

Minutes of Meeting
Dagsboro Planning & Zoning Commission
Bethel Center-28307 Clayton Street
March 1, 2018

I. Call Meeting to Order:

Chairman Brad Connor called the meeting to order at 6:00 p.m.

Those in attendance were: Chairman Brad Connor, Co-Chairperson Cathy Flowers, Commissioner Scott Crater, Commissioner Earl Savage, Commissioner Cindy Gallimore, Town Administrator Cindi Brought, and Town Engineer Kyle Gulbranson. Please see the sign in sheet for others in attendance.

II. Public Comment:

No public comment was made.

III. Approval of Agenda

Commissioner Savage made a motion to approve the agenda. Co-Chairperson Flowers seconded the motion. All in favor.

IV. Approval of Minutes:

A. February 1, 2018 – Planning and Zoning Meeting minutes

Commissioner Crater questioned the calculation of the patron space made by one of the building inspectors. He felt the calculation was incorrect.

Commissioner Crater made a motion to approve the February 1, 2018 meeting minutes. Seconded by Commissioner Gallimore. All in favor.

V. New Business:

A. Discuss Zoning Change for Waples Street Fire House – Wayne Bowden – Residential to Commercial for tax map 2.33-11.00-66.00

Mr. Wayne Bowden from the Dagsboro Volunteer Fire Department was present to discuss a possible zoning change for the old fire house. The fire department isn't completely sure, but they are wondering if they do try to sell the old fire house, if the buyer could change the zoning from residential to commercial. Chairman Connor asked if this is a non-conforming use. Mr. Gulbranson stated that it is zoned residential. The future land use map, which is part of the comprehensive plan, shows the property as institutional. To change the zoning, they would have to go through public hearing and proper notice would have to be given to surrounding property owners. A comprehensive plan map amendment would also need to be done.

Mr. Bowden asked if they don't do the zoning change, what happens down the road if the buyer wants to do the change. Mr. Gulbranson stated the buyer would go through the same process, but it cannot be guaranteed that it would be approved.

Commissioner Crater raised the issue that the word "bar" is listed as an acceptable use under the Commercial District, but not under Town Center District and therefore, somebody could buy it and turn it into a bar if it is Commercial, but not Town Center. Mr. Gulbranson stated that actually the restaurant and bar regulations apply across the board throughout town – the same thing that applies to Town Center District, would apply to the Commercial District. The town made this amendment to the code because of an application that was submitted for a bar and restaurant in town. Commissioner Crater's concern was that the town needs to decide if they would be okay something that could be sold as a bar in town. Mr. Gulbranson stated that they could always apply for Town Center zoning or Commercial zoning. Chairman Connor stated they could do Commercial with these uses only to preclude them from putting things the town does not want there. Mr. Gulbranson stated they could, but that would be conditional zoning and that is probably not the best way to go. The only commercial property in town is the property that the fire company is on currently and the small heating and air condition property on Hudson Road.

Mr. Bowden stated that the fire company does not want to change the zoning and then have it sold and the buyer wants something else and to have to change it again. They would just like to know what is allowed so they can tell potential buyers. Chairman Connor stated they would have to accept the water tower being there as well.

Commissioner Crater asked if it would need to have a public hearing if the buyer wanted to change the property into a bar. Mr. Gulbranson stated it would be a Change of Use and would have to go before Planning and Zoning and Town Council. Chairman Connor asked if there would be a fee. Mr. Gulbranson stated there would be a fee and there would be a zoning change application (which is \$250).

Mr. Gulbranson suggested they look at the uses listed under each zoning because Town Center actually allows more uses than Commercial. Mr. Bowden stated that is all they needed – just information that he can pass on.

B. Change of Zoning Request William and Gayle Chandler – Presentation of Letter Requesting Cluster to Residential – 2.33-11.00-224.02 (formerly B/Z Builders – 9 acres +/- W/S Road 401 – Main Street)

Mr. Chandler had submitted a letter to request the property listed above be changed from Cluster zoning to Residential. He was present at the meeting and informed the Commission that he and his wife (who are the only voting members of the LLC that owns the property) have acquired this piece of land (and another nearby). The request for the zoning change is because it is an intergenerational gift to future generations to protect the land as it exists, to preserve the open space for wildlands and wildlife, and to preserve agricultural areas. They believe the county is at the tipping point of overdevelopment where it will further degrade and impair the quality of life in the county. Their intention is to preserve this property as agricultural, wildlife areas, and wildland areas. They may also partner with Delaware

Wildlands or the Nature Conservancy to do that. The zoning of this property is inappropriate for the intended use because it will never be developed. The request is to restore it to what the original zoning was.

Commissioner Crater asked where exactly this property is located and where it is in relation to the Zonko property. Mr. Chandler described where the property is in town and replied that it is the Zonko property. Mr. Chandler informed the Commission that they are not just doing this in Dagsboro – they have made similar acquisitions around the county. Mr. Gulbranson asked if there is an interest in a conservation easement. Mr. Chandler replied that there may be – they will be looking at that next.

Mr. Gulbranson stated that this one is easy because it was a form of residential zoning so it is just a change within the residential category. Mr. Chandler asked if the comprehensive plan would need to be amended. Mr. Gulbranson replied that changing from Cluster Residential to Residential would have no impact on the comprehensive plan because the future land use would still be residential.

Commissioner Savage made a motion to approve the zoning change request. Commissioner Crater seconded the motion. All in favor.

VI. Old Business:

- A. Kern Preliminary Site Plan Recommendation – discuss/review the possibility of an additional recommendation to the Town Council in regard to granting a waiver for the non-conforming setback shown on preliminary site plans going to public hearing at the Town Council meeting on March 19, 2018

Town Administrator Brought informed the Commission that the Town Council meeting has been moved to March 26th, due to a lack of a quorum and there will not be a public hearing at that meeting.

Chairman Connor asked Mr. Gulbranson to give the Commission a background on what is happening and explain the waiver. Mr. Gulbranson reviewed the events that have occurred since the last Planning and Zoning meeting when they approved the preliminary site plan with some changes. The revised plans have been received with the concrete pad and enclosure for the dumpster being shown, as well as a walkway from the front of the building to the rear and location of the propane tanks.

Mr. Gulbranson explained that Attorney Witsil reviewed the site plan and letter of recommendation. In the town code, there is a clause for the Town Center District that states for new businesses and existing structures the side yard setback can be waived to give a continuous looking building. Attorney Witsil's interpretation of this was that the language was not strong enough in terms of a waiver for the side yard setback. From the north side, the building itself is only one foot from the property line. The building is at least fifty years old and pre-dates the zoning code. Currently, the Town Center District regulations require an eight foot side yard setback for new construction, but does have the provision that the side yard setback can be waived. The town attorney feels that the best course of action since there is a non-conforming situation is that the applicant seeks a variance to the side yard setback requirement. Mr. Gulbranson stated that he does believe that provides some protection to the property owner. Should they choose to sell the property at some point, if there is a variance on file, the variance goes with the property.

Chairman Connor asked if the variance would mean they need to go to the Board of Adjustment and if so, there would be a fee involved. Mr. Gulbranson confirmed it would be before the Board of Adjustment and stated that currently, the fee is \$2,500. Chairman Connor expressed concern with the owners trying to get a business started and needing to come up with that amount of money. He asked if it would be possible to make a recommendation to lower the fee. Commissioner Crater asked why they would want to lower the fee. Mr. Gulbranson stated that since that fee has been established, he does not think there has ever been a variance request. Chairman Connor asked what happens if the variance is denied. Mr. Gulbranson replied that if the variance gets denied, the project cannot move forward.

Commissioner Crater asked why the setback requirements were instituted – if it was just for aesthetic purposes or for fire department access around a building or another reason. Mr. Gulbranson replied that typically, in a commercial district or a town center district, the side setbacks are minor or in some towns, there are none at all. It forms a continuous looking streetscape, which is why there are relatively small side yard setbacks in town center or commercial districts.

Chairman Connor asked if a waiver can be granted. Mr. Gulbranson confirmed the town code allows for a waiver to be granted by Town Council. Chairman Connor clarified that nothing would make the waiver illegal, Mr. Witsil is just recommending the variance to make it cleaner. Mr. Gulbranson confirmed that is correct. Chairman Connor expressed concern that the public hearing will push the project back and then they'll be charged more money for the fees.

Commissioner Crater asked for clarification as to whether the building would continue on the property line. Mr. Gulbranson clarified that it is inside the property line by one foot. The continuation of the building would be inset slightly more so it at least maintains the one foot distance. Commissioner Crater also called attention to Chapter 275, Section 39 that shows they might not have to get a variance. He feels it isn't clear and it's all in the way it's interpreted. Chairman Connor stated that as long as it's legal, they should allow the waiver so that the Kerns can keep moving along. Commissioner Crater interprets the code to mean that a nonconforming building can add an addition, but the new addition must meet today's setbacks. Mr. Gulbranson stated that is found in the nonconforming use section and that was the same section that Mr. Witsil was using for his argument to go to the Board of Adjustment – he feels the current proposed building, in its current proposed state, does not meet that challenge. However, Mr. Gulbranson stated in the Town Center District, there is conflicting language.

Commissioner Crater asked which is more concrete – the waiver or the variance. Mr. Gulbranson replied that a waiver is something the Town Council can grant – it is not documented or recorded at the courthouse, there is just a paper trail stating a waiver was granted. There have been other waivers granted for other projects in town – mostly, the Woodlands at Peppers Creek. Mr. Gulbranson thinks Mr. Witsil was coming from the thought that a variance is documented, there is a public meeting held, and a variance is typically recorded with the deed of a property.

Mr. Chandler (Town Council member), shared that Mr. Witsil's view is for a particular reason – if a lawyer is asked to certify that there is a clear title to this property (whether it is a bank asking for loan purposes or if the Kerns decide to sell the property), the lawyer could not certify there is a clear title without anything in the record of the title about an appropriate variance being granted for the violation of the setback requirements. Mr. Chandler himself considers the rights of the adjoining property owner. From the public policy point of view, in a variance, the adjoining land owner will get a mailed notice informing them the neighboring property has requested a variance and he or she can come to the public hearing to share their view on the situation. For a waiver, the adjoining property owner would not get a

certified letter to them personally. Mr. Chandler's concern is that they will come back in the future and complain that the town did not go through the steps to grant a variance.

Chairman Connor questioned if this would set precedence for somebody else to ask for a variance and then the town is locked into granting it. Mr. Chandler explained that if the Board of Adjustment granted this variance, but not one for another property in town, they would have to show there was a special hardship to allow for the one and not the other. Mr. Gulbranson stated that he believes this property does have a special hardship because the building that was built 50 years ago was built very close to the property line. Mr. Chandler stated that Mr. Bodenweiser (the adjoining property owner) was aware of this because the building was there when he bought the lot in 1976.

Chairman Connor stated the issue is only on the one side – the side with the movie theater is okay. Mr. Gulbranson confirmed. Co-chairperson Flowers asked if this restaurant does not succeed, Mr. Kern could possibly have trouble selling it if it did not have a variance. Mr. Gulbranson stated that he thinks that is Mr. Witsil's concern.

Commissioner Savage is concerned that if they keep bringing up issues to be corrected, it could discourage the Kerns and asked if there is a way to express to the Town Council what their ultimate goal is to help this business get through. Mr. Gulbranson stated that he thinks Town Council is looking to the Planning and Zoning Commission to see how to proceed. Chairman Connor stated that is why he thought maybe the Board of Adjustment cost could be reduced. Mr. Gulbranson stated that there was a time in the past with the Downtown Development that the town did mention considering lowering fees to help the businesses. Commissioner Crater stated that this particular instance will be expensive - Mr. Gulbranson will have a lot of time into this and that will cost the town money. Chairman Connor asked if there is an idea of what other towns charge. Mr. Gulbranson stated it ranges from \$250 to \$2,500, with Dagsboro being at the higher end. The Commission was in agreement they don't want this to stop the project from moving forward. Chairman Connor asked what the procedure would be to reduce the fee for this situation. Mr. Chandler stated he does not like the idea of reducing the fee for one person – he would prefer it would be fair and reduce the fee to everybody. The procedure is for the Commission to recommend the lower fee, it would then get put on the agenda for Town Council, and they make a motion to approve or disapprove. Co-Chairperson Flowers asked if it would just be lowered for a certain amount of time, if that is what Millsboro did. Mr. Gulbranson stated Millsboro lowered theirs indefinitely.

Chairman Connor asked what a fair amount would be and suggested maybe \$1,000. Co-Chairperson Flowers disagreed because some are as low as \$250. Mr. Gulbranson suggested \$500. There are advertising costs, certified mailings that need to take place, expenses for the town for an attorney, and so on. Chairman Connor asked if \$1,000 is a fair number. Mr. Gulbranson stated that would cover the town's costs. Commissioner Crater asked if there could be a situation down the road that is more laborious and would cost the town more money. Mr. Gulbranson stated it is hard to predict. Commissioner Savage suggested cutting the current fee in half to \$1,250. Co-Chairperson Flowers feels it needs to be researched a little.

Commissioner Crater asked what Mr. Gulbranson would charge to review the plans. Mr. Gulbranson stated the when someone goes for a variance, they have site plans or some sort of plans submitted that already have a fee so the review of those plans is covered in other fees. Commissioner Crater asked if there was a way to research this "in house" instead of paying Mr. Gulbranson to research. He asked Mr. Chandler for suggestions. Mr. Chandler stated that he feels this is a situation where you cannot quantify

it – it would just need to be a ballpark. There might be one instance where it costs more than the fee, but another instance where it will cost less. The range already suggested from \$500 to \$1,250 is a ballpark. Commissioner Crater suggested they go in the middle of that range - \$1,000.

Commissioner Savage made a motion that they recommend to Town Council that the Board of Adjustment fee be reduced to \$1,000. Commissioner Crater seconded the motion. All in favor.

Commissioner Savage made a motion to recommend that the Kerns need a variance for the side yard setback. Co-Chairperson Flowers seconded the motion. All in favor.

B. Review and discuss changes to Sign Ordinance and results of Town Council review on February 26th

Mr. Gulbranson informed the Commission that Attorney Witsil had made suggestions to the sign ordinance and he had incorporated his suggestions into the ordinance. Mr. Gulbranson also shared some suggestions for the real estate signs since they have been an issue recently. Currently, the town code only allows the small, regular size real estate sign for any property. The problem has been for larger parcels of property or places like Cea-Dag. They just go place a larger sign (something like 4'x8', which is a normal size for a larger real estate sign) and then Town Administrator Brought has to make them remove it. The larger sign would not be appropriate on a single family home lot in town, but it might be on a 30 acre parcel along Route 113, where cars are going by at higher speeds. The Commission will take some time to review all of these possible changes and will discuss it at the next meeting.

VII. Public Comment:

No public comment was made.

VIII. Adjournment:

Motion to adjourn was made by Commissioner Savage and seconded by Co-Chairperson Flowers. All in favor.

Meeting adjourned at 7:00 p.m.

Respectfully Submitted,
Megan Thorp, Town Clerk