

Town of Lovettsville

Minutes of the Planning Commission Regular Meeting February 3, 2016

Call to Order/Pledge of Allegiance

Chairman McDonough called the Regular Meeting of the Lovettsville Planning Commission to order at 7:29 p.m. on February 3, 2016 at the Lovettsville Town Hall, 6 East Pennsylvania Avenue, Lovettsville, VA.

Pledge of Allegiance

Chairman McDonough led those present in the Pledge of Allegiance.

Present at Meeting

- Chairman Frank McDonough
- Vice Chair Robert Gentile
- Commission Thomas Ciolkosz (arrived at 7:36 p.m.)
- Commissioner Nate Fontaine
- Commissioner Joseph Mueller
- Commissioner Shiva Schilling
- Commissioner Buchanan Smith

Commissioners Absent

There were no commissioners absent.

Staff Present

- Zoning Administrator Joshua Bateman
- Town Manager Laszlo Palko
- Town Clerk Harriet West

Public Comment

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

Additions/Deletions/Modifications to the Agenda

There were no changes to the agenda.

Approval of the Planning Commission Minutes

There were none.

Committee Reports

There were none.

Staff Reports

There were none.

Action/Discussion Items

A. Presentation on Annexation Policy

Chairman McDonough introduced this item by stating that the Planning Commission has no formal role in developing the Town Annexation Policy, but that his main purpose for conducting a meeting on this issue is to ensure that the comprehensive plan reflects the Town Council's intent with respect to the annexation policy as adopted.

Mr. Bateman introduced Economic Development Consultant Sam Finz.

Mr. Finz explained the purpose and background of the Annexation Policy and Procedure. He explained that the state code contains enabling legislation and that the contents of the policy are guided by state law. He stated that Loudoun County developed Urban Growth Area Plans for towns beginning in 1991, but that Lovettsville opted out of forming a Joint Land Management Area (JLMA) in 2000 because it wanted to control its own growth. He explained how the Purcellville Urban Growth Area Management Plan (PUGAMP) is Purcellville version of a JLMA and that the intent of all JLMAs is the same: to manage growth outside of the town limits. Mr. Finz stated that language calling for the creation of an Annexation Policy exists in the Town of Lovettsville Comprehensive Plan, and that the Town Council discussed creating a policy at the 2015 retreat to generate additional revenue and increase the Town's tax base. The Town is limited as to how much growth it can accommodate, but it could encourage economic development and growth in areas lying immediately outside of the Town limits. Mr. Finz stated that the Town Council recently adopted the Annexation Policy and Procedures, and explained that the overall goal of the policy is to ensure that the Town's population does not grow above 3,500.

Mr. Finz noted language in Chapter 9 and Chapter 11 of the Loudoun County General Plan supporting cooperation between towns and counties. Chairman McDonough asked Mr. Finz to confirm that Lovettsville does not currently have a JLMA that the Town manages jointly with the County, and Mr. Finz confirmed it. Mr. Finz explained that both the state law and County plan encourage cooperation between Lovettsville and Loudoun County, and read the guiding principles of the Annexation Policy. Chairman McDonough stated that neither the Planning Commission nor Town Council have ever expressed interest in annexing specific properties outside of the town, and Mr. Finz noted that annexing specific properties was not the intent of the Annexation Policy. Mr. Finz read the policy regarding annexation of properties for commercial and industrial purposes. Mr. Smith asked about the possibility of annexing one or more properties for an airport located in the County and whether the lack of a policy in the comprehensive plan to this effect would lead the County to disapprove of such an annexation. Mr. Finz responded that, in discussions between the Town and County regarding this issue, the County would ask why the Town is seeking to annex something that is not proposed or contemplated in the Town plan.

Chairman McDonough stated that he does not know whether the County would approve of an annexation for an airport or a Wal-Mart, and Mr. Smith stated that such an annexation might involve an airport or something else entirely like a school. Mr. Palko stated that, under state code, a traditional annexation could still be legally pursued by the Town even if the County contested it in court. He said the Town annexation policies do not override state law and that the Town policies are used by the Town and not by the County in reviewing annexation proposals. Chairman McDonough stated that the primary purpose of the Annexation Policy is so that people acquiring property along the edges of the Town can confirm that their property will be protected from adjacent future residential development and so prospective businesses outside of Town can determine whether the Town is interested in pursuing economic development involving their particular piece of property. Mr. Finz said that the Town policy provide general guidance regarding what the Town will and will not approve, but no one is precluded from filing an application. He explained that any annexation proposal would require the Town to weigh the benefits against the costs and to undertake a financial analysis to determine whether it is in the Town's best interest.

Mr. Bateman noted that any court reviewing an annexation proposal for an airport would likely take the Town and County plans into consideration and identify whether the plan contains policies or proposals regarding an airport. Mr. Finz agreed that a court most likely would, and Mr. Bateman noted that since the Annexation Policy states that an annexation must be consistent in all respects with the comprehensive plan, the lack of policies regarding an airport would certainly come into play from the court's perspective. Mr. Smith said that when the Planning Commission first discussed the topic of annexation in the context of the comprehensive plan amendment several months ago, the Commission dismissed the possibility of amending the plan to include discussions of annexation, yet now staff is

stressing the importance of the plan in deciding a potential annexation case. Mr. Bateman noted that the Commission and staff did not dismiss the issue of annexation during previous discussions, and Mr. Palko stated that there was no point in discussing annexation earlier before the Town Council had established the Town's preferred direction.

Mr. Finz continued reading the policies of the Annexation Policy and Procedures, and stated that the ability to provide public water and sewer services is a key factor in any annexation, and the cost of doing so would be incurred by the property owner or the County. He discussed the annexation map showing two dots corresponding to general areas where annexation efforts would be concentrated. He explained that the process for annexation, whether by boundary line adjustment, voluntary settlement initiated by a property owner, or traditional annexation initiated by the Town, is governed by state law, which is incorporated into the policy. He reviewed the procedure outlined in the Annexation Policy for all three types of annexations and noted the roles of Town and County staff and of the Town Council in approving annexations and selecting the method of annexation

Chairman McDonough noted that there were certain properties bisected by the Town boundary and asked, since the Town cannot provide services to these properties, how long the process would take to adjust the boundary to exclude these properties entirely if both the Town and owners did not contest it. Mr. Finz stated that he could not answer the question precisely, but that the process is a lengthy one and can take six months to a year or more. Mr. Finz stated that any change to the zoning map or comprehensive plan would occur as a separate process coming after the approval of the annexation. He noted that annexations by a method other than boundary line adjustment would go to the Commission on Local Governments and the Loudoun County Circuit Court. He identified the factors the Court would consider in determining whether to approve the annexation. He concluded by reiterating the purpose of the Annexation Policy to expand the Town's commercial tax base, not add residential development, and stressed the importance of any annexation being consistent in all respects with comprehensive plan.

Mr. Palko stated that the Town Council has approved the draft policy which will now be taken to the County to obtain their support, and noted that the County is in the process of updating its comprehensive plan.

Chairman McDonough noted that the policy is now the Town's policy, and the Commission has no interest in changing it. He stated that a committee would be meeting in six weeks to make sure the comprehensive planning policies are consistent with what the Town Council has adopted. Mr. Finz explained that the Annexation Policy has been reviewed by the Town Attorney and is consistent with state code. Mr. Bateman stated that the committee's responsibility will be to review what has been drafted in the comprehensive plan thus far to make sure that it is consistent with the guiding principles and specific policies of the Annexation Policy. Mr. Bateman stated further that he will be developing a draft of the comprehensive plan amendment and update all of the spreadsheets for the Commission once the committees have completed their work.

B. Zoning Ordinance Amendment Regarding the Minimum Rear Yard Setback in the C-2 District
Chairman McDonough introduced, and Mr. Bateman presented, this item. The Commission is being asked to initiate and schedule a public hearing on a zoning ordinance amendment reducing the minimum rear yard setback in the C-2 District from 35 to 20 feet for any principal building which abuts commercially- or industrially-zoned property. Mr. Bateman explained that the purpose of the amendment is to assist 7-Eleven in developing the best layout of the new convenience store, which corresponds to the third layout option referred to by the applicant as the home plate layout. The new layout pushes the building back towards the left rear property line so that the building would face diagonally towards the intersection of South Church Street and East Broad Way. The tower feature would be on the left side facing the square, but the building would be much closer to rear property line than is currently allowed. The rear yard setback in the C-2 District is 35 feet, whereas the home plate layout moves the building to within 20 feet of the rear property line. The new layout turns the canopy so that shorter side faces East Broad Way.

Mr. Bateman expressed that the 35-foot minimum setback requirement in the C-2 District is excessive unless a property abuts residential property, and that a requirement of 20 or 25 feet would be acceptable where commercial uses adjoin commercial uses. He said that the amendment included in the meeting packet preserves the required 35-foot rear setback in the C-2 District where a commercial property adjoins a residential use. Mr. Bateman stated that he is not recommending a change to the C-1 District at this time. Chairman McDonough asked Mr. Gentile whether he has any experience with this issue working in various local jurisdictions, and Mr. Gentile replied that he tends to work in more urban environments where the setbacks are reduced. Mr. Bateman explained that the goal should be to protect residential property from the potential adverse effects of adjoining commercial land use activities. In response to a question from Chairman McDonough as to whether there are any other properties in the C-2 District that currently back up to commercial properties, Mr. Bateman replied that, although no such properties currently exist, they may occur in the future once the Engle Tract is subdivided.

Chairman McDonough asked Mr. Bateman whether he is seeking a motion to schedule a public hearing on the draft amendment presented this evening, and Mr. Bateman replied in the affirmative and that it would be held on March 2nd.

Mr. Mueller asked why not make the minimum setback smaller, and Mr. Bateman replied that it must be established at some reasonable number. Chairman McDonough stated that it may be necessary to have access to the rear of the building, and Mr. Mueller stated his preference is for a rear yard setback requirement of 10 feet.

Mr. Bateman stated that the Commission should prescribe a reasonable distance that accounts for potential conflicts between adjacent properties and the activities that are conducted behind commercial buildings. He is recommending that the Commission establish the minimum that gets 7-Eleven to where they want to be with their new store.

Mr. Ciolkosz asked whether the concept they recently presented is a common one for their other stores and whether it yields a better outcome with respect to locations of loading areas and the dumpster enclosure. Mr. Bateman stated that new layout improves functionality and aesthetics, which were the main issues with previous layouts as were pedestrian and vehicle travel and maneuvering of trucks on the site. Mr. Ciolkosz asked whether the proposed layout was common, and Ms. Hise replied that, no, the home plate layout is unusual for 7-Eleven stores but was offered to address the Town's concerns. Mr. Fontaine asked why the rear yard setback requirement is larger than the setbacks for the front and side yards, and Mr. Bateman replied that the rear yard is the most important setback in ensuring separation between adjoining uses. Mr. Fontaine stated that he feels 15 feet is more appropriate where a commercial property adjoins similar commercial use. Mr. Bateman explained that the setback requirements in Town are designed for the small lots in Lovettsville, and he suggests leaving the setback requirement of 35 in place since one cannot anticipate all of the effects of a decision to reduce it to 5 or 10 feet. Mr. Gentile asked why the Town does not simply require a special use permit for the reduced setback for the 7-Eleven store rather than amending the requirement throughout the entire C-2 District. He suggested requiring a special use permit to establish a 10-foot minimum rear yard setback for the 7-Eleven property. Mr. Bateman responded that the Town Attorney has said that is not the best way to reduce the setback requirement, and Mr. Gentile asked whether she gave a reason for her opinion. Mr. Bateman replied that, although there is precedent in the Town for reducing a setback using a legislative approval process, such decisions can be perceived as arbitrary unless the records clearly indicate otherwise. Mr. Bateman explained why district-wide zoning decisions are easier to defend legally than those made for only one specific property.

Mr. Ciolkosz asked whether staff could word it so that the 20-foot or 10-foot requirement would apply only to commercial properties that abut other commercial properties. Mr. Bateman stated that the requirement can be lowered below that which is provided in the draft if the Commission so desires. A discussion

ensued about what the minimum rear yard setback should be where a commercial property in the C-2 backs up to other commercial property.

Motion: "I move to initiate the attached amendment to Section 42-259 drafted by staff and schedule a public hearing on the matter on March 2, 2016."
By: Commissioner Mueller
Second: Commissioner Fontaine

Discussion: Mr. Mueller stated that 20 feet is reasonable, but that 15 feet might be more reasonable when a commercial property abuts commercial or light industrial zoning. Mr. Mueller recommended that the amendment be modified to 15 feet. Mr. Bateman noted that he could advertise the amendment as currently written, and that the Commission can always discuss and agree to reduce the setback requirement after the public hearing since doing so would be less stringent to properties in the C-2 District. Mr. Bateman said that he was simply seeking to hold a public hearing on this amendment at this time.

Aye: Commissioners Ciolkosz, Gentile, McDonough, Mueller, Schilling, and Smith
Nay: None
Abstain: None
Absent: None

Draft Amendment (Attachment 1)

Information Items

There were none.

Next Meeting

Chairman McDonough noted that the next meeting will be held on February 17, 2016 and asked staff to confirm that the meeting time will be earlier than when the Commission typically meets. Mr. Bateman asked whether the Commission could meet at 7:00 p.m. or 7:15 p.m. After a discussion, the Commission agreed to meet at 7:00 p.m.

Comments from the Mayor and Commissioners

Mayor Zoldos thanked the Commission for inviting Sam Finz to speak on the topic of annexation and stated that there has been a firestorm surrounding the issue of annexing the two properties depicted on the map, but that he has personally spoken to those two property owners and they have expressed some interest in being annexed into the Town at some point in the future. The Mayor reported on current issues in Town and items that are being considered and will be considered by the Town Council, including the budget schedule, renumbering addresses on South Church Street and renaming Route 287 surrounding the Town Square, the recent winter storm and VDOT response, speed limits on Berlin Pike and establishment of a "No Truck" route on South Loudoun Street, the Council's legislative agenda, the recent string of thefts in the Town, the broadband networking summit and Town Association of Northern Virginia meeting he recently attended, and progress regarding the hiring of an economic development director. He also discussed upcoming events in Town.

Adjournment

Motion:
By: Commissioner Mueller
Second: Commissioner Gentile
Aye: Commissioners Ciolkosz, Fontaine, Gentile, McDonough, Mueller, and Smith
Nay: None
Abstain: None
Absent: Commissioner

There being no further business before the Planning Commission the meeting was adjourned at 9:08 p.m.

Respectfully submitted,



Harriet West, Town Clerk

Date Approved: December 20, 2017

Attachments:
Draft Amendment to Section 42-259

Sec. 42-259. C-2 Mixed Use Business District.

(a) *Scope and purpose.* The provisions of this section apply to the C-2 Mixed Use Business District. The purpose of this district is to permit certain commercial, office, retail type mixed uses which do not in any way detract from the residential desirability of the town. Properties in the C-2 district differ from a property that is zoned as a Town Center Planned Development District and is smaller in size and scale. All properties in the C-2 district shall be subject to the standards set forth in this section.

(b) *Permitted uses.*

- (1) Auto parts.
- (2) Electric or plumbing supply store, without outdoor storage and/or display.
- (3) Emergency care facility.
- (4) Lumber and/or building material sales without outdoor storage and/or display.
- (5) Mixed commercial use dwellings.
- (6) Child care center, day care centers or nursery schools subject to section 42-197.
- (7) Bed and breakfast inn subject to section 42-196.
- (8) Country inns.
- (9) Corporate center.
- (10) Schools: technical trade, vocational business.
- (11) Colleges and universities.
- (12) Dry cleaning, transfer facility only.
- (13) Offices, administrative, business and professional.
- (14) Offices, medical and dental.
- (15) Technology offices.
- (16) Banks and financial institutions without drive-through windows.
- (17) Government buildings.
- (18) Libraries.
- (19) Studio space for artists, crafters or writers.
- (20) Museum, cultural center.
- (21) Dance, music and/or fitness studio.
- (22) Park, public.
- (23) Restaurant, including curb service, without drive-through windows.
- (24) Country club, golf course.
- (25) Fraternal clubs, lodges, and community buildings for use by nonprofit organizations.
- (26) Movie theater, performing arts center.
- (27) Communications and broadcast studio.
- (28) Indoor recreation facilities.
- (29) Retail nurseries, greenhouses, farm and garden and farmers' markets, subject to the provisions of section 42-257(3).
- (30) Construction and/or sales trailer, subject to section 42-201.
- (31) Retail sales establishment, including the following:
 - a. Antique store.
 - b. Art gallery and/or framing.

- c. Arts and crafts studio and/or retail sales.
- d. Auto parts.
- e. Bakery.
- f. Bookstore.
- g. Candy store.
- h. Clothing and clothing accessories.
- i. Delicatessen.
- j. Fabric store.
- k. Florist.
- l. Food store.
- m. Funeral home.
- n. Gift shop and jewelry store.
- o. Hardware store.
- p. Hobby store.
- q. Music store.
- r. Office supplies, stationary store.
- s. Pharmacy.
- t. Photographic equipment and/or sales photographic studio.
- u. Sporting goods store.
- v. Computer sales and service.
- w. Tack store.
- x. Pet supplies, feed store.
- y. Furniture and appliance sales and/or service.
- z. Furniture and cabinet making shops.
- aa. Convenience stores without fuel sales

(c) *Conditionally permitted uses.* The following uses may be permitted within the C-2 district, conditional use permit process and criteria as established in this chapter:

- (1) Art kilns, foundries.
- (2) Convenience stores with fuel sales.
- (3) Banks and financial institutions with not more than two drive-through windows.
- (4) Auto repair shops.
- (5) Retail sales and/or service with outdoor storage and/or display.
- (6) Microbrewery.
- (7) Veterinary hospital.
- (8) Wireless communications equipment.
- (9) Contractor office in a permanent building with indoor and outdoor storage of related equipment, materials and vehicles.

(d) *Lot requirements.*

- (1) Minimum size: 6,000 square feet.
- (2) Minimum lot width: 50 feet.
- (3) Yard requirements:
 - a. Front yard: 25 for lots fronting Berlin Pike; 15 feet for all other lots.
 - b. Side yards: Ten feet.

c. Rear yard: 35 feet, except the minimum rear yard shall be 20 feet for any building or structure abutting a parcel located in a commercial or industrial zoning district.

(e) *Building height.* Thirty-five feet for principal structures, 15 feet for accessory structures.

(f) *Utility requirements.* All public utilities located within the C-2 zoning district shall be located underground and shall be designed per the article VI of chapter 30, required installation of public improvements, section 30-157, public utilities installation standards. (Ord. of 9-21-2006, § 3-13; Ord. of 11-20-2008; Ord. No. 2009-11-19-01, 11-19-2009; Ord. No. 2010-05-01, 5-13-2010; Ord. No. 2012-01-02, 1-26-2012)