



City of Salisbury – Wicomico County

DEPARTMENT OF PLANNING, ZONING AND COMMUNITY DEVELOPMENT

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DIRECTOR OF ADMINISTRATION

MINUTES

The Salisbury-Wicomico Planning and Zoning Commission met in regular session on March 19, 2015 in Room 301, Council Chambers of the Government Office Building, with the following persons in attendance:

COMMISSION MEMBERS:

Charles "Chip" Dashiell, Chairman
James W. Magill, Vice Chairman
Scott Rogers
Tim Spies
Marc Kilmer
Newell Quinton
James McNaughton

CITY/COUNTY OFFICIALS:

Henry Eure, City Building, Permits, and Inspections Department
Mark Tilghman, City Solicitor
Tom Stevenson, City Administrator
Bill Holland, City Building, Permits, and Inspections Department
Rachel Harris, Assistant County Attorney

PLANNING STAFF:

Jack Lenox, Director
Gloria Smith, Planner
Beverly Tull, Recording Secretary



The meeting was called to order at 1:30 p.m. by Mr. Dashiell, Chairman.



Minutes:

Upon a motion by Mr. Rogers, seconded by Dr. McNaughton, and duly carried, the Commission **APPROVED** the minutes of the February 19, 2015 meeting as submitted.



#SP-0803-15A **PUBLIC HEARING – TEXT AMENDMENTS – To Section 17.04.120 – Definitions and to Add Sections 17.166.090 and 17.166.100 – related to Adult Entertainment Businesses.**

Mr. Lenox read the ad and administered the oath to anyone wishing to testify in this matter. Mr. Dashiell explained the public hearing procedure.

Mr. Lenox gave the history on this section of the Code. At the City Council work sessions of January 5 and March 2, 2015, the Council discussed with the City Attorney the Administration's initiative to modify the Adult Entertainment provisions of the City Code. Draft Ordinances have been prepared for both Zoning (Chapter 17) and Building (Chapter 5). Under current Code provisions, a business is considered Adult Entertainment if at least 20% of their square footage is devoted to merchandise relating to Adult Entertainment. Businesses could circumvent this by hanging merchandise on the walls and keeping it off of the floor. Under the proposed Ordinance, registration as an Adult Entertainment Business would be required if the significant amount of space devoted to adult merchandise is at least 15%. The determination would include not only floor space, but also wall space and any areas where merchandise is displayed. The new ordinance would further reduce the percentage of gross revenue received or expected to be received from the adult entertainment merchandise from 20 to 15. In accordance with the requirements of Section 17.228 of the Salisbury Municipal Code, the Planning Commission must hold a Public Hearing on proposed Text Amendments to the Code. The Commission must forward a recommendation (within six months) to the City Council. The City Council must also hold a public hearing before granting final approval to Code text amendments (by Ordinance).

Mr. Tilghman discussed how the percentage being reduced and the definition being changed will include the display area and floor area as well as the square footage. The City feels reducing the numbers is appropriate. The inspections have been added to the Code. Mr. Tilghman handed out updated language which added an additional section. He stated that all the changes have been researched by the City Solicitor's office and would uphold in Court. The two (2) year sunset period is acceptable. The issues with the Red Light District store are what started these changes.

Mr. Magill questioned how the 15 percent figure was determined. Mr. Tilghman responded that the decrease in the percentage was legally acceptable and could be defensible in Court.

Dr. McNaughton questioned what cases were reviewed. Mr. Tilghman referenced Hagerstown as an example of a case that was used for research.

Mr. Kilmer questioned how many businesses this text amendment would affect. Mr. Lenox responded that three (3) businesses would be affected. Mr. Kilmer questioned if this was all brought about by the Red Light District. Mr. Tilghman responded that the City found that the wall space in the Red Light District store was flooded with adult material. Mr. Kilmer questioned Mr. Dashiell what the Commission's role was. Mr. Dashiell responded that the Commission would forward a recommendation to the City Council regardless of whether it was favorable or unfavorable.

Ms. Cindy MacDonald, attorney representing the Red Light District, stated that the reduction in space allowed for adult materials has a distinction that is more significant than what is being pointed out. The floor space is being changed from 20 percent to 15 percent. They are not only changing the amount of floor space that can be used but they are taking the words usable floor space completely out of the definition and they are inserting in its place areas that are used for display or storage of merchandise on the floors, walls or vertical display areas. She discussed that the City is using a fraction where the bottom number in the fraction is shrinking and the top number is growing so it will be much more difficult for a business to meet the requirements of this ordinance. She also questioned if there was a way to determine if a complaint had any reliability to it before an inspection was done.

Mr. Lenox questioned Mr. Tilghman if he felt comfortable with the language as worded, specifically regarding display areas for when Mr. Holland and Mr. Eure go in the stores to do inspections. Mr. Tilghman responded in the affirmative.

Dr. McNaughton questioned Mr. Tilghman if this was unique language. Mr. Tilghman responded that the language was designed by him for the City. Dr. McNaughton questioned if this was a unique problem. Mr. Tilghman responded in the negative, explaining that this is a problem all over the country. Dr. McNaughton questioned why unique language was written. Mr. Tilghman responded that unique language was written in an attempt to avoid skirting.

Mr. Kilmer stated that it sounded like the language was written to target one (1) business that the City had issues with. Mr. Tilghman responded that the other two (2) businesses were grandfathered and they do not flaunt their business. He stated that his research showed that there are consultants out there that show how to open an adult entertainment business without looking like one. The goal is to regulate what the City believes is an adult store. Mr. Kilmer questioned that the goal is to make the business shut down in two (2) years. Mr. Tilghman responded that the store could relocate to an area where the impact would not be as great.

Mr. Magill questioned how the authenticity of the complaint would be addressed. Mr. Tilghman responded that it would be up to the judge to grant a search warrant. The audit would include part of the sales so the City could audit to see if they were in compliance.

Mr. Dashiell questioned if Section 5.08.010 was referenced in the language. Mr. Tilghman responded that the section that is really under consideration is Chapter 17 of the Zoning Code.

Upon a motion by Mr. Magill, seconded by Mr. Rogers, and duly carried, the Commission forwarded a **FAVORABLE** recommendation to the Mayor and City Council for a text amendment to Section 17.04.120 and the addition of Sections 17.166.040, 17.166.090, and 17.166.100 to the Salisbury Zoning Code.

Mr. Kilmer and Dr. McNaughton opposed the motion.



Mr. Dashiell recognized City Councilman Jack Heath and County Councilman John Hall in the audience.



#SP-0517-15A COMPREHENSIVE DEVELOPMENT PLAN – Lodges at Naylor Mill, Phase II – 45 Units – Seniors Housing – 29339 Naylor Mill Road – R-10A Residential District – M-29; G-8; P-325.

Mr. Rick Della and Mr. Mike Kobin came forward. Mrs. Gloria Smith presented the Staff Report. George, Miles and Buhr, on behalf of the applicant, has submitted a Comprehensive Development Plan for construction of a 45-unit expansion to the apartment building on this 23.1 acre site. Site Plans, a Landscaping Plan, Building Elevations and Floor Plans were submitted for Commission review.

Mr. Kobin stated that they were asking to construct 0.41 acres of pervious area.

Mr. Della stated that no more than 31 parking spaces have been used since 2007. The need for parking in affordable senior housing usually doesn't exceed 50 percent. A total of 82 spaces are being proposed and there will be excess parking.

Mr. Dashiell questioned if the parking isn't utilized due to the age of the residents. Mr. Della responded that this is also income restricted housing so when the residents are qualifying they must watch their expenses. Shore Transit has provided a bus stop for this building.

Dr. McNaughton questioned if the handicapped parking was based on a percentage. Mr. Eure responded that as he remembered the handicapped parking was compliant. Mr. Della added that the handicapped parking far exceeds the requirements. Dr. McNaughton questioned the vacancies in the regular parking. Mr. Della stated that people use the spaces closest to the entrances. Mrs. Smith stated that there will be 18 handicapped parking spaces with the new parking.

Mr. Rogers stated that he was in favor of less impervious surface so the parking was not an issue for him. Mr. Magill agreed.

Mr. Spies stated that he was having a hard time finding the dumpster location. Mr. Kobin identified the dumpster location on the plan. Mr. Spies questioned if it was big enough for recycling. Mr. Della responded in the affirmative. Mr. Spies stated that there was not a fence height restriction so they could put in a tall fence to improve the view for the residents.

Upon a motion by Mr. Magill, seconded by Mr. Quinton, and duly carried, the Commission **APPROVED** the Comprehensive Development Plan for Lodges at Naylor Mill 2 Ltd. Partnership, subject to the following revised Conditions of Approval:

CONDITIONS:

1. The site shall be developed in accordance with the approved Comprehensive Development Plan. Minor plan adjustments may be approved jointly by the Directors of the Planning and Zoning and Building, Permits, and Inspections Departments.
2. Subject to further review and approval by the Salisbury Public Works Department.



#SP-0015-15B REVISED COMPREHENSIVE DEVELOPMENT PLAN – Red Oak Car Wash & Laundromat – To Demolish Car Wash/Rebuild as Free-standing Tunnel System – David M. Wyatt – 1100 Nanticoke Road – Neighborhood Business District – M-106; G-7; P-3292; L-3.

Mr. Mitch Wyatt came forward. Mrs. Gloria Smith presented the Staff Report. Mr. Mitch Wyatt has submitted a Plan for modification of this neighborhood shopping center. He proposes demolition of the existing car wash and replacement with a free-standing tunnel system.

Mr. Wyatt stated that this property is an albatross getting in and out. There is an agreement with McDonald's that prohibits the sale of food on this property. The proposed car wash is a smaller tunnel. There would be one (1) person there to get the vehicles on the conveyor belt. The car washes would start at \$5 and go up to \$18 depending on which service was chosen.

The vacuum cleaners will be free. This will not be like University Car Wash. It takes one (1) minute to go through the car wash.

Dr. McNaughton questioned if this was a proven technology in other locations. Mr. Wyatt responded in the affirmative, explaining that this is now the trend as it saves on labor costs. Dr. McNaughton questioned if this saves on water. Mr. Wyatt responded in the affirmative stated that It not only uses less water but also less chemicals and cleans better.

Mr. Spies questioned if trash receptacles were shown on Attachment # 5 and if there would be something similar at the vacuum sites. Mr. Wyatt responded in the affirmative. He explained that Attachment # 3 showed that when you exit the tunnel, the seven (7) spaces to the right are where the vacuums will be. The tree on the property that was previously saved will be taken down as it is dead.

Mr. Dashiell questioned if the car wash tunnel would resemble what was shown in the staff report. Mr. Wyatt responded that he hadn't gotten into the cost of the building yet but he expected it to look nice. Mr. Dashiell questioned if it would be an enclosed car wash. Mr. Wyatt responded in the affirmative.

Dr. McNaughton questioned if the signage would have to be approved. Mr. Wyatt responded that he wanted to get this approval first. He stated that he hopes to put signage on Pemberton Drive and digital signage on the marquee. The same letters as are currently on the building would be on the new building. Mrs. Smith stated that Mr. Wyatt would have to come back with a sign plan since this is considered a shopping center.

Mr. Dashiell questioned if there was any concern over loading spaces. Mr. Eure responded that he had no concerns about a loading space with this type of use.

Mr. Wyatt stated that with this new car wash that the parking will be more convenient for the Laundromat.

Mr. Rogers questioned if the dumpster would be accessible for the waste management company. Mr. Wyatt responded in the affirmative.

Mr. Magill stated that he would like to see landscaping on the Pemberton Drive side of the building. Mr. Wyatt stated that landscaping would only help his property but added that the Pemberton Drive side of the property was elevated. After discussion, Mr. Rogers noted that the topography will make it physically difficult to soften the appearance of the property on the Pemberton Drive side.

Mr. Spies suggested using other ground cover that requires less maintenance instead of grass.

Upon a motion by Mr. Magill, seconded by Dr. McNaughton, and duly carried, the Commission **APPROVED** the Revised Comprehensive Development Plan for Red Oak shopping center for David Wyatt, subject to the following Conditions of Approval:

CONDITIONS:

1. The site shall be developed in accordance with the approved Final Comprehensive Development Plan. Minor plan adjustments to the leasable area may be approved jointly by the Directors of the Building, Permits and Inspections and Planning and Zoning Departments.
2. This project is subject to further review and approval by the Salisbury Department of Public Works.



#SP-8713-15LL SIGN PLAN – Cracker Barrel – 2300 North Salisbury Blvd. – General Commercial District – M-119; G-15; P-237.

Mrs. Gloria Smith presented the Staff Report. Elrod Engineering has submitted a Sign Plan for the Cracker Barrel restaurant approved for construction at the Centre at Salisbury Mall. At the time of Comprehensive Development Plan approval in February, the Commission required submission of a Sign Plan prior to any sign installation on the site.

Dr. McNaughton questioned if the signs would be the same height as Red Lobster. Mrs. Smith responded that she wasn't sure because she used the square footage of all the signs and added that they are not permitted to have a ground sign. Mr. Spies stated that he feared that there would be a large sign for the beltway. Mrs. Smith stated that they were told they could not have a ground sign.

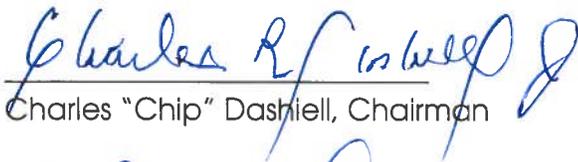
Upon a motion by Mr. Magill, seconded by Mr. Quinton, and duly carried, the Commission **APPROVED** the sign Plan for Cracker Barrel, as submitted.



There being no further business, the Commission meeting was adjourned at 2:53 p.m. by Mr. Dashiell.



This is a summary of the proceedings of this meeting. Detailed information is in the permanent files of each case as presented and filed in the Salisbury-Wicomico County Department of Planning, Zoning, and Community Development Office.


Charles "Chip" Dashiell, Chairman


John F. Lenox, Director


Beverly R. Tull, Recording Secretary