 11, 2015 – Regular-meeting

Motion by: Commissioner Rosensweig

Seconded: Commissioner Lahendro

VOTE: 6-0

“Aye”: Commissioners Green, Keesecker, Keller, Lahendro, Rosensweig, Santoski

“Nay”: None

Abstentions: None

Disqualifications: None

III. JOINT PUBLIC HEARINGS (Beginning at 6:00 P.M.)

G. JOINT PUBLIC HEARINGS

SP14-00003 Market Plaza (200 2nd Street SW): An application by Market Plaza, LLC, to amend a special use permit approved by City Council on December 1, 2014. The previously approved special use permit granted residential density of up to 60 units per acre, an additional 31 feet of building height, in addition to the 70 feet allowed by right; authorized two special uses (Farmer’s Market and Auditorium, theaters-- maximum capacity greater than or equal to 300 persons.) The proposed Amendment seeks to change special use permit condition # 3, to authorize the open-air Plaza within the development to remain privately controlled and operated by the property owner, instead of being subject to a recorded easement for a right of public access.

RECOMMENDATION

The proposed modifications to the special use permit would change some of the conditions that were intended to set up the plaza in the project as a public space similar to Lee Park or the Downtown Mall.

Staff finds limited guidance on which to base a recommendation. The physical form of the plaza space will still be subject to BAR review, and none of the proposed changes suggest the applicant intends to prohibit public access to the plaza outside of the Farmer’s Market. The proposed changes are coming as a result of ongoing negotiations between the City and the applicant. It is staff’s opinion that the proposed changes do not substantially alter the project originally approved by City Council, and thus these changes should be approved.

Mr. Greg Powe said the developer and city have been negotiating a 99-year lease that would allow the market to operate on the plaza once a week. He continued to stipulate that both parties are in agreement that the most effective way to assure the general public and our tenants and residents that overlook the plaza can enjoy it, but the developer will maintain control of the plaza to allow private events and enforce rules on the property. He said over and over the concept remains unchanged and it will still be a publicly accessible plaza.

Commissioner Green asked when was the first time you discussed changing this from public to private space.

Mr. Powe said since late winter, about 4 or 5 months ago, and it was drafted by the City Attorney and Parks and Recreation.

Commissioner Green said what happens after all of this goes through and we have all of these lease agreements and the property sells to someone else. The public use could go away at any time.

Mr. Powe said the lease remains with the property not the owner. The terms of the operation of the city market are defined in the lease. The lease is being drafted by the City Attorney with the input of the market operators and Parks and Recreation.

Commissioner Keller asked would you be able to secure the plaza as an aspect of the lease, or would you gate the plaza. The private operator has the right to any private events in the plaza.

David Pettit, attorney for the applicant said the SUP says the plaza will be a public forum subject to rules and regulations, so when there is not an event taking place it will be open to the public.

Commissioner Keesecker commented on controlling the behavior on Water Street. How is one to discern when someone passes through from the public realm to the other space?

Commissioner Green said she wouldn't have voted to approve the (SUP) height if she thought the plaza would become a privatized area. The commission initially approved for the developers to build a structure beyond the zoning's established limits.

The application moved forward with changes providing the city a chance to agree on the hours the plaza will be accessible to the public, limit the amount of programmed private space to no more than 50 percent of the plaza, allow private events only 52 times a year and maintain the same dimensions for right of way along First Street, which will be transitioned to a public walkway.

Commissioner Green said she understands that we can put a rule where we'll have someone from the city review the developer's rules, but where does that get us? She continued to comment that this gives us nothing other than a feel-good pat on the back. The public's tired of that. The public wants a public space. This is not what I felt we voted on last October.

Public Hearing

Zachery Bullock, 700 Hinton Avenue: Is concerned about the effect of the proposed amendment on the long term vibrancy of downtown Charlottesville. The design concept was approved with the intention of preserving and enduring public space while increasing the supply of housing near the Downtown Mall and that intention is now in jeopardy with increased private management of that space. He asked the Commission to use its power to maintain the City's authority over this public space.

Kelly Crozet, 700 Hinton Avenue: If a restaurant is going to be successful in this city it better have outdoor seating and trees grow so if going between the stalls 99 years from now you might have a tree that is taking up quite a bit of space. She said she understands when you are selling condos for 1.2 million dollars; you want to keep the people who buy those condos happy because they are spending a lot of money but if they don't want people offending their sensibilities then

they should move to the County. I don't think we are limited for space on the Downtown Mall in general.

Jewel Mindshell, 621 Harris Road: What she has heard is that the developer wants to have control over the management of public behavior and her concern is does management mean setting the rules as well as enforcing them because they might take saying you can't have a leashed dog except on the easement. Another concern would be more restrictions from what the city allows the public.

Claire McKinley, 106 Leigh Place: what would happen long term if the developer sold it and that person decided to blockade in that area. If you do approve this, what happens when you are not on the Council or the Planning Commission?

Cecil Glum, 1115 Sycamore Street: She thinks what is missing in the whole picture is the vision for the market in the future and vendors have never conducted their own market. The City has always arranged the market on different days, and different places. We need more of a vision of what could be for the new future space. The market has been seeking a new home for 20 years. But also we need a little more vision to what else is going to happen there for more than one day a week.

Closed the Public Hearing

Commissioner Keller noted it is highly unusual for the Planning Commission to be commenting on city leases and easements, and it is her preference to stay away from the legalities of the lease and easement. She is not comfortable with the Planning Commission treading into that territory.

Commissioner Rosensweig said there are a few basic language changes like public access that is relevant in the manner of the language. The public having have a right of access to the plaza but also agreed to by the city so the city has some rights versus a public right of access.

Commissioner Keesecker felt the same way about public use. Good cities are defined by their public spaces.

There was nearly a three-hour debate about the semantics of the public-private partnership between the Planning Commissioners and developers of the 101-foot mixed use building.

Several councilors and members of the public disagreed, calling into question what authority developer Keith Woodard and any eventual property owners not privy to the potential lease will have over the plaza space.

Commissioner Green said is there a way to create a code for this site that could be a part of this SUP. If you wanted a concrete description in which the public can enjoy and use the plaza, hours, pets, how much can be used.

Commissioner Rosensweig moved to recommend approval of the proposed modification of a special use permit as requested in SP15-00003, subject to conditions listed in the staff report with the following changes to 4a:

1. The rules and regulations governing the behavior in the plaza are subject to city council approval including future updates to those regulations. Flexible for future of the market with the ability to re-negotiation.
2. Amount of program private space is restricted to the amount of the floor area of the corresponding retail space.
3. The number of times public access is restricted because of private events be restricted to a maximum of 52 events a years
4. The current width of the 1st Street public right of way remains.
(There was no second to the motion)

Commissioner Green moved for a denial of this application, seconded by Commissioner Keesecker 4-2, motion failed.

Commissioner Keesecker said he cannot get past the fact we are changing the public space to private space. This affects a broader community than the people in the tower. This is a case in an urban setting where the interest to the community out-weighs the interest of the individuals, no matter how much the individuals are paying for their units.

Commissioner Lahendro would like to see it put off until another meeting to give him time to go through and do the hard reading and is uncomfortable voting for this now.

Mr. Pettit would like to move forward, take action tonight.

Commissioner Rosensweig moved to recommend approval of the proposed modification of a special use permit as requested in SP15-00003, subject to conditions listed in the staff report with the following exceptions to 4A:

1. The public will have right of access subject to hours agreed to by the City and the owner.
2. The amount of programed public space will not exceed 50% of the plaza or the total area of the retail operations (whichever is less)
3. The plaza may be restricted from public use for a maximum of 52 events during the course of the year.
4. The 1st Street right-of-way will be equal in width (on the Water Street access easement) to the existing public right-of-way.

Because I find that approval is required for the public necessity, convenience, general welfare or good zoning practice, Seconded by Commissioner Lahendro, motion passes 4-2, (Commissioner Keesecker and Commissioner Green opposed.)

10 minutes recess back in at 9:00

H. SITE PLAN APPEAL

1. Willoughby Site Plan

Justin Shimp, on behalf of Moore's Creek, LLC, submitted a preliminary site plan application for Willoughby Place on October 29, 2014. The application was denied on November 4, 2014 because the site plan does not meet the required sight distance, and therefore does not comply with City Code 34-896, which stipulates each development must provide safe and convenient access to one or more public roads. The applicant is appealing the Director of Neighborhood Services' denial of the Willoughby Place preliminary site plan.

The property is zoned R-3 Multifamily. This property is further defined on City Real Property Tax Map 21B as parcel 13 in close proximity to Harris Road and containing approximately 220,849 square feet of land (5.07 acres). The preliminary site plan proposes 48 dwelling units located in two multifamily structures.

Commissioner Rosensweig moved to defer the application and send the site plan back to staff and have it come back before the planning commission in 6 months, Seconded by Mr. Keesecker, motion passes 6-0.

I. PRELIMINARY DISCUSSION

1. Midland and Randolph Rezoning

Background

Mark Jones, acting as agent for Donnie McDaniel, has submitted a rezoning application petition for an unaddressed property at the intersection of Midland Street and the Randolph Avenue right-of-way. The property is further identified on City Real Property Tax Map 56 Parcel 56.1. The property is approximately 0.25 acres. The site is currently zoned R1-S. The petition requests a rezoning to B-2 commercial to align with Mr. McDaniel's adjoining properties on Carlton Avenue (TMP 560046000 and 560047000).

The application notes the reason for seeking this change is for the future development of multifamily housing.

Preliminary Analysis

The applicant has requested a rezoning from single family residential to a commercial designation. While a commercial designation is consistent with the adjacent parcels on Carlton Avenue and Randolph Avenue, the parcel to be discussed is located on a street of detached single family homes.

Questions for Discussion

1. How could a multifamily development affect the adjacent properties on Midland Street?
2. How could a different use allowed in B-2 commercial zoning affect the adjacent properties on Midland Street?
3. How could potential access directly from Carlton Avenue to the subject parcel affect the adjacent properties on Carlton Avenue?
4. How does the existing alley behind the subject parcel affect request for rezoning of the parcel?

Commissioner Rosensweig said these are a good series of questions but are a little difficult to answer until we get a sense of what uses the applicant interested in removing from consideration, if any. The transportation system is also critical to understand the potential impact on the adjacent uses. We would have to know the traffic circulation as well as the plan for the parking lot in the back or a tower in the back. Is the Randolph right of way buildable? He said it is hard to answer the questions without having some sort of dialogue with the builder.

Commissioner Green said another thing that needs to be looked at is the critical slopes. She said there are a lot of critical slopes and a stream so she is not sure that a transportation connection could be made.

Ms. Rainey said because we don't have a proposed site plan or site diagram to talk about it, it is hard to know what the applicant wants in terms of access from Midland, access from Randolph. Staff did request the information but the applicant chose not to provide it at this time.

Ms. Creasy said we are bringing forward a complete application per the ordinance.

Commissioner Rosensweig said is this for rezoning because the land use wasn't capable somehow it needs to be brought into conformity to what is around it. He said we need more detail, we need an application, a concept, and a sense of what the planning is for us to decide if the proposed zoning is more appropriate than the current zoning. If this lot along Carlton was zoned R2 or R1 and they were requesting B2 that makes a lot more sense because you are basically completing a network, but they are talking about a property that is adjacent to both commercial and residential and this is one of those where we need additional information.

Commissioner Lahendro said until we know there is going to be a connection directly to Carlton, he is going to presume the worse that it would be a business use at the end of a very nice residential street with a narrow road and he thinks that is inappropriate.

Commissioner Keller said we just don't know enough about it and the applicant is not here and what is presented is very skimpy. She said the staff report was the only information we got.

Ms. Creasy said we will share the comments with the applicant and they will have a chance to refine their application or denote that they want to move forward and whatever path they take it will come back to you at the appropriate time.

2. Development Review Process Policy

At their meeting on February 2, 2015; City Council initiated a zoning text amendment to modify the way in which the City reviews development applications. Specifically, the proposed changes would not immediately refer complete applications for development (rezoning requests, special use permits, site plans and subdivision plats) to the Planning Commission upon receipt, but would rather give the Director of Neighborhood Development Services and City Council the ability to hold off on referring the item to the Commission. The additional time in the process would be used for potential work sessions on the project with the Planning Commission, a mandatory community meeting arranged by the applicant, and staff review that could result in a request for additional information from the applicant in order to better explain their request.

At their May 12, 2015 meeting, the Planning Commission recommended changes to the development review process to City Council. At their meeting on June 1, 2015, City Council reviewed the proposed changes and expressed concern about the provision that would permit the Director of NDS to waive the requirement. Council directed staff to draft a document that would provide further guidance to the Director of NDS and staff about when it may be appropriate to waive the public meeting requirement.

The Planning Commission held a joint public hearing with City Council on this matter at their meeting on May 12, 2015. Two members of the public spoke at the meeting. The first speaker expressed concern with the amount of staff time necessary to implement the changes, while recommending that staff be responsible for arranging the public meetings. The speaker also questioned the City's legal authority to require a meeting with neighborhoods on by-right projects.

The second speaker noted that the site plan conferences the City currently hosts are held during typical work hours, making attendance difficult for some citizens. The speaker also noted that the additional meetings, especially for site plans, would require many more night meetings for staff to attend.

Policy Summary

Staff divided the applications subject to the new public meeting requirement into three categories:

- The first category is for applications where the Director would not waive the public meeting requirement under any circumstances.

- The second category is for applications where the assumption is that the public meeting would be held, unless the Director specifically decides to waive the requirement
- The third category is for applications where the assumption is that the public meeting would NOT be held, unless the Director specifically directs staff to hold a public meeting.

Commissioner Green asked if staff has to provide the meeting space.

Ms. Creasy said the code changes don't necessarily denote that. If it is going to be a neighborhood meeting, it makes a lot more sense to have something that is nearer to the neighbors. She said we are setting it up to where the materials come in but the application is not referred a completed application until you have the documentation that you have met that meeting requirement. The applicant should invite us to the meeting but if staff is unable to go then information can be provided to complete the application that they are submitting.

Commissioner Keller asked where this would fall in the timing, before or after the preliminary discussion.

Ms. Creasy said they wouldn't have a completed application until after that had come forward.

Ms. Robertson said that could be a little bit flexible. What they can't do until they have the meeting is get on a public hearing agenda. She said you will not be put on a public hearing schedule until you have this meeting completed.

Chairman Santoski said he has heard enough times from people around the city that the first time they heard of the item was at the public hearing. There is no guarantee that at the public hearing what was seen prior is what you are going to get. He said having applicants sit down and talk to the neighborhood association may extend it a bit, and the director should have as much flexibility as they have but we have to be careful of the people who come up and say we wish we had a chance to ask a few questions.

Commissioner Keesecker said other than good communication, what is the impetus behind taking major subdivisions, which are by-right, to a community meeting. He noted that it makes sense to have a meeting in the case of rezonings.

Commissioner Green said people ask her all of the time, why do the developers run this town?

Ms. Robertson said we will have to have policies and set standards for the meetings and it will take additional staff time. Somebody will mostly likely be invited and they will want somebody to be there. Council wanted some reassurance that there was a policy that said to the public that we still want the director to have some discretion but we want some reassurance to the public that certain things will always be given a review. They wanted

you to look at this policy to determine when waivers can be granted in reasonable circumstance.

Mr. Ikefuna said the concerned raised by Commissioner Green is in order because he thinks this process will give the neighborhood representatives and the residents the opportunity to say we took a look at this project and here are our concerns. He said in most cases, a very smart developer responds to the needs of the community.

Chairman Santoski said he thought after two years, Council should come back and review this again.

After a major discussion, the Commission decided to send the Development Review Process Policy to Council for review.

Commissioner Green moved to approve and send the attached memo (Development Review Process Policy) to Council to be reviewed in two years, Seconded by Commissioner Lahendro, motion passes 4-2 (Commissioners Keesecker and Rosensweig opposed)

Commissioner Keesecker motion to adjourn until the 2nd Tuesday in October.

Adjournment: 10:15