

**PLANNING AND ZONING COMMISSION
MINUTES
December 4, 2018**

ATTENDEES:

Members

Pam Buckley
(*Peck Miller – absent*)
Joel Brous
Lauren Taylor
Chris Shanahan
Palmer Gillis
Joe Wilson

Staff

Frank Hall
Kay Gordy
Will Esham, attorney
Daphne Hurley – Public Hearing
Reporter

6:30 PM

I. APPROVAL OF MINUTES –

Minutes of October 2, 2018

MOTION/Taylor SECOND/Gillis to approve the minutes as submitted. Vote was (4-0-3), Chairman Pam Buckley and Commissioners Joe Wilson absent for that meeting and Commissioner Peck Miller absent for this vote.

Minutes of October 16, 2018

MOTION/Taylor SECOND/Shanahan to approve the minutes as submitted. Vote was (5-0-2), Commissioner Palmer Gillis absent for that meeting and Commissioner Peck Miller absent for this vote.

II. INFORMAL DISCUSSION –

Keith Iott, Iott Architecture and Engineering, presented a change in the master site plan of 45th Street Village. On the southeastern portion of Land Unit 4, a retail store site has been approved in conjunction with the master site plan. The owners, 45th Street Village, LLC, Avraham Sibony, principal, proposes replacing the retail store with an 18-hole miniature golf course. Mr. Iott presented the site plan showing the proposed location and large illustration boards that show the proposed mini-golf course design in color.

The members of the Commission were pleased to see a recreational activity located at the site with the existing restaurants and a Loft Hotel, under construction, slated to open March of 2019 and encouraged Mr. Sibony to make application for a Conditional Use hearing.

During the remaining time before the public hearings were to begin, Zoning Administrator Frank Hall briefed the Commission on items that could come before them in the future and those not requiring Planning Commission review coming through the Planning and Community Development office.

7:00 PM

III. PUBLIC HEARINGS:

To consider amending Article II, Division 4. Section 110-94(2)(b) Special Exception to Parking and Loading Requirements, and Article IV, Division 18. Section 110-744(4)g Transfer of Development Rights, to prohibit special parking exceptions for the portion of development projects that utilize Transfer of Development Rights (TDR).

APPLICANT: PLANNING AND ZONING COMMISSION (FILE #18-14100013)

Zoning Administrator Frank Hall presented a staff report, below:

Special Parking Exception with use of Transferable Development Rights (TDR)

Issue Summary: Chapter 110 Zoning, Section 110-93(2) Powers, grants authority to the Board of Zoning Appeals to “hear and decide on applications for special exceptions...” which includes applications that request a “Waiver or reduction of the parking requirements and design standards in any district whenever the character or use of the building is such as to make unnecessary the full provision of parking facilities.” (Section 110-94(2)(b))

Recent site plans with the use of TDRs to increase density also included a special parking exception which prompted much discussion with the Planning Commission. The Commission indicated that the use of TDRs in conjunction with a special exception with parking was excessive.

Option: Amend Section 110-94(2)(b) to read as follows:

“Waiver or reduction of the parking requirements and design standards in any district whenever the character or use of the building is such as to make unnecessary the full provision of parking facilities.” **Special Exceptions to parking requirements are not permitted for the portion of a development project that utilizes Transferable Development Rights to increase its base density.**

Also amend Section 110-774(4) g Transfer of development rights to read as follows:

“A development project that utilized the TDR program and is able to increase its base density is subject to all other development requirements, including but not limited to height, parking, setbacks and landscaping. This does not, however, preclude requests for available variances and special exceptions. **Special Exceptions to parking requirements are not permitted for the portion of a development project that utilizes Transferable Development Rights to increase its base density.**”

MOTION/Taylor SECOND/Brous to amend the Code sections as submitted. Vote was (6-0-1), Commissioner Peck Miller absent.

7:10 PM

To consider amending Article II, Division 3. Section 110-72(a) Determination of existence of nonconforming use, structure or lot, to limit a Determination of Nonconformity for parking requirements.

APPLICANT: PLANNING AND ZONING COMMISSION (FILE #18-14100014)

Staff Report:

Determination of Parking Non-conformity with use of TDRs

Issue Summary: Section 110-72(a) Determination of existence of nonconforming use, structure or lot states: “The existence and extent of a nonconforming use, structure or lot shall be a question of fact to be determined by the administrator. If, after investigation and an on-site inspection, the administrator cannot make a confident determination, he may require the property owner to apply to the Board of Zoning Appeals for determination of nonconformity following a public hearing.”

Option A: Amend Section 110-72(a) to read as follows:

“The existence and extent of a nonconforming use, structure or lot shall be a question of fact to be determined by the administrator. If, after investigation and an on-site inspection, the administrator cannot make a confident determination, he may require the property owner to apply to the Board of Zoning Appeals for determination of nonconformity following a public hearing.” **A Determination of Nonconformity of parking requirements shall not be applicable to support the portion of a development project that utilizes Transferable Development Rights to increase its base density.**

Option B: Amend Section 110-72(a) to read as follows:

“The existence and extent of a nonconforming use, structure or lot shall be a question of fact to be determined by the administrator. If, after investigation and an on-site inspection, the administrator cannot make a confident determination, he may require the property owner to apply to the Board of Zoning Appeals for determination of nonconformity following a public hearing.” **A Determination of Nonconformity for parking requirements is permitted for redevelopment projects that are reducing the degree of the existing non-conformity.**

Option C: Amend Section 110-72(a) to read as follows:

“The existence and extent of a nonconforming use, structure or lot shall be a question of fact to be determined by the administrator. If, after investigation and an on-site inspection, the administrator cannot make a confident determination, he may require the property owner to apply to the Board of Zoning Appeals for determination of nonconformity following a public hearing.” **A Determination of Nonconformity for parking requirements is only permitted as provided in Section 110-74 (d).**

For reference, Section 110-74(d) states:

“Nonconforming structures which have been damaged by any cause whatsoever, **other than intentional demolition for redevelopment**, may be repaired or rebuilt, provided that

any repair or rebuilding does not in any respect increase the extent of nonconformity in any manner whatsoever.

Option D: Amend Section 110-72(a) to read as follows:

“The existence and extent of a nonconforming use, structure or lot shall be a question of fact to be determined by the administrator. If, after investigation and an on-site inspection, the administrator cannot make a confident determination, he may require the property owner to apply to the Board of Zoning Appeals for determination of nonconformity following a public hearing.” **A Determination of Nonconformity for parking requirements is only permitted for the portion of the development project that is similar in use, bulk, density, and intensity of the original structure. A change in use or increase in density greater than the original use must meet the full parking requirement for the new use or additional density.**

Discussion – Commission was not in agreement with proposed changes as presented. They were in consensus that option D was on the right track, but requested that staff work with the Board’s attorney to modify the language based on their discussion.

MOTION/Gillis **SECOND/Wilson** to continue this hearing until the next meeting and to have the proposed amendment readvertised. Vote was (6-0-1), Commissioner Peck Miller absent.

7:20 PM

To consider amending Article I, Section 110-2. Definitions for accessory commercial uses and buildings to clarify that accessory commercial uses are located within or attached internally to a principal use; and Article V, Division 3. Section 110-933(k) Interpretation of minimum requirements to clarify the parking requirements for uses located within or attached internally to a principal use.

APPLICANT: PLANNING AND ZONING COMMISSION (FILE #18-14100015)

Mr. Hall’s staff report:

Accessory Uses/Structures in conjunction with a Principal Use/Structure

Issue Summary: The Planning & Zoning Commission expressed concern that so called “accessory uses” on major development projects are practically a second “principal use” which can impact site development standards such as parking, setbacks, density limitations, landscaping, etc... to a greater degree than a true subordinate business, use, or structure. Also, accessory uses typically do not affect density standards. Section 110-2 Definitions lists two (2) relevant definitions shown below for reference:

[Existing] Accessory building – A subordinate building, the use of which is clearly incidental to or customarily found in connection with and located on the same lot as the main building or principal use of the premises and is not attached by any common wall or by a common roof to the main building, except as otherwise provided in this chapter.

[Existing] Accessory use – One which is clearly incidental to or customarily found in connection with and is located on the same lot as the principal use of the premise. When the term “accessory” is used in this chapter, it shall have the same meaning as “accessory use”.

[Existing] Section 110-933(k)

In the case of mixed uses, or uses with different parking requirements occupying the same building or premises, or in the case of joint use of a building or premises by more than one that one use having the same parking requirements, the parking spaces required shall equal the sum of the requirements of the various uses computer[d] separately, except that in such mixed uses the computation shall not be subject to the base minimum requirement specified in section 110-932(b) above for individual uses; and that the parking requirements for permitted accessory retail and services uses **in** a hotel, motor or motor lodge containing 50 or more dwelling units may be reduced by the following percentages:

- (1) Retail sales, offices and service establishments, 30 percent;
- (2) Restaurants and dining rooms, 50 percent;
- (3) Ballrooms, banquet halls, meeting rooms and auditoriums, 70 percent.

Amendment to Chapter 110 – Zoning, Section 110-2 Definitions

Accessory **detached** building (**Commercial**) – A subordinate building, the use of which is clearly incidental to or customarily found in connection with and located on the same lot as the main building or principal use of the premises and is not attached by any common wall or by a common roof to the main building, except as otherwise provided in this chapter.

Accessory **detached** use (**Commercial**) – One which is clearly incidental to or customarily found in connection with and is located on the same lot as the principal use of the premise. When the term “accessory” is used in this chapter, it shall have the same meaning as “accessory use”.

Accessory **attached** use (**Commercial**) – One which is clearly incidental to or customarily found in connection with and is located on the same lot as the principal use of the premise **and located within or attached internally to the principal use**. When the term “accessory” is used in this chapter, it shall have the same meaning as “accessory use”.

Amendment to Section 110-933(k)

In the case of mixed uses, or uses with different parking requirements occupying the same building or premises, or in the case of joint use of a building or premises by more than one that one use having the same parking requirements, the parking spaces required shall equal the sum of the requirements of the various uses compute[d] separately, except that in such mixed uses the computation shall not be subject to the base minimum requirement specified in section 110-932(b) above for individual uses; and that the parking requirements for permitted accessory retail and services uses **in within or attached internally to** a hotel, motor or motor lodge containing 50 or more dwelling units may be reduced by the following percentages:

- (1) Retail sales, offices and service establishments, 30 percent;
- (2) Restaurants and dining rooms, 50 percent;

(3) Ballrooms, banquet halls, meeting rooms and auditoriums, 70 percent.

Accessory uses and structures not located within or attached internally to the principal use shall have their parking calculated equal to the sum of the various uses computed separately, or as otherwise allowed in Section 110-932(b) above.

MOTION/Wilson **SECOND**/Taylor to amend the Code sections as submitted. Vote was (6-0-1), Commissioner Peck Miller absent.

ADJOURNMENT – 7:50 pm

<u>Peck Miller</u>	<u>12/18/18</u>
Peck Miller, Secretary	DATE