

Submitted December 30, 2019
Approved January 8, 2020
Date

**MINUTES OF THE ROCKVILLE PLANNING COMMISSION
MEETING NO. 26-2019
Wednesday, December 11, 2019**

The City of Rockville Planning Commission convened in regular session in the Mayor and Council Chambers at 7:00 p.m.
Wednesday, December 11, 2019

PRESENT

Gail Sherman - Chair

Anne Goodman Sarah Miller
Don Hadley John Tyner II
Charles Littlefield

Absent: Rev. Jane Wood

Present: Ricky Barker, Director of Planning and Development Services
David Levy, Deputy Director
Cynthia Walters, Deputy City Attorney
Nicholas Dumais, Assistant City Attorney
Jim Wasilak, Chief of Zoning
Andrea Gilles, Principal Planner
Brian Wilson, Principal Planner
Larissa Klevan, Principal Planner
Clark Larson, Senior Planner

I. REVIEW AND ACTION

- A. Waiver Request WAV2020-00017**, for a 12.6 reduction in the number of required parking spaces at 1251 West Montgomery Avenue in the MXE (Mixed Use Employment Zone); Rockville Motel Associates, LLC, applicant.

Brian Wilson presented the staff report and recommendation, which was for approval, based on the application meeting three of the criteria for parking reductions, as noted in Sec. 25.16.03.h.1 of the Zoning Ordinance.

Patricia Harris of the law firm of Lerch Early and Brewer spoke on behalf of the applicant in support of the application and answered questions of their behalf, including regarding hotel operations and the parking survey conducted.

Commissioner Tyner moved, seconded by Commissioner Littlefield, to approve Waiver Request WAV2020-00017, based on the findings and subject to the conditions listed in the staff report. The motion passed 6-0, with Commissioner Wood absent.

II. COMMISSION ITEMS

A. Staff Liaison Report – Jim Wasilak reported that the next meeting is January 8, 2020, with three items planned: Final Record Plat for two lots at 200 Woodland Road, public hearing on the North Stonestreet Avenue master plan amendment, and continuing discussion of the Planning Areas staff draft of the Rockville 2040 Comprehensive Plan update.

B. Old Business

1. Open Meeting Compliance Board Opinion – Cynthia Walters noted that the Commission is required to make a statement regarding the findings of the Open Meetings Compliance Board. Chair Sherman noted that it is her intent to not reopen the reconsideration of the Site Plan approval for 107 West Jefferson Street, which occurred in September 2018, and stated that,

“It is the intent and practice of this Commission to operate in as transparent a manner as is possible and to fully consider all testimony and evidence that is provided in making our decisions and recommendations that are within our purview. In some instances and particularly the application for the garage at Luckett [House], I am not sure that was entirely the situation. I am not sure that we had all of the information that we needed at the time we made the decision. I find that there are some flaws in some of our procedures that need to be addressed, and I will address that later on. The issue regarding reconsideration of the application was not one that we took up at any time. As the petition for judicial review had already been filed by WECA, we were advised that we no longer had jurisdiction over the application. Further, representatives of WECA have requested a review of Planning Commission procedures to ensure that there are no more Open Meeting Act violations. There are reasons to both agree to this and not, and I am hoping that this body will have some discussion on whether or not to have an outside review of the procedures.

Regarding the Open Meeting Act violations, there were four points that were raised, one of which I believe is valid – we didn’t get our minutes quite out as quickly as we should have. However, I think there was some misunderstanding or misinterpretation that came back to us. One thing being, the special meeting which was held on November 5, a Monday night and not a normal meeting night, which was held for us by counsel to help us respond. I don’t think that the Compliance Board viewed that meeting as a “special meeting” for us to obtain counsel. I think they also raised an issue about a vote which we did not take in that session. Again, the August 2019 issue of reconsideration was raised by a representative of Peerless Rockville, and again the Commission elected not to. That was in a closed session and it was determined that the Chair would announce, which I did, in open session that reconsideration would not be addressed.

Regarding our policies and procedures review, I think that there are some things that could be changed, and there are some things that need to be changed. I don’t believe that this commission should be operating without all of the information that it needs in order

to make a decision, and I have talked to Mr. Barker and Mr. Wasilak about establishing an ad-hoc working group to look at our procedures, with representatives from the affected communities and historic districts, which I think are unique in this city, so that when or if this situation comes up again, we have procedures in place that the public has worked on and has agreed to as well. That meeting group could also consider zoning changes for the historic district and historic overlay. I have learned a lot through this process and I think it is important to get it right.

I would like to make one other comment or request, and that is to task the Planning staff to establish the committee. I would also like legal staff to respond - I know that the open meetings compliance board will probably say, 'We don't want to look at any kind of response or rebuttal to what we've said' - but I would still like some clarification made to those areas where we don't necessarily agree were correct. I don't know whether I can ask you directly or whether I have to ask you through another body, but I would like to ask that as well. I could probably go on for quite a long time but I am not going to do that because I think it is important that this body have some discussion on all of the documentation that they have seen and read."

Commissioner Hadley noted that the chair's comments were well taken, and given the impact on stakeholders involved, would be open to an independent outside review of what the Commission did or didn't do, if desired. He wants the Commission to be totally accountable for what happens.

Commissioner Tyner noted that he is the designated contact for the Open Meetings Act on the Commission, having been trained by the state. He stated that the closed sessions were conducted as they should have been, but the issue was that the Commission did not go back on the record to make a statement after the closed session. He noted that the minutes need to be better written to document the continuity of what happens, but also include further actions so the record is complete.

Commissioner Littlefield agreed with Commissioner Tyner, and noted that the Commission must go back on the record after closed sessions to address issues of public perception, which is very important.

Commissioner Goodman stated that it is not clear to her that what happened was incorrect, and that it is not clear when Closed Sessions are necessary. Some clarification would be useful, as she supports transparency for the Commission but it is not clear how the review comes about. Mr. Barker responded that if the request is made, he will work with the City Manager to make resources available. Commissioner Miller said that she agrees with Commissioner Goodman, as it is not clear to her what went wrong, and she has experience with closed sessions in her profession and as a volunteer. She would prefer a narrow scope to look at what happened, and then make appropriate changes to procedures.

Commissioner Hadley stated that a review of the Commission's actions and advice is necessary to then look at changes to procedures. He also noted that, although closed sessions

are necessary, not all legal advice needs to take place in closed session to enhance the Commission's accountability for its actions based on such advice. This aspect should be part of the outside review, recognizing attorney-client privilege. Chair Sherman pointed out that a City Attorney is at the meetings, and that questions are asked of them in open session.

Commissioner Littlefield could support a review on a more limited basis to identify items to be corrected, provided that their guidance is clear.

Commissioner Goodman saw two issues: addressing the objections raised by stakeholders, and whether these were valid, and addressing the procedural aspects of Commission actions in this instance. She does support an outside counsel to look at these items. Chair Sherman stated that she also agrees with her colleagues and supports outside review. Commissioner Tyner reminded the Commission to be focused specifically on what is being requested.

Commissioner Hadley moved, seconded by Commissioner Goodman, to request staff to obtain independent analysis and opinion which reviews the record of the pending matter, including the actions taken by the Commission and the opinions of the Open Meetings Compliance Board, to identify items that the Commission took that were either not consistent with law or inadvisable, and what was done right or somewhere in between, and that the analysis and opinion provide suggestions on ways that the commission's procedures may or must be improved. The motion passed by a vote of 6-0.

Mr. Wasilak reminded the Commission that the Open Meetings Act requires that the Compliance Board decision be signed by commission members, acknowledging receipt of the decision. He gave a copy to the Commission for the signatures. Ms. Walters noted that, with the signatures, the Commission is not admitting to or agreeing with the violations.

2. Correspondence from West End Citizens Association and Peerless Rockville – see above.

C. New Business

1. Approval of 2020 Planning Commission meeting dates – The Commission agreed on the proposed dates, except that the November 2020 meeting will be on November 18 rather than November 11.
2. Election of Commission Chair for 2020 – Commissioner Miller nominated Commissioner Littlefield as chair, which was seconded by Commissioner Goodman. The motion passed 4-0-2, with Chair Sherman and Commissioner Littlefield abstaining and Commissioner Wood absent.

D. Minutes

1. June 26, 2019 – Commissioner Hadley moved, seconded by Commissioner Tyner, to approve the June 26, 2019 minutes. The motion passed 4-0-2, with Commissioners Littlefield and Tyner abstaining and Commissioner Wood absent.

2. October 16, 2019 – Commissioner Miller moved, seconded by Commissioner Goodman, to approve the October 16, 2019 minutes. The motion passed 5-0-1, with Commissioner Hadley abstaining and Commissioner Wood absent.
3. October 23, 2019 - Commissioner Hadley moved, seconded by Commissioner Goodman, to approve the October 23, 2019 minutes. The motion passed 4-0-2, with Commissioners Littlefield and Tyner abstaining and Commissioner Wood absent.

E. FYI/Correspondence – none

III. PRESENTATION AND DISCUSSION

A. Rockville 2040 Comprehensive Master Plan Update – Planning Areas: Initial Staff Draft

Cynthia Kebba introduced Larissa Klevan, recently-hired Principal Planner.

Clark Larson presented an overview of Volume II of the Master Plan Update, which contains the Planning Areas. Similar to the process for Volume I, staff and the Commission will engage in a series of worksessions to review the staff draft and development a draft for public hearing. Commissioner Goodman suggested that maps of the old and new planning area boundaries on the same page would be useful for comparison. The Commission asked that staff provide large color copies of the current and proposed planning area boundaries, and staff agreed to bring to next meeting.

Commissioner Littlefield questioned whether the Westmore industrial area should be part of the Lincoln Park planning area or the Southlawn planning area. David Levy explained that staff recommends that it be part of Lincoln Park given the potential for annexation of the intervening WINX property. Commissioner Littlefield agreed to leave the boundary as shown for now.

Introduction

Mr. Larson explained the content of the Introduction, including changes to the planning areas noted in the staff report, and pointed out that these are not in the Volume II document itself. He further explained the treatment of existing neighborhood plans by the new document. In response to a question from Commissioner Goodman, he explained why some areas are recommended for a neighborhood plan and some are not, typically based on the public input received during the Rockville 2040 process. Chair Sherman asked about whether a neighborhood plan for King Farm might be accomplished in the future. Mr. Larson responded that the existing development approvals govern most of this planning area, but it is certainly possible.

Commissioner Littlefield noted several areas that are within the City's Maximum Expansion Limits (MELs) but not currently in the City's jurisdiction. Some of these, such as the areas along MD 355 north of Town Center, could constitute a future neighborhood plan. Commissioner Hadley expressed concern that only the West End neighborhood is being treated with the equivalent of a neighborhood plan, so it should be clear as to how the existing neighborhood

plans are referenced. Mr. Levy stated that it is the intent of the draft plan to ultimately incorporate new neighborhood plans into the planning areas component of the Comprehensive Master Plan after a period of transition. Commissioner Hadley then noted that p. 6 should be clear as to the status of the existing neighborhood plans, including when previously adopted plans are superseded or adopted by the new plan.

Mr. Larson explained that the introduction also included an explanation of the relationship between Volumes I and II, and reviewed the general structure of each planning area section, including area characteristics, planning history, key issues and recommendations, with the exception of the Planning Area 4 section. He noted that one new planning area is Planning Area 11, Woodmont and the combining of North Farm and Montrose planning areas into a single planning area. Commissioner Hadley noted that it might be appropriate to include the Woodmont Country Club property in between the two areas to provide a connection. Mr. Larson suggested text be added to Planning Area 11 to note the impacts of future development in this area on the two neighborhoods.

Commissioner Goodman reminded staff that an Executive Summary and glossary is needed for the entire document.

Planning Area 3: Hungerford, New Mark Commons and Lynfield.

The Commission discussed the draft section for Planning Area 3, and agreed to the following changes to the draft:

- Remove second clause of last sentence in paragraph 2, under Planning History regarding a request made in the 2002 Plan (p. 29);
- Under Key Issues, move fifth bullet regarding high traffic volumes at certain intersections to Planning Area 8 (p. 29)
- Project 6, monitoring traffic to and from Bayard Rustin ES, should be modified that reflect that the site is constrained site and change text reading “consider a new access...” to “consider the feasibility of a new access ...” (p. 30)
- Under Community Partnerships, change wording to read: “The City should consider working with the New Mark Commons HOA to find creative solutions for the future maintenance of the New Mark lake.” (p. 30)

At the suggestion of Commissioner Miller, staff will discuss with Recreation and Parks Director Tim Chesnutt about the language regarding including Dawson Farm Park in the local Dawson Farmhouses Historic District. Staff will report at the next meeting.

Planning Area 5, Woodley Gardens and College Gardens

The Commission agreed to the following changes:

- Project 1, new entrance to the Rockville Senior Center from West Gude Drive, refer to Volume I, Transportation element (p. 62)

- Project 4, new bike and pedestrian paths across Upper Watts Branch Park, should explain that this project applies to the entire park (p. 62)

Planning Area 13, Potomac Woods, Orchard Ridge and Falls Ridge

The Commission agreed to the following changes:

- In the second bullet under Other Policy Recommendations, add other impacts, not just the visual buffer. (p. 110)

Ms. Kebba reviewed the schedule for completing the review of the draft document. On January 8, the Commission will review Planning Areas 1, 7, 9, 10 and 11. Upcoming meetings for discussion of the draft are scheduled for the January 22 and February 12 regular meetings. Based on the poll results, staff suggests meeting on January 15 and February 5. The latter meeting may not be needed, based on progress.

Mr. Larson reviewed next steps once the document becomes a public hearing draft, including release of the document in March for the required 60-day review period, public hearings in May and worksessions to review public testimony during the summer. Staff then anticipates the Commission transmitting the approved Planning Commission draft to the Mayor and Council in the fall of 2020.

Commissioner Hadley encouraged specific definitions of the terms “ground floor retail” and “mixed-use development” so that it is clear what is meant and where this recommendation should be located. Staff agreed to look at these recommendations as the planning areas come forward. Commissioner Littlefield suggested that the Town Center planning area may merit a discussion of its own at a future meeting. Mr. Levy noted that it will be the first planning area for the next meeting, and encouraged commissioners to bring the ULI TAP (Urban Land Institute Technical Assistance Panel) report to that meeting.

IV. ADJOURN

During a break in the prior discussion, Councilmember Feinberg presented a Certificate of Appreciation to Chair Sherman on behalf of the Mayor and Council for her service and leadership on the Planning Commission. Chair Sherman stated that she has enjoyed her service on the Commission, particularly in bringing diverse opinions to the Commission’s actions, and thanked commissioners and staff for their support.

Chair Sherman asked for a copy of the Master Plan once approved. Commissioner Goodman wished Chair Sherman well and thanked her for her leadership over the last two years as chair.

There being no further business to come before the Planning Commission, Commissioner Hadley moved, seconded by Commissioner Tyner, that the meeting be adjourned at 9:42 p.m. The motion was approved unanimously.

Respectfully Submitted,



Commission Liaison