

Town of Lovettsville

Minutes of the Planning Commission Meeting May 3, 2017

Call to Order/Pledge of Allegiance

Chairman McDonough called the meeting of the Lovettsville Planning Commission to order at 7:30p.m. on May 3, 2017 at the Lovettsville Town Hall, 6 East Pennsylvania Ave, Lovettsville, Virginia.

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

Pledge of Allegiance

Chairman McDonough led those present in the Pledge of Allegiance.

Staff Present

- Zoning Administrator Joshua Bateman
- Town Manager Laszlo Palko

Public Comment

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

Additions/Deletions/Modifications to the Agenda

There were none.

Planning Commission Minutes

There were none.

Zoning Administrator Monthly Activity Report

Chairman McDonough said that the monthly report was a significant document. He asked whether there were any questions regarding Mr. Bateman's March report. There being none, Chairman McDonough stated that the items covered in the reported were dated and asked Mr. Bateman to elaborate on more recent activities. Mr. Bateman replied that staff is currently very busy with planning and zoning matters and that there is considerable construction activity underway. He said one of the things he will try to do is post more information about such activity on the Town's website, including the potential lane closures on Route 287 associated with construction of turn lanes and the second entrance to the Heritage Highlands subdivision. He said good communication will help mitigate potential complaints.

Chairman McDonough asked about the status of the Keena Subdivision. Mr. Bateman replied that the owner plans to submit construction drawings this week. Mr. Fontaine asked about the timeframes associated with the Town Square Master Plan, and Mr. Palko said that staff is meeting with the consultant and branding people on May 16th to determine what information they need to begin work.

Action/Discussion Items

A. LVZA 2017-0002: Public Hearing on Zoning Ordinance Amendment Requiring a Traffic Impact Analysis (TIA) for Certain Development Applications

Chairman McDonough introduced the item, opened the public hearing and read the public hearing notice regarding the enclosed zoning ordinance amendment to Article II (Administration and Enforcement), Division 1 (Generally) of the Zoning Ordinance necessary to comply with §15.2-2222.1 of the Code of Virginia and 24 VAC 30-155 of the Virginia Administrative Code. The notice explains that the state code requires submission by an applicant of a traffic impact analysis for certain rezoning proposals and conditional use permits that will substantially affect transportation on state highways, and that such proposals must then be submitted to VDOT for review and comment. If approved, the proposed amendment would be added to Section 42-37 of the Zoning Ordinance.

Mr. Bateman presented background information on the proposed amendment and noted that the size of projects for which a traffic impact analysis (TIA) is required has been changed in the state code such that only larger projects now require a TIA. He stated that the only TIA submitted for a project in town was for the new 7-Eleven convenience store, and that this was because the number of trips generated by that redevelopment met VDOT's criteria with respect to peak hour trips. Mr. Bateman explained that, since the time of that approval, only rezonings and conditional uses that generate 5,000 average daily trips require a TIA, which constitutes a major change. He stated that a TIA requirement has never been incorporated into the Town zoning ordinance in any case, and that the Town never witnessed payment by 7-Eleven of applicable fees for submitting a TIA to VDOT since these were paid directly by the applicant. He noted that a traffic impact analysis is an important tool for understanding the transportation impact of a particular development project and that staff uses the pre-development and post-development data contained therein in the staff report and recommendation.

Chairman McDonough asked whether there were any questions regarding the presentation. There were none. Chairman McDonough asked whether anyone was signed up to speak on this matter. Mr. Mueller replied in the negative. Chairman McDonough asked whether anyone from the public has submitted written comments, and Mr. Bateman replied that he was not aware of any. Chairman McDonough closed the public hearing and stated he would now entertain a motion.

Motion: I move to recommend approval of LVZA 2017-0002 as presented in order to require that applicants for certain rezoning and conditional use permit applications prepare a Traffic Impact Analysis and submit the same to VDOT for review and comment.

By: Commissioner Mueller

Second: Commissioner Hornbaker

Discussion: Mr. Fontaine stated that when he read through this the first time, he noted the 5,000 average daily trips requirement. He asked whether this requirement could be included in the amendment because conditional use permits whether large or small generate traffic impacts regardless of whether they are required to be submitted to VDOT. Mr. Bateman stated his desire to avoid having to amend the Town's zoning ordinance and conditional use permit requirements every time the state amends the TIA regulations. He said that the reference to the state law and regulations will suffice to keep the Town ordinance consistent with guidance published by VDOT pursuant to the state law and regulations. He noted the law only makes rezonings subject to the TIA requirement, but that VDOT guidance documents expound upon the law by concluding that conditional use permits are subject to the requirement as well. He explained that the technical guidance is very detailed and specific.

Mr. Fontaine asked how the law impacts residents through the Town Code, and Mr. Bateman replied that the TIA requirement would be unlikely to affect residents since a TIA is only required for only the largest projects. Mr. Bateman explained how the law has changed and how the effect of that change was to reduce the number of projects

that will likely require a TIA going forward.

Chairman McDonough asked whether the change would necessitate changes to the ordinance with respect to the information required for conditional use permits. Mr. Bateman said no and explained that civil engineers will use the international Trip Generation Manual to determine whether a TIA is necessary. Mr. Hornbaker asked whether it was possible to change this standard to one that is stricter, and Mr. Bateman replied in the negative and explained that the stricter requirements are precisely what changed.

Chairman McDonough called for a vote on the motion.

Aye: Commissioners McDonough, Mueller, Schilling, Fontaine, Wolf, and Hornbaker
Nay: None
Abstain: None
Absent: Commissioner Ciolkosz

B. LVZA 2017-0004: Amendment to Zoning Ordinance (Article II, Division 1) Clarifying the Requirements for Zoning Permits and Certificates.

Mr. Bateman presented this background information regarding the proposed zoning ordinance amendment to Article II (Administration and Enforcement), Division 1 (Generally) to clarify and differentiate the procedures for issuance of zoning permits, zoning certificates and certificates of occupancy. He explained that the difference between permits and certificates generally is that the former authorizes a new activity whereas the latter certifies whether an existing activity is consistent with zoning ordinance. Mr. Bateman explained the difference between certificates of occupancy that the Loudoun County Building Department issues and the occupancy permit the Town issues at the end of construction. He said that he recently encountered a situation whereby a builder in town constructed part of a dwelling in the required rear yard setback, which occurred despite checks that exist in the Town's permitting process. He noted that he caught this because of the requirement for a Town occupancy permit. Mr. Bateman explained how this happened and how he ordered the violation corrected by making the builder demolish the covered porch constructed in the setback. Mr. Bateman explained that all permits and plats required as part of the approval process are intended to catch mistakes like this. Chairman McDonough asked whether there were any questions regarding Mr. Bateman's presentation.

Mr. Hornbaker referred to Section 42-33 (d) paragraphs 1 and 2 and noted that the amendment changes all in-ground and aboveground swimming pools to minor improvements, whereas they used to be considered major improvements. He stated that swimming pools occupy an area almost as large as the footprint area of the main structure and asked for staff's reasoning for this change. Mr. Bateman replied that the ordinance as currently written considers the construction of an aboveground pool which does not involve site grading to be a minor improvement. All other aboveground and in-ground pools were considered major improvements. Mr. Bateman stated his view that the basis for differentiating pools based on site grading is vague and is instead proposing to eliminate this distinction so that all pools are considered a minor improvement.

Mr. Fontaine noted that small lots like those in Town Center would be unlikely to require significant site grading, but would likely require only minor site grading to make the pool site level as with other permits for fences and accessory structures. Mr. Bateman stated that the previous requirement for a zoning permit to undertake any site grading has been eliminated since the County already requires a grading permit for this activity if greater than 10,000 square feet in area. Since the typical lot is already smaller than this, the way to regulate these smaller grading activities would be to add it back to this section as either a major or minor improvement. Mr. Bateman questioned what he would be regulating if the Commission did require a permit for grading activities since the zoning ordinance contains no restrictions pertaining to land disturbance. Mr. Hornbaker proposed that a distinction be

made between in-ground and aboveground spas and pools, and Mr. Bateman said the rationale behind the requirement as written seems to be that aboveground pools have less of an impact than in-ground ones. Mr. Bateman said he does not recall approving any aboveground pools or spas since he has been with the Town. Mr. Fontaine noted the construction of several in-ground pools in Town Center that are extensive. Mr. Bateman noted the recent permitting and construction of a pool on Fox Meadow Drive just outside of the Town Center Subdivision. He explained the nature of regulations of pools by the County. A discussion followed on whether to make aboveground pools a minor improvement and in-ground pools a major improvement. The Commission unanimously agreed to this change.

Mr. Bateman explained that the more significant amendment to this section involves the size of the accessory building above which the structure would be considered a major improvement. He said that the current requirement of 64 square feet is restrictive and that this is the smallest storage building one can buy at Home Depot. He suggested increasing this to 150 square feet and stated his opinion that this would cause minimal impact to homeowners installing accessory storage buildings and building additions. He asked whether there were any issues with making this change, and there were none.

Mr. Bateman explained the amendment with respect to zoning certificates and occupancy permits. He read proposed Section 42-31 paragraph (c) which has been amended to state that any change in a use or ownership resulting in the need for additional off-street parking would now require a zoning permit. He explained several businesses in town that have experienced this type of situation.

Motion: I move to schedule a public hearing on LVZA 2017-0004 on June 7, 2017 with the amendments as agreed upon by the Planning Commission on May 3, 2017.
By: Commissioner Schilling
Second: Commissioner Mueller
Aye: Commissioners McDonough, Mueller, Schilling, Fontaine, Wolf, and Hornbaker
Nay: None
Abstain: None
Absent: Commissioner Ciolkosz

C. LVZA 2017-0005: Initiate Amendment to Zoning Ordinance (Article VII) Regarding Uses in Commercial and Industrial Zoning Districts.

Mr. Bateman said that he does not have a presentation at this time, but plans to conduct research and present information regarding an amendment to Article VII (Commercial and Industrial Zoning Districts) of the Zoning Ordinance amending the uses permitted by-right and with a conditional use permit in the Town's commercial and industrial zoning districts. Ms. Wolf recommended the creation of a comparison chart and Mr. Bateman agreed and explained what such a chart would show. He said the Commission would direct the amendment and staff would draft the specific revisions. Chairman McDonough asked whether there were any questions. There were none, and Ms. Wolf asked whether Commissioners understand the reason for amending the zoning ordinance in this regard. Mr. Bateman said that the need for such an amendment is expressed in the comprehensive plan.

Motion: I move to initiate Zoning Ordinance Amendment LVZA 2017-0005 in order to amend the uses permitted in the commercial and light industrial zoning districts and add definitions and performance standards, as necessary.
By: Commissioner Fontaine
Second: Commissioner Hornbaker
Aye: Commissioners McDonough, Mueller, Schilling, Fontaine, Wolf, and Hornbaker
Nay: None

Abstain: None
Absent: Commissioner Ciolkosz

Information Items

A. Zoning Amendments Checklist

Mr. Bateman explained the FY 2018 Zoning Ordinance Amendment Checklist and said that it contains more than enough amendments to keep the Commission busy for the next year. He noted that amendments directed by specific policies in the comprehensive plan contain references to those policies. Mr. Bateman stated that the Town Council approved this in March and that 1, 2, 3 and 5 on the list are either in the process of being adopted or have already been adopted.

Ms. Wolf noted that she did not see anything on the list regarding a comprehensive streetlight plan. Mr. Bateman replied that this is because he was not certain about the Commission's intentions and whether the lighting plan would involve an amendment to the zoning and subdivision ordinances. He said that policies regarding the creation of a streetlight master plan were not included in the comprehensive plan when it was updated and that it was always referred to as a plan during those discussions. Chairman McDonough stated that requirements for streetlights are already included in the subdivision ordinance, and that his understanding is that the Commission wanted to establish some sort of governance to protect the night skies, even though the Dark Skies initiative is not an officially recognized set of standards in North America or Europe. He said that this was the primary reasoning and that the Commission wanted rules on lumens and lighting direction, not merely on the design of streetlights. Mr. Bateman asked whether there is something in the comprehensive plan that speaks to this, because if there is a policy to this effect, then adoption of ordinance requirements could be added to the checklist rather easily.

Mr. Fontaine stated the original discussion that came up during the comprehensive plan review is that it would be more of a plan and specify where streetlights should be installed and the intervals between them on a particular street. Mr. Bateman agreed and stated that such a plan could contain specific policies regarding illumination levels and lighting direction. Mr. Palko said that if that is what the Commission is looking at, then the Planning Commissioner on the Town Council committee that discusses such issues should bring it up at a meeting of that committee. Chairman McDonough asked whether streetlights are considered infrastructure, and Mr. Palko replied in the affirmative. Mr. Palko said the goal would be to get the Infrastructure Committee to recommend adding the installation of streetlights to the Capital Improvement Plan budget. Mr. Bateman stated his preference that the Planning Commission describes the issue needing to be resolved or addressed in a plan since that creates the rationale for solving that problem going forward. He stated it would help for him to know what the Planning Commission sees as the issue regarding streetlights.

Mr. Mueller said, in talking about this previously, he thought the issue was to create a master plan that states why the Town wants to do this, because you can't regulate something without sufficient justification. Mr. Bateman agreed and stated that he understands there is no plan specifying the Town streets on which streetlights should or will be installed in the future. But, he noted, if the problem is also that the lights which have been recently installed are too bright at the property line, then that is a separate problem. Mr. Bateman said he needs to identify the problem before he can devise an appropriate solution.

Chairman McDonough suggested the formation of a small committee comprised of Planning Commissioners to put this together and make recommendations to the Infrastructure Committee, which in turn would bring back recommendations for Planning Commission consideration which the Commission could then forward to the Town Council. He asked whether there was any objection to this course of action. There being none, Chairman McDonough said he would consult with the Town Manager and ask the Mayor at the next meeting to appoint a small committee of perhaps three members. Mr. Fontaine said that Mayor Zoldos has been one of the people advocating for this, and Mr. Bateman said that facilitating streetlights on Berlin Pike can be properly addressed through the planning process.

Mr. Hornbaker said he knows that there are a couple of housing policies that call for keeping the standard R-1, R-2 and R-3 zoning districts and he does not see where that is discussed in the checklist. He elaborated that, rather than amending those districts, the policies call for keeping those standard districts intact and requiring any new residential development that does not meet the standards of those districts to apply for the establishment of a new zoning classification. Mr. Bateman said that whenever one is talking about rezoning property for uses not permitted in the underlying zoning district, then that involves rezoning the property to another zoning classification or amending the uses permitted in the underlying district. He said that this process necessarily involves seeking guidance from the comprehensive plan. Therefore, if the planning policies specify how this is to be accomplished, then this language is what guides whether an amendment should be approved. Mr. Hornbaker asked whether an additional amendment to the zoning ordinance is necessary to make this language more controlling, and Mr. Bateman responded that possibly criteria could be added to the section about zoning ordinance and map amendments. He stated he is in favor of adding such criteria specifying that zoning amendments will be evaluated against the comprehensive plan.

Chairman McDonough stated that, in the same way that the Town Council is requiring all zoning districts to be compliant with the comprehensive plan, he interprets that Mr. Hornbaker is suggesting that the Commission revisit the residential zoning districts to ensure that these requirements are compliant with the comprehensive plan. Mr. Hornbaker replied in the affirmative. Mr. Bateman said, in order to accomplish this with respect to the residential districts, this would have to be added to the checklist. He stated that he thinks the residential districts are in pretty good shape but noted that there is an amendment on the checklist which calls for the Commission to revisit the non-residential uses permitted in the residential districts. He said the biggest issue with residential rezonings is that the 2016 proffer statute makes it difficult for the Town to accept proffered conditions. He said that the law was passed immediately after the Commission added policies about residential rezonings to the comprehensive plan and that it is still a good idea to retain these policies so that the Town does not merely create new zoning districts for specific projects. Mr. Hornbaker clarified that the Town should also not modify its existing residential districts for specific projects, and Mr. Bateman agreed.

B. How-To Analysis for Architectural Guidelines and/or Standards

Mr. Bateman explained that he has been working on the development of architectural standards for the Town's historic district and that he only recently started this exercise. He stated that the goal would be to provide a detailed analysis of the pitfalls and benefits of adding such standards to the Town zoning ordinance. Chairman McDonough asked whether that would involve creation of a zoning overlay district, and Mr. Bateman replied in the affirmative. Mr. Bateman explained that he only undertaking an analysis at this point, but that it would ultimately involve recommendations for the Town Council to consider. He said that he has never worked in a Town that had such standards and that this has been a learning experience.

Mr. Mueller stated his view that this is a hot-button issue and that adding zoning standards for the Town's national and state historic district was not a popular concept when discussed in the past. Mr. Bateman stated that the folks in the audience who represent Loudoun jurisdictions which do have such districts may be happy to discuss their community's experiences. He said these districts allow the locality to regulate colors used on the exterior of buildings and make bona fide offers to purchase property when demolition of a historic structure is being contemplated by an owner. Mr. Bateman said there are issues that need to be understood before the Town takes this step.

Chairman McDonough asked whether there were any questions. There were none.

Next Meeting – May 17, 2017

Chairman McDonough announced that the next meeting would be held on May 17th and that there are two items requiring the Commission attention on that date, one of which involves the fact that it will be Mr. Mueller's final meeting.

Committee Reports

Mr. Fontaine reported on upcoming events involving the Love America Committee. Chairman McDonough reported on Love Spring and the upcoming MayFest event. Ms. Wolf reported on the movies and concerts coming up on the Town Green. Mr. Fontaine reported that there have been no meetings of the Business and Tourism Committee since he last reported on the committee's activities. Mr. Hornbaker reported on the Information Flow Committee's activities. Mr. Mueller reported on the Infrastructure and Environment Committee's efforts to rename one or more segments of South Church Street.

Chairman McDonough explained that Mr. Fontaine is leading an effort to convene regular meetings of Planning Commissioners from all of the jurisdictions in Loudoun County. Mr. Fontaine said that the Commission is trying to organize a meeting for County staff to present on stormwater management, transportation initiatives and various other topics.

Comments from the Mayor and Commissioners

Chairman McDonough said that Mayor Zoldos was unable to attend tonight's meeting but provided written comments for the Chairman to deliver. He said that he has not seen that email arrive and asked Mr. Palko whether he would like to speak on behalf of the Mayor. Mr. Palko replied that he had nothing additional to add.

Adjournment

There being no additional business to come before the Planning Commission, the meeting was adjourned at 8:23p.m.

Respectfully submitted,



Harriet West, Town Clerk

Date Approved: June 20, 2018

Attachments:
None