

**MINUTES OF THE PLANNING COMMISSION MEETING**  
**Wednesday, October 5, 2016**  
**City Council Chambers**  
**2400 Washington Avenue**  
**Newport News, Virginia**

**PRESENT:** Michael F. Carpenter, Chairman; Mark Mulvaney, Vice-Chairman; Willard G. Maxwell, Jr.; Sharyn L. Fox; Robert B. Jones; Elizabeth W. Willis; N. Steve Groce; (Staff: Sheila W. McAllister, Director of Planning; Claudia Cotton, Manager of Current Planning; Flora Chioros, Planning Coordinator; Saul Gleiser, Senior Planner; David Watson, Planner; Johnnie Davis, Planner; Lynn Spratley, Deputy City Attorney; Christine Mignogna, Zoning Administrator)

**ABSENT:** Daniel L. Simmons, Jr.; Lorraine P. Austin

**CALL TO ORDER**

Ms. Fox read the Planning Commission's purpose as stated in Section 15.2-2210 of the Code of Virginia. She made a motion to adopt the agenda before the Planning Commission. Mr. Jones seconded the motion. The City Planning Commission voted to adopt the agenda by acclamation.

**INVOCATION**

Mr. Maxwell presented the invocation.

**MINUTES**

The minutes of the September 7, 2016 public hearing were approved as presented.

**PUBLIC HEARING**

**ZONING TEXT AMENDMENTS**

**ZT-16-383, City of Newport News.** Requests an amendment to the Zoning Ordinance regarding real estate ownership disclosure for change of zoning, conditional use permit, special exception and variance applications. (Sections 45-2703, 45-3203, 45-3204, and 45-3404).

Claudia Cotton, Manager of Current Planning, presented the staff report (copy attached to record minutes).

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There being no questions or comments, Mr. Carpenter opened and closed the public hearing.

Ms. Fox made a motion to recommend adoption of zoning text amendment ZT-16-383 to City Council, as recommended by staff. The motion was seconded by Mr. Jones.

**Vote on Roll Call**

**For: Maxwell, Fox, Jones, Mulvaney, Willis, Groce, Carpenter**

**Against: None**

**Abstention: None**

The Planning Commission voted unanimously (7:0) to recommend adoption of zoning text amendment ZT-16-383 to City Council.

**ZT-16-384, City of Newport News.** Requests an amendment to the Zoning Ordinance redesignating amusement arcade as amusement establishment and amending the permitted uses in the Oyster Point Urban Core Overlay District. (Sections 45-402 and 45-3139).

Claudia Cotton, Manager of Current Planning, presented the staff report (copy attached to record minutes).

There being no questions or comments, Mr. Carpenter opened and closed the public hearing.

Ms. Willis made a motion to recommend adoption of zoning text amendment ZT-16-384 to City Council, as recommended by staff. The motion was seconded by Mr. Jones.

Ms. Willis stated she thinks it is a positive change for the city, because of the changing times. She stated that allowing people to have stand-alone entertainment activities is a good use of the area.

**Vote on Roll Call**

**For: Fox, Jones, Mulvaney, Willis, Groce, Maxwell, Carpenter**

**Against: None**

**Abstention: None**

The Planning Commission voted unanimously (7:0) to recommend adoption of zoning text amendment ZT-16-384 to City Council.

**ZT-16-385, City of Newport News.** Requests an amendment to the Zoning Ordinance adding nightclubs as a permitted use in the C3 Regional Business zoning district and

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amending the general regulations for adult uses regarding how distances are measured. (Sections 45-402 and 45-524).

Claudia Cotton, Manager of Current Planning, presented the staff report (copy attached to record minutes).

Ms. Willis asked what is the entertainment that is allowed in nightclubs. Ms. Cotton stated the ordinance states anything, including but not limited to, live bands, floor shows, comedians, solo artists and/or a dance floor for patrons.

Ms. Willis asked if the ordinance defines what type of art a solo artist would be allowed. Ms. Cotton stated no.

Ms. Willis stated she is concerned about the open-ended definition of entertainment.

Ms. Fox asked if we have a fair number of nightclubs outside of Oyster Point. Ms. Cotton stated there are 7 or 8 nightclubs that are still operating in the city that were in existence prior to the 1996 regulation that continue to operate.

Ms. Willis asked what is the definition of a floor show. She stated she has some concerns about the type of adult entertainment that would be allowed anywhere in the city in any strip mall. Ms. Willis stated you could have a strip mall with a church on one end and an entertainment floor show on the opposite end, and it presents an interesting scenario. Ms. Cotton stated in Ms. Willis's scenario, the distance requirement would still be applied, and the unit the adult use occupied would still need to be 500 feet from the unit occupied by a church.

Ms. Willis asked if the hours of operation for an adult use would be regulated. Ms. Cotton stated the ordinance does not regulate hours of operation.

Ms. Cotton stated an adult use would still be something Planning Commission would review for a conditional use permit. Ms. Willis asked if a by-right use would require a conditional use permit. Ms. Cotton stated we are only recommending the C3 Regional Business district as by-right, but the rest of the city in the C1 Retail Commercial and C2 General Commercial districts would require a conditional use permit. Ms. McAllister stated the by-right designation is only for nightclub and not all adult uses.

Mr. Carpenter asked if, in Ms. Willis's scenario, an adult use cannot locate within 500 feet of a church, but is the reverse also true if you already have a nightclub, is the church restricted from coming into the strip mall. Ms. Cotton stated no, that is not true. She stated it would be the church's decision if they wanted to locate near an existing adult use.

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Ms. Fox asked if there is any type of zoning that prohibits certain types of adult entertainment. Ms. Cotton stated we cannot prohibit things on the basis of free speech or there would be legal challenges. She stated adult entertainment can be regulated, as was done in 1996, and this is relaxing the distance requirement, but still regulating adult entertainment. Ms. McAllister stated this is just for nightclubs, not for all of the other adult uses. Ms. Fox stated we already have nightclubs in the city. Ms. Cotton stated yes. She stated what we are hearing from the community is restaurant owners who want to have music for their patrons, but because their occupancy load of more than 100 they are not allowed to do it, but an establishment next door with an occupancy load of 50 can do it every night.

Mr. Jones asked if the building capacity is 100 people, but there are not 100 people, does it still apply. Ms. Cotton stated yes, it is based on occupancy load.

Dr. Maxwell asked if we approve this text amendment, would it allow a strip club to occupy a particular place. Ms. Cotton stated they would still need to meet the distance requirement. She stated the regulation that is being amended is Section 45-524, general regulations for adult uses. Mr. Carpenter asked if there is a way to more heavily regulate the strip club versus the adult entertainment. Ms. McAllister stated they all require a conditional use permit, so they cannot go in by-right, even in C3. She stated C3 will allow a nightclub by-right, but not the adult use.

Ms. Willis asked if a floor show can be a strip club in a nightclub. Ms. McAllister stated a nightclub could bring in that type of entertainment. Ms. Cotton stated if they are an adult use, they will require a conditional use permit, even in C3.

Ms. Willis asked how do you determine if something is an adult use. Ms. McAllister stated adult use is defined in the zoning ordinance. Ms. Spratley read the definition for "adult use" as "Any adult book store, adult entertainment establishment, adult motion picture theater or nightclub." She read the definition for "nightclub" as "An establishment, excluding motion picture theaters, which provides entertainment (including but not limited to live bands, floor shows, comedians, solo artists, and/or a dance floor for patrons), more than two (2) times per month, stays open after 11:00 p.m., and has a capacity exceeding one hundred (100) patrons." Ms. Spratley stated a nightclub could include a floor show, by definition. She stated "floor show" is not defined, so it is a little ambiguous. Mr. Carpenter stated that, with a conditional use permit, you can state what is allowed and what is not. Ms. Cotton stated that is correct, you can establish conditions on how the property is being used and hours of operation. Ms. Willis stated that by agreeing to this, we are allowing nightclubs in C3 without a conditional use permit. Ms. Cotton stated that is correct. Ms. Willis stated the adult use is not being defined other than "adult use." She stated she is looking for something that says people cannot enter an adult use establishment without being carded to prove they are an adult, to define that use as "adult" entertainment place,

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and she does not see that in the code. Ms. Spratley stated we have a definition for "adult entertainment establishment" and read "Any establishment where live performance, display or dance of any type, which has a significant or substantial portion of such activity or, when considered as a whole, has as its dominant theme or purpose, any actual or simulated performance of sexual activity, removal of articles of clothing or appearing unclothed." She stated the nightclub definition includes "floor show," but it is not defined, nor does it refer to the definition for adult entertainment establishment. Ms. Spratley stated if a nightclub was trying to have a sexually explicit floor show, then it would fall under the definition of adult entertainment establishment. She stated it would be open to interpretation by the Zoning Administrator.

Mr. Groce stated that in the late 1980s, this issue came before City Council and the nightclubs that were considered topless nightclubs required that the women wear some sort of top. He stated the former topless nightclubs can use their existing locations, but they cannot open any new nightclubs like that in the future. Mr. Groce stated that something under that ordinance may help for clarification.

Ms. Spratley stated we need to define floor show. Mr. Carpenter recommended the zoning text amendment should be remanded to the Regulations Committee. Mr. Mulvaney stated there are some other components that need more explanation, and the entire text amendment needs some definition.

Mr. Groce stated if someone wanted to have a sexually explicit floor show, they would need to get a conditional use permit. Ms. McAllister stated no, the definition of adult entertainment speaks to it being the predominant use. She stated that what Ms. Willis is speaking of is where a bachelorette party is being held at a nightclub and they decide to have strippers there. Ms. McAllister stated that scenario is a possibility in a nightclub. Mr. Carpenter stated that would be an allowed form of entertainment because it is not the predominant use of that nightclub. Ms. McAllister stated yes, and it would be unlikely that we would even be aware of it.

Mr. Mulvaney asked how this amendment could potentially help a restaurant. Ms. Cotton gave a scenario where there is a restaurant in a strip shopping mall whose adjacent neighbor is a church. She stated the restaurant in that strip shopping center can only have entertainment no more than twice a month, not after 11:00 P.M. and they can only have it if they have less than 100 patrons. Ms. Cotton stated if this restaurant would like to expand to an occupancy load of more than 100 patrons, they can do so, and they can only have entertainment twice a month; however, if they want to have entertainment more than twice a month, they are not allowed by this ordinance. Mr. Mulvaney asked if this ordinance allows them to do that by-right. Ms. Cotton stated no, they are only allowed by-right in the C4 Oyster Point Business district, but if they are in a situation where they are more than 500 feet away, or 200 feet if you are not fronting the same street, and if the unit they are occupying is more than 200 feet from a

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residentially zoned property, this ordinance would allow them to have entertainment more than twice a month with a conditional use permit. She stated that right now, without the change, because the whole strip shopping center is close to that church, no restaurant in that strip shopping center can have entertainment more than twice a month. Ms. Cotton stated that if they are located in the strip shopping center and their unit measures more than 500 feet or 200 feet, depending on if you front the same street, then they would have an opportunity to have more frequent entertainment whereas right now they do not. Mr. Mulvaney asked if the scenario is the same in a standalone restaurant. Ms. Cotton stated yes, standalone would be the same measurement. Mr. Mulvaney stated the ordinance seems restrictive in that it seems we could have pulled restaurant out of there and been a little more definitive to allow for that use.

Ms. Fox made a motion to remand zoning text amendment ZT-16-385 to the Regulations Committee. The motion was seconded by Mr. Mulvaney.

**Vote on Roll Call**

**For: Jones, Mulvaney, Willis, Groce, Maxwell, Fox, Carpenter**

**Against: None**

**Abstention: None**

The Planning Commission voted unanimously (7:0) to remand zoning text amendment ZT-16-385 to the Regulations Committee.

**EXECUTIVE SECRETARY REPORT**

Ms. McAllister stated that, on September 13, 2016, City Council approved the conditional use permit for the communications tower lease area expansion at Denhigh High School, the zoning text amendment for nonconforming uses and the zoning text amendment for signs in the Lower Jefferson Avenue Urban Corridor Overlay District. She stated that, on September 27, 2016, City Council approved the conditional use permit for an amusement arcade (Breakout Adventure Games) at DW Center in Suite 416, a conditional use permit for sale of off-premises alcohol at 620 Stoney Creek Lane, Suite 20 and a change of zoning with proffers for 591 City Center Boulevard.

Ms. McAllister stated on November 2, 2016, the Planning Commission public hearing will include two conditional use permits: one for the DW center for an amusement establishment (Lazer Tag) and another for an existing communications tower at 517 29<sup>th</sup> Street.

Ms. McAllister stated we have no cases for the October 19, 2016 meeting. Mr. Jones stated we had training today with Dr. Michael Chandler, and one item discussed was Robert's Rules of Order. He stated he does not want that to become an email

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discussion. Mr. Carpenter stated it is not appropriate to have a discussion via email. Mr. Jones stated he does not think a work session for it would be necessary, but he would defer to his fellow Commissioners. Mr. Carpenter stated we could use that date to have a work session to discuss Robert's Rules of Order. Ms. Willis stated she would like a discussion on looking at including economic impact into what we do, in either our agenda packages or our discussion. Ms. McAllister stated we can have a work session to follow-up on today's work session.

Mr. Mulvaney made a motion to hold a work session on October 19, 2016. The motion was seconded by Mr. Jones. The Planning Commission voted by acclamation.

**COMMITTEE REPORT**

Mr. Mulvaney stated on September 21, 2016, the Regulations Committee met and reviewed the zoning text amendments which were presented today. He stated two of those amendments are going before City Council, and one will be remanded for further discussion.

**NEW BUSINESS**

Mr. Carpenter stated a citizen would like to address the Planning Commission on the Comprehensive Plan Citizen Advisory Committee membership.

Mr. Joe Leming, 377 DeShazor Drive, stated he came to speak on the Comprehensive Plan Citizen Advisory Committee (CPCAC) membership instead of waiting for the opportunity to speak at the next CPCAC meeting, in an effort to overcome what he views as a problem. He stated there were 13 attendees at the last meeting, of a membership that started at 28. Mr. Leming stated that when we come to a point where we cannot get half of our body to come do the work, something needs to be done. He stated it was his hope that the people who come and fill out the forms and see the committee work, would step forward and want to join the effort. Mr. Leming stated at the last meeting, that happened, and that person asked how they could join the CPCAC. He stated this citizen was told to fill out an application to be approved by the Planning Commission, but was then told we do not hand out blank forms anymore because all of the vacancies are filled. Mr. Leming stated he likes the new system for the comprehensive plan update, but this particular person is imminently qualified to join our thin ranks because the community this person belongs to has never been represented, which is the arts community. He stated the policy is too inflexible and he asks that it be reconsidered. Mr. Leming asked that applications be handed out if there are still people who are interested enough to come and join us and have something to offer the CPCAC. He stated surely, there is a problem when only 13 people are attending these meetings.

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Mr. Carpenter thanked Mr. Leming for addressing the Planning Commission.  
Ms. Willis stated she agrees with Mr. Leming and we can look at the rules and procedures at our work session on October 19, 2016. She stated if we have people who are not attending regularly like they said they would, there is no reason to keep them on our roles. Ms. Willis stated that, because this is a very important document that we are working on with the Planning Department, and one the Planning Commission puts their name to, she would like to see it done correctly.

Dr. Maxwell thanked Mr. Leming for his comments on the arts, because a lot of times the arts are pushed to the back burner. He stated it is scientifically proven that it increases the intelligence of a child when they are performing in the arts because it stimulates another part of their brain. Dr. Maxwell stated that, as an educator, he appreciates Mr. Leming bringing that up.

Ms. Fox congratulated Commissioner Maxwell on receiving his Ph.D.

Mr. Carpenter stated it is Breast Cancer Awareness month, and he thanked his fellow Commissioners for wearing pink for the public hearing.

There being no further business, the meeting adjourned at 4:49 P.M.

  
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Recording Secretary

  
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Executive Secretary