

Town of Lovettsville

Minutes of the Planning Commission Meeting March 1, 2017

Call to Order/Pledge of Allegiance

Chairman Frank McDonough called the Meeting of the Lovettsville Planning Commission to order at 7:30 p.m. on March 1, 2017 at the Lovettsville Town Hall, 6 East Pennsylvania Ave, Lovettsville, Virginia.

Pledge of Allegiance

Chairman McDonough led those present in the Pledge of Allegiance.

Present at Meeting

- Chairman Frank McDonough
- Commissioner Christopher Hornbaker
- Commissioner Joseph Mueller
- Commissioner Shiva Schilling
- Commissioner Stephanie Wolf
- Commissioner Nate Fontaine

Absent

- Commissioner Tom Ciolkosz

Staff Present

- Zoning Administrator Joshua Bateman

Public Comment

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

Additions/Deletions/Modifications to the Agenda

Mr. Mueller moved to change the order of consideration of items under Item 6 by switching items b. and c. Chairman McDonough asked whether there was any objection. There being none, Chairman McDonough stated that Items 6.a. and 6.b. will be switched in terms of the order in which they will be considered.

Planning Commission Minutes

There were none.

Zoning Administrator Monthly Activity Report – January 2017

Mr. Fontaine asked Mr. Bateman about the status of the business seeking to open down the street on East Pennsylvania Avenue. Mr. Bateman replied that he has given the new owner the zoning application materials but has not yet received the completed forms. Mr. Bateman explained the nature of the proposed uses, which include an art studio and coffee shop, and noted the property is currently zoned C-1. Mr. Mueller asked Mr. Bateman to describe impacts to the floodplain on the Loudoun West property from proposed grading activities. Mr. Bateman described the location of the 100-year floodplain, how the floodplain was changed by the Town Center Subdivision, and the process for changing the mapped limits of the floodplain in this area by the developer of Loudoun West. He stated his intent to require the developer to bond for the costs of undertaking the floodplain analysis to correct this historic mistake in that part of town.

Ms. Wolf asked Mr. Bateman about the status of agency review comments on the site plan for Heather's Kids Daycare, and Mr. Bateman replied that he is presently waiting on VDOT comments on the latest

submission. He explained that the project is being reviewed by Tom Van Poole in the VDOT Northern Virginia District Office.

Action/Discussion Items

A. LVZA 2016-0005: Public Hearing on Zoning Ordinance Amendment to Clarify Zoning Designation of Annexed Properties.

Chairman McDonough opened the public hearing. Mrs. Schilling read the public hearing notice. Mr. Bateman stated that he and the Town Engineer met this afternoon with the fire department's civil engineer to discuss the concept plan for the new station. He explained the need to change the 40-foot maximum front yard setback in the CRA-1 District or eliminate it altogether given the department's need for a long apron for egress of fire and rescue vehicles. He described further the need to increase the 30-foot maximum building height restriction either by increasing the overall height limit to 35 feet or by exempting fire and rescue stations specifically. Mr. Hornbaker suggested distinguishing between residential and non-residential uses, and Mr. Bateman said that that is a third option. Mr. Bateman displayed the proposed amendment on the overhead projector screen.

Chairman McDonough asked whether the Commission wanted to amend the motion proposed by staff, and Mr. Bateman proposed that the amendment distinguish between single-family detached dwellings and all other permitted uses. A discussion followed on whether to exempt only fire and rescue stations from the maximum height requirement or make the existing requirement applicable only to single-family dwellings. Mr. Fontaine said he is hesitant to write the requirement for only one project, and a discussion followed on whether to broaden the proposed exemption for other uses. Mr. Bateman expressed concerns about the 30-foot height limitation affecting the architecture of the proposed fire station building. He said that a pitched roof like the one on the fire station in Neersville might look better.

Mr. Hornbaker recommended consistency regarding whether numbers in the ordinance are included in numeric form or spelled out. Chairman McDonough asked how the clock tower was exempted, and Mr. Bateman replied that that exception is included in Section 42-294. He said that the exception was created when the district was adopted.

Mr. Bateman asked for the Commission's preference regarding the maximum setback. Mr. Fontaine said he likes having a minimum, and Mr. Fontaine said that if you remove the maximum of 40, the 20-foot minimum would allow parking in front for future uses. A discussion followed on whether parking should be allowed in front or relegated to the rear of buildings as with other commercial districts. Mr. Bateman suggested deleting the maximum except for single-family detached uses. Mr. Fontaine asked what the front yard setback is in the other commercial districts and Mr. Bateman replied by citing the setback in the C-2 District. Chairman McDonough reminded the Commission that this setback applies to all properties annexed by the Town regardless of location. Mr. Bateman recommended a 25-foot minimum setback and no maximum setback. Mr. Mueller said that this could result in farm machinery and other equipment being displayed in the front yards of buildings at prominent gateways. A discussion ensued about the proper front yard setback for properties located at the edges of the Town that might be candidates for annexation and the likelihood that various properties around the Town will be annexed. Mr. Bateman said that the reality is that a 40-foot maximum setback will not work for the new fire station and said that the Commission must address this issue at a minimum.

Mr. Hornbaker said that every other piece of property to be annexed, like the property behind the Kingsridge Subdivision, must be rezoned in order to be developed. He said there may not be existing structures on them as with this property. He suggested making the maximum setback more restrictive for existing structures compared to new structures. Mr. Bateman said the proposed requirement applies to new structures but does not affect existing structures other than by making them nonconforming. Mr. Hornbaker asked whether it would be a moot point since a rezoning would be necessary to construct new residences on annex land practically speaking. Mr. Bateman replied that Mr. Hornbaker's assumption is reasonable for residential uses and explained why this is so. A discussion ensued about the process of zoning land annexed by the Town at the time of annexation and later before the property can be

developed. Mr. Fontaine said the district allows by-right restaurants, so there are certain uses that will have no need to request rezoning for higher-intensity use. Mr. Bateman replied that the Town Council can rezone the property at any time after the annexation and can proactively rezone in accordance with the land use plan.

Chairman McDonough asked whether the Commission can impose time limitations on how long a property can be zoned CRA-1, and Mr. Bateman replied in the affirmative but said he does not recommend this because such deadlines can be missed. A discussion followed regarding the zoning of property annexed by the Town and its application to residential and commercial properties. Mr. Hornbaker recommended a minimum front yard setback of 25 feet and a maximum of 40 feet for all uses except for fire, rescue, police stations, and government and public uses. The Commission discussed this proposal and Mr. Bateman drafted the change for Commissioners to view. The Commission discussed the proposed amendment further and agreed to exempt fire, rescue and police stations from the maximum setback requirement in the CRA-1.

Motion: I move to forward LVZA 2016-0005, as modified by the Planning Commission on January 18th, February 1st, and March 1, 2017 to the Town Council with a recommendation for approval.”
By: Commissioner Hornbaker
Second: Commissioner Schilling
Aye: Commissioners McDonough, Fontaine, Hornbaker, Mueller, Schilling, and Wolf
Nay: None
Abstain: None
Absent: Commissioner Ciolkosz

B. LVZA 2017-0002: Initiate Amendment to Article II, Division 1 of the Zoning Ordinance to Comply with Traffic Impact Analysis (TIA) Law and Regulations

Mr. Bateman explained the purpose and described the need for drafting an amendment to the zoning ordinance to require a traffic impact analysis for projects meeting certain minimum criteria. He recommended that the Commission initiate the amendment so that he could draft and bring it back for the Commission’s consideration at the next meeting.

Motion: “I move to initiate and authorize staff to draft an amendment to Article II, Division 1 of the Zoning Ordinance in order to require that applicants for certain rezoning and conditional use permit applications prepare a Traffic Impact Analysis as required by the state law and regulations and that staff submit the same to VDOT for review and comment.”
By: Commissioner Fontaine
Second: Commissioner Hornbaker
Aye: Commissioners McDonough, Fontaine, Hornbaker, Mueller, Schilling, and Wolf
Nay: None
Abstain: None
Absent: Commissioner Ciolkosz

C. LVZA 2016-0004: Amendment to Article XI (Sign Regulations) to Comply with *Reed v. Town of Gilbert*

Mr. Bateman reviewed the amendment, comments from the Town Attorney and staff responses.

Page 1: The Town Attorney identified six definitions lacking corresponding usage in the sign regulations. Mr. Bateman said that he did not find that many but did make sure that definitions for terms that have corresponding requirements remain in the draft. He said that Liz has not yet issued a second set of comments. He also explained that the Town Attorney found ambiguities between sections 42-399 and

42-401 involving signs for which regulations are not included. He said that he removed corresponding provisions from Section 42-399 when such signs are not allowed. Mr. Bateman read the Town Attorney's comment regarding the maximum height of signs included in the definitions and said that he addressed this by deleting any such height requirements from the definitions. He read the Town Attorney's comment regarding awning and canopy signs and explained the differences between these two types of architectural features.

Page 2: Mr. Bateman said he deleted the definition of construction signs and notified the Commission that the new provision for such signs has been relocated to Section 42-407(g).

Mr. Bateman explained the logic behind changing the definition of government signs to include signs on property where the Town has an easement. He also explained the purpose for adding a definition for the term "individual establishment."

Page 4: Mr. Bateman said he added a definition for the term "sign copy" per the Town Attorney's request. He read and explained the purpose for adding an exemption to Section 42-401 for government signs.

Page 5: In the second paragraph of subsection (a), Mr. Bateman noted that he moved these provisions to Section 42-401 to expound upon the purpose and intent of the sign regulations. Mr. Hornbaker suggested striking the reference to Section 42-400 since it is no longer correct, and Mr. Bateman agreed to change that reference to "herein."

Page 6: Mr. Bateman read the Town Attorney's comment on the method prescribed for measuring sign area. He said that the proposed ordinance amendment is designed to simplify this calculation by drawing a simple shape around irregularly-shaped signs to determine their area. Mr. Bateman read the Town Attorney's comment and staff's response to Section 42-402. He further stated that the change to the method for calculating sign height was in response to direction from Ms. Wolf. Mr. Bateman explained that it can be difficult to measure sign area for irregularly-shaped signs, and after a brief discussion, the Commission agreed that shapes used for this purpose should be limited to circles, squares, rectangles and triangles.

Page 7: Mr. Bateman explained that the Town Attorney's comment that businesses seeking to install signs in the VDOT right-of-way should obtain permission is irrelevant since VDOT does not give such permission. He said that he regularly picks up and discards such signs when he finds them and would likewise be disinclined to give such permission on behalf of the Town.

Mr. Bateman explained that paragraph 8.c. was deleted and the language amended so that sign lighting cannot flash or give the appearance of movement.

Page 8: Mr. Bateman stated that the requirements have been changed so that the fascia of a fuel canopy cannot be illuminated per Mr. Fontaine's direction.

Page 10: Mr. Bateman explained that 11.g. was deleted because real estate signs are now regulated as temporary signs in Section 42-407.

A discussed commenced on the character of lighting used to illuminate fuel canopies and signage thereon.

Page 11: Mr. Bateman explained that he added signs for food and produce stands to the permitted sign types in the commercial and industrial zoning districts.

Page 12: Mr. Bateman explained that window signs may now include not more than one internally-illuminated sign under the rules provided in this section.

Page 13: Mr. Bateman explained the Town Attorney's concerns regarding the lack of sufficient venues for free speech for residential property owners since the ordinance does not allow much in the way of signage in residential zoning districts. He read the allowable sign types on residential lots and in the resident districts per the amendment. Mr. Bateman said the amendment is restrictive but hopefully allows sufficient opportunities for the exercise of free speech. Mr. Hornbaker asked whether flags are considered signs, Ms. Wolf read the definition of a flag, and a discussion ensued about what types of flags are considered signage. Mr. Hornbaker suggested adding flags to the list of permitted sign types in residential districts, and the Commission discussed the issue before directing Mr. Bateman to do so.

Mr. Bateman explained the purpose of listing the residential and non-residential districts. Mr. Hornbaker asked whether the restriction on flags would limit the number that could be displayed on residential lots to one. Ms. Wolf responded in the affirmative, and Mr. Bateman explained that flags of states and nations are exempt. Mr. Bateman asked whether the Town Center HOA has restrictions on residential signage, and Mr. Hornbaker replied that they do. Mr. Bateman suggesting allowing up to two flags on a residential lot, and Chairman McDonough asked whether there was any objection to this change. Mrs. Schilling said she does not understand why the Commission is restricting flags on residential properties, and a discussion followed at the conclusion of which the Commission agreed to allow up to two flags on a residential lot.

Mr. Fontaine asked Mr. Bateman to clarify whether flags are limited to two square feet, and Mr. Bateman replied in the negative and explained that this applies to attached signage only.

Mr. Bateman explained that limiting monument signs in residential district to four square feet is overly restrictive. He suggested increasing the allowable area. He read the applicable provision. Mr. Hornbaker suggested requiring a sign permit for such signs which are greater than four square feet. A discussion followed, and the Commission agreed to require a permit for signs greater than four square feet.

Mr. Bateman read the provision regarding security and warning signs and explained that signs authorized or required by federal and state laws would be permissible in the Town sign regulations. He said that one additional sign is allowed per residential lot.

Mr. Bateman gave examples of non-residential uses in residential zones. He said that such uses are allowed to have signage that is larger than residential uses are permitted to have.

Page 14: Mr. Bateman explained the corrected reference to the state code section. He further explained how the draft addresses the Town Attorney's comment in paragraph b.

Page 15: Mr. Bateman explained why he added standards for produce stands and modular food establishments.

Page 17: Mr. Bateman explained that the amendment to paragraph a. is intended to exclude other sign types permitted in a particular zoning district. Mr. Bateman read the proposed restrictions and provisions regarding temporary signs.

Page 19: Mr. Bateman explained the proposed provisions pertaining to nonconforming signs and used the LED sign at the fire station as an example of one such sign. Mr. Bateman said the change references the nonconforming use provisions of the zoning ordinance and described how those provisions limit whether and how nonconforming signs can be moved, enlarged, or changed. Mr. Fontaine said that if the fire station is annexed and a new station built, the use of the old station would change. Mr. Bateman stated that this would not prevent a new user from re-purposing and re-facing the existing LED sign. A discussion ensued about whether a change in use would necessitate removal of the sign. Mr. Bateman explained that the sign would be considered a nonconforming structure and would be allowed to be rebuilt if destroyed by an act of God. Chairman McDonough asked why the LED sign is objectionable to the Commission and why, given that it is not located across from a residential neighborhood, the Commission

is looking for ways to tear it down. A discussion of the fire station LED sign ensued. Mr. Bateman said the Commission will get another opportunity to decide the final disposition of the sign when it considers the fire company's annexation application, and he believes the sign will be removed but understands that the Town cannot compel them to.

Mr. Bateman stated that he will make the changes to the draft amendment discussed here this evening and schedule the amendment for a public hearing on April 5, 2018.

Motion: I move to schedule a public hearing on April 5, 2017 on LVZA 2016-0004 as amended by the Planning Commission on March 1, 2017.
By: Commissioner Wolf
Second: Commissioner Hornbaker
Aye: Commissioners McDonough, Fontaine, Hornbaker, Mueller, Wolf, and Schilling
Nay: None
Abstain: None
Absent: Commissioner Ciolkosz

D. Amendment to Bylaws and Rules of Procedure

Chairman McDonough said that the information members have in their packet is not complete and should include a paragraph distributed by staff prior to the meeting. He said that the Commission may wish to table this until the information is complete and the Commission is better prepared. Mr. Hornbaker said he felt it is ready to go as it is. Mr. Hornbaker said it was previously brought before the Commission at the last meeting for consideration without prior notice and that the amendment was discussed and additional changes were made. He said it is being brought tonight for consideration by the Commission with prior notice having been given and it should come before the Commission in the form that it is currently in. Chairman McDonough said that he cannot object to someone making a motion to vote on this. Ms. Wolf asked Mr. Bateman whether he has the omitted information. Mr. Bateman replied in the affirmative, and Ms. Wolf asked Mr. Bateman whether he drafted a motion. Mr. Bateman replied that he had not, but that the motion to adopt is substantially similar to the one considered at the last meeting.

Chairman McDonough stated that the missing information includes a reference to the state code and methodology for approval of requests for Commissioners to participate by electronic communication means. He said a Commissioner could call in at 7:25 p.m. prior to a meeting and there would be no way to disapprove it or set up the necessary equipment in time. Chairman McDonough said that his intention previously was to forward the previous version of the amendment to the Town Attorney for additional minor editing, but since that version of the amendment did not pass, he made the necessary changes himself and incorporated them into a single policy statement in the form presented this evening. The Town Attorney has approved it as written and made no additional changes to it, and the Town Council is planning to adopt this amendment verbatim. He said there were some concerns cited previously about the granting of permission by the Chairman, but that the Chairman is limited to the reasons established in the Virginia Code Section 2.2-3708.1.

Mr. Mueller moved to amend the draft as presented to include a new paragraph in Section (F.)(4) at the end of the paragraph (4) saying: "Members requesting this exception would be required to submit such a request in writing to the Chairman and Town Clerk by 12:00 noon on the day of the meeting in question. The Chairman shall grant permission based on the circumstances set forth in Virginia Code Section 2.2-3708.1." The motion was seconded by Ms. Wolf. Chairman McDonough asked whether there was any discussion on the motion.

Mr. Fontaine said, as he as stated before, that this is a small town and public officials owe it to the citizens to sit at the dais and face them in person. He said that the rules require a quorum, and if a member is absent the Commission can conduct business as long as a quorum is present. He said another concern he has involves a member being on a prescription drug and being unable to function

effectively whereby Commissioners and the public would be unable to confirm that fact via a video screen. Chairman McDonough asked Mr. Fontaine whether his preference is to have such a drugged person here, and Mr. Fontaine replied that the Commission can determine this if said person attends in person. He said he is wholeheartedly opposed to any amendment allowing members to participate through electronic communication means, that it represents the wrong direction given that citizens are currently complaining about transparency, and that members should have to attend in person and face the public when making decisions on their behalf.

Mr. Mueller pointed out that the motion was made to add the paragraph to the amendment, not to approve the actual amendment to the bylaws.

Mrs. Schilling said that, based on the way Mr. Fontaine has just stated this, she has decided to make a different decision from the last meeting and agreed that the amendment should not be adopted. Ms. Wolf said the reason why she supports it is because she feels the Planning Commission does not need to be more restrictive than the Town Council and state law since the Commission is legally authorized to allow such participation. She said the Commission is not higher or mightier than the Town Council. Mr. Hornbaker agreed with Ms. Wolf's last statement, but said the first time the Commission heard about this was when he walked through the door and the equipment was being set up. He said that, unlike the state of Virginia, we do not have avenues to allow the typical citizen to have the same opportunity to participate. He said that now is not the best time to move forward with the amendment in the form that it is in, although the Town's technological capabilities are constantly improving. Mr. Hornbaker said that he still wants to amend the proposed amendment to include a notification process and to have automatic approval based solely on the criteria established in the state law.

Mr. Hornbaker moved to postpone consideration of the amendment definitely until the Town has the capability to allow for live streaming of these meetings so that Town citizens have the same capability to participate by one-way electronic communication means in real time. He said there were other avenues that were presented such as the comment letter read during the previous meeting, but that the previous discussion of this issue raised additional concerns regarding such participation. He cited one such concern about how this capability was not extended to a previous Planning Commissioner who is no longer on the Commission. He suggested waiting to amend the bylaws until the Town has the capability to allow citizens to participate electronically.

Chairman McDonough said that the Commission can amend the bylaws in the future as the Town's technological capabilities improve regardless of whether this amendment is approved tonight. He asked Mr. Hornbaker whether his experience with the Information Flow Committee suggests that participation by the general public would be only one way, that is, Commissioners would not be able to see and interact with people sitting at home. Mr. Hornbaker replied that this is correct. Chairman McDonough said that Ms. Wolf's video and audio feed at the last meeting was two way, meaning that Commissioners could see and interact with her. He asked Mr. Hornbaker how this is a transparency challenge. Mr. Hornbaker replied that this is because we are not offering the same opportunity to the general public. He explained that a Commissioner should not be able to "phone it in" if nobody else can. Mr. Hornbaker said there will be other citizens who meet the criteria in the state law who are unable to participate in this way.

Mr. Fontaine asked Chairman McDonough what the driving force for this is and why a formal process is needed. He said if someone has a medical disability and is unable to attend a meeting, perhaps they shouldn't be attending the meeting. Chairman McDonough said his initial indication regarding this issue, which goes back to last year, involves when Town Council used this method to allow Councilman McIntyre to participate when he had the flu, and that it was new then and had been allowed in their procedures in accordance with a much broader authorization than what is being contemplated here. He said that as Chairman he prefers to follow the Council's lead with respect to procedures to the maximum extent possible. He asked rhetorically whether, if the Council has this tool to enable them to accomplish the Town's business, then why shouldn't the Commission have this same capability. Chairman McDonough said that, when Ms. Wolf had surgery, it seemed like an ideal opportunity to put electronic participation into practice, so that is why it came up at that time. He said that he sees this as a tool in the

tool belt and not as a way to give Commissioners something that the Town citizens don't have. He said that the Town Council and its committees are continually finding ways to include people in what is going on in this chamber and that he believes the Town Council wants to extend this authorization to the Planning Commission as well. He said that the amendment is not out of character for the move to bring the Commission's meetings into the electronic age that we are currently in. Chairman McDonough said it is great that the Commission has been given an opportunity to do this, but we may be told by the Town Council that we have to do so anyway. The Town Council may include the Commission when they amend their procedures despite the fact that the Commission is free to amend its procedures as it seems fit.

Ms. Wolf moved to the previous question and call for a vote on Mr. Mueller's amendment. Mr. Hornbaker rose to a point of order and stated that there is a motion on the table. Mr. Bateman agreed and said consideration of Mr. Mueller's motion first is literally out of order. He explained that the amendment to postpone must be decided first. Chairman McDonough asked whether the question on the floor is to postpone this to a date to be determined later. Mr. Hornbaker clarified that his motion was to postpone definitely until such opportunities for participation are made available to the public. The motion was seconded by Mr. Mueller.

Mr. Mueller asked what the timeframe is for future consideration of the amendment. Mr. Hornbaker said that on Monday night the Information Flow Committee recommended that the Town move forward with a service that provides up to 500 hours of streaming video and would be available for Council and Commission meetings. Both bodies could utilize this service to provide for faster and more efficient management of the agenda and minutes as well as provide streaming service to the public by the beginning of the next budget cycle, that is, within months. Chairman McDonough called for a vote. Mr. Mueller, Mrs. Schilling, Ms. Wolf, and Mr. Hornbaker voted aye. Mr. McDonough and Mr. Fontaine voted no. The motion carried to postpone definitely consideration of amending the bylaws to allow participation by electronic means until such time as live streaming of public meetings is made available.

Next Meeting

Chairman McDonough informed the Commission that the next meeting is scheduled for March 15, 2017.

Committee Reports

Chairman McDonough suggested limiting to committee reports to the second meeting of each month. He proposed amending the bylaws to reflect this and asked whether there were any objections. There were none.

Comments from the Commissioners

Mr. Mueller gave an update of the Infrastructure Committee's recent activities and public meeting on changing the street name and reassigning addresses affected on South Church Street.

Adjournment

There being no additional business to come before the Planning Commission, the meeting adjourned at 9:13p.m.

Respectfully submitted,



Harriet West, Town Clerk

Date Approved: June 20, 2018

Attachments:

None