

Town of Lovettsville

Planning Commission Minutes of Regular Meeting, July 7, 2010

Chairwoman Bushway called the Regular Monthly Meeting of the Lovettsville Planning Commission to order at 7:31 P.M. on July 7, 2010.

Present at Meeting

- Mayor Elaine Walker
- Chairwoman Mari Bushway
- Commissioners Lorraine Bauer, Jack Burden, Elaine Fischer, Rodney Gray, Aaron Kahn, Joseph Mueller
- Town Manager Keith Markel
- Zoning Administrator Steve McGregor
- Town Clerk Judy L. Kromholz

Absent

- None

Present In the Audience

Among those present were Councilwomen Charlotte Coleman and Tiffaney Carder.

Election of Chair and Vice Chair of Commission

Commissioner Burden announced that he is placing his name in nomination for Chairman and then for Vice Chairman if he is not elected Chair.

Chairwoman Bushway announced that she is running for Chair.

Vice Chairman Gray announced that he will not be running for vice chairman again as he prefers focusing on the issues to running the meeting.

Commissioner Kahn announced that he is running for Vice Chairman.

Motion: I move that the elections by Planning Commission Chair and Planning Commission Vice Chair be held as secret ballots.

By: Commissioner Burden

Second: Commissioner Mueller

Aye: Commissioners Bauer, Bushway, Burden, Fischer, Gray, Kahn, Mueller

Nay: None

Abstain: None

Absent: None

Chairwoman Bushway opened the floor for nominations for Chairman of the Planning Commission.

Commissioner Fischer nominated Commissioner Burden to chair the Planning Commission.

Commissioner Kahn nominated Chairwoman Bushway to chair the Planning Commission. There being no further nominations, Chairwoman Bushway closed the nominations. Manager Markel distributed and collected the ballots. Clerk Kromholz counted the ballots and announced the results:

Jack Burden: 2 votes

Mari Bushway: 5 votes

Commissioner Fischer nominated Commissioner Burden for Vice Chair of the Planning Commission.

Chairwoman Bushway nominated Commissioner Kahn for Vice Chair of the Planning Commission. There being no further nominations, Chairwoman Bushway closed the nominations. Manager Markel distributed and collected the ballots. Clerk Kromholz counted the ballots and announced the results:

Jack Burden: 5 votes
Aaron Kahn: 2 votes

Public Comment

Chairwoman Bushway asked for public comment. There was none at this time.

Comments from Planning Commission

Commissioner Fischer suggested that in future years the Town close East Broad Way between Loudoun and Locust Streets during the July 3rd celebration. She reported that there has been a lot of trash left on private property in previous years.

Additions/Deletions/Modifications to the Agenda

Chairwoman Bushway called for changes to the agenda. There were none.

Approval of Planning Commission Minutes

No minutes were presented.

Staff Reports

Administrator McGregor presented his written report for May 2010. The Commissioners had no comments or questions.

Action Items

A. LVZA 2010-0003 Outdoor Swimming Pools, Hot Tubs and Spas

Administrator McGregor presented this item. At the June 24th Town Council public hearing and meeting the Town Council passed a motion to send the item back to the Planning Commission to discuss some concerns that the Council had so that the Commission could reconsider parts of its recommendation. One concern of the Council is that since outdoor hot tubs and spas usually have a water depth of two feet or more and that Loudoun County includes these in their definition of swimming pools then the Town should consider including these facilities in its regulations. The Council feels that if outdoor swimming pools with a water depth of two feet or more present a potential safety hazard then so also would outdoor hot tubs and spas.

The other concern of the Council relates to the set back requirement for hot tubs and spas located on decks. The Council is currently considering the possibility of reducing the setback requirement for decks to coincide with the setback requirement for primary structures in residential districts. If the setback regulations were modified to do this, decks could be eight (8) feet from a property boundary in the R-1, R-2 and R-3 districts; and six (6) feet from a property boundary in the Planned Infill district; and five (5) feet from a property boundary in the Town Center Planned Development T-C district. The Council is concerned that if decks were setback less than ten (10) feet from a property boundary then a homeowner wanting to locate an outdoor hot tub or spa on a deck would still have to locate these facilities at least ten feet from a property boundary on the deck. The Council feels this would be an inconvenience for the homeowner and difficult for the Town to enforce. Staff concludes that the Zoning Ordinance definition of swimming pools should be the same as that of the County, which includes the terms *hot tubs* and *spas*. This will help bring the Town regulation in line with the County's building permit requirement.

Staff also concludes that the current ten (10) foot setback for permanent, temporary, public or private outdoor swimming pool (not including hot tubs and spas) makes sense because of the noise potential generally associated with a swimming pool. It is more reasonable that the setback for hot tubs and spas be allowed the same setback as the primary structure or a deck (if these are located on a deck) because these facilities are generally smaller than swimming pools and can be viewed as generating minimal noise compared to most swimming pools.

The proposed application procedures previously discussed and recommended by the Planning Commission should be removed from this item as they will be developed and implemented administratively. However, staff wants to make it clear that with the inclusion of hot tubs and spas (Jacuzzis) in the Town swimming pool regulations, these facilities will require a zoning permit from the Town with a fee in addition to a building permit from the County.

Commissioner Fischer expressed concern about the noise factor with decks so close to the property line but concluded that there would not be a major difference in noise between five and ten foot setback. Commissioner Mueller asked if hot tubs, Jacuzzis, and spas are exempt from fencing if they have a cover and Administrator McGregor stated that the County does exempt such installations from fencing. He reiterated that the proposed Town ordinance is concerned only with setbacks as a zoning ordinance matter and will let the County take the lead on safety concerns.

Commissioner Gray confirmed that the Town does not currently issue zoning permits for hot tubs and spas, but would under the new ordinance. Commissioners Kahn and Mueller expressed concern that the proposed zoning fee is too high and Manager Markel suggested that, if the rest of the Planning Commission agreed, they include that in their recommendation to the Town Council.

Motion: I move that the Planning Commission authorize a public hearing of item LVZA 2010-0003 Outdoor Residential Swimming Pools, Hot Tubs and Spas, as presented, to amend Section 4-8 of the Zoning Ordinance. Additionally I move that after the public hearing the Planning Commission make a recommendation to Council concerning the permit fees.

By: Commissioner Mueller

Second: Commissioner Kahn

Chairwoman Bushway called for additional discussion. The Commission decided that the setting of fees was a function reserved to the Council. Commissioner Mueller withdrew the second sentence of his motion and Commissioner Kahn withdrew his second. The final motion read as follows:

I move that the Planning Commission authorize a public hearing of item LVZA 2010-0003 Outdoor Residential Swimming Pools, Hot Tubs and Spas, as presented, to amend Section 4-8 of the Zoning Ordinance.

There being no further discussion, Chairwoman Bushway called for the vote.

Aye: Commissioners Bauer, Bushway, Burden, Fischer, Gray, Kahn, Mueller

Nay: None

Abstain: None

Absent: None

Manager Markel announced that the public hearing will be held on August 4th.

B. LVZA 2010-0005 Deck Regulations

Administrator McGregor presented this item. He reported that numerous citizen complaints have been received stating that the Town setback requirement of fifteen (15) feet for a deck from a property boundary is not logical given the fact that some houses are permitted to be within five (5) feet of a property boundary. On June 24 the Town Council authorized the Zoning Administrator, Staff and the Planning Commission to prepare an item evaluating this issue and making a recommendation based on their conclusions.

The current regulation (Section 4-7 Uses and Structures Permitted in Required Yards, (e) for decks requires a setback of at least fifteen (15) feet from a rear or side property boundary regardless of the setback requirement for the primary structure). The following table shows that a primary dwelling is permitted to be as close to a side property boundary as five (5) feet:

Residential Zoning District	Minimum side yard allowed for a dwelling (in feet)
R-1	8
R-2	8
R-3	8
Town Center (T-C)	5
Planned Infill	6

Ryan Homes is currently building some dwelling units in the Town with the only access from the dwelling to a future deck located at such a point that it would require the deck to be closer to the side property boundary than the Town's fifteen foot requirement. This poses an inconvenience to the homeowner, as

this might preclude them from having a deck. It could be surmised that the intent of the Zoning Ordinance in establishing a fifteen foot setback for decks was to keep an outdoor activity area separated from the adjacent property in order to ameliorate potential noise and visual intrusion. This is a legitimate consideration when discussing deck setback regulation modifications. What then is the proper balance between allowing a deck as close as the setback allowed for a primary structure to a property boundary as a matter of convenience for the homeowner and setting a deck back from an adjacent residential property boundary to decrease potential noise interference for the neighbor? One option would be to allow a deck setback as close as the setback allowed for a primary structure to a property boundary on the basis that deck noise would not create any more adverse impact on the neighbor than the dwelling itself. Another option is to allow a deck setback as close as the setback allowed for a primary structure to a property boundary but with a requirement that if the deck were closer than fifteen (15) feet to a property boundary then an opaque screen would be required to shield the adjacent property. This, however, presents enforcement difficulties. The applicant would have to draw the screen and the Town would have to inspect the sites where these are required. A compromise seems reasonable. Such a regulation could permit decks to be six (6) feet from a property boundary and no screen would be required. For townhouse and duplex units a setback of four (4) feet seems reasonable. In the case of a *through lot* there are two front yards, which has the effect of preventing a deck on the rear of a dwelling. An exception to the location of a deck is reasonable in this case.

Commissioner Mueller asked Administrator McGregor how he had arrived at a 6', rather than 5' setback. Administrator McGregor said that it was a professional decision, reached partly in response to the historical preferences evidenced in the existing ordinance. Commissioner Mueller suggested establishing the edges of the house as the limit for the deck and Commissioner Kahn agreed that represented a simpler solution. Commissioner Burden stated that if Ryan Homes is building houses that do not allow for a deck, that is Ryan's problem, not the Towns since they were responsible for knowing the local ordinances. Commissioner Mueller suggested establishing the width of the house and the minimum side yards as the allowed width of a deck.

Motion: I move that the Planning Commission authorize a public hearing of item, LVZA 2010-0005 Deck Setback Regulations, as amended at this meeting, to amend the Zoning Ordinance regulations for Section 4-7 regarding deck setbacks as follows:

(e) Decks are permitted and may project into any required yard other than a front yard, except for a *through lot*, provided that the deck is set back no more than the setback allowed for the primary building from a property boundary. A deck may be located on a *through lot* if it is located in the side yard and only in the front yard opposite the front entrance of the primary structure on the lot.

By: Commissioner Kahn
Second: Commissioner Gray
Aye: Commissioners Bauer, Bushway, Burden, Fischer, Gray, Kahn, Mueller
Nay: None
Abstain: None
Absent: None

Discussion Items

There were no Discussion Items on the agenda.

Information Items

There were no Information Items on the agenda.

Comments from the Commissioners

Chairwoman Bushway called for comments from the Commissioners.

Commissioner Burden stated that he had spoken to Chairwoman Bushway about running about a week ago and she had strongly encouraged him to run. He thanked Commissioner Gray for his service last year.

Commissioner Gray stated that this was the first year he attended the July 3rd festivities and he was very impressed both with the activities and with the number of people attending. He thanked everyone who had worked so hard to make the event happen

Commissioner Fischer stated that the July 3rd activities exemplify why we all love living in a small Town.

Mayor Walker reported on the following:

1. She agreed with Commissioner Gray about the July 3rd activities and reminded those present that the event is sponsored by the Lovettsville Community Center Advisory Board. She reported that this was the first Lovettsville July 3rd event attended by Congressman Frank Wolf although Delegate Joe May attends every year.
2. The Loudoun County Board of Supervisors Public Hearing for the Lovettsville Community Park SPEX will be held on Monday July 12th. She encouraged everyone to attend the hearing and speak.
3. The Lovettsville Movie in the Park on Friday, July 9th will be *Harry Potter & the Half Blood Prince*.

Manager Markel reminded those present that National Night Out will be August 3rd at the Lovettsville Community Center.

Public Comment


Chairwoman Bushway called for comments from the public. There were none at this time.

Adjournment

- Motion:** To adjourn the Planning Commission meeting of July 7, 2010
By: Commissioner Mueller
Second: Chairwoman Bushway
Aye: Commissioners Bauer, Bushway, Burden, Fischer, Gray, Kahn, Mueller
Nay: None
Abstain: None
Absent: None

The Meeting was adjourned at 9:14 P.M.

Respectfully submitted,


Judy L. Kromholz, Town Clerk

Date Approved: September 1, 2010

Attachments:

- I. Speaker Sign Up Sheet

City of Sodaville

Speaker Sign - Up Sheet

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Please Print.

Name and Association	Address	Topic

Each speaker will be limited to no more than three (3) minutes.