

Minutes of the New Bern Planning & Zoning Board July 2, 2013

The regularly scheduled meeting of the New Bern Planning & Zoning Board was held in the City Hall Courtroom, 300 Pollock Street, on Tuesday, July 2, 2013 at 6:30 PM.

Members present: Mr. Tim Tabak, Chair
Mr. Kenneth Peregoy, Vice-Chair
Ms. Stevie Bennett
Mr. Jimmy Dillahunt
Mr. Paul Yaeger
Mr. Bill Stamm
Mr. Patrick McCullough

Members absent: None

Members Excused: Ms. Tiffany Dove
Ms. Dorothea White
Ms. Velda Whitfield

Staff present: Mr. Bernard George, AICP
Planning Division Manager

Mr. Kevin Robinson, AICP
City Planner

Chairman Tabak called the meeting to order. Roll call was taken and a quorum declared.

Prayer: A prayer for guidance was given by Mr. George.

Minutes: Chair Tabak noted two sets of minutes were being considered from the May 7, 2013 and June 4, 2013 meetings. Reading of the minutes was waived.

May 7, 2013 minutes were unanimously approved as presented with a motion by Mr. Peregoy and second by Mr. Dillahunt.

June 4, 2013 minutes were unanimously approved with corrections with a motion by Mr. McCullough and second by Mr. Peregoy.

Chair Tabak addressed the public on the purpose and responsibilities of the Planning & Zoning Board.

New Business

A. Consideration of a request by the City of New Bern to amend the Public Notification Provisions of the Land Use Ordinance so as to provide for a unified system of public meeting notice consistent with State Law.

Staff Comments: Mr. George stated City Planner Kevin Robinson would be speaking regarding this item. Mr. George advised this item will be presented to the Board of Aldermen for consideration in August.

Applicant Comments: Mr. Kevin Robinson summarized this item, as it was previously discussed at the June Planning & Zoning Board meeting. Mr. Robinson advised the amendment to the Land Use Ordinance will create an addition of a new part to Article III, Administrative Mechanisms. The purpose of the amendment is to summarize and standardize minimum notification methods for the City of New Bern Bern's boards and commissions. Staff will reserve the right to provide notifications earlier to boards and commissions as deemed necessary. Generally most items reflect what is currently in the ordinance or current staff policies. Mr. Robinson proceeded to summarize the remaining items as follows.

Annual update of meeting schedule will remain the same; seven (7) calendar days before the first meeting can take place following the annual meeting.

Notification of appellant and applicant is also seven (7) calendar days, except in the case of zoning map amendments per general statute 168-384 which requires notification between 10-25 days prior to the public hearing.

Affected property owners within 100 feet should be notified by post-marked written letter no less than seven (7) days.

Subject property posting as discussed at the May meeting was missing a time frame. Therefore seven (7) days has been added for the posting time frame.

Notification of boards and commissions is currently three (3) days. As previously discussed, the time frame is insufficient for thorough review of agenda items; therefore a minimum of five (5) days was decided.

Two newspaper postings with notifications for text or zoning map amendments are currently 10-25 days prior to hearings as required by general statute.

The continuance of hearings provision restates what is currently in the ordinance.

Notification of special meetings requires a minimum of 48 hours. The notice will be posted at City Hall, on the City's website and will require mail, email or delivery to any media sources who files a request for such notification.

The notification of affected property owner's process will change. The addresses will be obtained through Craven County GIS and will be compiled no later than fourteen (14) days prior to meeting date to ensure owner information is as current as possible.

Emergency meetings allow for unscheduled meetings to be held only under extreme circumstances which require notification by email, telephone and media outlet using the same notification methods for boards or commissions.

Failure to give proper notification - Failure to adhere to these requirements will be grounds for denial of a hearing or cancellation of the entire hearing, whichever is deemed more appropriate. The meeting cannot be rescheduled until the minimum meeting requirements have been met.

Chair Tabak asked if the remainder of the amendment body would be discussed, asking board members if they preferred to discuss the section details or just cover noted items. Mr. Robinson advised the necessary changes have already been noted in the draft amendment based on the Board's previous discussions of the new section.

Public Comments: None

Board Discussion: Member Stevie Bennett noted in the past, starting on line 35-41, notification of applicant/appellant, that the Board of Adjustment previously had 15 days notification, whereas the new verbiage only requires 7 days for notification, and wondered why this change was being considered.

Mr. George responded the ordinance was drafted about 21-22 years ago (1992). The general statutes do not specify minimum time for a Board of Adjustment notice. The 15 days was chosen by those who were drafting the ordinance at that time. It is the most excessive time of all boards. To make notification consistent, 7 days is being suggested for all boards. This reduces conflicting and confusing public notice deadlines. Mr. George further stated he is unaware of any reasons why Board of Adjustment hearings would require more notification time than other board hearings.

Ms. Bennett had concern that the 15 day notice was a state statute. Mr. George advised it is not.

Ms. Bennett noted on line 43 there was discussion at the May meeting about the maximum distance to notify affected property owners. Ms. Bennett thought the board came to consensus that it should be expanded further than the existing 100 feet.

Chair Tabak recalled that discussion as well. There was also discussion about putting the notice on the website and internet so it would reach more people than those within the existing 100 feet. Ms. Bennett noted the state minimum is 100 feet, which Mr. Robinson reiterated. Chair Tabak questioned how effective the website would be in reaching the public. Mr. Robinson advised he could not speak on behalf of the Planning & Zoning Board or the Board of Adjustment. But for the HPC Board he facilitates, the agenda, applications, and annual meeting schedule are posted. The Certificates of Appropriateness have recently been added to the website for viewing as well, and seems to be very effective.

Ms. Bennett suggested that Mr. Robinson meet with city staff Colleen Roberts on Channel 3 to discuss upcoming applications, cases, and who to contact. Mr. Robinson agreed that was a good idea and would discuss it with Ms. Roberts.

Ms. Bennett noted many years ago there were problems when applicants for a COA were required to submit names and addresses of owners within 100 feet of an applicant's property. She questioned who would be responsible now for accuracy of the information. Mr. Robinson advised that previous verbiage has been removed and the requirement is now the responsibility of city staff. He emphasized the new provision requires affected property addresses to be obtained no later than fourteen (14) days prior to the hearing.

Chair Tabak asked how often the Craven County website is updated. Mr. Robinson advised he wasn't sure of their update requirements, but noted sometimes it can take up to thirty (30) days for updates to occur. Typically it doesn't take that long, but it can. Ms. Bennett advised she has spoken with Craven County about this, and while she isn't sure of the timing for updates on the website, but due to NC law, a deed has to be recorded as soon as it is in the office. Mr. George advised the GIS records are updated monthly, within a 30-day period.

Mr. Bennett noted line 77 verbiage should include the date of the meeting as well, as it currently just states time and place. Mr. Robinson agreed to make the correction.

Ms. Bennett questioned running notifications in a local newspaper, as she has been told if the Sun Journal wants to run it, they can, but they don't have to run it. She questioned the validity of that provision. Mr. Robinson noted in the general statutes there is one case where posting is required, which is Special Called Meetings. In addition there is one item, rezoning, that has to be posted and run twice.

Ms. Bennett suggested meeting notices would be another good item for Ms. Roberts to update on the website. Mr. George advised since we now have a city channel, it is required that this information be updated and posted. Meeting notices currently are run on Channel 3, the city's TV station.

Chair Tabak clarified when meeting notices are sent to the newspaper; they are generally posted at will or free of charge except for zoning amendments, which are paid advertisements that are published on two separate occasions prior to the meeting. Mr. George confirmed this.

Ms. Bennett questioned if City Attorney Scott Davis had reviewed the proposed amendment. Mr. Robinson advised Attorney Davis has a draft of the suggested changes, but he has not received any feedback. She questioned if Mr. Davis was to make a change if the changes would have to be presented to the Planning & Zoning Board for approval. Mr. Robinson advised they would. She then questioned if this has been presented to the HPC Board. Mr. Robinson advised the amendment doesn't affect the HPC, as the changes are minor and therefore shouldn't need to be presented to that board.

Motion: Member Stevie Bennett motioned to approve the text amendments for Article III, part 6 Notification of Public Hearings of Appointed Boards and Commissions, Section 15-43 Notification Requirements. Vice-Chair Peregoy seconded the motion. Motion was approved by unanimous vote.

B. Consideration of a request by the City of New Bern to amend the Public Nuisance Ordinance so as to add front yard clotheslines and graffiti to the list of public nuisances for abatement.

Staff Comments: Mr. Kevin Robinson advised two new items have been added to section 26-26, Conditions Constituting a Nuisance. Currently it addresses grasses, odors, trash, animals, and noxious materials. The first proposed nuisance amendment adds clotheslines or hanging garments in the front yard and side yard, if on a corner lot. Staff has received multiple complaints throughout town about this issue. This will aesthetically help the area and property values as well.

Mr. Robinson stated the second is a bit more confusing: graffiti. He read the definition of graffiti located on public, private, commercial and multi-family properties. This now would be deemed a public nuisance and prohibited by ordinance.

Mr. Robinson advised the Police Department was especially concerned as it documents graffiti tags by gangs and other individuals. Documenting graffiti helps police keep up with gang activity in an area. According to the amendment, if a building inspector discovers graffiti, a 15-day process is initiated in which the inspector will notify the Police Department, allowing the Police time to work with the property owner on abatement and document their records. At the end of the 15-day period, the case would be turned over to the Code Enforcement Officer which then starts another 15-day period for the inspector to enforce. If a Police Officer identifies graffiti, he or she would notify the Code Enforcement Officer and the two 15-day processes will be initiated.

Mr. Robinson advised there was some concern that this may target some private property owners without the financial means to address the issue. The single family residential aspect has been removed from the amendment and the focus is now on multifamily and commercial properties that would have the means to abate these issues.

Board Discussion: Chair Tabak questioned what area of a lot would be acceptable to have a clothesline. Mr. Robinson advised anything from the front part of the house forward could not have a line, assuming the property is not on a corner lot. Chair Tabak noted this would restrict the view from the road. Mr. Robinson agreed this covers public rights-of-way and private homes.

Chair Tabak questioned the wording of the graffiti, stating he feels the verbiage makes it sound like a person could be in violation of a sign ordinance if it was approved by the owner. Mr. Robinson advised approval by the owner and City, or any other entity involved would provide official authorization. Chair Tabak questioned where the line would differ between what is considered a sign and what is considered graffiti. Mr. Robinson advised the current process in

obtaining a sign permit would remove any confusion on this point. If it is approved by the City and property owner it would be a sign.

Vice-Chair Peregoy advised there are many properties whose rear yards back up to the river and/or a golf course, which concerns him. Mr. Robinson advised he has talked to Attorney Scott Davis about this. North Carolina is not a 'Right to Dry' state. But, there is some legislation that states we cannot completely restrict the right to dry on a property. Something could be added that if the property is visible from these areas (rivers, golf courses), a screen would be required in order to have a clothesline.

Mr. Jimmy Dillahunt had concerns for properties with a small setback or small yard. Mr. Robinson felt there should be other areas of the yard that could accommodate clotheslines. Mr. Dillahunt had concerns about the railroad cars that have graffiti on them as well.

Ms. Bennett advised the umbrella clotheslines erected in Trent Court were not approved or authorized by the HPC. She reported Trent Court for unauthorized erection of these unsightly umbrella lines, but said the City did not follow up on the violation.

Mr. Robinson advised these issues refer back to screening from any public right of way.

Chair Tabak requested verbiage be included that the City would continue to police the streets for graffiti. This includes all commercial structures and multi-family structures, public property, streets, but not single family homes. Mr. Robinson advised single family homes are not included in the amendment due to concern that there may be limited capability of some property owners to have the means to clean up graffiti within the required time frame. Ms. Bennett requested clarification on the definition, requesting a change in verbiage to be more specific on the type of single family homes by referring to them as "detached single family residences."

Vice Chair Peregoy asked what would happen if graffiti showed up on a single family dwelling, if it would be removed. Mr. Robinson advised the City would not follow up, but hoped the Police Department would continue their efforts in the clean-up of these residences. He further stated the Police Department was concerned about the capability of single family owners to afford removal of graffiti.

Suggestions were made by Mr. Peregoy and Ms. Bennett to make the verbiage straight across the board for any graffiti anywhere, including single family homes. Mr. Robinson advised he is waiting for further review and the final amendment draft from the City Attorney. Discussion followed with no resolution as to the application of the graffiti ordinance on single family homes.

Chair Tabak asked if this item should be tabled for changes. Mr. Robinson recommended tabling the matter in order to clean up the language and receive comments from the city attorney.

Vice-Chair Peregoy reiterated his concern with the subject of clotheslines visible from the waterfront view.

Ms. Bennett suggested that clotheslines are banned from public view. Mr. Robinson stated the issue can be addressed by the city attorney along with his review of the graffiti amendment.

Public Comments: N/A

Motion: Mr. Dillahunt made a motion to continue consideration of this amendment until the next meeting. Stevie Bennett seconded. Motion passed unanimously.

Ms. Bennett noted there is an issue in the city with people parking in their front yards. This kills the grass. In some of the older sections of New Bern, the right of way between the sidewalk and the street, people park on this area and she has concerns that this is crushing the buried city water and sewer lines. Ms. Bennett advised this is a problem on National Avenue and she has previously talked with Public Works Director Mark Stephens about seeking a solution. She requested an amendment be drawn up to keep people from parking in both of these places. Mr. George advised there currently is a maximum limit of four cars that can be parked between a home and the street. Mr. Robinson felt something could be considered for the right of way parking as an enforcement issue.

Chair Tabak closed the discussion and proceeded to the next agenda item.

C. Consideration of a request by the City of New Bern to amend the Land Use Ordinance provisions of Article VII Enforcement and Review, Article XXI New Bern Historic District, and Chapter 38 Article 1 of the Housing Code so as to create a unified graduated penalty system for code violations.

Mr. George distributed to board members copies of the proposed graduated penalty ordinance. Ms. Bennett asked if what he just handed out included the changes from the previous meeting. Mr. George agreed by stating the ordinance was drawn up by Attorney Davis and included recommended changes from the board's preceding meeting.

Mr. George gave background on the board's previous meeting including discussion leading to the continuation of consideration of the amendment. He stated that during the regular meeting on June 6, the board continued its consideration of this amendment due to concerns raised and to provide the board additional time to further review the amendments.

Ms. Bennett was concerned the penalty wasn't high enough to be an effective deterrent. Mr. George responded that according to discussions with the city attorney, if the penalty is considered too high a judge may be hesitant to award the fees to the City. Mr. George noted the penalty is cumulative and the assessment doubles if repeated within 12 months.

Ms. Bennett questioned the process of levying penalties on property and if penalties continue accumulating until all violations are corrected. Mr. George advised that is correct, but the goal is to gain compliance and not to deprive an owner of his property. The City does not gain income by owning private property and taking property off the tax books. He further advised the purpose of the new penalty system is to encourage owners to better maintain their properties. When a property owner begins to repair dilapidated property, the building inspector has the

latitude to modify or abate the penalty if the owner is serious about correcting the violation. Mr. George reiterated the goal of the proposed penalty system is not to deprive an owner of property, but to gain compliance with the city's ordinances.

Mr. George described several amendment provisions that have been revised pursuant to board recommendations. City Attorney Davis has reviewed and made final changes. The draft amendments include current provisions with lines through the deleted language, and new provisions with the revisions underlined. A clean copy of all updated verbiage was also included for board review.

Mr. George continued by describing the amendment provisions in detail. Currently, Chapter I "General Provisions" of Code of Ordinances of the City of New Bern categorizes violations of city ordinances as misdemeanor. This language has been amended to provide for a civil penalty of \$500.00.

Mr. George summarized the amendment provisions of Section 15-114 "Penalties and Remedies for Violations" that provided cumulative penalties as follows:

- The sum of \$500.00 for failure to correct said violation within 31 days of notice;
- An additional total sum of \$1,000.00 for failure to correct said violation within 61 days of notice;
- An additional total sum of \$1,500.00 for failure to correct said violation within 91 days of notice;
- An additional total sum of \$2,000.00 for failure to correct said violation within 121 days of notice; and
- An additional sum of \$2,000.00 for each additional 30-days or fraction thereof for continuing failure to correct said violation as required in the initial notice after 121 days of notice, which includes administrative fees.
- If the offender fails to correct the violation within thirty-one (31) days after being cited for said violation, the penalty may be recovered by the city in a civil action in the nature of a debt. In addition, should the offender commit the same violation within a twelve (12) month period from the date of the initial violation and fail to correct said violation after due notice, the penalty shall be double the amounts established herein.

Following board discussion of the penalty provisions, Mr. George summarized the amendment provisions of Section 15-435 "Penalties and Remedies" for the prevention of demolition by neglect of buildings and structures within locally designated historic districts. The amendment provides for a graduated penalty system beginning with \$500 instead of the current \$50 per day fine. This is consistent with the civil penalties proposed in the amendment of Section 15-114 of the Land Use Ordinance.

Mr. George concluded his presentation by summarizing the revisions to Chapter 38 “Housing” of the Code of Ordinances of the City of New Bern. The amendment seeks to standardize the city’s civil penalty system for violations of the city’s Minimum Housing Code. The amendment provides for a graduated penalty system beginning with \$500 instead of the current \$50 per day fine. This is consistent with the civil penalties in the proposed amendment of Section 15-114 of the Land Use Ordinance.

Public Comments: None

Board Discussion: Board members held a very lengthy and detailed discussion on the proposed amendments. It was determined that city attorney Scott Davis had reviewed and approved the ordinance.

Motion: Mr. Peregoy moved, seconded by Mr. McCullough, that the board recommends approval of the proposed amendment. The motion was unanimously approved.

D. Nominating Committee: Chair Tabak appointed a three member nominating committee to provide a slate of officers at the next meeting consisting of chair and vice chair nominees.

There being no further business, the meeting was adjourned.

Tim Tabak, Chairman

Bernard George, AICP, Secretary