

Minutes of the New Bern Planning & Zoning Board September 3, 2013

The regularly scheduled meeting of the New Bern Planning & Zoning Board was held in the City Hall Courtroom, 300 Pollock Street, on Tuesday, September 3, 2013 at 6:30 PM. The meeting was preceded by a 5:30 pm work session

Members present: Mr. Tim Tabak, Chair
Mr. Kenneth Peregoy, Vice-Chair
Ms. Stevie Bennett
Mr. Jimmy Dillahunt
Ms. Tiffany Dove
Mr. Patrick McCullough
Ms. Dorothea White
Mr. Byron Walston

Members absent: None

Members Excused: Mr. Bill Stamm
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.

Chair Tabak provided an introduction to the purpose and responsibilities of the Planning & Zoning Board.

Minutes: Minutes from the August 6, 2013 meeting were presented. Reading of the minutes was waived. **Motion** made by Mr. Patrick McCullough for approval as presented. Motion was seconded by Ms. Stevie Bennett. Minutes were unanimously approved.

New Business

A. Consideration of a request by the City of New Bern to amend Land Use Ordinance Section 15-63. Amendments to and modification of permits. So as to clarify revisions that require a new application.

Staff Comments: Chair Tabak noted there are six (6) considerations in reference to the amendments, some of which coincide. He questioned if prior to starting the similar amendments could be combined to keep thoughts on the same track. Staff Mr. Kevin Robinson agreed that made sense.

Mr. Robinson presented information and provided an overview of this item. He advised this item pertains to previously approved plans. Currently, insignificant deviations to the permit are permissible, including approved plans issued by the Board. Subsequently, minor design modifications are permissible with approval from the Board. Section C which is a bit more vague, further clarify changes regarding increasing the intensity (change in overall square footage, change in use, etc.) to ensure proper determination of what is considered a major versus a minor change.

Public Comments: N/A

Board Discussion: Chair Tabak questioned if the terms “density” and “intensity” were defined elsewhere in the Ordinance. Mr. George advised the word ‘intensity’ was not defined. Vice-chair Peregoy was comfortable with the term density, but felt the term intensity was a fairly subjective term in the overall Land Use concept and therefore needed to be clarified. Mr. Robinson provided suggestions for properly defining the term within the Ordinance. Chair Tabak advised typically the term intensity is defined as a change from commercial to residential, or the opposite. He also felt the words square footage may need additional clarification as well.

Mr. George advised Section 15-124 of the Land Use Ordinance refers to the term “intensity”, defining the changes it refers to (the degree of activity on a particular site). Chair Tabak suggested noting “as defined in Section 15-124” when using the term. Vice-chair Peregoy suggested leaving in verbiage detailing those terms.

Mr. Jimmy Dillahunt voiced concern about the verbiage being too restrictive, and not allowing flexibility within the Inspections Division to alter or review, which may force more items before the Board of Adjustment than is necessary.

Mr. Patrick McCullough questioned if expansion on the term intensity should include traffic count or vehicle trips per day, as that seems to be a key component. Mr. Robinson noted he agreed with the relevance, but felt those issues typically are drawn out during the normal process as is.

Vice-chair Peregoy advised when someone requests a change, the staff determines if it's a minor change or a major change that requires board review and consideration. Ensuring clear communication and understanding will assist this process.

Mr. George advised for the voting process, there will be a roll-call taken for each proposed amendment to ensure each item is correct. He noted that item C had the only change consisting of verbiage in the first line of the item that added the words "increases in density and intensity." He suggested tying those definitions to Section 15-124 where explanations are provided.

Vice-chair Peregoy asked that Mr. Robinson work on adjusting the definition and explanation of the term 'intensity' and bring it back to the board for consideration.

Mr. George advised his understanding is the board is requesting the following verbiage, or something similar:

All other requests for changes and approved plans, especially increases in density or intensity of use that result in an increase of parking requirements shall be considered major changes and shall be processed as new applications.

Chair Tabak didn't feel that was adequate. He preferred:

All other requests for changes and approved plans, especially increases in density or intensity, as defined in Section 15-124d, such as.....shall be considered major changes.

Chair Tabak noted an intensity factor needed to be included in that section, noting the board thought parking spaces may be the proper factor, but that may not be the proper terminology. Vice Chair Peregoy noted Mr. McCullough's suggestion of the term 'traffic count' may be appropriate. The board agreed this is more in line with their requests.

Motion: Vice-Chair Peregoy motioned to table this requested amendment change until more specific language is presented for the definition of the term 'intensity'. Motion seconded by Mr. Jimmy Dillahunt. Motion to table was approved by unanimous vote.

B. Consideration of a request by the City of New Bern to amend Land Use Ordinance Section 15-125. *Repair, maintenance and reconstruction.* So as to further define major renovation of nonconforming property.

Board Discussion: Ms. Stevie Bennett questioned what problems the City has run into to warrant this change, noting she is not against this consideration, but would like additional clarification.

Mr. Robinson requested clarification on which section Ms. Bennett was inquiring about. She noted Section A. Mr. Robinson advised the intent of this request is to reduce the repair and placement cost definition of a non-conforming structure. He noted that once one exceeds the 50% mark, it is no longer considered the original structure. This is also to clarify the time period for computing repair costs which currently is open-ended.

Mr. Dillahunt questioned the definition of value; did it pertain to appraised tax value. Mr. Robinson advised it is the tax value of the property before the repairs or renovations occurred, versus the appraised value after repairs or renovations are completed. Mr. Dillahunt felt this may cause confusion. Vice-Chair Perego advised there is verbiage in Section 3 that allows for tax evaluation modified by the CPI and/or submittal of appraisal by a professional appraisal.

Mr. Dillahunt still felt due to the cost factor, there may be an issue. Mr. George advised the appraisal is done at the beginning of the process in order to get a building permit. Therefore the appraised value after repairs shouldn't matter since the value is determined at the time of the building permit application.

Chair Tabak questioned if it would be possible to clarify using the term "basis". Vice-Chair Perego advised the basis is the evaluation at the beginning of the process and the cost as related here, pertains to improvements, and therefore didn't feel that clarification was necessary.

Public Comment: N/A

Motion: Vice-Chair Perego motioned to approve the modification to Section 15-125 as submitted. Ms. Tiffany Dove seconded the motion. Motion was approved by unanimous vote.

C. Consideration of a request by the City of New Bern to amend Land Use Ordinance Section 15-126. *Change in use of property where a nonconforming situation exists. So as to allow change of use to only an allowed use.*

Staff Comments: Mr. Robinson advised this section deals in change of use from a nonconforming use to another nonconforming use that remains less intense. It is staff's opinion that once you have a nonconforming use, it should remain as such.

Public Comments: N/A

Board Discussion: Ms. Dorothea White requested additional information pertaining to Item C. Mr. Robinson advised this was removed primarily due to financial aspects, noting there could be multiple reasons for financial hardship considerations.

Chair Tabak confirmed the financial hardship pertained strictly to the nonconformance. Mr. Robinson affirmed this to be correct.

Motion: Member Mr. Jimmy Dillahunt motioned to accept the modification to Section 15-126 as submitted. Motion seconded by Byron Walston. Motion was approved by unanimous vote.

D. Consideration of a request by the City of New Bern to amend Land Use Ordinance Section 15-397(c). *Initiation of amendments.* So as to reference the required application filing fee as stated in the Development Services fee schedule.

Staff Comments: Mr. Robinson advised this is to remove the filing fee/application fee to correlate to the Development Services fee schedule.

Board Discussion: Chair Tabak confirmed the intent was to not have to change an ordinance on an annual basis if the fee schedule changes.

Vice-chair Peregoy suggested that explanation be included in the sentence: “The applicant shall pay the then-current filing fee to the Zoning Administrator.” He advised using this terminology allows it to be used every year, and would not require additional amendments.

Public Comments: N/A

Motion: Member Mr. Byron Walston motioned to accept the modification to Section 15-397(c) as submitted, with the addition to state ‘the current Development Services fee schedule’. Motion seconded by Vice-chair Peregoy. Motion was approved by unanimous vote.

E. Consideration of a request by the City of New Bern to amend Land Use Ordinance Section 15-455. *Site plan submission requirements.* So as to require site plan submittal on a boundary survey prepared by a registered surveyor.

Staff Comments: Chair Tabak noted his assumption that the amendment is being considered due to the submittal of hand drawn documents that were difficult to utilize.

Mr. Robinson advised the goal is to standardize plan submittals to ensure all dimensions and property lines are accurate.

Board Discussion: Ms. Bennett questioned if this would also apply to the HPC. Mr. Robinson advised it would not. Ms. Bennett noted there have been issues in the past with applicants submitting plans that weren’t to scale. Mr. Robinson advised that issue has been addressed with the HPC.

Chair Tabak requested clarification of the difference between the Planning & Zoning Board and the Historic Preservation Commission. Mr. Robinson advised the HPC handles locally designated properties within the Downtown Historic District as well as the Riverside Historic District.

Mr. Robinson advised he prefers to keep this issue separate from the HPC due to minor changes that are made to a historic properties could incur unnecessary large costs if surveys are required.

Chair Tabak reiterated that if this revision was applied to the HPC as well, anyone requesting a permit from the City for a revision would require a survey if they were going to alter a structure. Mr. Robinson affirmed this.

Mr. George advised this amendment is for the Commercial Entranceway Corridor District. Mr. George advised this is noted in Section 15-455 under the Entranceway Corridor section of the ordinance. Generally, the City will require a survey based upon the complexity of the project. Staff will review the plans with an applicant and let them know the extent of the information that is required and determine they meet requirements of the ordinance.

Chair Tabak requested additional information is provided on the entranceway corridors that exist. Mr. George confirmed there are six Commercial Entranceway Corridors, approximately 200 feet minimum from the centerline of the right-of-way.

1. Broad Street/Queen Street corridor
2. Trent Road Corridor
3. Glenburnie Road Corridor
4. Neuse Boulevard Corridor
5. US Highway 17/Clarendon Corridor
6. First Street Corridor

Chair Tabak questioned if these start at the city limits or reach out into the extra-territorial jurisdictions. Mr. George advised they will vary. The best place to view them is on the zoning map. The Glenburnie Road Corridor covers most of Glenburnie Road from Neuse Boulevard to Trent Road. Trent Road Corridor covers from Highway 17 to Simmons Street. Neuse Boulevard Corridor covers from First Street to Washington Forks. The zoning map, which is available on the city website, identifies the corridor boundaries. Commercial corridors have a higher appearance standard so as to protect the City's character as well as attract good development.

Chair Tabak noted the standards are to assist in enhancing the City's aesthetic appeal. Mr. George affirmed this. Mr. Robinson noted all the major corridors are covered and most meet up with the other, so all areas are covered.

Public Comments: N/A

Motion: Vice-chair Peregoy motioned to accept the modification to Section 15-455 as submitted. Motion seconded by Ms. Stevie Bennett. Motion was approved by unanimous vote.

F. Consideration of a request by the City of New Bern to amend Land Use Ordinance Section 15-461. *General scope and commentary.* So as to prohibit high intensity colors such as fluorescent colors and to limit black and metallic colors.

Staff Comments: Chair Tabak requested clarification on metallic colors to mean silver. Mr. Robinson advised that to be correct, including silver, gold and any other metallic type paint.

Mr. Robinson advised the reason for this request is intended to create a unified look and street development patterns within each corridor. The requirements for each corridor do vary slightly, but the overall goal is the same.

Board Discussion: Vice-chair Peregoy asked if proposed legislation limiting the ability of municipalities and governmental entities to control aesthetics passed. Mr. Robinson advised he did not know the status of that legislation but knows it pertained to single-family residential properties, not commercial structures.

Mr. Dillahunt noted he didn't think a good business person would entertain the metallic colors; therefore didn't feel the city should regulate what colors or designs businesses were allowed to utilize. He continued, stating everyone in New Bern is aware the city is historical and doesn't want to see the growth potential stifled. He feels this goes a little too far. Mr. Robinson noted there is language advising recommendations regarding façade and colors in the Ordinance. Mr. Dillahunt recommended verbiage suggesting consideration by appropriate parties but not specifying what an owner cannot do.

Mr. Robinson reiterated the goal of this suggested change is to maintain consistency.

Vice-chair Peregoy noted that covenants and building guidelines usually prefer a color pallet within the earth-tones. There are now multiple variations of earth tone colors available such that the options are quite open within that guideline. He felt broad terms could create problems in the future if not reigned in somewhat.

Mr. George advised the Department's concern is primarily with fluorescent colors. He questioned how this can best be accomplished: by limiting some colors that may be off the chart, or limiting the extent of the colors and the amount of color allowed on a building.

Vice-chair Peregoy noted on Broad Street there was a residence at one time painted an off-choice blue color that did not fit in with the area. In addition the residence was not well kept and subsequently had a detrimental effect on the area. Mr. Peregoy stated he recognizes the need to have parameters, but doesn't want to be too narrow or broad.

Mr. Dillahunt asked about the Auto Zone building. Mr. George advised this was not the type of structure color that this ordinance would affect.

Chair Tabak advised that previous discussions regarding the overlay districts and signage led to a decision to have final the final determination made by a third party with an approved permit. He questioned if this would be an option, to require a special use permit for out of character colors.

Ms. Dorothea White, referencing Item A, specifically the sentence that states "in general", suggested removing that verbiage, leaving the rest intact. The sentence prior to the above referenced sentence that discusses color of buildings that dominate the corridor at the time of adoption would decide colors. She noted whatever dominate colors are existing would prevail. She further noted the provision provides a choice, but allows only choosing from existing colors

in the corridor. The next sentence states that fluorescent and metallic colors are not allowed, so she feels it covers all areas. Mr. Robinson agreed this suggested change makes sense.

Chair Tabak clarified, noting the sentence under discussion is on part of lines 16 and 17 of Section A, 15-461, starting with the verbiage “in general” and ending with “earth tone colors”. Chair Tabak agreed that Ms. White’s suggestion is a valid compromise. Vice-Chair Peregoy agreed, noting it takes the ambiguity out of the equation. Mr. Dillahunt also felt it was a valid compromise, even though he doesn’t necessarily agree with it.

Public Comments: *Linda Stout, 802 Pollock Street*, felt the compromise was acceptable but requested additional verbiage.

Ms. Bennett advised she was thinking back to HPC and the fact they can’t control the colors painted on homes. She felt the compromise was acceptable as well.

Vice-chair Peregoy asked the Board their opinion on the 25% coverage allowance. He felt that percentage is too much for black or metallic coverage, noting 25% could be an entire side of a structure. He would prefer the percentage be closer to 10-15%.

Mr. Robinson advised staff’s view of the colors pertained to trim more than an entire wall color. Mr. McCullough referenced a Verizon building on Highway 17 South with its upper parafait black. He felt it was possibly over the 25% requirement. The rest of the building has an earth-tone brick façade.

Mr. Dillahunt felt 25% was acceptable. He felt New Bern as a whole is a conservative town and the business owners share that conservatism. Mr. Peregoy questioned if the verbiage could be changed to reflect 25% of any surface, rather than entire surface. He reiterated the goal was to contain this 25% to mostly trim work, rather than the entire structure.

Motion: Ms. Stevie Bennett motioned to accept the modification to Section 15-461, with the addition of the following pertaining to lines 14-19. Chair Tabak noted changes specifically to be:

Colors: The exterior color finish of all buildings except for single and two-family dwellings, shall compliment the color of buildings that predominate the colors in the corridor at the time of adoption of this chapter to be of low reflectance. High intensity colors, such as fluorescent colors, shall be prohibited. Black and metallic colors are prohibited when used on more than 25% of one surface on the overall structure.

Ms. Bennett suggested changing that verbiage to “on any exterior wall”.

Chair Tabak advised that was his intent, but noted a change possibility would be any one exterior wall surface.

Vice-Chair Peregoy felt that was better. Mr. McCullough noted he felt the term “wall” was important to clarify.

Chair Tabak continued, Black and metallic colors are prohibited when used on more than 25% of any one exterior wall surface.

Motion seconded by Ms. White and approved by majority vote. Mr. Dillahunt opposed, all other board members agreed.

There being no further business, the meeting was adjourned.

Tim Tabak, Chairman

Bernard George, AICP, Secretary