

MINUTES OF THE PLANNING COMMISSION WORK SESSION
Wednesday, June 20, 2018
10th Floor City Council Conference Room
2400 Washington Avenue
Newport News, Virginia

PRESENT: Willard G. Maxwell, Jr.; Sharyn L. Fox; Zachary E. Wittkamp; Michael F. Carpenter; N. Steve Groce (Staff: Sheila McAllister, Director of Planning; Flora Chioros, Planning Coordinator; Saul Gleiser, Senior Planner; Connor Shapiro, Planning Intern; Lynn Spratley, Deputy City Attorney; Christine Mignogna, Zoning Administrator)

ABSENT: Mark W. Mulvaney, Chairman; Daniel L. Simmons, Jr., Vice-Chairman; Katie Stodghill; Elizabeth W. Willis

Ms. McAllister opened the work session at 2:00 P.M.

Ms. McAllister introduced the first item on the agenda: Sign Ordinance Review.

Ms. McAllister stated the reason why we are going through the sign ordinance update is because of the Supreme Court ruling that made our ordinance invalid because we can no longer regulate based on content. She stated Planning staff went through the ordinance and took out all of the content based signage and made sure that our ordinance met the requirements of the court ruling on *Reed v. Town of Gilbert, Arizona*, which became law in 2015. Ms. Spratley stated the court ruling basically says you cannot regulate the content of signs.

Ms. Fox asked if the ruling affects advertisements that could be considered indecent. Ms. Spratley stated no. She stated you cannot say that, based on the content, you are going to regulate a sign one way and another sign another way. Ms. McAllister stated political signs, garage sales signs and open house signs are all temporary signs and therefore should be regulated as temporary signs. Ms. Mignogna stated there is another city code section that regulates the content of signs that are obscene. Ms. Spratley stated we can regulate obscenity and the content of signs if there is a compelling governmental interest, but just because you prefer one thing over another is not a compelling reason. Ms. Mignogna stated yes, and that is why we put some of the things that we took out back in, such as directional signs. Ms. McAllister stated we are updating, clarifying and simplifying the regulations.

Mr. Carpenter asked if the new verbiage is coming from the state. Ms. Spratley stated the Local Government and Attorneys' Association for Virginia did a model sign ordinance and we used it as a guide.

Ms. McAllister presented the sign ordinance review (PowerPoint presentation attached to record minutes).

Mr. Carpenter asked if a sign that directs somebody to a real estate site that is off-site is a directional sign. Ms. McAllister stated she would not consider that a directional sign, not based on this ordinance. She stated that is a temporary sign. Mr. Carpenter asked if two 4x4 posts in the ground is considered temporary. Ms. McAllister stated that would be a legal sign. She stated since we can no longer regulate off-premises signs, someone who has an electronic sign or someone who wants to allow someone else to put a sign on their property can do that. Ms. McAllister stated we cannot regulate what is on that sign. She stated they still have to meet the size and the area requirements.

Mr. Wittkamp asked if there has been any pushback or opposition to the updated regulations. Ms. McAllister stated no. She stated before the sign ordinance went to the Regulations Committee for review, we sent it to all of the sign companies and we received no comments. Ms. Spratley stated this is less restrictive than our current sign ordinance.

Mr. Carpenter asked why building signs were taken out in Section 33.01-6(c)(2). Ms. McAllister stated that multiple-family and community facilities that are in residential districts and do not typically have them. Ms. Mignogna stated we do not have requests like that. She stated churches normally do not have building signs because they have freestanding signs. Mr. Carpenter asked if a church were to request a building sign they would not get it. Ms. McAllister stated they could get it if they did not erect a freestanding sign. She read "If no freestanding signs are erected for a community facility, such facility may erect a building sign or signs, the total area of which shall not exceed one hundred (100) square feet."

Ms. McAllister stated in Section 33.01-6(e) you get two freestanding signs if you are a commercial/industrial property. She stated before, you could get an additional third sign based on the amount of frontage that you had, so now we are just saying two freestanding signs. Ms. McAllister stated we took out the exception to Hilton Village because that is somewhere else in the ordinance. She stated we added "one square foot of sign area shall be permitted per linear foot of public street frontage provided the area for all freestanding signs shall not exceed 100 square feet per sign." Ms. McAllister stated we put that in, but what we did not take out was the distance requirement and the sign area that you get per linear foot. She stated that is something Planning staff will still work on. Ms. McAllister stated she thinks either way you are going to end up with 100 square feet for the two signs or not, but the separation still has to be 150 feet between each of the signs. She stated if you have 1,000 square feet of signage, you would get two 100 square foot signs and they would have to be 150 feet apart. Ms. McAllister stated you do not go up in the number of freestanding signs because you have a lot of frontage. She read Section 33.01-6(e)(1)c: "There shall be a minimum separation between all such signs measured along the frontage of the public street of one hundred fifty (150) feet."

Ms. Fox stated removing the Planned Development Flexibility Option (PDFO) seems contradictory to what we were trying to do with our sign ordinance before. She stated

she thought we were trying to minimize the number of signs and sizes of signs. Ms. McAllister stated we still limit the size of the sign and we can still limit the number of signs, but the PDFO mainly allowed you to have an off-premises sign which someone can have now anyway. Ms. Mignogna stated that includes both off-premises signs and larger signs. Ms. McAllister stated yes, and it was for specific uses. Ms. Fox asked if that would include an open house sign two miles away. Ms. McAllister stated yes. Ms. Fox asked if that sign could become a permanent structure. Ms. McAllister stated if the property owner wants you to have a permanent sign on their property it could. Ms. Mignogna stated it would still need to meet the regulations and setbacks. Ms. McAllister stated the PDFO regulated content. She stated it basically said on those signs you could only have a logo and we cannot do that anymore. Ms. McAllister stated really, the developments that actually could apply for this; have already applied and they already have signage.

Ms. McAllister read Section 33.01-7: The following signs shall be permitted in addition to those permitted in Section 33.01-6, and a sign permit shall be required for those signs which are in excess of thirty-two (32) square feet in area..." She stated she does not think we have any that are over 32 square feet. Ms. McAllister stated a construction sign is the largest sign that we have and other signs get progressively smaller afterward. Ms. Spratley asked why would you want to not still limit it in case someone decides to do a mega-sign. Ms. McAllister stated no, she is saying if we do not have any signs that are in excess of 32 square feet, why do we have to say that. Ms. Spratley asked how do you know you will not have any in excess. Ms. McAllister stated because we do not allow any of them to get progressively larger than 32 square feet. She stated the language "... and a sign permit shall be required for those signs which are in excess of thirty-two (32) square feet in area:" should be removed. Ms. Spratley stated it is silly to say a sign permit is required for those signs which are in excess of 32 square feet when we do not allow them. She stated we did not catch that language when looking at (1) the way it used to be written.

Mr. Carpenter asked why abandoned conforming signs are given 365 days and abandoned nonconforming signs are given two years to be removed. Ms. Spratley stated that under state code we have to give them two years but she would look it up and let him know why we chose the 365 days for conforming. She stated it used to be 90 days for abandoned conforming signs. Ms. McAllister stated we said the 90 days did not meet the requirements for the state code. She stated as long as conforming sign is maintained it is fine. Ms. McAllister stated this is only being revised to enforce maintenance.

Ms. McAllister introduced the second item on the agenda: Open Discussion.

Mr. Groce stated in April 2018 we had a public hearing and a work session that immediately followed. He stated that seems like it would be a cost-savings issue for everybody because Planning Commissioners would not have to come back for the second meeting of the month if we knew that we have a work session scheduled or

items we need to talk about. Mr. Groce stated he thinks that should be a priority. Ms. Fox stated that only works if we have an idea of how long the first meeting will last. Mr. Groce agreed. Mr. Wittkamp asked how much lead time is needed to look at what is on the agenda for a public hearing. Ms. McAllister stated the problem with the summer is in July you only have one meeting. She stated in regard to the sign ordinance, she was fast-tracking it because Ms. Mignogna is retiring at the end of July and she wanted her available for any questions. Ms. McAllister stated typically, we know what is scheduled for a meeting, but do not always know how the meeting will go. She stated we know in advance what the agenda looks like, such as in July which will have a change of zoning, a conditional use permit and three text amendments which are state code changes, so there is not a lot the Planning Commission can do other than vote for adoption.

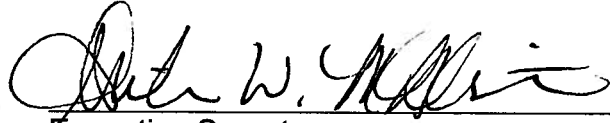
Ms. McAllister stated we all know about AirBnBs. She stated there is someone we know for sure that wants to do a bed and breakfast, but they cannot meet the definition of a bed and breakfast based on our zoning ordinance. Ms. McAllister stated our zoning ordinance specifically says it has to be an owner-occupied dwelling to be a bed and breakfast. She stated the reason it needs to be owner-occupied is because years back the city was trying to prevent older homes from being turned in to boarding houses and so strict definitions were adopted for bed and breakfasts and boarding houses. Ms. McAllister stated this person has asked us about adding something in the definition that says if you buy a house next door to your house, that the adjacent house can be a bed and breakfast. She stated personally, she does not like it, and she does not want to take "owner-occupied" out of the definition. Ms. Fox asked how the city handles AirBnB now. Ms. Mignogna stated we do not have an ordinance for AirBnBs. Ms. McAllister stated none of the localities have an ordinance because it is too difficult to try to regulate. She stated when you start to try regulating AirBnBs, the same thing as a bed and breakfast, the family definition comes into play. Ms. McAllister stated we were really strict on the family definition because people complained about people buying houses and having seven or eight unrelated people living in them. She stated we limited the number of unrelated people who could live together as a unit. Ms. Fox stated the AirBnB thing has had a lot of problems with regulations in large cities, but she did not think we would have those same issues. Ms. Mignogna stated, concerning bed and breakfasts, we did our homework and have, from the different localities, what their definition is and most of them are owner-occupied. Mr. Wittkamp asked if you can have a true bed and breakfast in Newport News if you are not living there. Ms. Mignogna stated no, and in certain zoning districts it can only be allowed by conditional use permit. Ms. McAllister stated typically bed and breakfasts are in residential districts and therefore only required by conditional use permit. She stated no matter what, whether it is owner-occupied or not, it would still have to go through a public hearing process. Ms. McAllister stated it is in a residential area so the likelihood is you are going to have controversy depending on where it is located. Ms. Fox stated we have had businesses that we have regulated in neighborhoods. Ms. McAllister stated they are home occupations. She asked how the Planning Commission feels about taking out "owner-occupied" from the bed and breakfast regulation. Ms. Fox asked why we would recommend it if Planning staff does not want to take it out. Ms. McAllister stated it is all

going to be required by a conditional use permit anyway, which opens it up for discussion. She stated if she can buy a bunch of older houses and try to make them all bed and breakfasts, they could be considered boarding houses. Mr. Carpenter asked what is the difference per our code between a bed and breakfast and boarding house. Ms. McAllister stated you can live in a boarding house whereas a bed and breakfast is a temporary stay. Ms. Fox asked if we limit the amount of time someone can stay there. Ms. McAllister stated she does not think there is a limit on the number days you can stay at a bed and breakfast. Ms. Spratley stated that is why it gets slippery, and why these houses can be turned into boarding houses because there is no limit. Ms. Mignogna stated for a bed and breakfast we say an owner-occupied house containing no more than six sleeping rooms rented for daily periods for guests only and primarily for occupancy by tourists, as distinguished from multiple-family dwellings and boarding houses. Ms. Spratley stated you can write your lease to say 365 days a year and whether it is consecutive or not. Ms. Mignogna stated a boarding house is an owner-occupied building other than a hotel or motel where, for compensation, lodging with or without meals, is provided for four or more persons. She stated we worked the family definition to have three unrelated people, so we are trying to cover every definition with a number. Ms. Fox stated we need to think about that because we do not want to see an influx of boarding houses. Mr. Carpenter stated he agreed but at the same time he does not see why a bed and breakfast has to have the owner living there. Mr. Wittkamp asked if there are food and beverage components since they are running a version of a commercial kitchen. Ms. Mignogna stated according to our building official if we go with this definition no, and the amount of people, no. Mr. Carpenter asked if it is possible to restrict the bed and breakfasts to certain areas. He stated it would make sense from a historical or tourist perspective. Ms. McAllister stated she would not want to do that. Mr. Groce stated it should be up to the neighborhood residents. Mr. Carpenter stated it would have to go in front of the neighborhood residents anyway because they have to get a conditional use permit. He stated he thinks we need to find a way to control the boarding house, but give a little bit more leeway to the bed and breakfast. Mr. Carpenter stated he does not know why the owner needs to be there. Mr. Wittkamp stated if the property and location is conducive to serve that purpose, that is one way of looking at it, but the problem is when do you just look at everything on a case by case basis and do not have a lot of uniformity across the board. Ms. McAllister stated we have to look at them all on a case by case basis because they have conditional use permits. Ms. Spratley asked how many bed and breakfasts are in the city now. Ms. McAllister stated one, the Boxwood Inn. Ms. Spratley stated if there is a market for it, it would be nice, and it would be nice if perhaps you did not have to have an owner. She stated we are near Williamsburg and other historic areas. Mr. Carpenter asked what is the difference between a bed and breakfast and a small hotel. Ms. McAllister stated they are not defined the same. She stated a hotel is a commercial operation. She stated people will ask what is the difference, other than one is in a commercial area and the other residential. Ms. Spratley stated one is conducive to that kind of thing and one is not. Ms. Mignogna stated another question is if the owner can have a caretaker stay with the tourists when the bed and breakfast is in use instead of being owner-occupied. Mr. Carpenter stated he looks forward to furthering the discussion at another time.

There being no further business, the meeting adjourned at 3:17 P.M.



Recording Secretary



Executive Secretary

SIGN ORDINANCE UPDATE

Newport News Planning Commission

Work Session

June 20, 2018



SIGN ORDINANCE UPDATE

- Reed v. Town of Gilbert, AZ – 2015
Supreme Court Ruling
- Update, clarify and simplify regulations



Section 33.01-1. – Findings, Purposes and Intent: Interpretation

- Reflect Supreme Court Ruling



Section 33.01-3. – Definitions

- Revise with content neutral language in all definitions
- Match definitions to those in zoning ordinance



Section 33.01-4. – Generally

- Revise with content neutral language
- Update code references
- Add references to overlay and special review districts
- Add explanation for double-faced sign



Section 33.01-6. – Permitted signs; number, sign area, height and placement

- Revise with content neutral language
- Match residential uses with zoning ordinance
- Simplify minimum separation between signs requirement



Section 33.01-6. – Permitted signs; number, sign area, height and placement

- Establish maximum number of signs per developed site
- Remove Planned Development Flexibility Option



Section 33.01-6.1. – Electronic display signs

- Revise with content neutral language



Section 33.01-7. – Temporary and other permissible signs

- Revise with content neutral language
- Establish requirements for temporary signage that will cover real estate signage as well as special events
- Match residential subdivision signage with Chapter 38 requirements



Section 33.01-8. – Prohibited signs

- Revise with content neutral language
- Update to reflect current state law
- Add portable signs



Add Section 33.01-11. – Abandoned nonconforming signs

- Establish criteria for removal of nonconforming signs per state law



ARTICLE II. Regulations Governing Use of Portable Signs

- Remove due to obsolescence



Chapter 38 - Streets and Sidewalks, Sections 38-24 – 38-26.1

- Revise with content neutral language
- Update insurance requirements
- Reduce height of regional transportation facility signs from 20' to 15'



Questions?

