

## Planning & Zoning Commission

### Minutes

January 9, 2019

The Planning and Zoning Commission for the City of Cambridge met on Wednesday, January 9, 2019 at 6:00 p.m. at the City Council Chambers, 305 Gay Street, Cambridge, Maryland.

**Commissioners in attendance:** Jerry Burroughs, Chair; Eugene Lauer, Vice-Chair; Mary Losty, Hubert Trego, Chan'Tay Nelson, and Marshall Rickert.

**Other in attendance included:** Patricia Escher, City Planner; Herve Hamon, Planner, Dave Cannon, Council Liaison and Patrick Thomas, City Attorney

Jerry Burroughs called the meeting to order at 6:00 p.m. and asked for a moment of silence.

#### **Approval / Amendments to Agenda**

Comm. Burroughs asked for a motion to approve the agenda. Comm. Rickert made the motion and was seconded by Comm. Losty. Motion was carried unanimously.

#### **Minutes**

Comm. Burroughs said corrections were needed to the minutes as he did not make the recommendation of the approval of the agenda at the December 4 meeting. After discussion it was decided that Comm. Craig made the motion to approve the agenda. Comm. Rickert noted that the last name of Cheryl Hannan was spelled incorrectly as Hann. Comm. Lauer stated he had several corrections to the minutes and would give them to Ms. Escher. Comm. Burroughs asked that the testimony from Charlie Fairchild on the Cambridge Marketplace plans and update be included.

Staff advised corrections would be made and emailed back to the board for review and then be given to Comm. Burroughs to sign if correct.

#### **Election of Chair and Vice Chair for the Calendar Year of 2019**

Comm. Burroughs opened the floor for nominations. Comm. Nelson recommended that the board remain the same.

Comm. Losty commented that Comm. Burroughs was just elected as Vice-Chair at the County and given his new leadership role that she would like to nominate new candidates to the Commission. Comm. Losty suggested Comm. Lauer step up to the Chairman position and Comm. Craig as Vice-Chairman. Comm. Burroughs stated that Comm. Craig would not take the position. Comm. Losty stated that she spoke to Comm. Craig and he said he would.

Comm. Rickert asked if that was a motion. Comm. Burroughs stated there were two motions. Comm. Losty confirmed that she made a motion.

Staff restated the two motions. The first motion was made by Comm. Nelson to keep the same positions. The second motion was made by Comm. Losty to recommend Comm. Lauer as Chair and Comm. Craig as Vice-Chair given Comm. Burroughs responsibilities in his new position with the County.

There was no second to Comm. Nelson's motion to keep the chair and vice chair the same.

Comm. Rickert seconded the motion that Comm. Lauer serve as Chair and Comm. Craig serve as Vice-Chair. Motion was carried 5:1.

It was decided the Comm. Lauer would take power at the next meeting.

Comm. Burroughs congratulated Comm. Lauer and Comm. Lauer thanked the Commission for their confidence in him. Comm. Losty expressed appreciation to Comm. Burroughs for his service. Comm. Losty recognized Comm. Burroughs' leadership with the County.

#### **Old Business**

No old business.

#### **New Business**

##### **Item 1. PZ 2019-006 Site Plan for Zion Baptist Church property located in the 1000 block of Washington Street.**

Staff reported that in 2009 Zion Baptist Church received a Special Exception to allow a cemetery on the property. Pursuant to the 2009 approval, the applicant needed to come to the planning Commission for a Site Plan review.

Staff recommended that Phase 1 of the plans be approved and that the Planning Commission give comments about the overall site plan design which will come back to the Commission as Phase 2.

Staff asked the Commission if they knew why the buffer was expanded for non-tidal wetlands to 50 feet. The State requirement is 25 feet. The applicant's plan complies with the State requirement at 25 feet. Staff consulted with George Hyde, City Engineer, and the reason for the expansion was not known. Comm. Trego stated his recollection was that the requirement dealt more with sub-divisions and at the time there was concern with some of the older applications in the wet areas that should have an extra step taken to mitigate it. He doesn't believe the intention was to do that on properties in a developed area.

Staff advised that it impacts this project that if the 50-foot buffer remains the applicant would need to move the driveway slightly.

The recommendation of the Board of Appeals was that it go to site plan for the Commission. The site plan staff has a sediment control plan and doesn't have sign-off from the City Engineer. Staff asked the Commission if the plan was vested pursuant to their previous approval.

Comm. Lauer asked if there was a limitation placed on the duration of the special exception. Staff advised that the Special Exception was with the land. Comm. Lauer stated that there could be a time limit as a condition of the Special Exception, but there was not a time limit included on this plan. Comm. Lauer suggested on future projects that a time limit should be consideration as there are code changes and ultimately a plan may no longer comply depending upon how long it takes. He believes if it is not specifically expired than there is the assumption it is valid and therefore grandfathered.

Patrick Thomas, City Attorney, advised the UDC states that unless the time limit is specified for the Special Exception than it is invalid indefinitely except if the use or activity ceases for any reason then it automatically expires.

Comm. Rickert commented that the project was known to be a lengthy future development, which is the case of many churches and other institutions that are subject to how quickly funds come in and that the Commission should keep that in mind. Comm. Rickert stated if there was a grandfathered action that was okay he would be inclined to let it move forward.

Staff advised the original plan was signed-off by the Soil District. Staff would need to consult the larger copy on file to determine what other signatures are on the plan as the copy is difficult to read.

Staff deferred to the Commission on whether the plan is compliant since the use was grandfathered and the site plan that was created never came before the Commission, or would the Commission prefer the 50-foot set-back reached, or take another review of the tidal wetland language that was incorporated into code.

Comm. Burroughs suggested that since the plan was already validated that the 25-foot was acceptable then to proceed with that.

Comm. Rickert stated that the rule changed in the interim and it was a valid approval and to proceed.

Comm. Trego stated that if the City Engineer, George Hyde, approved he stood in agreement.

Staff reiterated that the plan is approved, and that the tidal wetlands buffer language would be reviewed.

Comm. Rickert advised that the language review would be a separate issue.

Staff agreed and stated that there should be consideration of including term or time limits on Special Exceptions.

Comm. Lauer commented that with Phase 2 there would be quite a bit of work done on the plan and as long as the applicant is aware of that.

Staff advised the applicant would like the driveway and cemetery in the back so that is what is being reviewed now as Phase 1 and Staff recommends this portion be approved.

Comm. Rickert asked if the driveway goes around the perimeter of the cemetery or if it is a semi-circle.

Deacon Barry Pinder represented Zion Baptist Church and provided testimony on the property's ditch and right-of-way area.

Staff projected a larger image of the plan for review. There was further discussion on the driveway placement.

Comm. Rickert recommended approving the concept and to request a letter from the engineer with clarification on the driveway.

Staff suggested that the City Engineer look at the plan and then Staff would report back to the Commission on the findings.

Staff stated for Phase 1 the church would need to obtain a grading permit through the City Engineering Department and then submit a driveway access point to the State.

Comm. Rickert suggested that the applicant consider making the cemetery larger.

Staff commented that requirements for Phase 1 would be the grading permit and submit the driveway entrance to the State. Lane Engineering and the City Engineer could assist. Comments to Phase 2 may change because part of that is predicated on the church having to change the plan. Phase 2 will be for the full plan and the church.

Comm. Burroughs asked if it should be stated that the cemetery should be made larger.

The Pastor at Zion Church, Craig N. Mathies, Sr testified that increasing the size of the cemetery was considered. The Pastor Mathies stated he needed to look at the total property, building placement and extension of the cemetery towards the end of the property near the woods. He stated that he has a friend that operates a cemetery and believes he could help the church to assess the space and capacity.

Comm. Rickert suggested refinement of Phase 2 on the plan and identify an area on the plan as a future expansion.

Comm. Burroughs asked for a motion to approve the cemetery for Zion Baptist Church with the amendments and statements as given to the church and the Pastor. Comm. Rickert made the motion to approve and seconded by Comm. Losty. Motion carried unanimously.

## **Public Hearing**

### **1. TA 2018-013 – Revise Section 2.4 Non-Conforming Lots, Uses and Structures**

Staff reported this amendment was brought to the Council's attention at their October 9<sup>th</sup> hearing for introduction. The Commissioners of Cambridge wanted staff to look at other sub-sections within this Section of the UDC for errors and omissions. Staff met with the Commissioners and revised this Section and is bringing it back to the Planning Commission for consideration.

To amend the text of the Unified Development Code (UDC) to modify Section 2.4 to allow Multi-family structures in the Residential Zoning District that was destroyed by accidental or natural causes can be replaced in kind within a time specific period, to clarify sections of the UDC and correct some errors and omissions.

Staff recommended that the Planning Commission provide a favorable recommendation to City Council for the proposed text amendment to allow for six-foot fence that is rear of the primary building façade.

Comm. Rickert recommended to accept and approve the text amendment with the changes requested by the City Council. Comm. Nelson seconded the motion. Motion carried unanimously.

### **2. TA 2019-003 – Revision to proposed amendment for rear yard fences to address fence height only.**

To amend the text of the Unified Development Code (UDC) to modify Section 5.1.4 to allow for six-foot fence rear of the primary building façade.

This amendment was brought to the Council's attention at their November 13<sup>th</sup> hearing. There was much discussion regarding having the "smooth side" of a fence on the side facing outward towards the public right-of-way, but not much discussion about the increased height. The Ordinance was rejected.

Craig Linthicum has petitioned the Commission to take this measure forward again with elimination of the language regarding the finished side of the fence versus the unfinished side and just address the interpretation of the rear of the building.

Staff recommends that the Planning Commission provide a favorable recommendation to City Council for the proposed text amendment to allow for six-foot fence that is rear of the primary building façade.

Comm. Rickert recommends that the Planning Commission provide a favorable recommendation. Comm. Nelson seconded the motion.

Craig Linthicum provided testimony on his request to eliminate language regarding the fence height and architectural side of the fence. He stated that if a fence already existed, you would use that fence as the border instead of installing another fence inside of it. Some of those fences are complying and some are not so the argument would be that it doesn't matter unless you are on the end if you put up the architectural side on the outside or inside. Mr. Linthicum stated his home is two from the end and if he complied with the original regulation as proposed he would install outward, but the rest would be mis-matched. He was inquiring from a height perspective.

There was further discussion on the original proposal. Staff noted a correction to the old graphic that notes 50% and Council changed that to 90%.

Herve Hamon, City Planner, asked what would happen to the extra two feet difference for those houses that have similar dimension and already have a rear fence established with the back-porch condition if a fence was erected in relation to the old regulation at 6-feet.

Staff advised if it was enforced from a primary rear façade and the porch area only has the four-foot fence they can get a permit to add the two feet.

Discussion continued on the fence.

Mr. Linthicum stated he wanted to make one additional comment on record that one Council member said he was the only one making this request in the entire city and questioned why either issue was being addressed. Staff advised that Mr. Wheeler addressed that remark at the Council meeting and confirmed that the fence issue has been raised several times previously. Mr. Linthicum stated he believed it is just a matter of doing the right thing for what the regulation was intended to do in the first place.

Comm. Burroughs held the call for the final vote until Comm. Nelson returned to the table as she had seconded the motion.

When Comm. Nelson returned, Comm. Burroughs called for a final vote. The motion passed unanimously.

### **Discussion Items**

#### **1. Mill Street Property Update**

Staff advised the draft ordinance of the Overlay District applying to 201 Mill Street was posted on the city website and that there would be a two-week open comment period. Staff would report back to the Commission afterwards.

Comm. Rickert thanked Ms. Escher for organizing the public meeting. Comm. Losty concurred.

#### **2. Bingo Update**

Staff advised the petitioner was not present. Comm. Rickert asked if it would be helpful to get feedback from the Commission to share with the petitioner. Staff agreed to relay the feedback.

Comm. Rickert advised that his read of the City and County Ordinances concluded that the subject is not a permitted use, nor a permitted land use and that one cannot grandfather in something that was not previously permitted.

Comm. Lauer agreed with Comm. Rickert and added that the subject was not applicable to the required charitable, athletic or educational purpose of conducting bingo games.

Comm. Losty concurred.

Comm. Nelson stated she would not have a comment until after hearing from the petitioner.

Comm. Trego stated there has not been any indication of expenses by the petitioner to operate and if there would even be money left over for charitable causes after paying those fees. Comm. Trego does not agree with ~~the~~ bingo being in that area.

Comm. Burroughs said from his perspective it would not be a good thing to do and it is not in the zoning core at that property. He stated that the Commission just completed a commercial zoning for bingo in the city that was adequate, and it is not needed in a residential area. He said it does not meet a permitted use or was it an established business for three years and that is what the regulation and law state.

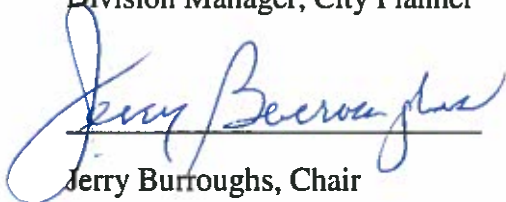
Comm. Burroughs called for a motion to adjourn the meeting. Comm. Rickert motioned and was seconded by Comm. Losty.

Meeting adjourned.

Respectfully submitted,

Patricia Escher

Division Manager, City Planner

  
Jerry Burroughs, Chair

  
Date Approved

