



PLANNING COMMISSION

Regular Meeting

Town Hall

December 7, 2010

At 6:06 p.m. in the Town Hall, Chairman Bruce Brinkley, having established a quorum, called to order the Regular Meeting of the Planning Commission. In attendance were Commissioners Malcolm Hayward, Dennis McCoy, Joan Natali and Mike Strub. Commissioners Ben Lewis and Roger Munz were not in attendance. Also present were Town Planner Tom Bonadeo and Town Clerk Libby Hume as well as five (5) members of the public.

A moment of silence was observed followed by the Pledge of Allegiance. Tom Bonadeo noted it was the anniversary of Pearl Harbor Day and to remember those servicemen who lost their lives on that day.

PUBLIC COMMENTS

There were no comments from the public nor any written comments submitted prior to the meeting.

CONSENT AGENDA

Tom Bonadeo noted that several members of the public were in attendance to hear discussion on certain agenda items and recommended reordering the agenda as follows: Item 3b-546 Madison Avenue – Conditional Use Permit (CUP) Home Occupation would be discussed first, followed by item 9a-Rezoning Request for Randolph and Strawberry, with Items 3a-207 Mason Avenue – Cup for Residential over Commercial and 3c-Wind Energy Ordinance moved to the end of the meeting.

Motion made by Joan Natali, seconded by Mike Strub, to amend the agenda as proposed by Tom Bonadeo. The motion was approved by unanimous consent.

The Commissioners reviewed the minutes for the November 2, 2010 Public Hearing & Regular Meeting.

Motion made by Joan Natali, seconded by Mike Strub, to approve the minutes from the November 2, 2010 Public Hearing & Regular Meeting as presented. The motion was approved by unanimous consent.

REPORTS

Tom Bonadeo reported the following: i) The bids have been opened for Phase 1 of the Harbor Redevelopment Project for the boat slips. The low bid came in within the scope of the budget. The next step would be to review the boat house plans and put that phase out to bid; ii) The Town has been working with Bay Creek regarding the construction of a golf cart path along the side of Old Cape Charles Road; iii) The Town has submitted an application for more money from the TEA-21 grant. This grant provided funding for the

park and trail projects and was only accepting applications from existing projects at the present time; and iv) The Historic District Review Board was still working on updating the Historic Guidelines. After they have concluded their review, their proposed changes would be presented to the Planning Commission for review and recommendation to the Town Council. This work should be ready for review by the Commissioners in the spring of 2011.

OLD BUSINESS

546 Madison Avenue – CUP for Home Occupation

Tom Bonadeo explained that a completed CUP application was received to operate a home business producing chocolate confections in the R-1 zone at 546 Madison Avenue. The R-1 zone allowed home occupations by CUP. Article 4 of the Zoning Ordinance has 9 criteria for operating a home business and this application met all 9 criteria.

Joan Natali stated that her interpretation of a home occupation was that the business owner must live in the house where the business was located and since the applicants were currently building another house in Town, suggested that this be added as a condition for the CUP approval.

Bruce Brinkley clarified that if the applicants decide to move into their new home, they could reapply for a CUP at their new location. There was some discussion regarding this issue and Tom Bonadeo explained that the CUP was for the property.

Joan Natali added that the applicants stated in their letter that this would be a wholesale business and no customers would be onsite and suggested that this be added as a condition. After some discussion regarding the language for this condition, it was agreed that the condition would state that no retail sales would be permitted from the location.

Tom Bonadeo asked the attendees if they had any comments or concerns regarding this CUP application. No comments were received.

Motion made by Joan Natali, seconded by Malcolm Hayward and unanimously approved to recommend approval of the CUP to the Town Council with two conditions stating that i) the applicant must make 546 Madison Avenue their primary residence and if they change their primary residence, a new CUP application was required for the new residence and this CUP would be revoked; and ii) no retail sales were permitted from this location.

NEW BUSINESS

Rezoning Request – Randolph Avenue and Strawberry Street

Tom Bonadeo informed the Commissioners that a completed rezoning application had been received for a portion of the Mack Building located at the corner of Strawberry Street and Randolph Avenue which contained four small one-floor office/apartments and had been zoned C-1 Commercial for some years. Tom Bonadeo went on to explain that over the past 10 years, this portion of the building had been used as offices and apartments and most recently, the apartment use came to the attention of the zoning administrator and the residents were removed. The owner at that time requested a zoning variance to allow residential use on the first floor of a commercial building. The

Board of Zoning Appeals reviewed the application and held a public hearing. The neighbors spoke out at the public hearing against the zoning appeal. After hearing the public comments, the zoning variance was denied. The Mack building has recently been purchased and the new owner has requested a rezoning of the property to CR-Commercial Residential and made several proffers which make good sense for the property and the Town. This portion of the building faces Randolph Avenue which is a residential avenue in Town. Also, the former owner was required to demolish the residential building just to the east of this property on Randolph Avenue and subsequently blocked the rear of the building and alleyway with large pieces of utility poles making the area impassable for trash trucks and emergency vehicles. Tom Bonadeo went on to inform the Commissioners that the applicant has proffered the following: i) four parking spaces in the rear of the building for the potential tenants which would keep cars from being parking on the street; ii) removal of the utility poles blocking the alley access and installation of a 12' side easement across the property connecting to the alley easement entering from Mason Avenue which would restore the alley for emergency vehicle access. This easement would encumber portions of two lots owned by the Mack Building; iii) a 12' evergreen landscape easement on 609 Randolph, the vacant lot to the east of this property, to block the view of the alley from Randolph Avenue; and iv) a 12' rear yard area to be used by potential tenants as a back yard. The building front was on the sidewalk property line and previously the renters used the sidewalk as their front yard.

Malcolm Hayward asked Mr. Patrick Hand, the applicant, to describe his plans to the Commissioners.

Mr. Hand informed the Commissioners that he wanted to do something that would be good for him, the potential tenants and the Town and proposed a 6' easement on the empty lot next door to this building, which would still leave room for a small house to be built on the lot. Mr. Hand stated that the landscape buffer along the empty lot would be beneficial to all and he would provide delineated parking in the back of the building with approximately 10-11 spaces. Mr. Hand went on to state that he would make it a requirement in his leases that no personal property was permitted in the front of the building and no loitering would be permitted on Town property.

Tom Bonadeo read two letters of support from the Arts Enter and Ms. Karen Jolly Davis and stated that letters would have to be mailed to neighboring property owners and a public hearing needed to be scheduled.

Joan Natali noted a discrepancy in the unit numbers on the Application for Zoning Map Amendment and Mr. Hand's letter. Mr. Hand confirmed the unit numbers should be 12-24 Strawberry Street and 316-320 Randolph Avenue.

Mike Strub asked if there was a demand for residential space. Mr. Hand replied that there was a demand for affordable residential space and that these units, once redesigned, would appeal to young tenants. Joan Natali also noted that this property was also handicap accessible.

Bruce Brinkley asked about the current surface in the easement area and who would be responsible for maintenance. Mr. Hand stated that the area was mostly grass but

contained some old gravel and concrete and that he would maintain the area with gravel and keep it open and accessible.

Motion made by Joan Natali, seconded by Malcolm Hayward, and unanimously approved to schedule a public hearing immediately preceding the January 4, 2011 Regular Meeting.

Reverend Jim Davis, who was a member of the public in attendance at this meeting, stated that there used to be an easement between Nectarine and Fig Streets and Jefferson and Washington Avenues, but a previous owner blocked the passageway. Tom Bonadeo explained that there was never a legal easement in this area. Reverend Davis added that he thought there was an agreement that allowed 10' of each property to be used as an alley. Tom Bonadeo stated that some properties in Town did have this agreement but the agreement was detailed in the property deeds. The properties in this area did not have this agreement as part of the deed but added that the Town was working on recreating the alleyways through the Town at a cost of approximately \$100-\$200 per property and funding may be included in next year's budget.

Bruce Brinkley thanked Reverend Davis for his concerns but added that this discussion was not in the purview of the Planning Commission meeting this evening and suggested he contact Tom Bonadeo at any time to further discuss this issue.

OLD BUSINESS

207 Mason Avenue – CUP for Residential Over Commercial

Tom Bonadeo explained that a completed CUP Application had been received for residential use over commercial space for 207 Mason Avenue which is in the C-1 zone. This building has been known as the "Delisheries" building. The applicant planned to add two floors to construct two residential apartments. Tom Bonadeo went on to explain that the architectural design required approval by the Historic District Review Board which has been granted pending the recommendation of the Planning Commission and approval by Town Council. Tom Bonadeo informed the Commissioners that the applicant, Mr. Thomas Ross, did not have a contract to purchase the property but had wanted to obtain the necessary approvals prior to submitting an offer to purchase. Since that time, another buyer has submitted a contract and has been negotiating with the bank regarding the sale of this property and has similar plans for the building. The CUP goes with the property.

There was some discussion regarding the conditions recommended by Tom Bonadeo. Joan Natali questioned the reasoning behind the first condition which stated that approval of the CUP should be conditional with the current sale of the property and that if the property was not sold within 30 or 60 days, the CUP would be null and void. After further discussion, it was agreed that a CUP, which was normally effective for one year, could help with the sale of the property.

Joan Natali asked that if there was a CUP on a property and was not acted upon with one year, it would become null and void. Didn't the Zoning Ordinance state that the Town Council could not approve another CUP for the same property within one year? Tom Bonadeo explained that this would be the case only if the initial CUP was denied by the Town Council.

Joan Natali asked about the fourth condition which stated that the CUP would be conditional upon final review and approval of the Historic District Review Board. Tom Bonadeo explained that the Historic District Review Board still had to approve the plans after approval of the CUP by the Town Council.

Mike Strub noted that if two stories were constructed on top of this building, the windows in the adjoining buildings would be obstructed. Tom Bonadeo stated that that would be the case. Neighboring property owners were sent letters regarding this CUP application and given the opportunity to attend tonight's public hearing or submit comments prior to the public hearing and no comments were received. Tom Bonadeo added that there were still several civil issues that needed to be resolved.

The Commissioners agreed to delete the first condition suggested by Tom Bonadeo.

Motion made by Joan Natali, seconded by Mike Strub, and unanimously approved to recommend approval of the CUP to the Town Council with the following conditions: i) The residential use for two floors over the commercial space should be conditional upon the applicant providing four parking spaces on site in accordance with the Zoning Ordinance; ii) The CUP only provides for residential use on the property in accordance with the Zoning Ordinance. Any civil issues and/or building code issues are to be resolved by the owner; and iii) The property will require additional floor(s) to be added and the CUP should be conditional upon final review and approval of the Historical District Review Board once a CUP is approved.

Wind Energy Ordinance

Tom Bonadeo informed the Commissioners that he attended a Wind Energy forum presented by the Virginia Economic Development Partnership (VEDP) earlier today in Richmond and met with several people there. Dr. Miles from James Madison University asked that the Town's draft Wind Energy Ordinance be emailed to him for his review. An Executive Senior Vice President from Dominion Power spoke and informed the attendees that the State Corporation Commission requires Dominion Power to choose the lowest price option and there was no way for offshore wind energy to compete with the price of coal, etc. Tom Bonadeo added that GAMESA and Northrup Grummond were looking at the possible installation of wind turbines on the Bayshore Concrete site.

Tom Bonadeo went on to state that the draft Wind Turbine Ordinance which was developed by the Planning Commission several months ago was included in the agenda packet. Since that time, several new members have been appointed to the Commission and asked that the Commissioners review the draft ordinance for discussion at the January meeting and added that the feedback from Dr. Miles should be available for review as well.

Dennis McCoy added that the draft ordinance had been reviewed by the County and some of the language had been adopted by the County.

Joan Natali expressed her concern regarding the decision of the Historic District Review Board not to allow micro systems in the Historic District adding that not all houses in the

Historic District were historical in nature and that micro systems may be allowed by CUP for non-historic buildings and dealt with on a case by case basis. Tom Bonadeo stated that it was unlikely that micro systems would be able to provide enough power to a property due to the height of the trees. The Historic District Review Board reviewed this issue and realized that there was no way for a wind turbine to be hidden from sight since it must be on the roofline.

Joan Natali asked about the table on page 1 of the draft ordinance and if the measurements were in feet. Tom Bonadeo stated that the measurements were in feet and that he would add this to the ordinance.

Joan Natali asked that the word “nacelle” on page 2 of the draft ordinance be defined.

ANNOUNCEMENTS

There were no announcements.

Mike Strub asked about the status of the Harbor Redevelopment Project. Tom Bonadeo stated that the bids had been opened but that the Town Council had not yet awarded the contract.

Motion made by Malcolm Hayward, seconded by Dennis McCoy and unanimously approved to adjourn the Regular Meeting of the Planning Commission.

Chairman Bruce Brinkley

Town Clerk