PLANNING AND ZONING COMMISSION
MINUTES
June 19, 2018

ATTENDEES:

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

Staff
Bill Neville
Frank Hall
Kay Gordy
Will Esham, III

6:30 PM

I. APPROVAL OF MINUTES – Minutes of June 5, 2018

MOTION/Taylor SECOND/Wilson to approve the minutes as submitted. Vote was (5-0-2), Chairperson Pam Buckley and Commissioner Chris Shanahan absent.

II. PLANNING UPDATE – Bill Neville, Planning Director and Frank Hall, Zoning Administrator

Mr. Neville and Mr. Hall led discussion with the Planning and Zoning Commission concerning proposed major zoning code amendments (Big Fish list). This is part of the implementation phase of the newly adopted 2017 Comprehensive Plan and will continue on from this point. Memorandum is attached.

With no further business, the meeting was adjourned.

ADJOURNMENT – 7:45 pm

Peck Miller 7-3-18
Peck Miller, Secretary DATE
Memorandum

Date: June 5, 2018

To: Planning & Zoning Commission

From: William W. Neville, AICP, Planning & Zoning Director
Frank V. Hall, Zoning Administrator
Kay Gordy, Zoning Analyst

Re: Zoning Ordinance – Major Amendments

As the Planning and Zoning Commission completed a review and update of the Comprehensive Plan in 2017, a list of potential code updates and new issues that need to be further developed were identified for consideration under the Implementation Strategies. These priorities include the usual next steps following adoption of the Comprehensive Plan:

1) Code Updates
   - **Zoning Ordinance**
   - Subdivision Ordinance
   - Development Regulations
   - Floodplain Ordinance

2) R-1 Neighborhood Strategy
   - Short Term Rentals

3) Workforce Housing Guidelines
   - Dormitory Standards

4) Non-Conformity / Change of Use
   - Parking Standards
   - Floor Area Ratio
   - Density Transfer
   - Site Plan Review

5) Pyramidal Zoning / Strategy for future transitions

Minor code revisions have been summarized in a previous memo, and described as the ‘little fish’ list. These revisions can reasonably be grouped as a single administrative update for the purpose of holding a public hearing and sending a recommendation to the Mayor and City Council for approval by adopted Ordinance.

**ACTION:** Staff recommends a process that includes providing a work session with the Board of Zoning Appeals and a briefing of the Mayor and City Council before initiating a public hearing.

Major code revisions are outlined below for discussion purposes and are described as ‘big fish’. In some cases, an item may be appropriate to include with the grouped revisions above. In other cases, an item should reasonably proceed on its own track for public review, proposed ordinance amendment and separate recommendation by the Commission.
ACTION: Staff recommends that the major revisions should be evaluated to determine if any should be included in the ‘little fish’ group, and which of the other items should move forward on a separate schedule and process.

ITEM #1 – Adopt Official Zoning Map Revisions

Issue Summary: The Zoning District Map for the Town of Ocean City, MD was authenticated as part of Ordinance 1999-32, adopted January 4, 2000, and individual pages of the Zoning Map are amended as new Ordinance changes are adopted. The last update was completed on June 21, 2010.

Since that time, there have been several revisions to the zoning district boundaries which need to be corrected on the official zoning map. In addition, the Town of Ocean City has purchased property for Public/Governmental purposes and it is necessary to adopt the P/G overlay zone by resolution with the appropriate change made to the official zoning map.

Specific changes include:

- ...
- ...
- ...
- ...
- ...
- ...
- ...
- ...
- ...
- ...

Option A: Provide a recommendation to the Mayor and City Council to revise the official zoning map concurrently with a resolution to adopt the Public/Governmental (P/G) overlay district on public ownership parcels. (*clarification required for OCDC model block assemblage). Update GIS zoning data following adoption.

ITEM #2
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 yard 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.

**ITEM #3– 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 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. In addition, 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.
ITEM #4 – 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:

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.

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 premises. When the term “accessory” is used in this chapter, it shall have the same meaning as “accessory use”.

Additionally, the term “accessory” is further refined by commonly understood terms such as “incidental” and “subordinate”. However, the term “principal use” is not defined in Section 110-2 Definitions.

The accessory definitions noted above do not include a numeric value such as a percentage size of the principal use or building that may be considered appropriate for an accessory use/structure. A numeric value can add specific scale limitations to help describe when an accessory use crosses the line and becomes a principal use or principal building. However, caution is warranted when using numeric values since they can imply that any value up to the written value is permissible by right.

Finally, and in addition to the term “principal use”, the terms “density” and “floor area ratio” are not defined in Section 110-2 Definitions. The American Planning Association defines density as “The number of dwellings or principal buildings or uses permitted per net area of land” and floor area ratio as “The total floor area of all buildings or structures on a zoning lot divided by the area of said lot.”

Option A: Clarify existing definitions accessory use and accessory buildings and consider adding definitions of “Principal Use”, “Density”, and “Floor Area Ratio” to Section 110-2. Initial drafts of these terms are noted below but they should be thoroughly reviewed and vetted by the Commission and legal advice before formal consideration.

Principal Use – The intended primary building or use of a parcel of land which is regulated by permitted use, design guidelines and bulk standards for the zoning district in which it is located.

Density – The number of dwelling units, principal or accessory building area permitted per net area of land.

Floor Area Ratio – The total floor area of all commercial buildings or structures on a lot divided by the total area of said lot.

Accessory 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, and does not increase the floor area ratio of
the main commercial building or commercial use by more than ______ percent, except as otherwise provided in this chapter.

Accessory use (Commercial) – One which is clearly incidental to or customarily found in connection with and is located on the same lot as the principal commercial use of the premise. Accessory commercial uses shall meet the off-street parking requirements of Section 110-932 of this chapter. When the term “accessory” is used in this chapter, it shall have the same meaning as “accessory use”.

Accessory building (Residential) – 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 use (Residential) – One which is clearly incidental to or customarily found in connection with and 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”.

Option A: Include additional standards to address mixed use buildings, and mixed uses on the same lot or common development plan area.

ITEM #5 – Density Calculation Methodology

Issue Summary: The Planning Commission considered two methods shown below of calculating density as presented by staff. The Commission chose Method A at an April 2018 meeting.

Method A
10,000sf Lot
10,000sf /1,450sf = 6.89 units
Base Multi-family density using rounded down number = 6 Units
6 Units X 1.25 (25% TDR) = 7.5 Units or 7

Method B
10,000sf Lot
10,000sf /1,450sf = 6.89 units
Use of actual calculated value of 6.89
6.89 X 1.25 (25% TDR) = 8.61 Units or 8

Option: Add the following definition to Chapter 110-2, amend the existing TDR definition, and amend Section 110-744(2) Receiving areas

Base Density Calculation (Residential) - Residential density shall be calculated by dividing the total area of a lot by the minimum area per unit bulk standard (density). The calculation shall be separated by residential type per the zoning district in which the development is to occur, and rounded down to the nearest whole number.

Transferable of Development Rights (TDR) – A process by which development rights may be transferred from one parcel of land in a sending area to another parcel of land in a receiving area for a maximum base density increase of 25%.
Section 110-744 Transfer of Development Rights
Receiving areas. The receiving area is the BT-R overlay district. When utilizing development rights transferred from a sending area, a residential, hotel, or motel project in a receiving area may exceed the number of units permitted by base residential density rounded down to the nearest whole number by district by regulations on the date of application for site plan approval by 25%.

ITEM #6 – TBD
Issue Summary:
Option:

ITEM #7 – TBD
Issue Summary:
Option:

ITEM #8 – TBD
Issue Summary:
Option:

ITEM #9 – TBD
Issue Summary:
Option: