PLANNING AND ZONING COMMISSION
MINUTES
September 18, 2018

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

Staff
Frank Hall
Kay Gordy
Bill Neville
Will Esham, III
Daphne Hurley, Public Hearing Reporter

6:30 PM

I. APPROVAL OF MINUTES –

Minutes of September 5, 2018

MOTION/Wilson SECOND/Taylor to approve the minutes as submitted. Vote was (6-0-1), Commissioner Peck Miller absent.

II. DELIBERATION OF REZONING APPLICATION PUBLIC HEARING FROM SEPTEMBER 5, 2018

A petition has been made to rezone properties identified as Land Unit 2 in the 25th Street Commercial Land Condominium dated April 21, 2015, further described as located on the west side of Philadelphia Avenue between 25th and 26th Streets (excluding the area encompassed by Fairfield Inn and Suites), and locally known as a portion of 2501 Philadelphia Avenue, 2511 Philadelphia Avenue and 207-26th Street, in the Town of Ocean City, Maryland. In order to accommodate a site plan development intended to be a neighborhood shopping center, and citing a substantial change in the character of the neighborhood for uses compatible with the uses of surrounding property as redeveloped, including a hotel use to the rear of the adjacent property along 25th Street, and substantial residential condominium use to the west of the property at 26th Street. Also in keeping with the adopted 2018 Comprehensive Plan and Future Land Use Maps, the applicant requests the area of the lands described above which are designated R-2, Medium Density Residential, Zoning District, to be rezoned entirely to LC-1, Local Commercial, Zoning District.

APPLICANT: JOSEPH E. MOORE, ATTORNEY FOR OCEAN HARBOR HOLDINGS, LLC, A MARYLAND LIMITED LIABILITY COMPANY (FILE #18-14100010)

Chairperson Pam Buckley opened the deliberations and emphasized that the public hearing was closed so no further testimony would be taken.

Each of the Commissioners commented in turn as to the pros and cons of approving or denying the rezoning request. Commissioner Lauren Taylor spoke at length as to her reasons for determining that there has not been substantial change in neighborhood. Mr. Moore, representing the applicants, had used change in neighborhood to request rezoning from R-2 to LC-1.
Across the board, the Commissioners spoke in favor of the design of the neighborhood shopping center, but fear that rezoning the R-2 to LC-1 would open the door for other projects that would be even more intense.

Attorney Will Esham pointed out that findings of fact showing change in neighborhood must be made in order to recommend rezoning. If the applicant has not adequately made that case, rezoning shouldn’t be recommended. The Commissioners acknowledged that the property owners have been vocal in their opposition to experiencing substantial change in neighborhood.

MOTION/Taylor SECOND/Shanahan that the applicant did not adequately convince the Commission of change in neighborhood. Vote was (6-0-1), Commissioner Peck Miller absent. Planning Director Bill Neville deferred to counsel as to whether or not the denial is required by Code to be recommended to the Mayor and City Council. Mr. Esham said that he would advise staff of the next procedural step.

Commissioner Taylor offered to modify her motion to deny the rezoning application based on no demonstration that the neighborhood has substantially changed.

7:00 PM

III. PUBLIC HEARING – as advertised:

To consider amending Article I. In General, Section 110-2 Definitions.

For the purposes of this chapter, the following definitions shall apply:

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 residential 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 is located on the same lot as a principal use of the premise. When the term “accessory” is used in this chapter, it shall have the same meaning as “accessory use.”

Base density calculation (residential). Residential density shall be calculated by dividing the total area of a lot by the minimum lot area requirement by residential type for the zoning district in which the development is to occur. Density calculations shall be rounded down to the nearest whole number.

Transfer 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%.

APPLICANT: PLANNING & ZONING COMMISSION (FILE #18-14100011)
To consider amending Article IV. Districts, Division 18. BT-R and BT-S Beach Transfer Overlay Districts:

**Code Section 110-744. Transfer of development rights.**

(2) **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 district bulk regulations on the date of application for site plan approval by 25 percent. **Density calculations shall be rounded down to the nearest whole number.** One development right shall be required for each excess hotel or motel unit, and two development rights shall be required for each excess multiple-family unit, regardless of lot area requirements at the time of construction. A project using development rights to exceed base density shall not be considered to be nonconforming with respect to density, and excess units which are constructed using development rights shall not be counted when determining nonconformity after enactment of this division.

**APPLICANT: PLANNING & ZONING COMMISION (FILE #18-14100012)**

Zoning Administrator Frank Hall introduced the code amendments and explained that tonight he was presenting residential code amendments and in the future he would be bringing forward similar commercial code amendments to present to the Mayor and City Council together. There was no one present in the audience in opposition or support of these amendments.

Mr. Hall prepared a staff report breaking down the advertised proposed amendments into numbers 7-9, below. Each proposed amendment has the motion and second immediately under it.

**Proposed Amendment - 7**  
**Amendments to Chapter 110 – Zoning, Section 110-2 Definitions**

**Issue Summary:** The Planning Commission desires to address the impact of accessory commercial uses and structures in terms of scale, parking, compatibility of design, and other site plan elements in a future round of code amendments. The proposed amendments below will separate the commercial accessory uses and structures from common residential accessory uses and structures such as sheds, pools, gazebos, and the like. Planning & Zoning staff will present the definitions below to the Mayor and City Council with the more complicated Commercial Accessory definitions once they are developed and recommended by the Planning Commission. Presenting both sets of definitions to the Mayor and City Council at the same time will help communicate their intent.

**Proposed Amendment (Red)**

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 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.”

MOTION/Wilson SECOND/Taylor to approve amendment #7 as written. Vote was (6-0-1), Commissioner Peck Miller absent.

Proposed Amendment - 8
Amendment to Chapter 110 – Zoning, Section 110-2 Definitions

Issue Summary: A recent site plan application caused a debate between Zoning staff and the developer on how to calculate base density. The method preferred by the Planning Commission from the spring 2018 work sessions is shown below. The preferred method first rounds the base density calculation down to the nearest whole number before applying the 25% density increase from the use of Transferable Development Rights. The new definition shown below in red clarifies that base density is to be rounded down to the nearest whole number. This calculation method is the historical method applied in Ocean City for past projects, but it has never been officially defined.

The second method uses the full decimal place value when applying the 25% TDR increase. This method will result in an additional development right as compared to the preferred method. This method is shown for the benefit of the public hearing and potential questions from the public.

Proposed Amendment

Base Density Calculation (Residential) - Residential density shall be calculated by dividing the total area of a lot by the minimum lot area requirement by residential type for the zoning district in which the development is to occur. Density calculations shall be rounded down to the nearest whole number.

Example:

10,000 sf Lot
10,000 sf / 1,450 sf = 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

MOTION/Taylor SECOND/Gillis to approve amendment #8 as written. Vote was (6-0-1), Commissioner Peck Miller absent.

Proposed Amendment - 9
Amendment to Chapter 110 – Zoning, Section 110-2 Definitions

Issue Summary: The changes shown in red to the existing definition will help clarify what a TDR is to the lay public, but also provide consistency between the TDR section of the code, and the new definition for Base Density Calculation.
Transfer 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%.

**MOTION/Gillis SECOND/Wilson** to approve amendment #9 as written. Vote was (6-0-1), Commissioner Peck Miller absent.

**Proposed Amendment 10 – Transfer of Development Rights**
**Amendment to Chapter 110 – Zoning, Section 110-744(2)**

**Issue Summary:** The proposed sentence shown in red will provide clarity for developers and consistency with the new base density calculation definition and amended TDR definition shown above.

**Proposed Amendment (Red) [As Advertised for the Public Hearing]**

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 district bulk regulations on the date of application for site plan approval by 25%. **Density calculations shall be rounded down to the nearest whole number.** One development right shall be required for each excess hotel or motel unit, and two development rights shall be required for each excess multiple-family unit, regardless of lot area requirements at the time of construction. A project using development rights to exceed base density shall not be considered to be nonconforming with respect to density, and excess units which are constructed using development rights shall not be counted when determining nonconformity after enactment of this division.

**Proposed Amendment (Red) [For Discussion at Public Hearing]**

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 district bulk regulations on the date of application for site plan approval by 25%. **Density calculations shall be rounded down to the nearest whole number [prior to applying the 25% TDR allowance].** One development right shall be required for each excess hotel or motel unit, and two development rights shall be required for each excess multiple-family unit, regardless of lot area requirements at the time of construction. A project using development rights to exceed base density shall not be considered to be nonconforming with respect to density, and excess units which are constructed using development rights shall not be counted when determining nonconformity after enactment of this division.

**MOTION/Wilson SECOND/Taylor** to approve amendment #10 as presented in the staff report. Vote was (6-0-1), Commissioner Peck Miller absent.

These proposed code amendments will be forwarded to the Mayor and City Council with a favorable recommendation.
With no further business, the meeting was adjourned.

ADJOURNMENT – 7:25 pm

Peck Miller 10-2-18
Peck Miller, Secretary DATE