

MINUTES
CITY OF ELIZABETH CITY
PLANNING COMMISSION
REGULAR MEETING
TUESDAY, December 3, 2013
4:00 PM

MEMBERS PRESENT

Ernest Sutton, Chairman
Lena Council
Sonny DiGirolamo
Carlton O'Neal

Also present were Angela Cole, Senior Planner; Cheryl Eggar, Planner and Dawn Harris, Secretary to the Board.

Chairman Sutton called the meeting to order and stated that there was a quorum. He asked for a motion to approve the minutes from the November 5, 2013 meeting. Mr. DiGirolamo made a motion to **APPROVE** the November 5, 2013 minutes as written. Ms. Council seconded the motion. **ALL IN FAVOR: COUNCIL, DIGIROLAMO, O'NEAL and SUTTON. MOTION CARRIED.**

Chairman Sutton asked for a motion to **APPROVE** the agenda for the meeting tonight. Mr. DiGirolamo made a motion to **APPROVE** the December 3, 2013 Agenda as written. Mr. O'Neal seconded the motion. **ALL IN FAVOR: COUNCIL, DIGIROLAMO, O'NEAL and SUTTON.**

First item on the agenda tonight was **CASE NO.: RZ-04-13** – presented by Tonya Spellman for property located at 305 Perry Street. The applicant is requesting to rezone the subject property from Residential (R6) to Neighborhood Business (NB).

Ms. Eggar gave the following overview of the application.

STAFF REPORT

Ms. Spellman as made a request to have the property at 305 Perry Street which used to be the site of Brooks Grocery/Deli rezoned from residential R-6 to neighborhood business. This will allow the historic commercial use of the site for food service to be continued. The property is comprised of a total of 5 lots with a total area of 26,500 square feet or 0.74 acres with frontage on both Perry Street and Peartree Road. Adjacent properties are zoned R-6 and O&I and are used for single and multi-family dwellings in addition to the New Hollywood Cemetery to the south and east. Elizabeth City supplies water, sewer and electricity to the site. The Land Use Plan designates the subject property as Medium/High Density Residential. Limited neighborhood commercial is considered an acceptable use with this designation. The NB zoning is considered conditionally consistent with the LUP. The commercial use of the site for a restaurant with fast food delivery service is compatible with Medium/High residential classification. Historically the site has been used for commercial purposes. For approximately 30 years it was the site of the Brooks Grocery, a neighborhood grocery store. In addition to groceries, the store had a deli counter where sandwiches and hot foods were served. After that it was Ocean Delight seafood market/restaurant. The applicant is proposing to use the site for a restaurant with a food delivery service. No indoor dining is proposed. The proposed hours of

operation will be limited to 6 am until about 2 pm. R-6 zoning district is a medium residential district intended to primarily accommodate a variety of medium density single and multi-family dwellings. Limited neighborhood-oriented convenience retail stores are permitted with a Special Use Permit

The proposed Neighborhood Business District is intended to allow small, limited retail service land uses which provide goods and services primarily to surrounding residential neighborhoods. The major objectives of this district are to encourage the location of convenience retail establishments, professional services, and professional offices so as to be as compatible as possible with surrounding residential uses; discourage intensive land uses which require large amounts of land area; and limit the location of large vehicular traffic-generating uses to major streets. The proposed restaurant and food delivery service is permitted by right within this district. The land uses permitted in the neighborhood business district are not high intensity uses but rather moderate commercial and service uses oriented towards servicing residential neighborhoods. Among the types of uses that are permitted in the neighborhood business zoning district are various professional and personal services, and neighborhood oriented retail services such as bakeries, bookstores, barber and beauty shops, convenience stores, drug and food stores, Laundromats, hardware stores, and restaurants. The agenda packets contain a list of all the permissible uses. The proposed use of the site should be the least intrusive of the all the past uses. The Elizabeth City Police Department confirmed that the past commercial use of the site has not been disruptive to the neighborhood.

There is an existing building on this site and this building conforms to neighborhood business setback requirements. The proposed neighborhood business rezoning with a limited neighborhood commercial use is conditionally consistent with the Future Land Use Map classification and is considered an acceptable use. The neighborhood business zoning will be an extension on the existing nonresidential zoning district found at New Hollywood Cemetery to the east and south. The neighborhood business zoning classification is an appropriate zoning to be found in a residential neighborhood. As proposed, and with consideration of the historic use of the site, staff is of the opinion that the proposed zoning is appropriate for the area and recommends APPROVAL of this application. This ended Ms. Eggar's Staff Report.

Chairman Sutton asked if there were any questions for Staff. There were no questions at this time. Chairman Sutton asked Ms. Spellman to come forward and present her case to the Commission.

Ms. Spellman stated that she appreciated everything that was said by Ms. Eggar. She added that her business would offer a service that is not available in Elizabeth City at this time. The restaurant will not be for dining in. The establishment that is there is already setup. Ms. Spellman stated that they would not have to do any construction or anything that would disrupt the neighborhood. She stated that there should not be any parking concerns. There is already on-site parking. This is not dine in it is carry out. She stated that they will be offering breakfast and lunch only during a responsible time of 6:00 AM to 2:00 PM. The business has been there for over 30 years. She thanked the Commission for their consideration.

Chairman Sutton asked if there were questions for Ms. Spellman. Chairman Sutton asked what would be on their lunch menu. Ms. Spellman stated that they would have sandwiches and

homemade soups. Mr. DiGirolamo asked the relationship between owner and the applicant. There is none. Ms. Spellman is leasing the property. There were no other questions.

Chairman Sutton asked for a motion. Ms. Council made a motion to **APPROVE** Case No.: RZ-04-13 from residential R-6 to Neighborhood Business (NB). Mr. DiGirolamo seconded the motion. ***ALL IN FAVOR: COUNCIL, DIGIROLAMO, O'NEAL and SUTTON.***

Next item on the agenda was Text Amendment 02-13 presented by the City of Elizabeth City to amend Articles II, IV, and VII of the Unified Development Ordinance so as to comply with the 2013 General Assembly enacted legislation, House Bill 276 (Session Law 2013-126) to modernize and clarify the statutes pertaining to county and municipal zoning boards of adjustment, locally referred to as the Board of Adjustment.

Chairman Sutton asked Staff for their report. Ms. Cole gave the following report.

STAFF REPORT

Text Amendment 02-13 is a proposal to amend our Unified Development Ordinance specifically Articles III, VI, VII and the Appendices A4-1 and A4-2. As stated in the summary section of the Staff Report our recent General Assembly body enacted legislation to update statutes pertaining to Zoning Boards of Adjustment. These changes were effective October 1, 2013. This text amendment is play catchup to regulation that is already in place that the City must comply with. The Board of Adjustment has been advised of these changes. They do not have opportunity to offer commentary on text amendments; even though it pertains to how they conduct business, but we certainly wanted to keep them informed of upcoming changes. Staff is asked for the Commission's consideration and recommendation to approve these text amendments as they move forward to Council for Call for Public Hearing and then their final adoption.

Ms. Cole stated that if the Commission would like for her to answer specific questions within the text, she can.

Chairman Sutton asked if there were questions regarding the amendments.

Mr. DiGirolamo stated that he had some areas that needed some clarification. Under 3-2.6 Voting, page 5 of 26, (B) "The chair of the Board of Adjustment or any member acting as chair..." In other areas it has been stated as "chairman." Ms. Cole stated that for the sake of consistency she would put in "chairman."

Mr. DiGirolamo stated that on Page 9 of 26, section 4-7.5, (B) seems like there was some duplication in the red section where it starts at "for petitions being heard and decided by the Board of Adjustment, the Secretary to the Board of Adjustment shall public notice of the public hear." Ms. Cole stated "publish notice of the public hearing." She stated that the paragraph would be as follows. "For petitions being heard and decided by Council, the City Clerk shall publish a notice of the public hearing; for petitions being heard and decided by the Board of Adjustment, the Secretary to the Board of Adjustment shall publish notice of the public hearing."

Mr. DiGirolamo stated that there are two sections labeled "B." Ms. Cole stated that she would update the section along with the remainder accordingly.

Mr. DiGirolamo stated he had a note on page 10 of 26 that perhaps there are some redundancies beginning at the top of the page in the red. It states, "Within that same time period, the City shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way." In Section (D) it reads, "Within that same time period, The Zoning Administrator shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way." Mr. DiGirolamo stated that he was not sure if he had missed something. It seemed redundant but it might not be. Ms. Cole stated that Staff can check on it. She stated that she knows that there are two different points of publication. To clarify, we have a Notice of Appeal; it becomes the responsibility of the appellant to post the property. In other instances, Variances and Special Use Permits—it is the responsibility of the City. She stated that in this section where the heading is clearly "Public Hearing Requirements and Procedures" she will need to go back and make sure she is talking solely about the Special Use and Conditional Use process and not an Appeal. She stated that she would clarify that.

Ms. Council asked for clarification regarding the posting on the site or adjacent street or highway right-of-way. She asked if it wouldn't be consistent to post on the site in addition. Ms. Cole stated that the Ordinance would allow Staff to do one or the other. Ms. Council understanding of that Ordinance is correct. Procedurally what we practice in the Planning Department is to post the property regardless. If there is a situation like we did a couple of years ago where we were rezoning property on Wellfield Road which was on an unfinished pavement section that people rarely go back there. That posting on site would have remained unseen. So Staff duplicated and added addition posting at the corner of Forest Park and Wellfield Road. In those instances Staff will duplicate. Staff has practiced similar techniques along Halstead Boulevard. A lot of those properties are below grade/street grade. We have to pull the posting forward and possibly off-site. Staff always adds to any posting the phone number, the case number, and referring persons to call for clarification.

Mr. DiGirolamo stated on the same page, Section E which reads as follows: "The Zoning Administrator shall make every reasonable effort to comply with the notice provisions set forth in this Section. However, it is the permit-issuing board's intention that no failure to comply with any of the notice provisions [except those set forth in subsection (B) and the requisite posting in subsection (D)] shall render any permit request invalid." He asked if that made sense to everybody else. Ms. Cole stated that basically Staff has to comply with (B) and (D). If there are additional notifications that the City imposes on itself and Staff fails to do the additional notification, it would not make the petition and the hearing invalid. The Board would be able to continue with the case.

Mr. DiGirolamo stated he had another question mark on Section G on the next page over. It reads as follows: "The permit-issuing board is not required to take final action on a permit request within any specific period of time, but it should proceed within a reasonable time period on permit requests since inordinate delays can result in the applicant incurring unnecessary costs." Ms. Cole stated that historically there have been issues where the Boards of Adjustment were getting into murky water as to what expeditiously in terms of hearing and deciding a case, especially when you have advertising deadlines and posting deadlines that lengthen the typical timeframe for scheduling and review. Ms. Cole stated that she thinks what the State wanted to in the give-and-take of this Ordinance favoring applicants; she thinks it also wanted to give a little

to Boards of Adjustment and Staff, changing the language to “a reasonable time period.” Still that remains up for interpretation. There is nothing specific about it at all.

Chairman Sutton stated that he thinks he is correct that they have taken all the four fifths [vote] out and made it a majority. [Variances being an exception.] Ms. Council questioned what Chairman Sutton meant. Ms. Cole stated that often it was referred to as a “super-majority” where of the seven members sitting at that particular hearing six had to agree. That is removed from decisions on Special Use Permits and Appeals. However, when it comes to Variances they still have to have the six of seven sitting at the meeting or in circumstances of five of six it would have to be five votes.

Mr. DiGirolamo stated that he had one more notation on page 22, Section D. It was brought up earlier where it reversed the “chair” as opposed to “chairman.” Ms. Cole stated she would clarify that for consistency. Mr. DiGirolamo stated that what all he had.

Chairman Sutton called for a motion on the amendment. Mr. DiGirolamo made a motion to **APPROVE** Text Amendment 02-13 with necessary corrections being made. Ms. Council seconded the motion. ***ALL IN FAVOR: COUNCIL, DIGIROLAMO, O’NEAL and SUTTON. MOTION CARRIED.***

Chairman Sutton asked for any reports from Staff. Ms. Cole stated that Staff was happy to announce that the Zoning Map corrections project has been completed and the updates have been digitized so they are available for Staff’s use as well as public use.

Ms. Cole stated with this being Planning Commission’s last business meeting of 2013 she would like to say on behalf of Director Brooks that they thank the Commission for their diligence and patience and perseverance on all matters of zoning and development and land use. She requested if there were objectives and goals that the Commission would like to see Staff work toward in 2014 Staff would certainly discuss it either individually or collectively.

For the new member, Ms. Cole went over several of the past amendments that Staff had worked. Those amendments included the Sign Ordinance, Dumpster and Screening Regulations, Code Enforcement and Text Amendments on Portable Storage Units. She stated that Staff looks forward to working with the Commission and whatever ideas they would like to share.

Chairman Sutton asked what Staff would like to see as far as communication, coordination or cooperation with other agencies/departments that would make their job easier or more consistent. Ms. Cole stated that she thinks that there needs to be a regular dialogue with established organizations such as the Chamber or the Economic Development, ECDI or the downtown business improvement area. Whether it is in a formal way that Staff has the opportunity to just sit in on those meetings on a regular basis or Staff receives copies of newsletters or reports/minutes. That link is needed. There are often times when Planning Staff brings up the rear in learning of new business interest or exists in our community. Certainly the Housing Authority would also be a good partner for Planning Staff. A lot of our CDC’s have had a long term relationship with our Community Development Officer by default of the grant writing process. Ms. Cole stated that she does not know to what degree that has weakened and needs to

be reinforced or strengthened, but certainly Director Brooks and the Community Development Officer could speak to that.

Ms. Eggar stated that another one would be NCDOT working with them for updating our Thoroughfare Plan.

Ms. Council asked if there had ever been conferences where you bring everyone together to perhaps just to have dialogue. Ms. Cole stated not since her tenure.

Chairman Sutton stated he thinks as pointed out that if you don't have good communication and coordination you lose a lot of motion and one agency doesn't get the opportunity to leverage other agencies responsibilities. He stated that he would like the Commission to set down with Staff and draft an outline of what Staff would like to see and in doing so recommend that the Commission develop a process to do what is outlined. He would like to just craft an outline, creating a draft, make a proposal and recommendation.

Ms. Eggar stated that she thinks that it is a good idea in helping to make Elizabeth City more business friendly. One thing that has happened that is helping with that is the change of the parking requirements in the Central Business District. That has opened it up for a lot more businesses to come in.

Chairman Sutton stated that a lot of times we focus on the external and not the internal. We forget to serve our internal customers. Mr. DiGirolamo stated that he agrees and would add to it that the Mayor currently has several projects going on within Elizabeth City all designed to help get us up from where we are now. What is being discussed here may help to push one of these initiatives along a little further or faster. Input from more than one person will have an impact. He stated that he thinks it is a great idea and he would like to sit in on the session.

There were No Member Concerns.

Chairman Sutton thanked Staff for all they do to make our City better and to make our Planning Commission better. He stated that he is serious about being your on customer. Sometimes we don't work and play with each other well within our on agency. He encouraged everyone to be an example for other agencies. He also thanked the Commission for their work.

With no further business Chairman Sutton adjourned the December meeting.

Respectfully Submitted,
Dawn Harris, Secretary of the Board