

Town of Lovettsville

Minutes of the Planning Commission
Regular Meeting
July 1, 2015
APPROVED ON SEPTEMBER 6, 2017

Call to Order/Pledge of Allegiance

Chairman Joseph Mueller called the Regular Meeting of the Lovettsville Planning Commission to order at 7:30 p.m. on July 1, 2015 at the Lovettsville Town Hall, 6 East Pennsylvania Avenue, Lovettsville, VA.

Present at Meeting

- Chairman Joseph Mueller
- Vice Chair Robert Gentile
- Commissioner Thomas Ciolkosz
- Commissioner Nate Fontaine
- Commissioner Frank McDonough
- Commissioner Anthony Quintana
- Commissioner Buchanan Smith (arrived at 7:34 p.m.)

Staff Present

- Zoning Administrator Joshua Bateman
- Town Clerk Harriet West

Pledge of Allegiance

Chairman Mueller led those present in the Pledge of Allegiance.

Public Comment

Chairman Mueller called for comments from the public. There were none.

Additions/Deletions/Modifications to the Agenda

Mr. Ciolkosz requested the addition of an item updating the Planning Commission on the training program he recently attended. There was no objection from the Commissioners.

Mr. Bateman requested that he be permitted to add an item updating the Commission regarding upcoming training opportunities. There being no objection from the Commissioners.

Approval of Planning Commission Minutes

A. January 21, 2015 Regular Meeting

- Motion:** To approve the minutes of the January 21, 2015 Regular Meeting as amended as requested by Chairman Mueller.
- By:** Commissioner McDonough
- Second:** Commissioner Quintana
- Aye:** Commissioners Ciolkosz, Fontaine, Gentile, McDonough, Mueller, Quintana, and Smith
- Nay:** None
- Abstain:** None
- Absent:** None

Staff Reports

Mr. Bateman said that he did not prepare a staff report for this meeting since the meeting was scheduled on the first day of the month and preparation of the report days before the month of June was finished would cause the report to omit information about things that happen after the date the report was drafted. Chairman Mueller asked whether anything significant had happened during the past few days and Mr. McDonough asked whether anything had changed with respect to the Town Center commercial project. Mr. Bateman stated his intention to present his staff report for the month of June at the next PC meeting. He further provided a brief update on the status of the Town Center commercial project and stated that he expects to have the site plan approved by August 1st and for construction to begin in the fall.

Mr. Ciolkosz asked whether the Lovettsville Cooperative Market was still planning to lease space in the Town Center. Mr. Bateman responded by directing commissioners to the Lovettsville Square website, which contains leasing information, and by stating that the "For Lease" sign has been installed on the property. Mr. Gentile asked what the status is of the Lovettsville Community Center. Mr. Bateman responded by saying that the County intends to move forward without the additional classrooms proposed in the conditions of approval and that Town staff has met with County planners regarding the park and he assumes the community center will be constructed following the park frontage improvements. Mr. Ciolkosz stated that based on a recent conversation with Loudoun County Supervisor Higgins, the County is waiting for the roundabout to be hashed out at the adjacent intersection. A discussion ensued on the nature of proposed improvements to the intersection of East Broad Way, Milltown Road and Lovettsville Road. Mr. Bateman delivered a background of the frontage improvements project and stated that, based on his recent meeting with County staff, the project is scheduled for bid in the fall.

Action/Discussion Item

A. Zoning Ordinance Amendment – Nonconforming Uses, Buildings and Lots

Mr. Bateman presented on this item. The Planning Commission is being asked to review and schedule a public hearing on the draft zoning ordinance amendment prepared by staff to resolve inconsistent requirements in Division 2, Article II regarding nonconforming uses, buildings, and lots. Mr. Bateman pointed out amendments recommended by the Town Attorney following a conversation with her last week, and summarized an amendment to Section 42-67(b) drafted by staff to address an issue raised in the previous meeting by Mr. Fontaine about what constitutes an increase in the extent of a nonconformity. Mr. Bateman stated that the section describes what constitutes an increase in the degree of nonconformity with respect to a minimum and a maximum setback requirement, and said that Mr. Fontaine had previously asked why the proposed language says that an improvement which "increases" the distance of the structure relative to the maximum required setback is deemed to increase the degree of nonconformity of the structure, rather than "decreases." Mr. Bateman explained why this was the correct wording of the proposed amendment by drawing an example on the dry-erase board. He further described what constitutes a more restrictive use, and Mr. Smith asked how someone would determine that given all the "what-ifs." Mr. Bateman responded that the case law would dictate, and continued explaining the purpose of the amendment generally.

Motion: I move to schedule a public hearing on the attached zoning ordinance amendment to Division 2, Article II, as presented by staff, on August 5, 2015 (Attachment 1).
By: Commissioner Gentile
Second: Commissioner Quintana
Aye: Commissioners Ciolkosz, Fontaine, Gentile, McDonough, Mueller, Quintana, and Smith
Nay: None
Abstain: None
Absent: None

Information Items

A. Draft Survey for Economic Development Advisory Committee

Mr. Bateman summarized the survey of residents that he drafted at the request of the committee last meeting and reviewed the survey questions. He stated that the survey would provide great information from residents about what types of land uses should be encouraged in the comprehensive plan. Mr. Quintana asked whether the answer to the first question pertaining to growth was already going to be obvious based on answers to the remaining questions. Mr. Bateman responded that for the most part, yes, but that there may be inconsistencies in how some people answer those different questions. A discussion followed about some of the specific uses listed in the survey.

Mr. Ciolkosz stated that he has had some success with surveys and that the first question was not needed, that growth was inevitable and so starting the survey with a negative question was a bad way to go. He recommended that staff include a description of the uses and that respondents be allowed to rank the importance of each of them. He asked that if everyone checks all of the boxes, where do you start. A discussion followed about whether to rank the businesses in order of importance and include certain uses such as pawn shops and firearm sales that cause a negative reaction on the part of respondents. Mr. Ciolkosz further advised that home-based businesses be added to the list. Mr. Bateman responded that it was not a foregone conclusion that residents will want more businesses in Town, and that recent comments from the public about not letting Lovettsville become like Ashburn may not just be about townhouses like those found in Ashburn, but about Ashburn-type commercial development as well. A discussion ensued about whether to include more data and potentially incorporate a ranking system so that respondents can rank businesses they would like to see in order of preference. Mr. Bateman stated that he did not want to introduce too much complexity but agreed to add a ranking system from 1 to 5 with 1 being the highest preference. A discussion ensued about whether to keep firearms sales, pawn shops and other objectionable uses in the survey. No consensus was reached.

Chairman Mueller asked how the survey was being distributed. Mr. Bateman said that he had not decided yet, but was leaning towards using a paper survey and distributing it by mail since this was the only way to ensure that it targets the appropriate population without obtaining duplicate responses from some residents. A discussion followed about the merits of also distributing the survey online versus utilizing a paper version only, and about prompting residents to enter personal information such as their name, address, and phone number online to ensure they do not also respond by mail. Mr. Bateman stated that he did not want to collect residents' personal information and a discussion followed about what types of information could be used to prevent out-of-Town residents from participating if an online version is used, which could potentially skew the results. Mr. Bateman agreed to deploy the survey online and include a question asking for the addresses of residents on the online version. A discussion followed about whether to include home-based businesses in the survey. The Commission agreed not to add home-based businesses but only keep brick-and-mortar establishments.

Mr. Smith expressed a desire to move the first question to the end of the survey or eliminate it altogether, and following a lengthy discussion, Mr. Bateman agreed to eliminate the question altogether and instead include a "none of the above" option for each of the remaining questions as well as add a space for respondents to elaborate.

Mr. Gentile asked about the timetable for deploying the survey, and Mr. Bateman responded that he hoped to get all of the responses back by the August 15th committee meeting. A discussion followed about the timetable and topics for discussion at the future Economic Development Advisory Committee meetings.

Election of Officers

Chairman Mueller opened the floor for nominations and announced that he enjoyed his time as chairman but would like to step down at this time. He nominated Frank McDonough for chairman. He asked if there were any other nominations. Mr. Quintana nominated Mr. Gentile. Chairman Mueller asked if there were any other nominations. Mr. Smith asked if he could nominate himself, and Chairman Mueller responded that he could. There being no further nominations, Chairman Mueller called for a vote on the nomination of Mr. McDonough for chairman. Upon a request from the clerk that the chairman read aloud

the names of the members voting for the motion, Chairman Mueller stated that commissioners Ciolkosz, Smith, Fontaine, and Mueller have voted "aye." Mr. Mueller called for a vote on the nomination of Mr. Gentile for chairman, and indicated that Mr. Quintana and Mr. Gentile have voted "aye." Mr. Mueller then announced that Mr. McDonough has been elected chairman.

Mr. Mueller asked for nomination to the position of Vice Chair. Mr. Quintana stated that he could not make that nomination because, based on the previous election of chair, he would probably be resigning very soon, for a lot of reasons. Mr. Smith nominated Mr. Gentile, and Mr. Ciolkosz seconded the nomination. Mr. Mueller asked whether there were any other nominations for vice chairman. There being none, Mr. Mueller called for the vote. Mr. Gentile was elected unanimously as Vice Chair.

Next Meeting

Mr. Mueller indicated that the next meeting of the Economic Development Advisory Committee was scheduled for July 15th and asked whether there were any members who could not attend. Mr. Mueller indicated that he would not attend the meeting. Mr. Ciolkosz indicated that he would attend the meeting, and Mr. Quintana indicated that probably would not attend the meeting.

Comments from the Mayor and Commissioners

Elaine Walker provided a summary of the recent "We're In!" Committee meeting and the upcoming concert in September by the U.S. Navy Band, the Sea Chanters. She stated that she did not see anything in the survey about industrially-zoned land, and that it may be a good idea to indicate the potential for industrial development of the Engle Tract in the survey. Mr. Bateman explained why industrial uses were not included in the survey and a discussion ensued about the merits of listing or describing potential industrial uses of the Engle Tract in the survey. No consensus was reached on whether to include that information.

Commissioner Ciolkosz notified the Commission that he was now a certified planning commissioner and described the training course he recently attended in Harrisonburg. Mr. Ciolkosz stated that he distributed to Mr. Bateman eight sets of bylaws from other jurisdictions and summarized their contents including office terms, attendance requirements, Robert's Rules of Order, and selection of a parliamentarian. He also described his experience recently attending the Planning Commission meeting in the Town of Purcellville. He described some of the things he learned as part of the training, and Chairman McDonough stated that Mike Chandler from the Plan Virginia organization is willing to travel to localities like Lovettsville to assist them with planning generally and present on various planning topics.

Mr. Bateman discussed an upcoming training opportunity to obtain certification for new members and invited Mr. Smith and Mr. Fontaine to let him know if they wished to attend. He explained the cost of the program in relation to the Town budget for such training and notified commissioners of the reduced rate offered by the Virginia Chapter of the American Planning Commission for the upcoming annual conference in Norfolk, Virginia. He further asked whether any commissioners were able to attend. Mr. McDonough indicated he was planning to attend.

Mr. Mueller reported that immediately before the next regular meeting, the "We're In!" Committee social mixer would be held from 5:30 to 7:30 p.m. He asked whether any of the commissioners would be able to attend and Mr. Smith, Mr. Fontaine, and Mr. Ciolkosz indicated they would be willing to go. Mr. Bateman suggested inviting members of the Economic Development Advisory Committee members as well to facilitate interaction between business owners and committee members.

Mr. Mueller asked whether any of the commissioners would be able to attend the next Town Council meeting and explained that commissioners are expected to give a short report to the Council. Mr. McDonough indicated he would attend and deliver a report to Council at their next meeting.

Adjournment

There being no further business before the Planning Commission the meeting was adjourned at 8:59 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Harriet West".

Harriet West, Town Clerk

Date Approved: September 6, 2017

Attachments:

1. Draft Amendment to Zoning Ordinance Division 2, Article II Nonconforming Uses, Building, and Lots

Sec. 42-2. Definitions and rules of construction.

- (b) *Definitions.* The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Building line means the line parallel to the street right-of-way line or front lot line and touching the part of the building closest to the street. ~~a line that is parallel to the front, side or rear lot line and is set so as to provide the required yard.~~

Nonconforming structure or building means an otherwise legal ~~building or structure or building~~ that does not conform with the lot, area, yard, height, lot coverage or other area regulations of this chapter, ~~or is designed or intended for a use that does not conform to the use regulations of this chapter for the district in which it is located, either at the effective date of this ordinance from which this chapter is derived or as a result of subsequent amendments to said ordinance.~~

Setback means the minimum or maximum distance by which any building or structure must be separated from any lot line.

Setback line means the line which establishes the required setback area and the area of the lot within which a building or structure may be erected or placed.

DIVISION 2. NONCONFORMING USES

Sec. 42-60. Construction of division.

The provisions of this division are intended to guide the zoning administrator, town officials and the board of zoning appeals in resolving issues involving vested rights and nonconforming situations consistently with Code of Virginia, § 15.2-2307 and controlling legal authority.

Sec. 42-61. Continuation of nonconforming use.

If, at the time of enactment of the ordinance from which this chapter is derived or at the time of a subsequent amendment of this chapter, any legal activity ~~which~~ is being pursued, or any lot or structure is being legally utilized, in a manner or for a purpose which does not conform to the provisions of this chapter, such ~~manner of use or purpose~~ may be continued only as follows provided in this division:

- (1) Except as otherwise provided herein, the lawful use of land or buildings existing at the effective date of this ordinance may be continued although such use does not conform to the provisions hereof only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition. Except as provided in this article, such nonconforming use may not be enlarged, extended, reconstructed, moved or structurally altered except in compliance with the provisions of this ordinance.
- (2) If any change in title or possession, tenancy, management, or renewal of a lease of any such lot or structure occurs, the use existing nonconforming use may be continued.
- (23) If any nonconforming use (structure or activity) is discontinued for a period exceeding two years after the enactment of the ordinance from which this chapter is derived or at the time of a

subsequent amendment of this chapter, it shall be deemed abandoned and any subsequent use shall conform to the requirements of this chapter. Notwithstanding the foregoing, any building that requires repair, rebuilding or replacement due to an Act of God, within the meaning of Va. Code section 15.2-2307 may be afforded additional time in which to complete such repair, rebuilding or replacement in accordance with the terms of that statute and section 42-67.

- (34) Whenever a nonconforming structure, lot or activity has been changed to a more limited nonconforming use, such existing use may only be changed to an even more limited use. A nonconforming use may be changed to any use that is allowed in the zoning district in which it is located, subject to the all applicable standards and requirements applicable to the new use. Once a nonconforming use is converted to a conforming use, it may not be changed back to a nonconforming use.
- (5) A nonconforming use that has been changed to a more restricted use may not thereafter be resumed except in compliance with the provisions of this ordinance.

- (465) Temporary seasonal nonconforming uses that have been in continual operation for a period to two consecutive years or more prior to the effective date of the ordinance from which this chapter is derived shall be considered nonconforming uses for purposes of this division.

(Ord. of 9-21-2006, § 9-1)

Sec. 42-62. Permits.

- (a) All nonconforming uses shall obtain a zoning permit within 60 days after the adoption of the ordinance from which this chapter is derived. Such permits shall be issued promptly upon the written request of the owner or operator of a nonconforming use.
- (ba) The construction or use of a nonconforming building or land area for which a zoning permit was properly issued prior to the adoption-effective date of the ordinance from which this chapter is derived, or subsequent amendment thereto, may proceed; provided construction of such building is complete within one year, or establishment of such use of land is established, is undertaken within 30 two years days after said the date the permit was issued effective date, and diligently carried on to completion.
- (b) Any use that was legally established at a time when no special form of approval or permit was required for the subject use (e.g. conditional use permit approval) shall not be deemed nonconforming merely as a result of not having obtained such approval. Any change, enlargement or expansion of such use shall be subject to the procedures and standards in effect at the time of such change, enlargement or expansion.

(Ord. of 9-21-2006, § 9-2)

Sec. 42-63. Repairs and maintenance.

- (a) On any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding 50 percent of the current content of the structure as it existed at the time of passage or amendment of the ordinance from which this chapter is derived, shall not be increased. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to

a safe condition of any structure or part thereof declared to be unsafe by any Town or County official charged with protecting the public safety, ~~upon order of such official~~ nor prevent any such building or structure from being brought in compliance with the Uniform Statewide Building Code, upon order of such official.

~~(b) Buildings or structures damaged or destroyed by natural causes or other act of God may be repaired or replaced only in accordance with the provisions of this chapter except to the extent otherwise provided by Code of Virginia, § 15.2-2307 or any successor statute.~~

(Ord. of 9-21-2006, § 9-3)

Sec. 42-64. Changes in district boundaries.

Whenever the boundaries of a district are changed, any uses of land or buildings which become nonconforming as a result of such change shall become subject to the provisions of this ~~division~~ § 9-4.

(Ord. of 9-21-2006, § 9-4)

Sec. 42-65. Expansion.

A nonconforming ~~activity~~ use may be extended throughout any part of a structure which was arranged or designed for such activity at the time of enactment of the ordinance from which this chapter is derived or subsequent amendment thereto. However, no such use shall be extended to additional buildings or to land outside the original building.

(Ord. of 9-21-2006, § 9-5)

Sec. 42-66. Nonconforming lots.

Any lot of record at the time of the adoption of the ordinance from which this chapter is derived, which is less in area or width than the minimum required by this chapter, may be used when all other applicable the requirements of the board of zoning appeals zoning ordinance, regarding setbacks, side and rear yards are met. A lot of record or structure which, solely as a result of an eminent domain proceeding, or conveyance under threat of condemnation, no longer conforms to the requirements of these regulations and restrictions as to area, frontage, and dimensions of lots or yards, shall not be deemed a nonconforming lot or structure for the purpose of this ordinance ~~§ 9-6~~.

(Ord. of 9-21-2006, § 9-6)

Sec. 42-67. ~~Restoration or replacement~~ Nonconforming buildings and structures.

(a) ~~———— If a nonconforming structure or a conforming structure devoted to a nonconforming activity is destroyed or damaged in any manner to the extent that the cost of restoration to its condition before the occurrence shall not exceed 50 percent of the cost of reconstructing the entire structure, it may be repaired or restored; provided that any such repair or restoration is started within six months and completed within 12 months from the date of partial destruction.~~

~~(b) If the cost of restoration to its condition before the occurrence shall exceed 50 percent of the cost of reconstructing the entire structure, it may be repaired or restored only upon the issuance of a special permit by the administrator with the approval of the town council.~~

~~(c) In approving such permit, the town council shall consider the stated purpose for the establishment of the zoning district in which the structure is located, the uses of the area immediately surrounding the~~

~~structure in question, particularly the nonconforming uses, and the hardship which would result from a denial of the special permit. The permit shall include conditions as to the time within which the repair or restoration must be started and completed and may contain any other conditions regarding the repair and restoration which, on the opinion of the town council, shall be necessary to carry out the intent of this section.~~

~~(d) — The cost of land or any factors other than the cost of the structure are excluded in the determination of fair market value for the purpose of calculating the percent of damage.~~

~~(a) If a variance is approved from otherwise applicable zoning district dimensional standards for a nonconforming building or structure, the subject structure shall still be deemed nonconforming.~~

~~(b) A nonconforming structure may be improved, enlarged or expanded without a variance if the expansion does not increase the extent of the nonconformity. With regard to building setbacks, an improvement, enlargement or expansion shall be deemed to increase the extent of the nonconformity if it:~~

~~1) Increases the footprint area of the portion of the structure encroaching into the required minimum setback area; or~~

~~2) Increases the distance between the building line and the maximum required setback line, where applicable.~~

~~(c) A nonconforming structure may be moved if the movement or relocation eliminates or reduces the extent of the nonconformity.~~

~~(d) If a nonconforming structure is destroyed by a natural disaster or other act of God, the owner may replace such structure without obtaining a variance for the nonconforming features in accordance with the provisions of § 15.2-2307 of the Code of Virginia, as amended, provided (i) there is no increase in the extent of the nonconformity, and (ii) that the repairs or reconstruction shall be undertaken within 2 years of the date of destruction and diligently carried on to completion.~~

(Ord. of 9-21-2006, § 9-7)

Secs. 42-68—42-92. Reserved.